

**SESSION LAWS**  
**OF**  
**HAWAII**  
**PASSED BY THE**  
**TWENTY-FIFTH STATE LEGISLATURE**  
**STATE OF HAWAII**

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**REGULAR SESSION**  
**2010**

Convened on Wednesday, January 20, 2010 and  
Adjourned sine die on Thursday, April 29, 2010

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Published under Authority of  
Section 23G-13, Hawaii Revised Statutes  
by the  
Revisor of Statutes  
State of Hawaii  
Honolulu, Hawaii

## PREFACE

This volume contains all of the laws enacted by the Hawaii State Legislature during the Regular Session of 2010.

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Statutory material that is being repealed is either bracketed or bracketed and stricken.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by Section 23G-16.5, Hawaii Revised Statutes, the text is edited to omit the bracketed material for HRS sections being repealed in their entirety, and to omit the underscoring for new HRS sections.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 15, 2010

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Daniel K. Inouye  
Daniel K. Akaka

House of Representatives:  
Neil Abercrombie  
Mazie K. Hirono

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**STATE EXECUTIVE OFFICERS**

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

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TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION 2010**

**SENATE**

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Vice President..... Russell S. Kokubun  
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Robert Bunda (D)

Twenty-Fifth District—(Oahu)  
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Twenty-Third District—(Oahu)  
Clayton Hee (D)

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 Vice Speaker ..... Michael Y. Magaoay  
 Clerk ..... Patricia A. Mau-Shimizu

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Fifty-First District—(Oahu)  
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2010 REGULAR SESSION**

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**Session Laws of Hawaii**  
**Passed By The**  
**Twenty-Fifth State Legislature**  
**Regular Session**  
**2010**

**ACT 1**

H.B. NO. 2162

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 \$7,377,244 or so much thereof as may be necessary to the senate for the following expenses:

- (1) The sum of \$6,477,244 for defraying any and all session and nonsession expenses of the senate up to and including June 30, 2011, including the 2010 regular session, twenty-fifth legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2010 and 2011 regular sessions; and
- (2) The sum of \$900,000 for defraying the expenses of the legislative information system for cost items such as hardware, software, consultants, installation, materials, supplies, and other related costs associated with the legislative information system that have been or will be incurred.

The sum appropriated in this section shall be expended by the senate.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$10,481,787 or so much thereof as may be necessary to the house of representatives for the following expenses:

- (1) The sum of \$9,793,363 for defraying any and all session and nonsession expenses of the house of representatives up to and including June 30, 2011, including the 2010 regular session, twenty-fifth legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2010 and 2011 regular sessions; and
- (2) The sum of \$688,424 for defraying the expenses of the legislative information system for cost items such as hardware, software, consultants, installation, materials, supplies, and other related costs associated with the legislative information system that have been or will be incurred.

## ACT 1

The sum appropriated in this section shall be expended by the house of representatives.

SECTION 3. Payment of expenses of the senate during the interim between the 2010 and 2011 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 2010 and 2011 regular sessions shall be made only with the approval of the speaker of the house of representatives.

SECTION 4. Before January 19, 2011, 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 19, 2011.

SECTION 5. Unless otherwise prescribed by law, the expenses of any member of the legislature while traveling abroad on official business of the legislature shall be \$145 a day as authorized by the president of the senate and the speaker of the house of representatives.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,371,783 or so much thereof as may be necessary to the office of the auditor for the following expenses:

- (1) The sum of \$2,408,013 for defraying the expenses of the office of the auditor during fiscal year 2010-2011;
- (2) The sum of \$813,170 for defraying the expenses of the office of the state ethics commission during fiscal year 2010-2011; and
- (3) The sum of \$150,000 during fiscal year 2010-2011 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.

The sum appropriated in this section shall be expended by the auditor.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,550,828 or so much thereof as may be necessary to the office of the auditor during fiscal year 2010-2011 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 \$6,300,000 or so much thereof as may be necessary to the office of the auditor during fiscal year 2010-2011 for the auditor to conduct or complete its audit functions as provided by law.

The sum appropriated in this section shall be expended by the auditor.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,861,633 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 2010-2011, including equipment relating to computer systems programming and operations.

The sum appropriated in this section shall be expended by the legislative reference bureau.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$998,342 or so much thereof as may be necessary to the office of the ombudsman for defraying the expenses of the office during fiscal year 2010-2011.

The sum appropriated in this section shall be expended by the ombudsman.

SECTION 11. 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.

The sum appropriated in this section shall be expended by the legislature for the purposes of this section.

SECTION 12. Except for moneys in the audit revolving fund, as of the close of business on June 30, 2011, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 13. Each section of this Act is declared to be severable from the remainder of this Act.

SECTION 14. This Act shall take effect upon its approval.

(Approved February 26, 2010.)

## ACT 2

H.B. NO. 2169

A Bill for an Act Relating to Employment Security.

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

SECTION 1. Chapter 383, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§383- Special assessments on employers to pay interest on loans from Secretary of Labor.** Whenever the State requests a loan from the Secretary of Labor in accordance with Title XII of the Social Security Act to pay expected benefit claims during a specified period of time, the director may assess all employers the amounts that are sufficient to pay the principal and interest costs on the loan; provided that the director develops a mechanism of distributing these payments among employers in a fair and equitable manner.”

SECTION 2. Section 383-22, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In the case of an individual whose benefit year begins prior to January 5, 1992, the individual’s weekly benefit amount shall be, except as otherwise provided in this section, an amount equal to one twenty-fifth of the individual’s total wages for insured work paid during the calendar quarter of the individual’s

**ACT 2**

base period in which such total wages were highest. In the case of an individual whose benefit year begins after January 4, 1992, the individual's weekly benefit amount shall be, except as otherwise provided in this section, an amount equal to one twenty-first of the individual's total wages for insured work paid during the calendar quarter of the individual's base period in which such total wages were highest. The weekly benefit amount, if not a multiple of \$1, shall be computed to the next higher multiple of \$1. If an individual's weekly benefit amount is less than \$5, it shall be \$5. The maximum weekly benefit amount shall be determined annually as follows: On or before November 30 of each year the total remuneration paid by employers, as reported on contribution reports submitted on or before such date, with respect to all employment during the four consecutive calendar quarters ending on June 30 of the year shall be divided by the average monthly number of individuals performing services in the employment during the same four calendar quarters as reported on the contribution reports. The amount thus obtained shall be divided by fifty-two and the average weekly wage (rounded to the nearest cent) thus determined. For benefit years beginning prior to January 1, 1992, two-thirds of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all claims for benefits filed by an individual qualifying for payment at the maximum weekly benefit amount in the benefit year commencing on or after the first day of the calendar year immediately following the determination of the maximum weekly benefit amount. For benefit years beginning January 1, 1992, but prior to January 1, 2008, and beginning again on January 1, ~~2011,~~ 2012, seventy per cent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all claims for benefits filed by an individual qualifying for payment at the maximum weekly benefit amount in the benefit year commencing on or after the first day of the calendar year immediately following the determination of the maximum weekly benefit amount. For benefit years beginning January 1, 2008, and ending December 31, ~~2010,~~ 2011, seventy-five per cent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all claims for benefits filed by an individual qualifying for payment at the maximum weekly benefit amount in the benefit year commencing on or after the first day of the calendar year immediately following the determination of the maximum weekly benefit amount. The maximum weekly benefit amount, if not a multiple of \$1, shall be computed to the next higher multiple of \$1.

(Column A) High Quarter Wages	(Column B) Basic Weekly Benefit	(Column C) Minimum Qualifying Wages	(Column D) Maximum Total Benefits in Benefit Year
\$ 37.50 - 125.00	\$ 5.00	\$ 150.00	\$ 130.00
125.01 - 150.00	6.00	180.00	156.00
150.01 - 175.00	7.00	210.00	182.00
175.01 - 200.00	8.00	240.00	208.00
200.01 - 225.00	9.00	270.00	234.00
225.01 - 250.00	10.00	300.00	260.00
250.01 - 275.00	11.00	330.00	286.00
275.01 - 300.00	12.00	360.00	312.00
300.01 - 325.00	13.00	390.00	338.00
325.01 - 350.00	14.00	420.00	364.00
350.01 - 375.00	15.00	450.00	390.00
375.01 - 400.00	16.00	480.00	416.00
400.01 - 425.00	17.00	510.00	442.00
425.01 - 450.00	18.00	540.00	468.00

(Column A) High Quarter Wages	(Column B) Basic Weekly Benefit	(Column C) Minimum Qualifying Wages	(Column D) Maximum Total Benefits in Benefit Year
450.01 - 475.00	19.00	570.00	494.00
475.01 - 500.00	20.00	600.00	520.00
500.01 - 525.00	21.00	630.00	546.00
525.01 - 550.00	22.00	660.00	572.00
550.01 - 575.00	23.00	690.00	598.00
575.01 - 600.00	24.00	720.00	624.00
600.01 - 625.00	25.00	750.00	650.00
625.01 - 650.00	26.00	780.00	676.00
650.01 - 675.00	27.00	810.00	702.00
675.01 - 700.00	28.00	840.00	728.00
700.01 - 725.00	29.00	870.00	754.00
725.01 - 750.00	30.00	900.00	780.00
750.01 - 775.00	31.00	930.00	806.00
775.01 - 800.00	32.00	960.00	832.00
800.01 - 825.00	33.00	990.00	858.00
825.01 - 850.00	34.00	1020.00	884.00
850.01 - 875.00	35.00	1050.00	910.00
875.01 - 900.00	36.00	1080.00	936.00
900.01 - 925.00	37.00	1110.00	962.00
925.01 - 950.00	38.00	1140.00	988.00
950.01 - 975.00	39.00	1170.00	1014.00
975.01 - 1000.00	40.00	1200.00	1040.00
1000.01 - 1025.00	41.00	1230.00	1066.00
1025.01 - 1050.00	42.00	1260.00	1092.00
1050.01 - 1075.00	43.00	1290.00	1118.00
1075.01 - 1100.00	44.00	1320.00	1144.00
1100.01 - 1125.00	45.00	1350.00	1170.00
1125.01 - 1150.00	46.00	1380.00	1196.00
1150.01 - 1175.00	47.00	1410.00	1222.00
1175.01 - 1200.00	48.00	1440.00	1248.00
1200.01 - 1225.00	49.00	1470.00	1274.00
1225.01 - 1250.00	50.00	1500.00	1300.00
1250.01 - 1275.00	51.00	1530.00	1326.00
1275.01 - 1300.00	52.00	1560.00	1352.00
1300.01 - 1325.00	53.00	1590.00	1378.00
1325.01 - 1350.00	54.00	1620.00	1404.00
1350.01 and over	55.00	1650.00	1430.00."

SECTION 3. Section 383-61, Hawaii Revised Statutes, is amended as follows by amending subsection (c) to read as follows:

"(c) For the calendar year 1991 only, the term "wages" does not include remuneration in excess of \$7,000 paid with respect to employment to an individual by an employer. For calendar years 2008[;] and 2009, [~~and 2010 only,~~] the term "wages" as used in this part does not include remuneration in excess of \$13,000 paid with respect to employment to an individual by an employer so long as the balance of the unemployment trust fund does not fall below the adequate reserve fund as specified by section 383-63. For calendar years 2010 and 2011 only, the term "wages" as used in this part does not include remuneration in excess of the wages paid with respect to employment to an individual by



an employer during the calendar year that exceeds ninety per cent of the average annual wage."

SECTION 4. Section 383-63, Hawaii Revised Statutes, is amended to read as follows:

**"§383-63 Definitions for experience rating provisions.** As used in sections 383-63 to 383-69:

"Adequate reserve fund" means an amount that is equal to the amount derived by multiplying the benefit cost rate that is the highest during the ten-year period ending on November 30 of each year by the total remuneration paid by all employers, with respect to all employment for which contributions are payable during the last four calendar quarters ending on June 30 of the same year, as reported on contribution reports filed on or before October 31 of the same year. "Remuneration", as used in this definition, means wages as defined in section 383-10. For the purpose of determining the highest benefit cost rate, the benefit cost rate for the first twelve-consecutive-calendar-month period beginning with the first day of the first month of the ten-year period and for each succeeding twelve-consecutive-calendar-month period beginning with the first day of each subsequent month shall be computed.

Effective for the calendar years 1992 through 2007, and [from] for calendar year 2011 [and thereafter], "adequate reserve fund" means an amount that is equal to [~~one and one-half times~~] the amount derived by multiplying the benefit cost rate that is the highest during the ten-year period ending on November 30 of each year by the total remuneration paid by all employers, with respect to all employment for which contributions are payable during the last four calendar quarters ending on June 30 of the same year, as reported on contribution reports filed on or before October 31 of the same year. "Remuneration", as used in this definition, means wages as defined in section 383-10. For the purpose of determining the highest benefit cost rate, the benefit cost rate for the first twelve-consecutive-calendar-month period beginning with the first day of the first month of the ten-year period and for each succeeding twelve-consecutive-calendar-month period beginning with the first day of each subsequent month shall be computed.

"Annual payroll" means the total amount of wages for employment paid by an employer during a calendar year; and "average annual payroll" means the average of the annual payrolls of an employer for a period consisting of the three consecutive calendar years immediately preceding the calendar year for which rates are computed, except that, for an employer whose account has been chargeable with benefits throughout at least one year but less than three years ending on December 31, 1955, and each December 31 thereafter, "average annual payroll" means one-third of the sum of the employer's cumulative payrolls for the period in which the employer has been subject to this chapter, but not more than the three calendar years ending on such December 31. Whenever there was or is a change in the definition of "employment" or in the definition of "wages", effective for the purposes of this chapter generally or of this part at the commencement of or at a date within the three-year period of any average annual payroll, "employment" and "wages" for the purpose of determining each annual payroll within such period and the average annual payroll for such period, shall have the meaning prior to the effective date of such change which they had in accordance with this chapter then in effect and shall have the meaning after the effective date of such change assigned to them by the amendment to this chapter providing for such change.

“Base period employers” means employers by whom an individual was paid the individual’s base period wages.

“Base period wages” means the wages paid to an individual during the individual’s base period for insured work.

“Benefit cost rate” means the rate derived by dividing the total net benefits paid to all individuals during a twelve-consecutive-calendar-month period by the total remuneration paid by all employers with respect to employment for which contributions are payable during the last four completed calendar quarters ending at least five months before the end of the twelve-consecutive-month period. “Remuneration”, as used in this [paragraph,] definition, means wages as defined in section 383-10.

“Contributions” includes the money payments required by this chapter to be made into the fund by any employing unit on account of having individuals in its employ. “Contributions” does not include penalties or interest for delinquency in payments.

“Current reserve fund” means the total assets of the fund available for the payment of benefits on November 30 of each year (exclusive of all moneys credited under section 903 of the Social Security Act to the account of this State in the unemployment trust fund [which] that have been appropriated for expenses of administration whether or not withdrawn from the trust fund).

“Reserve balance” means the difference between all contributions paid by an employer and credited to the employer’s account for all periods before January 1 (including those paid before February 1 of the same year with respect to wages paid by the employer before January 1 of the same year) and the total benefits chargeable to the employer’s account for all periods before January 1 of the same year.”

SECTION 5. Section 383-68, Hawaii Revised Statutes, is amended by amending subsection (c) as follows:

“(c) Effective with calendar year 1992 and thereafter, before December 31 of the previous year the contribution rate schedule for the following calendar year shall be determined on the basis of the relationship between the most recent current reserve fund and the most recent adequate reserve fund, in accordance with this subsection and subsection (d).

- (1) Whenever the ratio of the current reserve fund to the adequate reserve fund is greater than 1.69, contribution rate schedule A shall apply.
- (2) Whenever the ratio of the current reserve fund to the adequate reserve fund is 1.3 to 1.69, contribution rate schedule B shall apply.
- (3) Whenever the ratio of the current reserve fund to the adequate reserve fund is 1.0 to 1.29, contribution rate schedule C shall apply.
- (4) Whenever the ratio of the current reserve fund to the adequate reserve fund is .80 to .99, contribution rate schedule D shall apply.
- (5) Whenever the ratio of the current reserve fund to the adequate reserve fund is .60 to .79, contribution rate schedule E shall apply.
- (6) Whenever the ratio of the current reserve fund to the adequate reserve fund is .40 to .59, contribution rate schedule F shall apply.
- (7) Whenever the ratio of the current reserve fund to the adequate reserve fund is .20 to .39, contribution rate schedule G shall apply.
- (8) Whenever the ratio of the current reserve fund to the adequate reserve fund is less than .20, contribution rate schedule H shall apply.

Notwithstanding the ratio of the current reserve fund to the adequate reserve fund, contribution rate schedule D shall apply for calendar year 2010 and contribution rate schedule F shall apply for calendar year 2011.”

## ACT 3

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.<sup>1</sup>

SECTION 8. This Act shall take effect upon its approval and shall apply retroactively to January 1, 2010, for determinations of the employer's contribution rate and wage base.

(Approved March 11, 2010.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 3

S.B. NO. 520

A Bill for an Act Relating to the Motor Vehicle Industry Licensing Act.

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

SECTION 1. Section 437-12, Hawaii Revised Statutes, is amended to read as follows:

**“§437-12 Legal ownership certificates.** (a) Possession [~~or proof of possession~~] of or right to possess legal ownership certificate. No dealer shall sell or advertise for sale a new motor vehicle unless the dealer has in the dealer's possession [~~or proof of possession of the legal ownership certificate of the subject motor vehicle.~~] the actual legal ownership certificate or a certificate of origin or its equivalent issued to the dealer by the manufacturer or distributor for the subject motor vehicle. No dealer shall sell or advertise for sale a used motor vehicle unless the dealer has in the dealer's possession evidence that all liens on the subject motor vehicle have been satisfied and the actual legal ownership certificate or proof of the right to possess the legal ownership certificate for the subject motor vehicle.

(b) Delivery of legal ownership certificate. The legal ownership certificate shall be delivered within the time period [~~as provided~~] specified in section 286-52(b).”

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 March 15, 2010.)

## ACT 4

S.B. NO. 2246

A Bill for an Act Relating to Statutory Revision: Amending 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 188-34, Hawaii Revised Statutes, is amended to read as follows:

**“§188-34 Fishing in Honolulu harbor, Hilo harbor, [~~Kahului harbor,~~] restricted.** (a) It is unlawful to take or kill fish by means of any draw, drag, or seine net in the waters of the harbor of Honolulu; provided that commercial marine licensees as defined in chapter 187A may take bait fish by means of any draw, drag, or seine net during periods scheduled by the harbor master.

(b) It is unlawful to take or kill fish by means of any net in the waters of that portion of the bay of Hilo bounded by the breakwater, a line from the outer end of the breakwater to Alealea Point, and the shoreline from Alealea Point to the inshore end of the breakwater; provided that commercial marine and pond operators with appropriate licenses issued by the department of land and natural resources may take bait fish or pua, or persons may use throw net, opae net, crab net, or nehu net not longer than fifty feet to take nehu for family consumption or bait purposes.

~~[(c) It is unlawful to take or kill fish by means of any net in the waters of Kahului harbor; provided that persons may use throw net, opae net, crab net, or nehu net not longer than fifty feet to take nehu for family consumption or bait purposes.]”~~

SECTION 2. Chapter 205A, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) of section 205A-30.5, Hawaii Revised Statutes, to read:

“(b) Subsection (a) shall not apply to special management area use permits for structures with:

(1) An outdoor lighting fixture that is located on the grounds of a [~~ho-  
tel/hotel-condo~~] hotel, hotel-condominium, or condominium-hotel as defined in section 486K-1; provided that:

(A) The outdoor lighting fixture is located underwater or is directed downward and illuminates a limited area of no more than thirty feet into the shoreline and ocean waters; or

(B) The outdoor lighting fixture is the only practicable means of ensuring the safety and security of guests, visitors, and employees; and

(2) Artificial lighting provided by a government agency or its authorized users for government operations, security, public safety, or navigational needs; provided that a government agency or its authorized users shall make reasonable efforts to properly position or shield lights to minimize adverse impacts.”

2. By amending subsection (b) of section 205A-71, Hawaii Revised Statutes, to read:

“(b) Subsection (a) shall not apply to:

- (1) An outdoor lighting fixture that is located on the grounds of a ~~hotel/hotel-condo~~ hotel, hotel-condominium, or condominium-hotel as defined in section 486K-1; provided that:
  - (A) The outdoor lighting fixture is located underwater or is directed downward and illuminates a limited area of no more than thirty feet into the shoreline and ocean waters; or
  - (B) The outdoor lighting fixture is the only practicable means of ensuring the safety and security of guests, visitors, and employees; and
- (2) Artificial lighting provided by a government agency or its authorized users for government operations, security, public safety, or navigational needs; provided that a government agency or its authorized users shall make reasonable efforts to properly position or shield lights to minimize adverse impacts.”

SECTION 3. Section 291E-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The program shall include standards and procedures for the certification of the vendor selected to install and maintain ignition interlock devices pursuant to chapter 291E. At a minimum, the standards shall require that the vendor:

- (1) Install only an ignition interlock device that is certified pursuant to this section;
- (2) Offer or contract for ignition interlock device installation and maintenance statewide;
- (3) Train drivers who are required to install an ignition interlock device, pursuant to chapter 291E ~~[or 804]~~, in how to use the device;
- (4) Schedule the driver for all necessary readings and maintenance of the device; and
- (5) Provide periodic reports regarding the use of each ignition interlock device installed pursuant to chapter 291E, including incidents of test failure, attempts to circumvent the device, and dates, times, and distances the vehicle was driven.”

SECTION 4. Section 302A-462, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The superintendent of education ~~[and the advisory commission on gender equity in sports]~~ shall consider:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (2) The provision of equipment, uniforms, and supplies;
- (3) Equal access to practice and game times;
- (4) Travel and per diem allowances;
- (5) Opportunities to receive coaching and academic tutoring;
- (6) Assignment and compensation of coaches and tutors;
- (7) Access to locker room, weight room, and practice, competitive, and training facilities;
- (8) Access to medical services;
- (9) The provision of housing and dining facilities and services;
- (10) Publicity; and
- (11) Any other relevant factors.”

SECTION 5. Section 348-8, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) There is established within the department a state rehabilitation council. The council shall consist of twenty-one members appointed by the governor as provided in section 26-34 and without regard to section 78-4. The members shall include:

- (1) ~~At least one representative of the statewide council on independent living;~~
- (2) At least one representative of a parent training and information center;
- ~~(3)~~ (2) At least one representative of the client assistance program;
- ~~(4)~~ (3) At least one qualified vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs, who shall serve as an ex officio, nonvoting member if employed by the vocational rehabilitation division of the department;
- ~~(5)~~ (4) At least one representative of community rehabilitation program service providers;
- ~~(6)~~ (5) Four representatives of business, industry, and labor;
- ~~(7)~~ (6) Representatives of disability advocacy groups representing a cross section of individuals with physical, cognitive, sensory, and mental disabilities, and parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities who have difficulty in representing themselves or are unable due to their disabilities to represent themselves;
- ~~(8)~~ (7) Current or former applicants for or recipients of vocational rehabilitation services;
- ~~(9)~~ (8) At least one representative of the state educational agency responsible for the public education of students with disabilities;
- ~~(10)~~ (9) At least one representative of the state workforce development council; and
- ~~(11)~~ (10) The administrator of the vocational rehabilitation division of the department, who shall be an ex officio, nonvoting member;

provided that the council shall include at least one member from each county; and provided further that a majority of the council members shall be persons who have disabilities and are not employed by the vocational rehabilitation division of the department. The council members shall elect a chairperson from the membership. Each member of the council shall serve a three-year term but may not serve more than two consecutive full terms. Any vacancy occurring in the council membership shall be filled in the same manner as the original appointment, except that the governor may delegate the authority to fill such a vacancy to the remaining members of the council after making the original appointment.”

2. By amending subsection (d) to read:

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

SECTION 6. Section 386-1, Hawaii Revised Statutes, is amended by amending the definition of “physician” to read as follows:

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““Physician” includes a doctor of medicine, a dentist, a chiropractor, an osteopath, a [~~naturopath,~~] naturopathic physician, a psychologist, an optometrist, and a podiatrist.”

SECTION 7. Section 431:3-401, Hawaii Revised Statutes, is amended by amending the definition of “negative trend” to read as follows:

““Negative trend” means, with respect to a [~~life or health insurer,~~] life or accident and health or sickness insurer, ~~[[a]]~~ negative trend over a period of time, as determined in accordance with the “trend test calculation” included in the risk-based capital instructions.”

SECTION 8. Section 431:9A-107, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) 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]~~ part II of chapter 482.

Failure to timely inform the commissioner or the business registration division of a change of 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 9. Section 657-7.3, Hawaii Revised Statutes, is amended to read as follows:

**“§657-7.3 Medical torts; limitation of actions; time.** No action for injury or death against a chiropractor, clinical laboratory technologist or technician, dentist, [~~naturopath,~~] naturopathic physician, nurse, nursing home administrator, dispensing optician, optometrist, osteopath, physician or surgeon, physical therapist, podiatrist, psychologist, or veterinarian duly licensed or registered under the laws of the State, or a licensed hospital as the employer of any such person, based upon such person’s alleged professional negligence, or for rendering professional services without consent, or for error or omission in such person’s practice, shall be brought more than two years after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, but in any event not more than six years after the date of the alleged act or omission causing the injury or death. This six-year time limitation shall be tolled for any period during which the person has failed to disclose any act, error, or omission upon which the action is based and which is known to the person.

Actions by a minor shall be commenced within six years from the date of the alleged wrongful act except the actions by a minor under the age of ten years shall be commenced within six years or by the minor’s tenth birthday, whichever provides a longer period. Such time limitation shall be tolled for any minor for any period during which the parent, guardian, insurer, or health care provider has committed fraud or gross negligence, or has been a party to a collusion in the failure to bring action on behalf of the injured minor for a medical tort. The

time limitation shall also be tolled for any period during which the minor's injury or illness alleged to have arisen, in whole or in part, from the alleged wrongful act or omission could not have been discovered through the use of reasonable diligence."

SECTION 10. Section 302A-463, Hawaii Revised Statutes, is repealed.

SECTION 11. Chapter 353H, Part II, Hawaii Revised Statutes, is repealed.

SECTION 12. Act 169, Session Laws of Hawaii 2009, is amended by amending the prefatory language in section 8 to read as follows:

"SECTION 8. Section [~~423D-23;~~] 432D-23, Hawaii Revised Statutes, is amended to read as follows:"

SECTION 13. Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval; provided that:

- (1) Section 3 shall take effect on January 1, 2011; and
- (2) Sections 6 and 9 shall take effect on January 1, 2010.

(Approved March 15, 2010.)

**Note**

1. Edited pursuant to HRS 23G-16.5.

**ACT 5**

S.B. NO. 549

A Bill for an Act Relating to Motor Vehicle Express Warranty Enforcement.

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

SECTION 1. Section 481I-2, Hawaii Revised Statutes, is amended by amending the definition of "motor vehicle" to read as follows:

"Motor vehicle":

- (1) Means a self-propelled vehicle primarily designed for the transportation of persons or property over public streets and highways which is used primarily for personal, family, or household purposes;
- (2) Includes [~~but shall not be limited to~~]:
  - (A) A motorcycle as defined in section 286-2, but excluding a motor scooter;
  - ~~[(A)]~~ (B) A "demonstrator", which means a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model or type;
  - ~~[(B)]~~ (C) An individually registered vehicle used for an individual's business purposes as well as for personal, family, or household purposes; and
  - ~~[(C)]~~ (D) A vehicle owned or leased by a sole proprietorship, corporation, or partnership which has purchased or leased no more



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- than one vehicle per year, used for household, individual, or personal use in addition to business use; and
- (3) Shall not include mopeds~~[- motorcycles,]~~ or motor scooters, as those terms are defined in chapter 286, or vehicles over ~~[10,000]~~ ten thousand pounds, gross vehicle weight rating.”

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 of this Act shall apply to sales of motorcycles that take place on or after September 1, 2010.

(Approved March 16, 2010.)

ACT 6

S.B. NO. 2017

A Bill for an Act Relating to Insurance Claims Adjusters.

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

SECTION 1. Section 431:9-222.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner may issue a limited license to an adjuster who only adjusts either workers’ compensation or crop insurance claims; provided that the adjuster:

- (1) Is domiciled in the State of Hawaii, or in a state that permits residents of the State of Hawaii to act as adjusters in that other state;
- (2) Has had experience, special education, or training in handling loss claims under workers’ compensation or crop insurance contracts of sufficiently reasonable duration and extent to enable an individual to fulfill the responsibilities of an adjuster;
- (3) Has a passing grade on the workers’ compensation or crop insurance examination pursuant to section 431:9-206[;] or has a passing grade on an examination approved by the Risk Management Agency of the United States Department of Agriculture; and
- (4) Pays the applicable fees.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect on July 1, 2010.

(Approved March 16, 2010.)

Note

1. So in original.

ACT 7

S.B. NO. 2812

A Bill for an Act Relating to Captive Insurance Companies.

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

SECTION 1. Section 431:19-108, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~“(a) The commissioner or any authorized examiner [authorized by the commissioner] may conduct an examination of any captive insurance company as often as the commissioner deems appropriate; provided that an examination shall be conducted at least once every three years. The commissioner, upon application by a captive insurance company, may allow an examination to be conducted every five years; provided that the commissioner shall have completed at least one triennial examination of the company.], provided that unless the commissioner requires otherwise:~~

- ~~(1) An examination shall be conducted at least once every five years for all captive insurance companies, except as provided in paragraph (2); and~~
- ~~(2) An examination of a class 3 risk retention captive insurance company shall be conducted no later than three years after its formation and at least once every five years thereafter.~~

The commissioner or any authorized examiner shall thoroughly inspect and examine the captive insurance company’s affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this article.”

SECTION 2. Section 431:19-109, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The certificate of authority of a captive insurance company to do business in this State may be suspended or revoked by the commissioner for any of the following reasons:

- (1) Insolvency or impairment of capital or surplus;
- (2) Failure to meet the requirements of section 431:19-104 ~~[or section 431:19-105]~~;
- (3) Refusal or failure to submit an annual report, as required by section 431:19-107 or any other report or statement required by law or by lawful order of the commissioner;
- (4) Failure to comply with the provisions of its own articles of incorporation, articles of association, or bylaws;
- (5) Failure to submit to examination or any legal obligation relative thereto, as required by section 431:19-108;
- (6) Refusal or failure to pay the cost of examination ~~[as required by]~~ pursuant to section 431:19-108;
- (7) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders;
- (8) Failure to maintain actuarially appropriate loss reserves as determined by the commissioner; provided that the commissioner shall issue at least one warning to the captive insurance company to correct the problem prior to suspending or revoking the certificate of authority; and
- (9) Failure otherwise to comply with the laws of this State.”

SECTION 3. Section 431:19-303, Hawaii Revised Statutes, is amended to read as follows:

**“[§431:19-303] Protected cells.** A sponsored captive insurance company formed and licensed under this article may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following:

- (1) The shareholders or members of a sponsored captive insurance company shall be limited to its participants and sponsors; provided that a sponsored captive insurance company may issue nonvoting securities to other persons on terms approved by the commissioner;
- (2) A protected cell shall be organized and operated in only those forms of business organization authorized by the commissioner, including an association, corporation, limited liability company, partnership, or trust;
- ~~[(2)]~~ (3) Each protected cell shall be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends or other distributions to participants, and other factors as may be provided in the participant contract or required by the commissioner;
- ~~[(3)]~~ (4) The assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;
- ~~[(4)]~~ (5) No sale, exchange, or other transfer of assets may be made by a sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells;
- ~~[(5)]~~ (6) No sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to a sponsor or participant without the commissioner's approval, and in no event shall the approval be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;
- ~~[(6)]~~ (7) Each sponsored captive insurance company shall annually file with the commissioner, financial reports as the commissioner shall require, that shall include, without limitation, accounting statements detailing the financial experience of each protected cell;
- ~~[(7)]~~ (8) Each sponsored captive insurance company shall notify the commissioner in writing within ten business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations; and
- ~~[(8)]~~ (9) No participant contract shall take effect without the commissioner's prior written approval, and the addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell shall constitute a change in business plan requiring the commissioner's prior written approval."

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 March 17, 2010.)

## ACT 8

S.B. NO. 2015

A Bill for an Act Relating to Intrastate Telecommunications Services.

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

SECTION 1. Section 269-16.85, Hawaii Revised Statutes, is amended to read as follows:

~~“[§269-16.85] Local exchange~~ **Retail intrastate services; fully competitive.** (a) Notwithstanding section 269-16.9 or any other law to the contrary, the public utilities commission shall treat ~~[the State’s local exchange]~~ retail intrastate telecommunications services, under the commission’s classification of services relating to costs, rates, and pricing, as fully competitive and apply all commission rules in accordance with that designation. In addition, a telecommunications carrier shall not be required to obtain approval or provide any cost support or other information to establish or otherwise modify in any manner its rates, fares, and charges, or to bundle any service offerings into a single or combined price package; provided that a telecommunications carrier, except upon receiving the approval of the commission, shall not charge a higher rate for any retail telecommunications service than the rate for the same service included in the telecommunications carrier’s filed tariff. All rates, fares, charges, and bundled service offerings shall be filed with the public utilities commission for information purposes only.

(b) This section shall apply to retail rates charged for service to end-user consumers only and shall not apply to wholesale rates charged for services provided by a telecommunications carrier to another telecommunications provider, a wireless communications provider, a voice over internet protocol communications provider, or other similar communications provider.

(c) Nothing herein shall modify any requirements of a telecommunications carrier to provide lifeline telephone service, comply with carrier of last resort obligations, or comply with applicable service quality standards.”

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, 2010.

(Approved March 17, 2010.)

## ACT 9

S.B. NO. 2602

A Bill for an Act Relating to Real Estate Licensees.

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

SECTION 1. The legislature finds that the continual evolution of the real estate industry requires that real estate brokers and salespersons regularly update their knowledge of changes to the real estate industry. The legislature further finds that an increase in continuing education hours will advance the level of professionalism in the real estate industry.

The purpose of this Act is to increase professionalism among real estate licensees by increasing the minimum required continuing education hours for

## ACT 10

real estate brokers and salespersons from ten hours to at least twenty hours in each two-year licensing period.

SECTION 2. Section 467-11.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Prior to the license renewal of a real estate broker or real estate salesperson, the licensee shall provide the commission with proof of having attended [~~ten~~] at least twenty hours of continuing education or its equivalent as determined by the commission during the two-year period preceding the application for renewal. Failure to satisfy the continuing education requirement by the license expiration date shall result in the renewed license being automatically placed on an “inactive” status.”

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

SECTION 4. This Act shall take effect on January 1, 2011.

(Approved March 23, 2010.)

## ACT 10

S.B. NO. 2740

A Bill for an Act Relating to Saint Damien De Veuster Day.

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

SECTION 1. Jozef Damien de Veuster, who would later be known as Father Damien of Molokai and Blessed Damien de Veuster, was a Roman Catholic missionary who sacrificed his life in service to those suffering from Hansen's Disease in Kalaupapa on Molokai.

On October 11, 2009, Father Damien was canonized as Saint Jozef Damien de Veuster by His Holiness Pope Benedict XVI in Rome. Prior to his canonization, Saint Damien was beatified on June 4, 1995 in Brussels by His Holiness Pope John Paul II. At the time of his beatification, Saint Damien was granted a memorial feast day celebrated annually on May 10.

The purpose of this Act is to reflect Saint Damien's recent confirmation of Sainthood, and mark his feast day as Saint Damien de Veuster Day in Hawaii.

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

“~~[[§8-8]]~~ ~~Father~~ Saint Damien ~~[DeVeuster]~~ de Veuster Day. ~~[April 15]~~ May 10 of each year shall be known and designated as “[~~Father~~] Saint Damien ~~[DeVeuster]~~ de Veuster Day”, provided that this day is not and shall not be construed to be a state holiday.”

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 March 31, 2010.)

A Bill for an Act Relating to Restoration of Certain Forfeited Professional and Vocational Licenses.

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

SECTION 1. Section 442-11, Hawaii Revised Statutes, is amended to read as follows:

**“§442-11 Biennial renewal; fees; failure to renew.** Every person holding a license to practice chiropractic in the State shall submit a renewal application with the board of chiropractic examiners on or before December 31 of each odd-numbered year and shall pay a renewal fee. If the board has established continuing education requirements for renewal, the license shall not be renewed unless proof of compliance with the requirements is submitted. A renewal notice shall be mailed to the last known address of all licensed chiropractors on or before November 30 of each odd-numbered year.

The failure, neglect, or refusal of any person holding a license to practice chiropractic to renew the license or to pay the renewal fee, ~~after thirty days of delinquency, constitutes~~ on or before December 31 of each odd-numbered year shall constitute a forfeiture of the license; ~~provided that the license shall be restored upon written application therefor together with proof of compliance with the continuing education requirements, if any, and a payment of all delinquent fees and a penalty fee, if the application and payments are made within a period of one year from the date of the inception of the forfeiture. In the event, however, the forfeiture is permitted to continue over a period of one year, in addition to the foregoing requirements, the person may be required to submit to reexamination and successfully pass the reexamination]. A license that has been forfeited may be restored by the board upon compliance with the licensing renewal requirements provided by law and upon written application and payment of all applicable renewal fees, penalty fees, and compliance resolution fund fees within two years after the date of forfeiture. The license of any person who fails to apply for restoration of a forfeited license within two years from the date of forfeiture shall be automatically terminated. Once a license has been terminated pursuant to this section, the person may apply for a new license pursuant to and subject to all applicable laws and rules in effect at the time of application.”~~

SECTION 2. Section 467-11, Hawaii Revised Statutes, is amended to read as follows:

**“§467-11 Fees; original license and biennial renewals.** (a) All fees for applications, registrations, certificates, and any license prescribed by this chapter shall be deposited to the credit of the compliance resolution fund established pursuant to section 26-9(o), and all fees allocated to the real estate education fund shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(b) The biennial renewal fee and completed renewal application shall be submitted to the department of commerce and consumer affairs on or before the ~~[commission prescribed]~~ commission-prescribed deadline and prior to the expiration date of the license. All real estate licenses expire on December 31 of an even-numbered year. Failure, neglect, or refusal of any duly licensed real estate broker or real estate salesperson to pay the biennial renewal fee and to submit

a completed renewal application shall constitute a forfeiture of the license as of January 1 of the subsequent odd-numbered year.

(c) ~~The forfeited license of an individual real estate broker or real estate salesperson may be restored [upon approval of a completed application; payment of the delinquent fees and the penalty fees as provided in the rules adopted by the director of commerce and consumer affairs pursuant to chapter 91;] upon compliance with the licensing renewal requirements provided by law; submission of a complete written application; payment of all applicable renewal fees, penalty fees, compliance resolution fund fees, and, if applicable, recovery fund assessments; satisfaction of the applicable requirements in sections 467-8[;] and 467-9[;] 467-9.5, and; submission of written documentation demonstrating compliance with section 467-11.5; and [prior to submission of the completed application; and], for individual licensees, satisfaction of one of the following as applicable:~~

- (1) For a license forfeited for more than one year but less than four years, the successful completion of the commission-approved course or courses or passage of the commission-approved examination; or
- (2) For a license forfeited for more than four years[;] but less than five years, the successful passage of the commission-approved examination.

(d) The license of any individual licensed as a real estate broker or a real estate salesperson who fails to apply for restoration of a forfeited license within five years from the date of forfeiture shall be automatically terminated. Once a license has been terminated pursuant to this section, the individual may apply for a new salesperson license pursuant to and subject to all applicable laws and rules in effect at the time of application.

(e) The license of any real estate broker other than a natural person that fails to apply for restoration of a forfeited license within one year from the date of forfeiture, shall be automatically terminated. Once a license has been terminated pursuant to this section, the entity may apply for a new license pursuant to and subject to all applicable laws and rules in effect at the time of application.

~~(e)~~ (f) A real estate broker or real estate salesperson may place that person's license on an inactive status by filing an application and setting forth ~~[such]~~ information ~~[as may be]~~ prescribed or required by the commission~~[; and such]~~; the license shall be renewed on or before the [commission prescribed] commission-prescribed deadline prior to the expiration date of the license by payment of the biennial renewal fee and submission of a completed renewal application. A real estate broker or real estate salesperson may reactivate that person's inactive license by satisfying section 467-11.5, filing an application~~[; and]~~ setting forth ~~[such]~~ any information as may be prescribed or required by the commission, and paying the proper fee.

~~(d)~~ (g) The commission may refund any fee erroneously paid to it under this section when the commission deems it just and equitable.

~~(e)~~ (h) If beginning on July 1, 1987, the education fund balance at the end of any fiscal biennium exceeds \$1,200,000, there shall be a moratorium on ~~[such]~~ renewal contributions and the commission shall review and consider a reduction in the ~~[same]~~ amount ~~[in]~~ of license fees."

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 1, 2010.)

## ACT 12

H.B. NO. 2427

A Bill for an Act Relating to Solid Waste Management.

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

SECTION 1. The legislature finds that each county was required to submit to the office of solid waste management in the department of health an integrated solid waste management plan for review no later than July 1, 1995. Thereafter, counties are required to submit revised plans to the office of solid waste management once every five years, and as necessary. However, the legislature finds that the required interval of five years does not provide adequate time for analyzing and predicting solid waste trends, which would help provide more accurate planning. The process of analyzing one complete year of data and organizing and writing a revised plan from start to completion, can take well over two years, with the result that counties work continuously to update their plans throughout the five-year period.

The purpose of this Act is to extend from five years to ten years the required interval for a county to submit a revised integrated solid waste management plan.

SECTION 2. Section 342G-24, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each state-approved county plan shall be revised and submitted to the office on the following schedule:

- (1) The first revised plan shall be submitted to the office not later than four years after July 1, 1991; and
- (2) Subsequent revised plans shall be submitted to the office once every ~~[five years.]~~ ten years; provided that an interim status report on the implementation of a revised plan shall be submitted five years after every submission of a revised plan to the office.

All revised plans shall be consistent with the requirements 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 upon its approval.

(Approved April 8, 2010.)

## ACT 13

S.B. NO. 2772

A Bill for an Act Relating to Veterinary Medicine.

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

SECTION 1. Section 471-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to any other actions authorized by law, the board may revoke or suspend the license of any veterinarian or fine the licensee, or both, for any cause authorized by law, including but not limited to the following:

- (1) Professional misconduct, gross negligence, or manifest incapacity;



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- (2) Violation of this chapter or the rules adopted pursuant thereto or any other law which applies to the licensee as a practicing veterinarian;
- (3) Making any false representations or promises through advertising or otherwise;
- (4) Habitual intemperance in the use of alcoholic beverages or addiction to the use of narcotic or dangerous substances;
- (5) Mental incompetence;
- (6) Any fraudulent, dishonest, or deceitful act in connection with the practice of veterinary medicine;
- (7) Making a false statement in any document submitted or required to be filed by this chapter;
- (8) Revocation, suspension, or other disciplinary action by another state of a license or certificate for reasons as provided in this section;
- (9) Conviction~~[-, whether by nolo contendere or otherwise, or] of or plea of nolo contendere~~ to a penal offense substantially related to the qualifications, functions, or duties of a veterinarian, notwithstanding any statutory provision to the contrary;
- (10) Violation of chapter 329, the uniform controlled substances act, or any rule adopted pursuant thereto; ~~or~~
- (11) Failure to report any disciplinary action taken against a licensee in another jurisdiction within thirty days after the disciplinary action becomes final~~[-]; or~~
- (12) Conduct or practice contrary to the recognized principles of medical ethics of the veterinary profession as adopted by the Hawaii Veterinary Medical Association and the American Veterinary Medical Association.

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, 2010.

(Approved April 9, 2010.)

## ACT 14

S.B. NO. 2758

A Bill for an Act Relating to Safety Inspection of Motor Carrier Vehicles.

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

SECTION 1. Section 286-207, Hawaii Revised Statutes, is amended to read as follows:

**“§286-207 Exemptions, certain vehicles.** This part shall not apply to the following vehicles, if such vehicles are in compliance with safety ordinances and rules of the county in which they operate and other applicable state safety laws and rules:

- (1) The type of passenger carrying vehicle known as a “sampan bus” within a radius of twenty miles from the city of Hilo, Hawaii;
- (2) Station wagons for the carriage of property;
- (3) Trucks, truck-trailers, trailers, or other nonpassenger carrying equipment having a gross vehicle weight rating of 10,000 pounds or less~~[-]~~, except vehicles used in transporting material found by the United States Secretary of Transportation to be hazardous under

49 U.S.C. section 5103 and transported in a quantity requiring placarding under 49 C.F.R., subtitle B, chapter I, subchapter C:

- (4) Taxicabs as described in section 271-5(3)(B);
- (5) Passenger carrying vehicles with a seating capacity of nine or less used for the transportation of employees to and from the jobsite;
- (6) Passenger carrying vehicles used by employees solely for their own transportation to, from, and during work;
- (7) Passenger carrying vehicles with a gross vehicle weight of 10,000 pounds or less used in car or van pools for the movement of passengers to and from work;
- (8) A passenger carrying vehicle used for the transportation, without compensation, of persons for private, recreational, or entertainment purposes;
- (9) A passenger carrying vehicle with a gross vehicle weight rating of 10,000 pounds or less used solely for the transportation, without compensation, of the vehicle owner, the vehicle owner's family or guests;
- (10) A passenger carrying vehicle with a gross vehicle weight rating of 10,000 pounds or less used for the transportation, without compensation, of persons for the furtherance of their physical or mental rehabilitation or for social welfare activities."

SECTION 2. Section 286-209, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Motor carrier vehicles, including but not limited to trucks, truck-tractors, semitrailers, trailers, or pole trailers, having a gross vehicle weight rating of more than ten thousand pounds, ~~and~~ motor carrier vehicles having a gross vehicle weight rating of ten thousand pounds or less which transport passengers in the furtherance of a commercial enterprise, including car rental transport vehicles, and motor carrier vehicles used in transporting material found by the United States Secretary of Transportation to be hazardous under 49 U.S.C. section 5103 and transported in a quantity requiring placarding under 49 C.F.R., subtitle B, chapter I, subchapter C, shall be inspected and certified annually."

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 12, 2010.)

## ACT 15

S.B. NO. 2754

A Bill for an Act Relating to Commercial Driver Licensing.

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

SECTION 1. Section 286-240, Hawaii Revised Statutes, is amended by amending subsections (g) and (h) to read as follows:

"(g) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for a period of not less than ~~ninety~~ one hundred eighty days and not more than one year for a first violation, or for at least ~~one year~~ two years 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

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driver or vehicle out-of-service order committed in a commercial motor vehicle transporting non-hazardous materials arising from separate incidents occurring within a ten-year period.

(h) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for a period of not less than one hundred eighty days [ø] and not 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 required to be placarded under title 49 Code of Federal Regulations, part 172, subpart F, or designed to transport sixteen or more occupants[;] including the driver, arising from separate incidents occurring within a ten-year period.”

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 12, 2010.)

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S.B. NO. 2759

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, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A person operating the following category or combination of categories of motor vehicles shall be examined as provided in section 286-108 and duly licensed by the examiner of drivers:

- (1) Mopeds;
- (2) Motorcycles and motor scooters;
- (3) Passenger cars of any gross vehicle weight rating, buses designed to transport fifteen or fewer occupants, and trucks and vans having a gross vehicle weight rating of fifteen thousand pounds or less; and
- (4) All of the motor vehicles in category (3) and [~~trucks having a gross vehicle weight rating of fifteen thousand one through twenty-six thousand pounds.~~] any vehicle that is not a commercial motor vehicle.

A school bus or van operator shall be properly licensed to operate the category of vehicles that the operator operates as a school bus or van and shall comply with the standards of the department of transportation as provided by rules adopted pursuant to section 286-181.”

SECTION 2. 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 12, 2010.)

## ACT 17

S.B. NO. 2676

A Bill for an Act Relating to the Aloha Tower Development Corporation.

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

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

SECTION 2. The purpose of this Act is to provide sufficient moneys to the Aloha Tower development corporation to pay for the settlement of a claim by Kenneth H. Hughes, Inc., by making an emergency appropriation for a one-time only increase to its spending ceiling by \$900,000 from \$1,628,940 to \$2,528,940 for fiscal year 2009-2010.

The amount due under the settlement agreement (Kenneth H. Hughes, Inc. v. Aloha Tower Development Corp., Civil No. 09-00277 DAE-BMK, USDC) is \$1,550,000.

The Aloha Tower fund has sufficient moneys to pay for the emergency appropriation.

SECTION 3. There is appropriated out of the Aloha Tower fund the sum of \$900,000 or so much thereof as may be necessary for fiscal year 2009-2010 for the purposes of this Act.

The sum appropriated shall be expended by the Aloha Tower development corporation.

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

(Approved April 12, 2010.)

## ACT 18

S.B. NO. 2050

A Bill for an Act Relating to Vocational Rehabilitation in Workers' Compensation Law.

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

SECTION 1. Section 386-25, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) A provider shall file the employee’s plan with the approval of the employee. Upon receipt of the plan from the provider, an employee shall have ten days to review and sign the plan. The plan shall be submitted to the employer and the employee and be filed with the director within two days from the date of the employee’s signature. A plan shall include a statement of the feasibility of the vocational goal, using the process of:

- (1) First determining if the employee’s usual and customary employment represents suitable gainful employment, and, should it not;
- (2) Next determining if modified work or other work with [a different] the same employer represents suitable gainful employment, and, should it not;
- (3) Next determining if modified or other employment with a different employer represents suitable gainful employment, and finally, should it not;

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- (4) Then providing training to obtain employment in another occupational field.”

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, 2010.

(Approved April 13, 2010.)

ACT 19

S.B. NO. 2340

A Bill for an Act Relating to Kaneohe Bay Regional Council.

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

SECTION 1. Section 200D-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established within the department of land and natural resources, for administrative purposes only, the Kaneohe Bay regional council~~;~~ which; provided that except for the participation on the council of the two representatives from the department of land and natural resources as ex-officio nonvoting members pursuant to subsection (c) and except as provided under section 26-35, the department of land and natural resources shall not provide administrative support to the council, including providing staff, drafting, and other support at council meetings. The council shall be composed of seven voting members appointed by the governor in accordance with section 26-34 and ex officio nonvoting members as provided in subsection (c). The members shall serve without compensation.”

SECTION 2. Section 200D-4, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§200D-4]—Meetings.]~~ **Annual meeting.** ~~[All meetings of the]~~ The council shall ~~[be conducted]~~ schedule and conduct a meeting in accordance with chapter 92~~], and shall be held on the first Wednesday of each calendar quarter]~~ in each year of its operation.”

SECTION 3. Section 200D-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§200D-5]]~~ **Annual report.** The council shall submit ~~[semi-annual reports]~~ an annual report on its activities to the governor and the legislature, which may include recommendations; provided that the recommendations are consistent with the purposes of this chapter.”

SECTION 4. Act 68, Session Laws of Hawaii 2009, is repealed.

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 13, 2010.)

## ACT 20

S.B. NO. 2201

A Bill for an Act Relating to Motor Vehicles.

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

SECTION 1. Section 249-2, Hawaii Revised Statutes, is amended to read as follows:

**“§249-2 Imposition of tax.** Except as otherwise provided in sections 249-1 to 249-13, and except in the case of antique motor vehicles which shall be subject to an annual tax of \$10 in lieu of the annual tax otherwise imposed by this section, all vehicles and motor vehicles as defined in section 249-1, shall be subject to an annual tax, computed, except for the minimum tax provided for in section 249-13 according to the net weight of each vehicle at a rate determined as hereinafter provided in section 249-13. ~~[The tax shall become due and payable on January 1 and must be paid before April 1, in each year.]~~ The tax shall be paid by the owner of each vehicle in the county in which the vehicle is located at the time of registration, whether the original registration or any subsequent registration, and shall be collected by the director of finance of such county; provided that if ~~[any such]~~ a vehicle is transported to another county after the payment of ~~[such]~~ the tax, no additional tax shall be imposed on ~~[such]~~ the vehicle for the remaining period of the year for which ~~[such]~~ the tax has been paid.”

SECTION 2. Section 249-31, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All vehicles and motor vehicles in the ~~[State]~~ state as defined in section 249-1, including antique motor vehicles, except as otherwise provided in sections 249-4 and 249-6, shall be subject to a \$25 annual vehicle registration fee. The fee ~~[shall become due and payable on January 1, and]~~ shall be paid ~~[before April 1 in]~~ each year together with all other taxes and fees levied by this chapter~~;~~ provided that should any county elect to renew motor vehicle registrations on a staggered basis as established by each county as authorized by section 286-51, and the state registration for that county shall likewise be staggered so that the state registration fee is due and payable at the same time and shall be collected together with the county fee. The state registration fee shall be deemed delinquent if not paid with the county registration fee. The respective counties shall collect this fee together with the vehicle registration tax collected for the county and shall transfer the moneys collected under this section to the State.”

SECTION 3. Section 249-33, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The tax shall become due and payable ~~[on January 1 and shall be paid before April 1]~~ in each year together with all other taxes and fees levied by this chapter~~;~~ provided that should any county elect to renew motor vehicle registrations on a staggered basis as established by each county as authorized by section 286-51, the state vehicle weight tax shall likewise be staggered so that the state vehicle weight tax is collected together with the county fee. The state vehicle weight tax shall be deemed delinquent if not paid with the county registration fee. The tax shall be paid by the owner of each vehicle to the director of finance of the county in which the vehicle is registered and shall be collected by the director of finance of such county together with all other fees and taxes levied by this chapter from the owner of each vehicle and motor vehicle registered in the county.

## ACT 21

By the fifteenth day of the month following the month in which taxes under this section are collected, the director of finance of each county shall transmit the taxes collected to the state director of finance for deposit into the state highway fund.”

SECTION 4. Section 286-51, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) ~~Every certificate of registration issued under this part shall expire at midnight on December 31 of each year and shall be renewed annually before April 1 of each year upon application by the registered owner by presentation of the last issued certificate of registration or the last issued application for renewal, such renewal to take effect as of January 1 of each year; provided that the~~ The certificate of registration for each motor vehicle in the counties of the State [may] shall be renewed on a staggered basis[; if a county elects to do so;] as established by each county. The director of finance of each county may adopt rules to carry out the purposes stated in this section and shall expend the necessary funds from the director’s operating funds as may be necessary for these purposes; provided that the director of finance, if the director has ascertained as of the date of the application that the registered owner has not deposited or paid bail with respect to any summons or citation issued to the registered owner for stopping, standing, or parking in violation of traffic ordinances within the county, may require, as a condition precedent to the renewal, that the registered owner deposit or pay bail with respect to all such ~~summons~~ summonses or citations. The certificates of registration issued hereunder shall show, in addition to all information required under section 286-47, the serial number of the tag or emblem and shall be valid during the registration year only for which they are issued. The certificates of ownership need not be renewed annually but shall remain valid as to any interest shown therein until canceled by the director of finance as provided by law or replaced by new certificates of ownership as hereinafter provided.”

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 13, 2010.)

## ACT 21

H.B. NO. 2596

A Bill for an Act Relating to Tax Credits.

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

SECTION 1. The purpose of this measure is ensure the efficient administration of Hawaii tax credits, as well as to ensure budgeting certainty. This measure clarifies the ordering of credit claims relative to the use of refundable and nonrefundable credits. Currently, there is no statutory framework for the overall use of the differing credit types. Administratively, credits are claimed based upon when in time the credit became law. This measure clarifies that refundable credits must be used first, followed by nonrefundable credits.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§235- **Income tax credits; ordering of credit claims.** Notwithstanding any other law to the contrary providing for the use of an income tax credit under this chapter, in the offsetting of a taxpayer’s income tax liability, tax credits that may be refunded or paid to the taxpayer who has no income tax liability shall be used first, followed by nonrefundable tax credits that may be used as credit against taxes in subsequent years until exhausted.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval and apply to taxable years beginning on or after January 1, 2010.

(Approved April 14, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 22**

H.B. NO. 2600

A Bill for an Act Relating to Tax Administration.

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

SECTION 1. The purpose of this measure is to conform the filing and payment deadlines for miscellaneous taxes with the filing and payment deadline of the general excise tax, as amended by Act 196, Session Laws of Hawaii 2009. This measure also amends the periodic filing and payment of insurance premiums taxes from quarterly to monthly.

SECTION 2. Section 237D-6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) On or before the [last] twentieth day of each calendar month, every operator taxable, or plan manager liable under this chapter during the preceding calendar month shall file a sworn return with the director in such form as the director shall prescribe together with a remittance for the amount of the tax in the form required by section 237D-6.5. Sections 237-30 and 237-32 shall apply to returns and penalties made under this chapter to the same extent as if the sections were set forth specifically in this section.

(b) Notwithstanding subsection (a), the director of taxation, for good cause, may permit a taxpayer to file the taxpayer’s return required under this section and make payments thereon:

- (1) On a quarterly basis during the calendar or fiscal year, the return and payment to be made on or before the [last] twentieth day of the calendar month after the close of each quarter, to wit: for calendar year taxpayers, on or before April [~~30,~~ 20, July [~~31,~~ 20, October [~~31,~~ 20, and January [~~31~~ 20 or, for fiscal year taxpayers, on or before the [last] twentieth day of the fourth month, seventh month, and tenth month following the beginning of the fiscal year and on or before the [last] twentieth day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and the taxpayer’s total tax liability for the calendar or fiscal year under this chapter will not exceed \$4,000; or



- (2) On a semiannual basis during the calendar or fiscal year, the return and payment to be made by or before the [last] twentieth day of the calendar month after the close of each six-month period, to wit: for calendar year taxpayers, on July [31] 20 and January [31] 20 or, for fiscal year taxpayers, on or before the [last] twentieth day of the seventh month following the beginning of the fiscal year and on or before the [last] twentieth day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and the taxpayer's total tax liability for the calendar or fiscal year under this chapter will not exceed \$2,000.

The director, for good cause, may permit a taxpayer to make monthly payments based on the taxpayer's estimated quarterly or semiannual liability; provided that the taxpayer files a reconciliation return at the end of each quarter or at the end of each six-month period during the calendar or fiscal year, as provided in this section."

SECTION 3. Section 238-5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) On or before the [last] twentieth day of each calendar month, any person who has become liable for the payment of a tax under this chapter during the preceding calendar month in respect of any property, services, or contracting, or the use thereof, shall file a return with the assessor of the taxation district in which the property was held or the services or contracting were received when the tax first became payable, or with the director of taxation at Honolulu, setting forth a description of the property, services, or contracting and the character and quantity thereof in sufficient detail to identify the same or otherwise in such reasonable detail as the director by rule shall require, and the purchase price or value thereof as the case may be. The return shall be accompanied by a remittance in full of the tax, computed at the rate specified in section 238-2 or 238-2.3 upon the price or value so returned. Any tax remaining unpaid after the [last] twentieth day following the end of the calendar month during which the tax first became payable shall become delinquent; provided that a receipt from a seller required or authorized to collect the tax, given to a taxpayer in accordance with section 238-6, shall be sufficient to relieve the taxpayer from further liability for the tax to which the receipt may refer, or for the return thereof.

(b) Notwithstanding subsection (a), a taxpayer may be eligible to file the taxpayer's return required under this section and make payments thereon on a quarterly or semiannual basis during the calendar or fiscal year, the return and payment to be made on or before the [last] twentieth day of the calendar month after the close of each quarter or semiannual period, to wit:

- (1) For calendar year taxpayers filing on a quarterly basis, on or before April [30,] 20, July [31,] 20, October [31,] 20, and January [31,] 20;
- (2) For calendar year taxpayers filing on a semiannual basis, on or before July [31,] 20, and January [31,] 20;
- (3) For fiscal year taxpayers filing on a quarterly basis, on or before the [last] twentieth day of the fourth month, seventh month, and tenth month following the beginning of the fiscal year and on or before the [last] twentieth day of the month following the close of the fiscal year; or
- (4) For fiscal year taxpayers filing on a semiannual basis, on or before the [last] twentieth day of the seventh month following the beginning of the fiscal year and on or before the [last] twentieth day of the month following the close of the fiscal year;

if the taxpayer possesses a valid and current permit to file the taxpayer's general excise tax return and to make payments thereon on a quarterly or semiannual basis issued by the director pursuant to section 237-30. A taxpayer may also be eligible to make monthly payments based on the taxpayer's estimated quarterly or semiannual liability with a reconciliation return at the end of each quarter or semiannual period during the calendar or fiscal year, as heretofore provided, if the taxpayer possesses a valid and current permit to file quarterly or semiannual reconciliation general excise tax returns and to make monthly payments, issued by the director pursuant to section 237-30."

SECTION 4. Section 243-10, Hawaii Revised Statutes, is amended to read as follows:

**"§243-10 Statements and payments.** Each distributor and each person subject to section 243-4(b), on or before the [last] twentieth day of each calendar month, shall file with the director of taxation, on forms prescribed, prepared, and furnished by the director, a statement, authenticated as provided in section 231-15, showing separately for each county and for the island of Lanai and the island of Molokai within which and whereon fuel is sold or used during each preceding month of the calendar year, the following:

- (1) The total number of gallons of fuel refined, manufactured, or compounded by the distributor or person within the State and sold or used by the distributor or person, and if for ultimate use in another county or on either island, the name of that county or island;
- (2) The total number of gallons of fuel acquired by the distributor or person during the month from persons not subject to the tax on the transaction or only subject to tax thereon at the rate of 1 cent per gallon, as the case may be, and sold or used by the distributor or person, and if for ultimate use in another county or on either island, the name of that county or island;
- (3) The total number of gallons of fuel sold by the distributor or person to the United States or any department or agency thereof, or to any other person or entity, or used in any manner, the effect of which sale or use is to exempt the fuel from the tax imposed by this chapter;
- (4) Additional information relative to the acquisition, purchase, manufacture, or importation into the State, and the sale, use, or other disposition, of diesel oil by the distributor or person during the month, as the department of taxation by rule shall prescribe.

At the time of submitting the foregoing report to the department, each distributor and person shall pay the tax on each gallon of fuel (including diesel oil) sold or used by the distributor or person in each county and on the island of Lanai and the island of Molokai during the preceding month, as shown by the statement and required by this chapter; provided that the tax shall not apply to any fuel exempted and so long as the same is exempted from the imposition of the tax by the Constitution or laws of the United States; and the tax shall be paid only once upon the same fuel; provided further that a licensed distributor shall be entitled, in computing the tax the licensed distributor is required to pay, to deduct from the gallons of fuel reported for the month for each county or for the island of Lanai or the island of Molokai, as the case may be, one gallon for each ninety-nine gallons of like liquid fuel sold by retail dealers in that county or on that island during the month, as shown by certificates furnished by the retail dealers to the distributor and attached to the distributor's report. All taxes pay-

able for any month shall be delinquent after the expiration of the [last] twentieth day of the following month.

Statements filed under this section concerning the number of gallons of fuel refined, manufactured, compounded, imported, sold or used by the distributor or person are public records.”

SECTION 5. Section 244D-6, Hawaii Revised Statutes, is amended to read as follows:

“§244D-6 **Return, form, contents.** Every taxpayer shall, on or before the [last] twentieth day of each month, file with the department of taxation in the taxation district in which the taxpayer’s business premises are located, or with the department in Honolulu, a return showing all sales of liquor by gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a) made by the taxpayer during the preceding month, showing separately the amount of the nontaxable sales, and the amount of the taxable sales, and the tax payable thereon. The return shall also show the amount of liquor by gallonage and dollar volume in each liquor category defined in section 244D-1 and taxed under section 244D-4(a) used during the preceding month which is subject to tax, and the tax payable thereon. The form of return shall be prescribed by the department and shall contain such information as it may deem necessary for the proper administration of this chapter.”

SECTION 6. Section 245-5, Hawaii Revised Statutes, is amended to read as follows:

“§245-5 **Returns.** Every wholesaler or dealer, on or before the [last] twentieth day of each month, shall file with the department a return showing the cigarettes and tobacco products sold, possessed, or used by the wholesaler or dealer during the preceding calendar month and of the taxes chargeable against the taxpayer in accordance with this chapter. The form of the return shall be prescribed by the department and shall include:

- (1) A separate statement of the number and wholesale price of cigarettes;
- (2) The amount of stamps purchased and used;
- (3) The wholesale price of tobacco products, sold, possessed, or used; and
- (4) Any other information that the department may deem necessary, for the proper administration of this chapter.”

SECTION 7. Section 245-28, Hawaii Revised Statutes, is amended to read as follows:

“~~§245-28~~ **Time for payment of deferred-payment purchases; manner of payment.** Amounts owing for stamps purchased on the deferred-payment basis in any calendar month shall be due and payable on or before the [last] twentieth day of the following calendar month. Payment shall be made by a remittance payable to the department.”

SECTION 8. Section 245-31, Hawaii Revised Statutes, is amended to read as follows:

“~~§~~245-31 Monthly report on distributions of cigarettes and tobacco products, and purchases of stamps. (a) On or before the ~~last~~ twentieth day of each month, every licensee shall file on forms prescribed by the department:

- (1) A report of the licensee's distributions of cigarettes and purchases of stamps during the preceding month; and
- (2) Any other information that the department may require to carry out this part.

(b) On or before the ~~last~~ twentieth day of each month, every licensee shall file on forms prescribed by the department:

- (1) A report of the licensee's distributions of tobacco products and the wholesale costs of tobacco products during the preceding month; and
- (2) Any other information that the department may require to carry out this part.”

SECTION 9. Section 251-4, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) On or before the ~~last~~ twentieth day of each calendar month, every person taxable under this chapter during the preceding calendar month shall file a sworn return with the director in such form as the director shall prescribe together with a remittance for the amount of the surcharge tax in the form required by section 251-5. Sections 237-30 and 237-32 shall apply to returns and penalties made under this chapter to the same extent as if the sections were set forth specifically in this section.

(b) Notwithstanding subsection (a), the director, for good cause, may permit a person to file the person's return required under this section and make payments thereon:

- (1) On a quarterly basis during the calendar or fiscal year, the return and payment to be made on or before the ~~last~~ twentieth day of the calendar month after the close of each quarter, to wit: for calendar year taxpayers, on or before April ~~30,~~ 20, July ~~31,~~ 20, October ~~31,~~ 20, and January ~~31~~ 20 or, for fiscal year taxpayers, on or before the ~~last~~ twentieth day of the fourth month, seventh month, and tenth month following the beginning of the fiscal year and on or before the ~~last~~ twentieth day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the surcharge taxes due thereon and that the person's total surcharge tax liability for the calendar or fiscal year under this chapter will not exceed \$4,000; or
- (2) On a semiannual basis during the calendar or fiscal year, the return and payment to be made by or before the ~~last~~ twentieth day of the calendar month after the close of each six-month period, to wit: for calendar year taxpayers, on July ~~31~~ 20 and January ~~31~~ 20 or, for fiscal year taxpayers, on or before the ~~last~~ twentieth day of the seventh month following the beginning of the fiscal year and on or before the ~~last~~ twentieth day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the surcharge taxes due thereon and that the person's total surcharge tax liability for the calendar or fiscal year under this chapter will not exceed \$2,000.

The director, for good cause, may permit a person to make monthly payments based on the person's estimated quarterly or semiannual liability; pro-

vided that the person files a reconciliation return at the end of each quarter or at the end of each six-month period during the calendar or fiscal year, as provided in this section.”

SECTION 10. Section 431:7-201, Hawaii Revised Statutes, is amended to read as follows:

“**§431:7-201 Annual and ~~quarterly~~ monthly tax statements.** (a) Each authorized insurer shall file with the commissioner annually, on or before March 1 in each year, a statement signed by a duly authorized person on its behalf, setting forth the total business transacted, and the amount of gross premiums reported by the insurer, pursuant to section 431:7-202, during the year ending on the preceding December 31, from all risks or property resident, situated, or located within this State, together with such other information as may be required by the commissioner to determine the taxability of premiums. The term “gross premiums” as used in this part shall not include consideration paid for annuities.

(b) Each authorized insurer shall file with the commissioner ~~quarterly,~~ monthly, on or before the ~~last~~ twentieth day of the calendar month following the ~~quarter,~~ month in which the taxes accrue, a statement signed by a duly authorized person on its behalf, setting forth the total business transacted and the amount of gross premiums reported by the insurer, pursuant to section 431:7-202, during the ~~quarter~~ month from all risks or property resident, situated, or located within this State, together with other information as may be required by the commissioner to determine the taxability of premiums.

(c) Any insurer failing or refusing to file the annual tax statement on or before March 1, or the ~~quarterly~~ monthly statement on or before the ~~last~~ twentieth day of the calendar month following the ~~quarter,~~ month in which the taxes accrue, shall be liable for a fine in an amount not less than \$100 and not more than \$500 for each day of delinquency.”

SECTION 11. Section 431:7-202, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The taxes imposed by subsections (a), (b), (c), and (d) shall be paid ~~quarterly,~~ monthly. The ~~quarterly~~ monthly tax shall be due and payable on or before the ~~last~~ twentieth day of the calendar month following the ~~quarter~~ month in which it accrues, coinciding with the filing of the statement provided for in section 431:7-201.

In addition to the ~~quarterly~~ monthly tax and ~~quarterly~~ monthly tax statement, the annual tax shall be due and payable on or before March 1 coinciding with the filing of the statement provided for in section 431:7-201.

All amounts paid under this subsection, other than fines, shall be allowed as a credit on the annual tax imposed by subsections (a), (b), (c), and (d).

If the total amount of installment payments for any calendar year exceeds the amount of annual tax for that year, the excess shall be treated as an overpayment of the annual tax and be allowed as a refund under section 431:7-203.

Any insurer failing or refusing to pay the required taxes above stated when due and payable shall be liable for a fine of \$500 or ten per cent of the tax due, whichever is greater; plus interest at a rate of twelve per cent per annum on the delinquent taxes. The taxes may be collected by distraint, or the taxes, fine, and interest may be recovered by an action to be instituted by the commissioner in the name of this State, in any court of competent jurisdiction. The commissioner may suspend the certificate of authority of the delinquent insurer until the taxes, fine, and interest, should any be imposed, are fully paid.”

SECTION 12. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 2010.

(Approved April 14, 2010.)

## ACT 23

S.B. NO. 2834

A Bill for an Act Relating to Taxation.

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

SECTION 1. Section 235-2.4, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Section 165 (with respect to losses) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the amount prescribed by section 165(h)(1) (relating to the limitation per casualty) of the Internal Revenue Code shall be a \$100 limitation per casualty, [~~and section 165(d) (with respect to wagering losses) and~~] sections 165(h)(3)(A) and 165(h)(3)(B) (both of which relate to special rules for personal casualty gains and losses in federally declared disasters) of the Internal Revenue Code shall not be operative for the purposes of this chapter. Section 165 as operative for this chapter shall also apply to losses sustained from the sale of stocks or other interests issued through the exercise of the stock options or warrants granted by a qualified high technology business as defined in section 235-7.3.”

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

SECTION 3. This Act shall take effect upon its approval, and shall apply to taxable years beginning after December 31, 2008.

(Approved April 15, 2010.)

## ACT 24

H.B. NO. 1902

A Bill for an Act Relating to Long Term Care.

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

SECTION 1. Act 224, Session Laws of Hawaii 2008, section 4, is amended as follows:

1. By amending subsection (g) to read:

“(g) The long term care commission shall:

- (1) Submit an interim report to the legislature no later than [~~February 28, 2010,~~] January 19, 2011, describing the progress made in the development of the five-year plan and preliminary proposed system reforms; and

**ACT 25**

- (2) Submit a final report to the legislature no later than [~~September 30, 2010,~~] January 18, 2012, which shall include the final five-year plan, how the reforms will be prioritized and phased in, and a description and final recommendations regarding the financing of long term care services, including support for caregivers.”
2. By amending subsection (j) to read:  
“(j) The term of the long term<sup>1</sup> commission shall expire on [~~November 30, 2010,~~] adjournment sine die of the regular session of the 2012 legislature.”

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 15, 2010.)

**Note**

1. Prior to amendment “care” appeared here.

**ACT 25**

S.B. NO. 2432

A Bill for an Act Relating to Hawaii Institute for Educational Partnerships.

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

SECTION 1. Section 304A-1203, Hawaii Revised Statutes, is repealed.

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

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

(Approved April 15, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 26**

S.B. NO. 2111

A Bill for an Act Relating to Affordable Housing.

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

SECTION 1. The legislature finds that the lack of affordable housing in Hawaii remains an obstacle to a significant reduction in the cost of living for many residents. A 2008 report from the affordable housing regulatory barriers task force found that one obstacle to affordable housing development is the delay caused when counties fail to affirmatively accept or reject public infrastructure improvements that are developed as part of a housing project. This delay increases the costs of the project, which in turn increases the cost of homes.

During the 2009 regular session, the legislature passed Act 142, which deemed requests for dedication of infrastructure for affordable housing as accepted if the counties did not accept or reject the request within ninety days of the filing of the request.

The purpose of this Act is to clarify the provisions of Act 142, Session Laws of Hawaii 2009, to facilitate the expeditious development of affordable housing and to shorten the time period within which counties may accept or reject requests for dedication of infrastructure for affordable housing.

SECTION 2. Section 46-15.25, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Infrastructure for affordable housing shall be deemed dedicated to the county if the county does not accept or reject the request for dedication of infrastructure within ~~ninety~~ sixty days ~~[of the filing of the dedication request;]~~ of the receipt by the appropriate county council of a completed application for dedication request; provided that:

- (1) Applicable meter and connection fees and utility costs relating to the dedicated infrastructure have been paid;
- (2) The dedicated infrastructure conforms to applicable county standards in effect at the time of construction; and
- (3) The completion of the improvements comprising a dedicated infrastructure is granted approval by the county.”

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, 2010.

(Approved April 16, 2010.)

## ACT 27

S.B. NO. 2139

A Bill for an Act Relating to Veterans.

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

SECTION 1. Section 363-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The director shall have the following principal functions, duties, and powers:

- (1) Serve as the principal official in state government responsible for the performance, development, and control of programs, policies, and activities under this chapter;
- (2) Oversee, supervise, and direct the performance by the director's subordinates of activities in such areas as planning, evaluation, and coordination of veterans programs and development of a statewide service delivery network;
- (3) Assess the policies and practices of other agencies with respect to delivery of services and benefits to veterans;
- (4) Administer funds allocated for the office, and apply for, receive, and disburse grants and donations from all sources for veterans programs and services provided under this chapter;
- (5) Establish a clearinghouse for complaints of persons regarding services to veterans, or operations of state and county agencies affect-



- ing veterans, investigate such complaints, and refer the complaints and the director's findings to the appropriate agency for corrective action;
- (6) Adopt, amend, and repeal rules pursuant to chapter 91 for the purposes of this chapter;
  - (7) Employ and retain such staff as may be necessary for the purposes of this chapter, in conformance with chapters 76, 89, and the appropriate collective bargaining agreements, executive orders, executive directives, or rules, except for the position of coordinator and executive secretary to the director, who shall be hired without regard to chapters 76 and 89;
  - (8) Contract for or grant such services as may be necessary for the purposes of this chapter, including a master contract with other state agencies receiving federal and state funds for programs and services for veterans, and purchase of service agreements with appropriate agencies; ~~and~~
  - (9) Oversee the development, establishment, and operation of a state veterans cemetery on Oahu; develop and administer the policies and procedures of the state veterans cemetery in accordance with the United States Department of Veterans [Administration] Affairs and existing state guidelines; oversee the maintenance of state veterans cemeteries on all islands~~[-]; and~~
  - (10) Act on behalf of deceased veterans found to be indigent at the time of death and without surviving immediate family members to ensure burial or cremation services are provided and that the veteran's remains are buried or inurned in a state veterans cemetery."

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

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

(Approved April 16, 2010.)

**ACT 28**

S.B. NO. 2325

A Bill for an Act Relating to Contractors.

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

SECTION 1. The legislature finds that homeowners, inspectors, and government agencies have difficulty identifying the number of licensed tradespersons performing electrical and plumbing work on construction job sites. Further, it may be difficult to determine whether the ratio of licensed to unlicensed tradesmen performing electrical and plumbing work on construction job sites complies with the requirements of state law.

The purpose of this Act is to provide for the identification of licensed electricians and plumbers and the enforcement of licensing requirements on construction job sites to protect public safety and comply with state law.

SECTION 2. Section 444-9.5, Hawaii Revised Statutes, is amended to read as follows:

**“§444-9.5 Licensing of electrical or plumbing workers.** (a) At least half of all individuals performing electrical or plumbing work employed on a construction job site by an electrical or plumbing contractor shall be licensed in accordance with chapter 448E. The board may waive this requirement in any county when there are insufficient licensed electrical or plumbing workers in that county to comply ~~herewith.~~ with this section.

(b) All individuals employed on a construction job site by an electrical or plumbing contractor who are licensed in accordance with chapter 448E shall visibly display their license on their person while on the construction job site. Only individuals displaying their license at the time of a site inspection shall be counted as a licensee to determine compliance with 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 April 16, 2010.)

## ACT 29

H.B. NO. 40

A Bill for an Act Relating to State Bonds.

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

SECTION 1. Act 112, Session Laws of Hawaii 2009, is repealed.

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

(Approved April 16, 2010.)

## ACT 30

S.B. NO. 2357

A Bill for an Act Relating to Renewable Energy.

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

SECTION 1. The legislature finds that there are numerous renewable energy resources in the State that have the potential to contribute to the local production of energy that may be utilized by a gas utility to produce natural gas, biogas, biofuels, or biofeedstocks. The legislature also finds that the State's gas utility is considering a pilot program to determine whether it is technically and economically feasible to process these types of renewable resources, such as plant oil, animal fat, and landfill gas, into a feedstock for gas manufacturing with by-products consisting of a biogas to offset the use and consumption of petroleum-based fuel and biofuels or biofeedstocks for use by third parties.

As it is in the best interest of the State to consider all local renewable resources which may contribute toward the reduction of the State's dependency on imported petroleum, the purpose of this Act is to establish an annual reporting requirement for a gas utility to measure and evaluate its progress in integrating renewable resources as a part of its production of synthetic natural gas.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§269- Gas utility companies; renewable energy; reporting requirements.**

(a) Each gas utility company shall submit an annual report to the public utilities commission on or before March 31 of each year that shall include but not be limited to the following information:

- (1) The percentage of total feedstock used to produce natural gas, biogas, biofuels, or biofeedstocks for use in the State that is comprised of petroleum feedstock;
- (2) The percentage of total feedstock used to produce natural gas, biogas, biofuels, or biofeedstocks for use by the gas utility in the State that is comprised of non-petroleum feedstock;
- (3) The energy quantity in therms of natural gas, biogas, or gallons of biofuels, or biofeedstocks produced from petroleum feedstock for use by the gas utility within the State; and
- (4) The energy quantity in therms of natural gas, biogas, or gallons of biofuels, or biofeedstocks produced from non-petroleum feedstock energy for use by the gas utility in the State.

Within thirty days of receipt of the report, the public utilities commission shall submit the information required by paragraphs (1) and (2) to the legislature. Due to the proprietary nature of the information required by paragraphs (3) and (4), that information shall be held in confidence by the commission; provided that any information obtained by the commission under this section, including confidential information, shall be made available to the department of business, economic development, and tourism or its authorized representative, which shall safeguard the confidentiality of that information. The department, with its own staff and other support staff with relevant expertise and experience, shall use the information obtained under this section to effectuate the purposes and intent of chapters 125C, 196, and other relevant laws. The first report required by this section shall be for the year 2011 and shall be submitted no later than March 31, 2012.

(b) For the purposes of this section:

“Department” means the department of business, economic development, and tourism.

“Feedstock” means a material that is converted, consumed, or blended to produce an end use product.

“Total feedstock” means petroleum and non-petroleum feedstock combined.

“Non-petroleum feedstock” includes but is not limited to plant and animal fats and oils, algae and algae products, other organic material, organic waste, municipal solid waste, waste water, or sewage.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

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

(Approved April 16, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 31

S.B. NO. 2117

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 section 302A-1504, Hawaii Revised Statutes, requires the department of education to establish a school-level minor repair and maintenance account that does not exceed \$25,000 per school for use by each public school, and requires the department of education to make annual reports to the director of finance on the total amount of funds in the account that shall carry over to the next fiscal year. The legislature also finds that the account and reporting requirements apply to the school-level minor repairs and maintenance special fund established by section 302A-1504.5, Hawaii Revised Statutes. The special fund receives funds from the income check-off on state income tax refunds pursuant to section 235-102.5(b), Hawaii Revised Statutes. The legislature finds that the amount of moneys normally deposited into the special fund is such that a school-by-school accounting of moneys in the special fund is unnecessary. The legislature further finds that section 37-47, Hawaii Revised Statutes, sets forth reporting requirements for all non-general funds, including the school-level minor repairs and maintenance special fund. For these reasons, the legislature finds that the requirements of section 302A-1504, Hawaii Revised Statutes, are duplicative and unnecessary.

The purpose of this Act is to repeal the school-level minor repair and maintenance account and reporting requirements and to require the department of education to annually report to the director of finance and the legislature the total amount of funds in the school-level minor repair and maintenance special fund that is carried over to the following fiscal year.

SECTION 2. Section 302A-1504.5, Hawaii Revised Statutes, is amended to read as follows:

**“§302A-1504.5 School-level minor repairs and maintenance special fund[-] reporting of carry over funds.** (a) There is established within the state treasury a special fund to be known as the school-level minor repairs and maintenance special fund, into which shall be deposited all moneys collected pursuant to section 235-102.5(b), and any other moneys received by the department in the form of grants and donations for school-level minor repairs and maintenance. The special fund shall be administered by the department and used to fund school-level minor repairs and maintenance.

(b) The department shall submit to the director of finance a report that shall be prepared in the form prescribed by the director of finance and shall identify the total amount of funds in the school-level minor repairs and maintenance special fund that will carry over to the next fiscal year. The department shall submit the report to the director of finance within ninety days of the close of each fiscal year and a copy of the report to the legislature no later than twenty days prior to the convening of each regular session.”

SECTION 3. Section 302A-1504, Hawaii Revised Statutes, is repealed.

SECTION 4. Any unexpended or unencumbered funds remaining in any school-level minor repair and maintenance account established under section 302A-1504, Hawaii Revised Statutes, as of the close of business on the effective

## ACT 32

date of this Act shall lapse to the credit of the school-level minor repairs and maintenance special fund.

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

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

(Approved April 19, 2010.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 32

H.B. NO. 2028

A Bill for an Act Relating to Group Life 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 10D, to be appropriately designated and to read as follows:

“**§431:10D-A Other groups; limits.** Group life insurance offered to a Hawaii resident under a group life insurance policy issued to a group, other than a group described in sections 431:10D-202 through 431:10D-211, shall be subject to the following requirements:

- (1) No group life insurance policy shall be delivered in this State unless the commissioner finds that:
  - (A) The issuance of the group life insurance policy is not contrary to the best interest of the public;
  - (B) The issuance of the group life insurance policy would result in economies of acquisition or administration; and
  - (C) The benefits of the group life insurance policy are reasonable in relation to the premium charged;
- (2) No group life insurance coverage may be offered in this State, pursuant to this section, by an insurer under a group life insurance policy issued in another state, unless:
  - (A) The commissioner finds that the requirements of paragraph (1) have been met; or
  - (B) The issuing state has requirements substantially similar to those contained in paragraph (1) and has determined that those requirements have been met;
- (3) The premium for a group life insurance policy issued pursuant to this section shall be paid by the policyholder, by covered persons, or both; and
- (4) An insurer may exclude from coverage or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer under a group life insurance policy issued pursuant to this section.”

SECTION 2. Section 431:10A-201, Hawaii Revised Statutes, is amended to read as follows:

“§431:10A-201 Definitions. For the purposes of this article:

~~[(+)~~ (A) “Blanket disability insurance policy” means any policy or contract of accident and health or sickness insurance which ~~[conforms with the description and complies with one of the following requirements:]~~ does not require individual applications for covered persons and is:

~~[(+)~~ (1) A policy issued to any common carrier of passengers, which ~~[carrier]~~ shall be deemed the policyholder, ~~[covering]~~ that covers a group defined as all persons who may become ~~[such]~~ passengers~~], and whereby such passengers]~~ who shall be insured against loss or damage resulting from death or bodily injury either while~~]~~ or as a result of~~]~~ being ~~[such]~~ passengers~~[-];~~

~~[(+)~~ (2) A policy issued in the name of any volunteer fire department, first aid or ambulance squad, or volunteer police organization, which shall be deemed the policyholder, ~~[and covering]~~ that covers all the members of ~~[any such]~~ the policy holder organization against loss from accidents resulting from hazards incidental to duties in connection with such organizations~~[-];~~

~~[(+)~~ (3) A policy issued in the name of any established organization, whether incorporated or not, ~~[having]~~ that is recognized by the community [recognition and] as being operated for the welfare of the community and its members and not for profit, which shall be deemed the policyholder, ~~[and covering]~~ that covers all volunteer workers who serve without pecuniary compensation and the members of the organization~~]~~ against loss from accidents occurring while engaged in the actual performance of duties ~~[on behalf of such organization or in the activities thereof:]~~ or activities of the policy holder organization;

~~[(+)~~ (4) A policy issued to an employer, who shall be deemed the policyholder, ~~[covering]~~ that covers any group of employees defined by reference to exceptional hazards incident to ~~[such]~~ employment~~], insuring such]~~ and that insures employees against death or bodily injury resulting ~~[while, or from, being exposed to such]~~ from or caused by exposure to exceptional hazards[-];

~~[(+)~~ (5) A policy ~~[covering]~~ issued to a college, school, institute of learning, or to the head or principal of a college, school, or institute of learning, which or who shall be deemed the policy holder, that covers students or employees ~~[issued to a college, school, or other institution of learning or to the head or principal thereof, who or which shall be deemed the policyholder.]; or~~

~~[(+)~~ (6) A policy issued to a substantially similar group ~~[who, in]~~ that, pursuant to the discretion of the commissioner, may be properly eligible for blanket disability insurance~~[-~~

~~(B) Nothing in this section shall be deemed to]; provided that a blanket disability insurance policy shall not affect the liability of policyholders for the death of or injury to, any such member of such group.~~

~~[(C) Individual applications shall not be required from individuals covered under a blanket disability insurance contract.~~

- (2) ~~The term employees shall be deemed to include as employees of a single employer;~~ “Employees” means the compensated officers, managers, and employees of the employer and of subsidiary or affiliated corporations of a corporation employer, [and] the individual proprietors, partners, and employees of individuals and firms of which the business is under common control through stock ownership, contract, or otherwise[. The policy may provide that the term employees shall include], the individual proprietor or partners if the employer is an individual proprietor or a partnership[. The term employee may be deemed to include] and if specified by the policy, and retired employees.
- (3) ~~The term employer shall be deemed to include]~~ “Employer” means any municipal corporation or governmental unit, agency, or department [thereof] as well as private individuals, firms, corporations, and other persons.
- (4) “Group disability insurance” means that form of accident and health or sickness insurance covering groups of persons, with or without their dependents and family members, and issued under a master policy to:
  - ~~[(A) Such groups as]~~ (1) Groups that qualify for group life insurance under [sections]] 431:10D-201 to 431:10D-211 and 431:10D-A of this code; or
  - ~~[(B) (2) An automobile club formed for purposes other than obtaining group insurance[, covering] that covers the members of the club.”]~~

SECTION 3. In codifying the new section added by section 1 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 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

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

(Approved April 19, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 33**

S.B. NO. 1178

A Bill for an Act Relating to Health.

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

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

SECTION 2. The purpose of this Act is to appropriate \$40,000,000 in general funds and \$80,000,000 in federal funds for an emergency appropriation for fiscal year 2009-2010 for health care payments (HMS 401) to address a funding shortfall in the Medicaid program.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$40,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 for health care payments (HMS 401) to address the funding shortfall in the Medicaid program.

SECTION 4. There is appropriated out of federal Medicaid funds the sum of \$80,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 for health care payments (HMS 401) as a federal match for state funds.

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

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

(Approved April 19, 2010.)

## ACT 34

S.B. NO. 2120

A Bill for an Act Relating to the Certification of Principals and Vice-Principals.

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

SECTION 1. The legislature finds that the department of education currently has requirements for the certification of its principals and vice-principals. The legislature also finds that the federal American Recovery and Reinvestment Act of 2009 provides educational funds for states that pursue educational reform and additional funds for those states that qualify for Race to the Top funds by advancing educational reform. One of the selection criteria for Race to the Top funds is providing alternative routes to certification for teachers and principals; however, section 302A-605, Hawaii Revised Statutes, currently provides for one pathway to certification and exceptions on a case-by-case basis.

The purpose of this Act is to require the department of education to establish alternative routes to certification for principals and vice-principals. The alternative requirements shall meet the federal government's Race to the Top fund selection criteria.

SECTION 2. Section 302A-605, Hawaii Revised Statutes, is amended to read as follows:

**“§302A-605 Principals and vice-principals.** (a) Principals shall meet the department's certification requirements and shall have ~~[not less than]~~ at least five years of appropriate school-level experience ~~[of which]~~ including at least three years ~~[shall have been]~~ as a teacher.

(b) Vice-principals shall meet the department's certification requirements and shall have appropriate school-level experience as determined by the department.

~~[(c) On a case by case basis, the department may waive the certification requirements and school level experience for vice-principal candidates with appropriate administrative experience. The department shall establish criteria and reasons for waivers pursuant to chapter 91.]~~

(c) The department shall establish alternative routes to certification for principals and vice-principals pursuant to rules adopted under chapter 91.

(d) For purposes of this section, “alternative routes to certification” has the same meaning as determined by United States Department of Education



regulations for state applications for Race to the Top fund allocations under section 14001 of the federal American Recovery and Reinvestment Act of 2009, as amended."

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 19, 2010.)

## ACT 35

S.B. NO. 2837

A Bill for an Act Relating to Licensing.

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

SECTION 1. Section 448E-5, Hawaii Revised Statutes, is amended to read as follows:

**"§448E-5 Minimum requirements.** (a) ~~[A]~~ Except as otherwise provided in subsection (b), an applicant shall possess the following minimum qualifications:

- (1) Journey worker electrician~~[- Every applicant to]~~: To be eligible for the journey worker electrician examination, an applicant shall be at least eighteen years of age and shall provide satisfactory evidence of experience in residential or commercial wiring of at least five years full-time or its equivalent, but not less than [10,000] ten thousand hours [of experience], in the trade under the supervision of a journey worker or supervising electrician[-];
- (2) Journey worker specialty electrician~~[- Every applicant to]~~: To be eligible for the journey worker specialty electrician examination, an applicant shall be at least eighteen years of age and shall [have had] provide satisfactory evidence of at least five years' experience in the trade[-];
- (3) Supervising electrician~~[- Every applicant to]~~: To be eligible for the supervising electrician examination, an applicant shall have been registered with the board as a journey worker electrician for at least a period of four years [in the trade] or shall have [had] equivalent experience in the trade[-];
- (4) Supervising specialty electrician~~[- Every applicant to]~~: To be eligible for the supervising specialty electrician examination, an applicant shall have been registered with the board as a journey worker specialty electrician for at least a period of four years [in the trade] or shall have [had] equivalent experience in the trade[-];
- (5) Journey worker plumber~~[- Every applicant to]~~: To be eligible for the journey worker plumber examination, an applicant shall [have had] provide satisfactory evidence of experience of at least five years' full-time or its equivalent, but not less than [10,000] ten thousand hours, as a journey worker's or master plumber's helper[-, and is able to furnish satisfactory evidence of such fact.];
- (6) Master plumber~~[- Every applicant to]~~: To be eligible for the master plumber examination, an applicant shall have been registered with

the board as a journey worker plumber for at least two years or shall have ~~had~~ equivalent experience in the trade~~[-]~~;

- (7) Maintenance electrician~~[- Every applicant to]~~: To be eligible for the maintenance electrician examination, an applicant shall be not less than eighteen years of age and shall ~~have had~~ provide satisfactory evidence of at least one year of experience in performing electrical maintenance work or ~~[proof of]~~ two years of schooling in the electrical trade~~[-]~~;
- (8) Journey worker industrial electrician~~[- Every applicant to]~~: To be eligible for the journey worker industrial electrician examination, an applicant shall be at least eighteen years of age and shall ~~have had~~ provide satisfactory evidence of experience in industrial electrical work of at least five years full-time or its equivalent, but not less than ~~[10,000] ten thousand hours~~[-];
- (9) Supervising industrial electrician~~[- Every applicant to]~~: To be eligible for the supervising industrial electrician examination, an applicant shall have been registered with the board as a journey worker industrial electrician for a period of at least four years or shall have ~~had~~ equivalent experience in the trade.

(b) Effective July 1, 2013, an applicant for licensing pursuant to this chapter shall possess the following minimum qualifications:

- (1) Journey worker electrician: To be eligible for the journey worker electrician examination, an applicant shall be at least eighteen years of age and shall provide satisfactory evidence of:
  - (A) Experience in residential or commercial wiring of at least five years full-time or its equivalent, but not less than ten thousand hours, in the trade under the supervision of a journey worker or supervising electrician; and
  - (B) Satisfactory completion, accepted by a University of Hawaii community college offering an appropriate program of study, of two hundred forty hours of electrical academic coursework;
- (2) Journey worker specialty electrician: To be eligible for the journey worker specialty electrician examination, an applicant shall be at least eighteen years of age and shall provide satisfactory evidence of:
  - (A) Experience of at least three years full-time or its equivalent, but not less than six thousand hours, in the trade under the supervision of a journey worker electrician, supervising electrician, journey worker specialty electrician, or supervising specialty electrician; and
  - (B) Satisfactory completion, accepted by a University of Hawaii community college offering an appropriate program of study, of one hundred twenty hours of electrical academic coursework;
- (3) Supervising electrician: To be eligible for the supervising electrician examination, an applicant shall have been registered with the board as a journey worker electrician for at least a period of four years or shall have equivalent experience in the trade;
- (4) Supervising specialty electrician: To be eligible for the supervising specialty electrician examination, an applicant shall have been registered with the board as a journey worker specialty electrician for at least a period of two years or shall have equivalent experience in the trade;

- (5) Journey worker plumber: To be eligible for the journey worker plumber examination, an applicant shall provide satisfactory evidence of experience of at least five years' full-time or its equivalent, but not less than ten thousand hours, as a journey worker's or master plumber's helper;
- (6) Master plumber: To be eligible for the master plumber examination, an applicant shall have been registered with the board as a journey worker plumber for at least two years or shall have equivalent experience in the trade;
- (7) Maintenance electrician: To be eligible for the maintenance electrician examination, an applicant shall be not less than eighteen years of age and shall provide satisfactory evidence of:
  - (A) At least one year of experience in performing electrical maintenance work plus satisfactory completion, accepted by a University of Hawaii community college offering an appropriate program of study, of at least eighty hours of electrical academic coursework; or
  - (B) Two years of schooling in the electrical trade with not less than one thousand hours of hands-on lab exercises;
- (8) Journey worker industrial electrician: To be eligible for the journey worker industrial electrician examination, an applicant shall be at least eighteen years of age and shall provide satisfactory evidence of:
  - (A) Experience in industrial electrical work of at least four years full-time or its equivalent, but not less than eight thousand hours; and
  - (B) Satisfactory completion, as accepted by a University of Hawaii community college offering an appropriate program of study, of two hundred hours of electrical academic coursework;

and
- (9) Supervising industrial electrician: To be eligible for the supervising industrial electrician examination, an applicant shall have been registered with the board as a journey worker industrial electrician for a period of at least three years or shall have equivalent experience in the trade."

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, 2010.

(Approved April 19, 2010.)

## ACT 36

S.B. NO. 2910

A Bill for an Act Relating to Real Property.

*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 be appropriately designated and to read as follows:

**“§667- Buyer’s choice of title insurer and escrow agent.** (a) In connection with a judicial foreclosure or foreclosure by power of sale of residential property improved by four or fewer dwelling units, no foreclosing mortgagee or mortgagee who acquires the property through a foreclosure proceeding shall require, directly or indirectly, as a condition of selling the property, that the buyer purchase an owner’s title insurance policy covering the property or escrow service in connection with the sale of the property from a particular title insurer or escrow depository. This section shall not prohibit a buyer from agreeing to accept the services of a title insurer or an escrow depository recommended by the foreclosing mortgagee or mortgagee who acquires the property through the foreclosure proceeding if written notice of the right to make an independent selection of those services is first provided to the buyer by the foreclosing mortgagee or mortgagee who acquires the property through the foreclosure proceeding.

(b) A foreclosing mortgagee or mortgagee who acquires the property through a foreclosure proceeding who violates this section shall be liable to a buyer in an amount equal to three times all charges incurred in the purchase of the title insurance or escrow service.

(c) A transaction subject to this section shall not be invalidated solely because of the failure of any person to comply with any provision of this section.”

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

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 2010.

(Approved April 19, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 37

S.B. NO. 2440

A Bill for an Act Relating to the Boards of Water Supply.

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

SECTION 1. Section 54-25, Hawaii Revised Statutes, is amended to read as follows:

**“§54-25 Disbursement of fund.** The county treasurer shall disburse all ~~[monies]~~ moneys of the board ~~[of water supply]~~ only upon warrants issued by the county auditor or other county authorized signatory on accounts payable vouchers signed by the chairperson or the acting chairperson of the board~~[-]~~, except as provided herein. The board may delegate, through rules and policies adopted pursuant to chapter 91, its powers and duties regarding the disbursement of funds to the manager and chief engineer.”

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 19, 2010.)

**ACT 38**

H.B. NO. 134

A Bill for an Act Relating to Motor Vehicle Driver Licensing.

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

SECTION 1. Section 286-104, Hawaii Revised Statutes, is amended to read as follows:

**“§286-104 ~~[What]~~ Which persons shall not be licensed.** The examiner of drivers shall not issue any license ~~[hereunder:]~~ to any person:

- (1) ~~[To any person whose]~~ Whose license has been suspended by a court of competent jurisdiction during the suspension period, nor to any person whose license has been revoked until the expiration of one year after the date of the revocation, or until the expiration of the period of revocation specified by law, whichever is greater, except as provided under sections 286-102.6(d) and 286-102.6(e) for suspensions and revocations of a provisional license; nor to any person who, while unlicensed, has within two years been convicted of operating a vehicle under the influence of an intoxicant or, prior to January 1, 2002, of driving under the influence of alcohol or drugs;
- (2) ~~[To any person who]~~ Who is required by this part to take an examination, unless the person has successfully passed the examination;
- (3) ~~[To any person who]~~ Who is required under the motor vehicle financial responsibility laws of this State to deposit proof of financial responsibility and who has not deposited the proof;
- (4) ~~[To any person who]~~ Who the examiner of drivers has good cause to believe would not be able to operate a motor vehicle with safety upon the highways by reason of physical or mental disability;
- (5) ~~[To any person who]~~ Who is under eighteen years of age; provided that~~[-]~~ a person:
  - (A) ~~[A person who]~~ Who is fifteen years and six months of age may be granted an instruction permit;
  - (B) ~~[A person who]~~ Who is at least sixteen and less than eighteen years of age may be granted a provisional license upon satisfying the requirements of section 286-102.6;
  - (C) ~~[A person who]~~ Who is at least seventeen and less than eighteen years of age may be granted a license upon satisfying the requirements of section 286-102.6, which license may be

suspended or revoked by a judge having jurisdiction over the holder of the license. Upon revocation of the license, the person shall not be eligible to operate a motor vehicle on the highway until the person is eighteen years of age and has again satisfied the requirements of sections 286-108 and 286-109; or

- (D) ~~[A person who]~~ Who is an emancipated minor may be granted a license upon satisfaction of all requirements of this chapter applicable to persons eighteen years of age or older; ~~or~~
- (6) ~~[To any person who]~~ Who is not in compliance with section 286-102.5[-]; ~~or~~
- (7) Who does not submit proof, satisfactory to the director, that the applicant's presence in the United States is authorized by federal law. The director shall adopt rules in accordance with chapter 91 that provide for standards of proof and for exemptions from this requirement.

Any person denied a license under this or any other section of this part shall have a right of appeal as provided in section 286-129."

SECTION 2. Section 286-106, Hawaii Revised Statutes, is amended to read as follows:

**"§286-106 Expiration of licenses.** Every driver's license issued under this part, except for a provisional license issued under section 286-102.6 which shall expire on the date of the provisional licensee's nineteenth birthday, whether an original issuance or a renewal, shall expire on the first birthday of the licensee occurring not less than eight years after the date of the issuance of the license, unless sooner revoked or suspended; provided that ~~the~~:

- (1) The license shall expire on the first birthday of the licensee occurring not less than four years after the date of the issuance if, at the time, the licensee is twenty-four years of age or younger; ~~provided further that the~~
- (2) The license shall expire on the first birthday of the licensee occurring not less than two years after the date of the issuance of the license if, at that time, the licensee is seventy-two years of age or older[-]; and
- (3) If the licensee is a legal immigrant, the license shall expire no later than the licensee's authorized period of stay in the United States.

The examiner of drivers may issue a license for a shorter period if the licensee has a physical condition or conditions that the examiner of drivers reasonably believes may impair the driver's ability to drive."

SECTION 3. Section 286-110, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

(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~~:

- (1) 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[-]; and
- (2) If the applicant is a legal immigrant, the permit shall expire no later than the applicant's authorized period of stay in the United States.

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.”

SECTION 4. Section 286-111, Hawaii Revised Statutes, is amended to read as follows:

**“§286-111 Application for license, provisional license, or instruction permit; fees.** (a) Every application for an instruction permit, provisional license, or driver’s license shall be made upon a form furnished by the examiner of drivers and shall be verified by the applicant before a person authorized to administer oaths. The examiner of drivers and officers serving under the examiner may administer the oaths without charge. Each application for an instruction permit for a category (1), (2), (3), or (4) license shall be accompanied by a fee to be determined by the council of each county, and each application for a provisional license or driver’s license shall be accompanied by the fee, unless the applicant has already paid the fee upon application for an instruction permit in the same county, in which event no fee shall be charged. An additional fee to be determined by the council of each county shall be charged and collected upon the issuance of a provisional license or driver’s license. All of the foregoing fees shall become county realizations.

(b) The director shall establish by rule a standard fee for all driver’s license applicants who require verification through the federal system that their presence in the United States is authorized by federal law. The fees collected shall become state realizations and be deposited into the state highway fund. The state shall reimburse the counties all costs of verification through the federal system. The amount of reimbursement shall be determined by the director of transportation.

~~[(b)]~~ (c) The director of transportation shall establish a fee schedule for all commercial driver’s licensing examinations. The fees collected for a commercial driver’s license shall become state realizations and shall be deposited in the state highway fund. The State shall reimburse the counties all costs for administering the commercial driver’s licensing program. The amount of reimbursement shall be determined by the director of transportation.

~~[(e)]~~ (d) Every application shall state the full name, date of birth, sex, occupation, social security number if the applicant is eligible for a social security number, the residence address, and business address, if any, of the applicant, ~~[and]~~ shall briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as a driver, and, if so, when and in what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and if so, the date of and reason for the suspension, revocation, or refusal.

~~[(d)]~~ (e) If the applicant is not eligible to receive a social security number, the applicant shall submit, in lieu of providing proof of social security number pursuant to subsection ~~[(e)]~~ (d):

- (1) A United States Social Security Administration letter stating that the applicant is ineligible to obtain a social security number; and
- (2) Either:
  - (A) A government-issued photo identification document; or
  - (B) Other identification documents as deemed acceptable by the director.”

SECTION 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, 2010; provided that the amendments made to section 286-106, Hawaii Revised Statutes, under section 2 of this Act, shall not be repealed when that section is reenacted on January 9, 2011, pursuant to section 15 of Act 72, Session Laws of Hawaii 2005.

(Approved April 20, 2010.)

## ACT 39

H.B. NO. 2027

A Bill for an Act Relating to Dishonored Checks.

*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 \$30.”

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

SECTION 3. This Act shall take effect on July 1, 2010.

(Approved April 20, 2010.)

## ACT 40

H.B. NO. 2383

A Bill for an Act Relating to Flags.

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

SECTION 1. Since the American Revolution, more than five hundred thousand Americans have been captured and interned as prisoners of war. The largest number of prisoners held captive occurred during the Civil War when an estimated two hundred twenty thousand confederate soldiers were captured by the North and nearly one hundred twenty-seven thousand union soldiers were interned by the South.

Since World War I, over one hundred forty-two thousand Americans, including eighty-five women, have been captured and interned as prisoners of war. Not included in this figure are nearly ninety-three thousand Americans who are classified as missing in action.

As our country seeks out Al Qaeda terrorists in the Middle East, it is important to recognize and honor the extraordinary heroism of the brave men and women who risked or sacrificed their lives or their freedom in the past, as well those who place their lives in harm's way on a daily basis in Afghanistan and Iraq.



The purpose of this Act is to allow the National League of Families' POW/MIA (prisoner of war/missing in action) flag to be flown with the United States and Hawaiian flags at the state capitol and on the grounds of the headquarters of the state department of defense on specified days to honor American prisoners of war and military personnel who are missing in action.

SECTION 2. Chapter 5, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§5- POW/MIA (prisoner of war/missing in action) flag; recognition; use.**

(a) The State recognizes the National League of Families' POW/MIA (prisoner of war/missing in action) flag that was recognized by the United States Congress through P. L. 101-355 on August 10, 1990.

(b) The National League of Families' POW/MIA (prisoner of war/missing in action) flag shall be flown on the grounds of the state capitol and on the grounds of the headquarters of the state department of defense on the following days:

- (1) Armed Forces Day, the third Saturday in May;
- (2) Memorial Day, the last Monday in May;
- (3) Flag Day, June 14;
- (4) Independence Day, July 4;
- (5) National POW/MIA Recognition Day, the third Friday in September; and
- (6) Veterans Day, November 11,

and may be flown on the grounds of the state capitol and on the grounds of the headquarters of the state department of defense on other days; provided that if the Hawaiian flag is flown on the same halyard as the flag of the United States of America at those locations, then the POW/MIA (prisoner of war/missing in action) flag may be flown under the flag of the State of Hawaii, and if the Hawaiian flag is flown on a separate halyard as the flag of the United States of America at those locations, then the POW/MIA (prisoner of war/missing in action) flag may be flown under the flag of the United States of America.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

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

(Approved April 20, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Research.

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

SECTION 1. The purpose of this Act is to require the sharing of data across state agencies to support research that will improve the educational and workforce outcomes for the citizens of Hawaii and meet the longitudinal data requirements of the federal American Recovery and Reinvestment Act of 2009.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§302A- Departmental data sharing.** (a) The department of education, the University of Hawaii, the department of labor and industrial relations, and other state agencies, as appropriate, shall share data to support research that will improve educational and workforce outcomes and meet the longitudinal data requirements of the federal American Recovery and Reinvestment Act of 2009, as amended. The data to be shared shall be determined jointly by the department of education, the University of Hawaii, the department of labor and industrial relations, and other state agencies, as appropriate, and shall be shared no less than annually.

(b) The department of education, the University of Hawaii, the department of labor and industrial relations, and other state agencies, as appropriate, shall share data in a manner that safeguards the confidentiality of student education records, as defined by the federal Family Educational Rights and Privacy Act, and workforce data, as provided by applicable federal and state laws, rules, and regulations.

(c) The department of education, the University of Hawaii, the department of labor and industrial relations, and other state agencies, as appropriate, shall establish a data governance and access committee that meets on a quarterly basis to determine protocols to:

- (1) Prioritize analyses and research questions that will provide information to improve educational and workforce outcomes and policies; and
- (2) Approve requests for access to data provided by the department of education, the University of Hawaii, the department of labor and industrial,<sup>1</sup> and other state agencies, as appropriate.

(d) All state agency directors shall consider sharing data for the state-wide longitudinal data system.”

SECTION 3. New statutory material is underscored.<sup>2</sup>

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

(Approved April 20, 2010.)

#### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

## ACT 42

S.B. NO. 2389

A Bill for an Act Relating to the University Of Hawaii.

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

SECTION 1. Act 106, Session Laws of Hawaii 2008, as amended by section 13 of Act 11, Session Laws of Hawaii 2009, is amended by amending section 3 to read as follows:

~~“SECTION 3. This Act shall take effect on July 1, 2008[, and shall be repealed on June 30, 2011; provided that section 304A-2251, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act].”~~

## ACT 43

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

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

(Approved April 20, 2010.)

## ACT 43

H.B. NO. 2136

A Bill for an Act Relating to Distributions by Nonprofit Corporations.

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

SECTION 1. The Hawaii Nonprofit Corporations Act currently prohibits any distributions from nonprofit corporations except upon dissolution. For example, this prohibition bars public benefit corporations organized and operated as supporting organizations from making current distributions to their supported organizations. The adoption of the Hawaii Nonprofit Corporations Act was not intended to prohibit such current distributions. Federal law already permits such distributions.

Therefore, the purpose of this Act is to permit current distributions by public benefit corporations to their public benefit corporation members and affiliates; provided that the distributions are in accordance with the distributing public benefit corporations' purposes and will not jeopardize their liquidity.

SECTION 2. Section 414D-14, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Affiliate” means an entity that directly or indirectly controls, is controlled by, or is under common control with the public benefit corporation. Control includes the power to select the public benefit corporation’s board of directors.”

SECTION 3. Section 414D-232, Hawaii Revised Statutes, is amended to read as follows:

**“§414D-232 Authorized distributions.** (a) A corporation may purchase its memberships if, after the purchase is completed:

- (1) The corporation would be able to pay its debts as they become due in the usual course of its activities; and
- (2) The corporation’s total assets would [at least] be equal to at least the sum of its total liabilities.

(b) Corporations may make distributions upon dissolution in conformity with part XIII.

(c) The public benefit corporation, in conformity with its purposes, may make distributions to and confer benefits on a member or an affiliate that is another public benefit corporation if, after any distribution is completed:

- (1) The public benefit corporation would be able to pay its debts as they become due in the usual course of its activities; and
- (2) The public benefit corporation’s total assets would be equal to at least the sum of its total liabilities.”

SECTION 4. Section 414D-245, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A dissolved corporation continues its corporate existence but ~~may~~ shall not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

- (1) Preserving and protecting its assets and minimizing its liabilities;
- (2) Discharging or making provision for discharging its liabilities and obligations;
- (3) Disposing of its properties that will not be distributed in kind;
- (4) Returning, transferring, or conveying assets held by the corporation upon a condition requiring return, transfer, or conveyance, which ~~condition~~ occurs by reason of the dissolution~~[-]~~ in accordance with ~~such~~ that condition;
- (5) Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;
- (6) If the corporation is a public benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, ~~or~~ transferring, subject to any contractual or legal requirement, its assets to one or more persons described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or if the dissolved corporation is not described in section 501(c)(3) of the Internal Revenue Code, to one or more public benefit corporations;
- (7) If the corporation is not a public benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, to those persons whom the corporation holds itself out as benefiting or serving; and
- (8) Doing every other act necessary to wind up and liquidate its assets and affairs.”

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 21, 2010.)

## ACT 44

H.B. NO. 1927

A Bill for an Act Relating to Owner-Builders.

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

SECTION 1. The legislature finds that the intent of contractor licensing laws under chapter 444, Hawaii Revised Statutes, is to:

- (1) Protect the public from the dangers of unlicensed contracting activity;
- (2) Afford owner-builders a limited exemption from contractor licensing requirements for structures built for their own use, and which, at the time the exemption is obtained, the owner-builder does not intend to sell or lease; and
- (3) Prevent uses of the owner-builder exemption that circumvent contractor licensing requirements.

The legislature further finds that widespread economic hardship has forced many owner-builders into the unplanned sale of their property, despite their original intent to use the property for their own purposes. The legislature finds that it is necessary to provide relief for these owner-builders so that they may sell or lease their properties under these difficult circumstances without violating chapter 444.

The purpose of this Act is to provide further relief for owner-builders who must sell or lease a property prior to the expiration of the one-year prohibition on sales or leases and to clarify the applicability of the owner-builder exemption.

SECTION 2. Chapter 444, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§444-A Owner-builder exemption.** (a) This chapter shall not apply to owners or lessees of property who build or improve residential, farm, industrial, or commercial buildings or structures on property for their own use, or for use by their grandparents, parents, siblings, or children and who do not offer the buildings or structures for sale or lease; provided that:

- (1) To qualify for an exemption under this section, the owner or lessee shall register for the exemption as provided in section 444-9.1; and
- (2) The exemption under this section shall not apply to electrical or plumbing work that must be performed only by persons or entities licensed in accordance with this chapter, unless the owner or lessee of the property is licensed for such work under chapter 448E.

(b) Proof of the sale or lease, or offering for sale or lease, of the structure not more than one year after completion, unless the sale or lease was caused by an eligible unforeseen hardship as determined by the board pursuant to subsection (c), shall be prima facie evidence that the construction or improvement of the structure was undertaken for the purpose of sale or lease; provided that this subsection shall not apply to:

- (1) Residential properties sold or leased to employees of the owner or lessee; or
- (2) Construction or improvements performed pursuant to an approved building permit where the estimated valuation of work to be performed, as reflected in the building permit, is less than \$10,000.

(c) The board shall determine the eligibility of an unforeseen hardship claimed by an owner under subsection (b); provided that an alleged unforeseen hardship shall not be deemed eligible if the board determines that the construction or improvement of the structure was undertaken for the purpose of sale or lease. An owner seeking a determination of eligibility of an unforeseen hardship shall:

- (1) Be in compliance with the requirements set forth in the disclosure statement required to be provided under section 444-9.1; and
- (2) Apply in writing to the board at any time prior to selling, leasing, or offering to sell or lease the property.

The board shall communicate its determination to the owner in writing within ninety days of receiving a completed application under this subsection.

(d) Any owner or lessee of property found to have violated this section shall not be permitted to engage in any activities pursuant to this section or to register under section 444-9.1 for a period of three years. There is a rebuttable presumption that an owner or lessee has violated this section, when the owner or lessee obtains an exemption from the licensing requirements of section 444-9 more than once in two years.

(e) For the purposes of this section, "completion" means the date of final inspection approval by the county."

SECTION 3. Section 444-2, Hawaii Revised Statutes, is amended to read as follows:

**"§444-2 Exemptions.** This chapter shall not apply to:

- (1) Officers and employees of the United States, the State, or any county while in the performance of their governmental duties;
- (2) Any person acting as a receiver, trustee in bankruptcy, personal representative, or any other person acting under any order or authorization of any court;
- (3) A person who sells or installs any finished products, materials, or articles of merchandise that are not actually fabricated into and do not become a permanent fixed part of the structure, or to the construction, alteration, improvement, or repair of personal property;
- (4) Any project or operation for which the aggregate contract price for labor, materials, taxes, and all other items is not more than \$1,000. This exemption shall not apply in any case where a building permit is required regardless of the aggregate contract price, nor where the undertaking is only a part of a larger or major project or operation, whether undertaken by the same or a different contractor or in which a division of the project or operation is made in contracts of amounts not more than \$1,000 for the purpose of evading this chapter or otherwise;
- (5) A registered architect or professional engineer acting solely in the person's professional capacity;
- (6) Any person who engages in the activities regulated in this chapter as an employee with wages as the person's sole compensation;
- (7) ~~Owners or lessees of property who build or improve residential, farm, industrial, or commercial buildings or structures on property for their own use, or for use by their grandparents, parents, siblings, or children and who do not offer the buildings or structures for sale or lease; provided that this exemption shall not apply to electrical or plumbing work that must be performed only by persons or entities licensed under this chapter, or to the owner or lessee of the property if the owner or lessee is licensed under chapter 448E. In all actions brought under this paragraph, proof of the sale or lease, or offering for sale or lease, of the structure not more than one year after completion is prima facie evidence that the construction or improvement of the structure was undertaken for the purpose of sale or lease; provided that this provision shall not apply to residential properties sold or leased to employees of the owner or lessee; provided further that in order to qualify for this exemption the owner or lessee must register for the exemptions as provided in section 444-9.1. Any owner or lessee of property found to have violated this paragraph shall not be permitted to engage in any activities pursuant to this paragraph or to register under section 444-9.1 for a period of three years. There is a presumption that an owner or lessee has violated this section, when the owner or lessee obtains an exemption from the licensing requirements of section 444-9 more than once in two years;~~ Owner-builders exempted under section 444-A;
- (8) Any joint venture if all members thereof hold licenses issued under this chapter;

- (9) Any project or operation where it is determined by the board that less than ten persons are qualified to perform the work in question and that the work does not pose a potential danger to public health, safety, and welfare; or
- (10) Any public works project that requires additional qualifications beyond those established by the licensing law and which is deemed necessary and in the public interest by the contracting agency.”

SECTION 4. Section 444-9.1, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Each county or other local subdivision of the [State] state which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall also require that each applicant for such a permit file as a condition to the issuance of a permit a statement that the applicant and all specialty contractors are licensed ~~under~~ in accordance with this chapter, giving the license numbers and stating that the licenses are in full force and effect, or, if the applicant is exempt from this chapter, the basis for the claimed exemption; provided that if the applicant claims an exemption under section [444-2(7);] 444-A, the applicant shall ~~also be required to~~ certify that the building or structure is for the applicant’s personal use and not for use or occupancy by the general public. Each county or local subdivision of the [State] state shall maintain an owner-builder registration list which shall contain the following information:

- (1) ~~the~~ The name of any owner or lessee who claims an exemption from this chapter as provided in section [444-2(7);] 444-A;
- (2) ~~the~~ The address of the property where exempt building or improvement activity is to occur;
- (3) ~~a~~ A description of the type of building or improvement activity to occur;
- (4) ~~the~~ The approximate dates of construction activity; and
- (5) ~~whether~~ Whether any electrical or plumbing work is to be performed and if so, the name and license number of the person or entity who will do the work.

The absence of such registration is prima facie evidence that the exemption in section [444-2(7)] 444-A does not apply.”

2. By amending subsection (c) to read:

“(c) ~~To qualify for the exemption under section 444-2(7), the~~ The county shall provide ~~the applicant~~ applicants for the exemption under section 444-A with a disclosure statement in substantially the following form:

“Disclosure Statement

State law requires construction to be done by licensed contractors. You have applied for a permit under an exemption to that law. The exemption provided in section [444-2(7);] 444-A, Hawaii Revised Statutes, allows you, as the owner or lessee of your property, to act as your own general contractor even though you do not have a license. You must supervise the construction yourself. You must also hire licensed subcontractors. The building must be for your own use and occupancy. It may not be built for sale or lease. If you sell or lease a building you have built yourself within one year after the construction is complete, the law will presume that you built it for sale or lease, which is a violation of the exemption, and you may be prosecuted for this. It is your responsibility to make sure

that subcontractors hired by you have licenses required by state law and by county licensing ordinances. Electrical or plumbing work must be performed by contractors licensed under chapters 448E and 444, Hawaii Revised Statutes. Any person working on your building who is not licensed must be your employee which means that you must deduct F.I.C.A. and withholding taxes and provide workers' compensation for that employee, all as prescribed by law. Your construction must comply with all applicable laws, ordinances, building codes, and zoning regulations. If you violate section ~~[444-2(7)]~~ 444-A or fail to comply with the requirements set forth in this disclosure statement, you may be fined \$5,000 or forty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater, for the first offense; and \$10,000 or fifty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater, for any subsequent offense."

The county shall not issue a building permit to the owner-applicant until the applicant signs a statement that the applicant has read and understands the disclosure form."

SECTION 5. Section 444-23, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Any person who violates section [444-2(7);] 444-A, or fails to comply with the requirements set forth in the disclosure statement required to be provided under section 444-9.1 shall be fined:

- (1) \$5,000 or forty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater, for the first offense; and
- (2) \$10,000 or fifty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater, for any subsequent offenses."

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. In codifying the new section added by section 2 of this Act, the revisor of statutes shall substitute the appropriate section number for the letter used in designating the new section in this Act.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect on July 1, 2010.

(Approved April 21, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.



A Bill for an Act Relating to Health Clubs.

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

SECTION 1. Chapter 486N, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§486N- Military personnel; federal active duty deployment outside state; cancellation or suspension of contract.** (a) In addition to cancellation of a health club contract under sections 486N-6 and 486N-7, a health club contract of a member of the United States military, including a member of the Hawaii National Guard, United States military reserves, or regular United States armed forces who is serving on federal active duty or active duty in federal service and deployed or otherwise serving outside of this state during the term of the contract, may be canceled or suspended; provided that the request for cancellation or suspension:

- (1) Is made by the member or the member's legally designated representative;
- (2) Includes a copy of the member's official military orders or a written verification from the member's commanding officer; and
- (3) Is made within ninety days after the member receives notice of serving on federal active duty or active duty in federal service and deployment or service outside of this state.

(b) If a contract is suspended under this section, the health club shall not charge any fees to reinstate the contract and shall maintain the original payment obligations set forth in the contract. A contract that is suspended pursuant to this section shall be subject to cancellation two years from the date of suspension if the buyer fails to reinstate the contract.

(c) If a contract is cancelled under this section, the health club may retain the portion of the total contract price representing the services used plus reimbursement for the expenses incurred in an amount not to exceed twenty-five per cent of the total contract price."

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect on July 1, 2010.

(Approved April 22, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to University of Hawaii Projects.

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

SECTION 1. Act 138, Session Laws of Hawaii 2005, is amended by amending section 12 to read as follows:

“SECTION 12. The appropriations made for the construction and repair of university housing units authorized in this Act shall not lapse at the end of the fiscal period for which the appropriation or authorization is made; provided that all appropriations that are unencumbered as of June 30, [2010;] 2012, shall lapse as of that date.”

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

SECTION 3. This Act shall take effect on June 29, 2010.

(Approved April 22, 2010.)

## ACT 47

S.B. NO. 2701

A Bill for an Act Relating to Consumer Protection.

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

SECTION 1. Chapter 488, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to section 488-1 to be appropriately inserted and to read:

“Accumulation or payment of money” or “accumulates funds” means the payment of funds by a member to the plan.

“Commissioner” means the insurance commissioner.”

2. By amending subsections (a) and (b) in section 488-2, to read:

“(a) This chapter shall apply to all plans in the [State] state other than:

[~~(1) Plans in which either the group or the plan administrator is otherwise subject to regulation under chapter 431 or 432;~~

(~~2~~) (1) Plans in which any party to the plan is the federal government or any agency thereof; or

[~~(3)~~] (2) Any employer-employee plan that is subject to the federal Employee Retirement Income Security Act of 1974, Public Law 93-406.

(b) The commissioner shall have jurisdiction to enforce this chapter.

The operation of all plans subject to this chapter shall also be subject to chapters 480, part I of chapter 481, 481A, and 481B, 481C, and other provisions of law that may be applicable. Chapters 431 and 432 shall not apply to any plans or the operations thereof that are subject to this chapter, except as provided in sections 488-4, 488-5, [and] 488-6[-], and 488-7.”

3. By amending section 488-3 to read:

“~~[[§488-3]]~~ **Filing and other requirements.** (a) Sixty days prior to the implementation of any plan and the accumulation or payment of money thereunder, all plan documents shall be submitted in writing [~~to the department.~~] for approval by the commissioner.

(b) [~~Such~~] The documentation required by subsection (a) shall contain in writing the following:

(1) A brief statement of the plan’s financial structure, including a statement of the amount of prepayment, [~~and~~] other charges or dues to be paid by plan members, and the manner in which [~~such amount is~~] the amounts are to be paid[-];

- (2) A statement of the amount of benefits, legal services, or reimbursement for legal services to be furnished each member of a plan, and the period during which it will be furnished; and, if there are exceptions, reductions, exclusions, limitations, or restrictions of [such] benefits, legal services, or reimbursements, a detailed statement of [such] the exceptions, reductions, exclusions, limitations, or restrictions[-];
- (3) A statement of the terms and conditions upon which the plan may be canceled or otherwise terminated by the group, the plan administrator, the persons furnishing legal services, or the member; provided that for any [such] cancellation or termination, other than by a member, there shall be provision made for the disposition of funds accumulated under the plan[-];
- (4) A statement describing the applicability or nonapplicability of the benefits of the plan to the family dependents of the member[-];
- (5) A statement of the period of grace which will be allowed the member or the member's group for making any payment due under the plan[-];
- (6) A statement describing a procedure for settling disputes between or among the group, the plan administrator, the persons furnishing legal services, and the member[-]; and
- (7) A statement that the plan includes the endorsements thereon and attached papers, if any, and contains the entire contract or contracts to be used [between] among all parties to a plan.

Any amendments or changes to the documents filed under paragraphs (1) to (7) shall be filed with the [department] commissioner for approval at least sixty days before they take effect. All documents filed under this section shall be public documents."

4. By amending section 488-4 to read:

**"§488-4 Accumulated funds, protection, violation.** (a) Any plan [which] that accumulates funds from payments of premiums prior to [the payment of such] paying those funds to [the] persons providing legal services shall meet the requirements of this section.

(b) The plan administrator shall have the responsibilities of a trustee for all funds received or collected under this chapter.

(c) The plan administrator, upon receipt of premium funds intended for payment to a person providing legal services pursuant to this chapter, shall maintain the funds at all times in a federally insured account with a bank, savings and loan association, or financial services loan company located in Hawaii, separate from the plan's own funds or funds held by the plan administrator in any other capacity, in an amount at least equal to the funds collected and unpaid to the persons providing legal services, unless otherwise approved by the commissioner. Only additional funds that are reasonably necessary to pay bank, savings and loan association, or financial services loan company charges may be commingled with premium funds accumulated pursuant to this section. If the bank, savings and loan association, or financial services loan company account is an interest earning account, the plan shall not retain the interest earned on accumulated funds for the plan or plan administrator's own use or benefit without the prior written consent of the person entitled to the funds. A plan trustee account shall be designated on the records of the bank, savings and loan association, or financial services loan company as a "trustee account established pursuant to section 488-4, Hawaii Revised Statutes", or words of similar import.

(d) The plan administrator shall obtain a bond in an amount and form approved by the ~~[department]~~ commissioner which shall be executed by the plan administrator and a surety company authorized to do business in the ~~[State]~~ state as a surety. The bond shall be to the benefit of the members of the plan and shall be filed with the ~~[department.]~~ commissioner. In lieu of the bond required by this section, the ~~[department shall]~~ commissioner may accept letters of credit, certificates of deposits, or other evidences of security in form and amounts deemed appropriate by the ~~[department.]~~ commissioner.

(e) Any plan administrator who, not being lawfully entitled to do so, diverts or appropriates funds accumulated pursuant to this section or any portion thereof to the plan or plan administrator's own use, shall be subject to penalties as provided by law."

5. By amending section 488-5 to read:

**"§488-5 Annual exhibits; examination by ~~[director.]~~ commissioner.** (a) Each plan shall file with the ~~[director of commerce and consumer affairs]~~ commissioner within ~~[thirty]~~ sixty days after the end of its fiscal year ~~[a statement under oath in such form as the director prescribes containing:~~

- (1) ~~A statement setting forth the total amount of gross receipts and expenditures of the plan during its fiscal year;~~
- (2) ~~The assets and liabilities of the plan at the close of its fiscal year; and~~
- (3) ~~The profit and loss of the plan during its fiscal year.]~~

an income statement and balance sheet compiled, reviewed, or audited by a certified public accountant.

(b) The powers, authorities, and duties relating to examinations vested in and imposed upon the ~~[insurance]~~ commissioner under chapter 431 ~~[are extended to and imposed upon the director in]~~ apply with respect to examinations of ~~[the] plans[;]~~ subject to this section; provided that no examination shall attempt to obtain or inspect written or oral information or documents in violation of the rules for client-lawyer confidentiality as contained in the Hawaii rules of professional conduct adopted by the supreme court."

6. By amending section 488-7 to read:

**"[H] 488-7[H] Failure to comply; penalty.** (a) Any plan ~~[which]~~ that neglects or refuses to comply with this chapter shall be notified in writing by the ~~[director of commerce and consumer affairs]~~ commissioner of the neglect or refusal, and of the need to take corrective action[; if] within seven days. If the neglect or refusal continues for seven days after notification, the plan, group, or plan administrator may be fined not more than \$1,000. Every day's neglect or refusal after the expiration of seven days shall be a separate offense.

(b) The commissioner may deny, suspend, revoke, or refuse to approve any plan or plan amendments and may levy civil penalties as allowed by chapters 431, 432, 480, 481A, 481B, and 481C, and any other applicable law for any violation of this chapter."

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

SECTION 3. This Act shall take effect on July 1, 2010.

(Approved April 23, 2010.)

#### Note

1. Prior to amendment section symbol appeared here.

A Bill for an Act Relating to the Board of Directors of the Hawaii Public Housing Authority.

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

SECTION 1. The purpose of this Act is to ensure that the board of directors of the Hawaii public housing authority is able to perform its duties in a timely and efficient manner by reducing from seven to six members the number of board members required to constitute quorum.

SECTION 2. Section 356D-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) [~~Seven~~] Six members shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the authority. 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. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon approval.

(Approved April 23, 2010.)

A Bill for an Act Relating to Escrow Depositories.

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

SECTION 1. Section 449-5, Hawaii Revised Statutes, is amended to read as follows:

“**§449-5 License required to act as escrow depository.** (a) No person shall act as an escrow depository in this [~~State~~] state unless it is a corporation licensed to do so by the commissioner.

No person subject to the provisions of this chapter not licensed or exempted under this chapter shall transact any business under any name, title or descriptive term which contains the words “escrow”, “escrow depository”, or any other word or phrase having the same or similar meaning.

(b) No person shall act as an escrow depository from an out-of-state location for property located in this state unless licensed to act as a Hawaii escrow depository by the commissioner.”

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

SECTION 3. This Act shall take effect on July 1, 2010.

(Approved April 23, 2010.)

## ACT 50

S.B. NO. 2390

A Bill for an Act Relating to Pharmacist Licensure.

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

SECTION 1. The University of Hawaii at Hilo college of pharmacy accepted its first class in the fall of 2007 and is the only accredited pharmacy school in Hawaii and the Pacific basin. For decades, Hawaii has been viewed as the crossroads of the Pacific, merging cultures and people from all walks of life. Students from Hawaii, other states, the United States territories and possessions, and even other countries, come to study at the University of Hawaii at Hilo's college of pharmacy. The University of Hawaii at Hilo college of pharmacy is currently on track for full accreditation in 2011 when its first class of pharmacy students will graduate.

To graduate from the college of pharmacy, students must participate in advanced pharmacy practice experiences in their fourth and final year. The advanced pharmacy practice experiences begin in the summer after the third year of pharmacy school and include a minimum of one thousand four hundred forty hours of practical experience. Students participate in six different types of rotations. Mandatory rotations include a hospital or health system pharmacy, an inpatient/acute care facility, an ambulatory care clinic, and a community pharmacy. Students may take an additional two electives to fulfill the experience requirements.

The first class of the University of Hawaii at Hilo college of pharmacy will begin their advanced pharmacy practice experience rotations in May of 2010. Students will perform their rotations in the traditional pharmacy setting as well as other designated advanced practice locations under the supervision of a registered pharmacist where the practice of pharmacy occurs. Geographically, the rotations will occur in Hawaii and other states, the District of Columbia, and the United States territories.

As section 461-5, Hawaii Revised Statutes, is currently written, only the hours of practical experience performed in a pharmacy in one of the fifty states count toward the one thousand five hundred hours of practical experience required for licensure as a pharmacist. As such, students who perform their rotations outside of the traditional pharmacy setting will not receive credit toward their licensure requirements, even though those students are engaged in the practice of pharmacy under the supervision of a registered pharmacist at other designated advanced practice locations, such as clinics and acute care facilities. Moreover, advanced pharmacy practice experience rotations performed in one of the United States territories or the District of Columbia will not count toward licensure requirements.

Therefore, the purpose of this Act is to ensure that advanced pharmacy practice experience rotations performed in a United States territory or the District of Columbia, or at a designated advanced practice location under the supervision of a registered pharmacist, count toward licensure requirements.

SECTION 2. Section 461-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Territory” means Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, or American Samoa.”

SECTION 3. Section 461-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any applicant for a license as a pharmacist shall submit an application on a form prescribed by the board and shall provide evidence to the board that the applicant:

- (1) Is at least eighteen years of age;
- (2) Holds a degree from a school or college of pharmacy or department in a university which is recognized and accredited by the American Council of Pharmaceutical Education;
- (3) Has a minimum of fifteen hundred hours of practical experience in any state or territory of the United States ~~[in a pharmacy], or the District of Columbia,~~ under the supervision of a ~~[registered] pharmacist[-] who is duly registered or licensed in the state, territory, or district where the experience is obtained.~~ Service and experience ~~[in a pharmacy]~~ under the supervision of a registered pharmacist as required in this section shall be predominantly related to the ~~[selling of drugs, compounding prescriptions, preparing pharmaceutical preparations, and keeping records and making reports required under state and federal statutes.]~~ practice of pharmacy as defined under section 461-1. In the event an applicant has no practical experience as required, the applicant may take the examination and upon passing the examination, shall not receive a license until after the ~~[fulfillment of]~~ applicant fulfills the practical experience requirement;
- (4) Has passed an examination as may be prescribed by the board; and
- (5) Does not have an encumbered license or a pending disciplinary action or unresolved complaint in the practice of pharmacy in any state or territory of the United States, or the District of Columbia, or if any license has been or is encumbered, the applicant shall provide all information requested by the board.”

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; provided that the amendment made to section 461-1, Hawaii Revised Statutes, by section 2 of this Act shall not be repealed when section 461-1, Hawaii Revised Statutes, is reenacted on July 1, 2010, pursuant to section 11 of Act 190, Session Laws of Hawaii 2004.

(Approved April 23, 2010.)

ACT 51

S.B. NO. 2770

A Bill for an Act Relating to Remote Dispensing Pharmacy.

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

SECTION 1. The legislature finds that many individuals living in underserved or remote areas need improved access to medications and pharmacy services. Without access to a pharmacy, individuals face tremendous barriers to obtaining basic, much-needed medications. To permit residents on rural islands and in remote areas to have access to a remote dispensing pharmacy, the legislature passed Act 96, Session Laws of Hawaii 2009.

The purpose of this Act is to clarify the definitions of “remote dispensing machine” and “remote dispensing pharmacy” to allow remote dispensing pharmacies to better serve these residents.

SECTION 2. Section 461-1, Hawaii Revised Statutes, is amended by amending the definitions of “remote dispensing machine” and “remote dispensing pharmacy” to read as follows:

“Remote dispensing machine” means a device used for dispensing unit-of-use drugs ~~[that are acquired pursuant to section 340B of the Public Health Service Act, Title 42 United States Code section 256b,]~~ that is operated using information technologies and is located in a remote dispensing pharmacy.

“Remote dispensing pharmacy” means the area in an institutional facility, including a federally qualified health center ~~[, providing]~~ that provides outpatient medical care in any county, ~~[by dispensing] where~~ prescription drugs ~~[that are acquired pursuant to section 340B of the Public Health Service Act, Title 42 United States Code section 256b,]~~ are dispensed through the use of a remote dispensing machine.”

SECTION 3. Act 190, Session Laws of Hawaii 2004, is amended by amending section 11 to read as follows:

“SECTION 11. This Act shall take effect on July 1, 2004, and shall be repealed on July 1, 2010; provided that ~~[sections]:~~

- (1) Sections 328C-1, 328C-2, and 461-1, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act[-]; and
- (2) The definitions of “institutional facility” and “unit of use container” shall not be repealed when section 461-1, Hawaii Revised Statutes, is reenacted on July 1, 2010, pursuant to paragraph (1).”

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; provided that:

- (1) Section 3 of this Act shall take effect on June 30, 2010; and
- (2) The definitions of “remote dispensing machine” and “remote dispensing pharmacy”, as amended by this Act, shall not be repealed when the amendments to section 461-1, Hawaii Revised Statutes, are repealed on January 2, 2014, pursuant to section 7 of Act 212, Session Laws of Hawaii 2008, as amended by Act 96, Session Laws of Hawaii 2009.

(Approved April 23, 2010.)

## ACT 52

S.B. NO. 2597

A Bill for an Act Relating to the Hawaii Employers’ Mutual Insurance Company.

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

SECTION 1. Section 431:14A-101, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§431:14A-101]]~~ Purpose.** The Hawaii employers’ mutual insurance company is established to provide workers’ compensation coverage to employers of the ~~[State] state~~ at the highest level of service with the lowest possible cost, consistent with reasonable and applicable actuarial standards and the sound fi-



nancial integrity of the company. The purposes of the company are to provide the highest standard of workplace safety and loss prevention, to encourage employer involvement, and to be responsive to each policyholder's experience, practice, and operating effectiveness. Nothing in this article shall create any implied third-party duty or impose additional legal liability for the company toward its members or beneficiaries beyond that explicitly created by this chapter, chapter 386, or common law, and generally applicable to all issuers of workers' compensation insurance in this state."

SECTION 2. Section 431:14A-102, Hawaii Revised Statutes, is amended by amending the definition of "administrator" to read as follows:

"Administrator" means the ~~[president and]~~ chief executive officer of the Hawaii employers' mutual insurance company."

SECTION 3. Section 431:14A-105, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The initial eight division directors shall be appointed by the governor within sixty days of June 19, 1996, and shall serve for terms of one year each. The governor shall ensure adequate representation from the major sectors of the economy and workforce in the ~~[State]~~ state.<sup>1</sup>

The public, at-large member initially elected by the board shall serve for a term of one year.

The initial board of directors shall determine the staggering and length of future directors' terms; provided that no term shall exceed three years. Upon the expiration of the terms of the initial division directors, the company's policyholders in the division represented by the director shall elect the directors. Each director shall serve for terms as specified by the board unless sooner removed for cause pursuant to rules adopted by the board. Each director shall hold office until a successor is elected as provided in this section. No person shall serve more than two consecutive full terms as director. Any other law to the contrary notwithstanding, the election and composition of the board of directors as provided in this section shall be deemed adequate to qualify the company as a mutual insurer under chapter 431."

SECTION 4. Section 431:14A-108, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The board shall hire an administrator~~[,]~~ who shall serve at the pleasure of the board. The administrator shall be ~~[the president of the company and]~~ the chief executive officer~~[, who]~~ and shall be responsible for the day-to-day operations and management of the company."

SECTION 5. Section 431:14A-117, Hawaii Revised Statutes, is amended to read as follows:

**["§431:14A-117"] Workplace safety and health programs.** (a) The company shall work with policyholders, health care providers, and employees to develop, implement, and monitor workplace safety and health and return to work programs. The programs shall include the development of a workplace accident and injury reduction plan that promotes safe working conditions.

(b) The company shall promote safety programs to policyholders ~~[by:]~~ through the programs and activities which may include:

- (1) Analyzing reports of industrial accidents of members to help determine the cause of those accidents;

- (2) Conducting studies for risk and hazard identification and assessments by safety and medical professionals;
  - (3) Conducting educational programs designed to prevent frequently recurring industrial accidents; and
  - (4) Inspecting work sites and investigating unsafe working conditions to promote job safety and eliminate hazards.
- (c) Company representatives shall have reasonable access to the premises of any policyholder or applicant during regular working hours to carry out workplace evaluations.

(d) ~~[Upon] Where the company finds, upon the completion of a detailed inspection [and recognition of a] that an insured has policies and practices in place that demonstrate a high regard for employee work safety, [a deviation may be applied] the company may apply a deviation to the insured's rate structure [of that insured],~~ noting special recognition of those efforts.

(e) The company shall not incur additional legal liability toward its members or beneficiaries as a result of any action taken or not taken pursuant to this chapter beyond that explicitly created by this chapter, chapter 386, or common law, and generally applicable to the acts or omissions of all issuers of workers' compensation insurance in this state."

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, 2010.

(Approved April 23, 2010.)

**Note**

- 1. Period should not be underscored.

**ACT 53**

H.B. NO. 2197

A Bill for an Act Relating to Condominiums.

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

SECTION 1. Presently, the law does not provide boards of directors broad authority on behalf of their associations to install solar energy devices, even though associations can benefit from installing solar energy or wind energy devices on the common elements to reduce Hawaii's dependence on fossil fuels. Some companies are now proposing to lease areas of the common elements from associations to install solar energy or wind energy devices, thereby reducing the association's energy costs and dependence on fossil fuels.

The purpose of this Act is to amend sections 514A-13.4 and 514B-140, Hawaii Revised Statutes, to specifically provide boards of directors with the authority to install or allow the installation of solar energy or wind energy devices on the common elements under appropriate circumstances to further reduce Hawaii's dependence on energy generated from fossil fuels.

SECTION 2. Section 514A-13.4, Hawaii Revised Statutes, is amended to read as follows:

**"[§514A-13.4] Telecommunications equipment[-] and renewable energy devices.** (a) Notwithstanding any other provisions to the contrary in this chapter, in the declaration of any project, or in the bylaws of any association:

- (1) The board of directors of an association 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 apartment or apartments for the use of which the limited common element is reserved; and

- (2) 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, elements, and easements appurtenant to each apartment or to be a structural alteration or addition to any building different in any material respect from the plans of the project filed in accordance with section 514A-12; provided that no such installation shall directly affect any non-consenting apartment owner.

(b) Notwithstanding any other provision to the contrary in this chapter, in the declaration of any project or in the bylaws of any association:

- (1) 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
- (2) 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 function by different means or methods shall not be deemed to alter, impair, or diminish the common interest, elements, and easements appurtenant to each apartment or to be a structural alteration or addition to any building different in any material respect from the plans of the project filed in accordance with section 514A-12.

(c) Notwithstanding any other law to the contrary in this chapter, or any provisions in the declaration of any project or in the bylaws of any association:

- (1) The board of directors of an association shall have the authority to install or cause the installation of, or lease or license the common elements for the installation of solar energy devices and wind energy devices on the common elements of the project; provided that solar or wind energy devices shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for which use of the limited common element is reserved; and
- (2) The installation of solar energy devices and wind energy devices on the common elements of the project by the board shall not be deemed to alter, impair, or diminish the common interest, common elements, or 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 section 514A-12; provided that the installation does not directly affect any nonconsenting unit owner.

~~(e)~~ (d) As used in this section:

“Directly affect” means the installation of television signal distribution and telecommunications equipment, solar energy devices, or wind energy devices in a manner which would specially, personally, and adversely affect an individual apartment owner in a manner not common to the apartment owners as a whole.

“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 as it is sold to consumers cannot be used as a solar device without incorporation with other equipment, it shall be installed in place and ready to be operational to qualify as a “solar energy device”; provided further that “solar energy device” shall not include skylights or windows.

“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.

“Wind energy device” means any new identifiable facility, equipment, apparatus, or the like which makes use of wind energy for producing electricity or reducing the use of other types of energy that are dependent upon fossil fuel for generation; provided that if the facility, equipment, apparatus, or the like cannot be used as a wind energy device without incorporation with other equipment, it shall be installed in place and ready to be operational to qualify as a “wind energy device.”<sup>1</sup>

SECTION 3. Section 514B-140, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding any other [~~provisions~~] law to the contrary in this chapter or any provisions 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 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[-]; and

(3) Regarding the installation of solar energy devices and wind energy devices:

(A) The board shall have the authority to install or cause the installation of, or lease or license comment<sup>1</sup> elements for the installation of solar energy devices and wind energy devices on the common elements of the project; provided that solar or wind energy devices shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for which use of the limited common element is reserved; and

(B) The installation of solar energy devices and wind energy devices on the common elements of the project by the board shall not be deemed to alter, impair, or diminish the common interest, common elements, or 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 the installation does not directly affect any nonconsenting unit owner.

(e) As used in this subsection:

“Directly affect” means the installation of television signal distribution and telecommunications equipment, solar energy devices, or wind energy devices in a manner which would specially, personally, and adversely affect [a] an individual unit owner in a manner not common to the unit owners as a whole.

“Solar energy device” means the same as in subsection (c).

“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.

“Wind energy device” means any new identifiable facility, equipment, apparatus, or the like which makes use of wind energy for producing electricity or reducing the use of other types of energy that are dependent upon fossil fuel for generation; provided that if the facility, equipment, apparatus, or the like cannot be used as a wind energy device without incorporation with other equipment, it shall be installed in place and ready to be operational to qualify as a “wind energy device.”<sup>1</sup>

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 23, 2010.)

Note

1. So in original.

## ACT 54

S.B. NO. 2898

A Bill for an Act Relating to Diversion Program for Chemically Dependant Nurses.

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

SECTION 1. In enacting Act 106, Session Laws of Hawaii 1993, the legislature found that nursing is a stressful occupation and some nurses attempt to cope with the pressures of their jobs by consuming alcohol and drugs. Accordingly, the legislature established a diversion program for nurses with chemical dependency problems and placed the program under the oversight of the board of nursing.

The diversion program established by chapter 334D, Hawaii Revised Statutes, requires a third-party sponsor to objectively evaluate, counsel, monitor progress, and provide ongoing support for rehabilitative services. Under existing law, that third-party sponsor is the Hawaii Nurses Association (HNA) and since the diversion program is a component of the HNA's peer assistance program, only nurses who have been reported by HNA are able to participate. The legislature finds that the public would be better served by allowing the board of nursing to recognize programs that are provided by additional sponsors and meet the board's requirements.

Existing law also precludes the board of nursing from disciplining nurses who abide by the terms and conditions of the diversion program. The legislature finds that the public health, safety, and welfare would be better served by continuing the policy of no disciplinary action against a nurse who has successfully complied with a diversion program and has been successfully rehabilitated but also allowing the board of nursing to take action when nurses are noncompliant.

Finally, the legislature finds that reporting requirements in the existing law are obsolete since the board of nursing is already required to comply with state and federal law regarding reporting, and the data bank maintained by the National Council of State Boards of Nursing has aligned its reporting requirements with federal law.

SECTION 2. Section 334D-1, Hawaii Revised Statutes, is amended to read as follows:

~~“[§334D-1] Findings and purpose. [Nursing is a stressful occupation and some nurses may be tempted to escape the pressures of their job by consuming alcohol or taking drugs. Many times nurses do not realize that they have developed a chemical dependency problem, and that they need help before the problem gets worse.~~

~~The legislature finds that there is no formal peer program to assist nurses who have developed a chemical dependency problem. There is, however, an informal peer program operated by the Hawaii Nurses Association. This is a peer assistance program for nurses who have not been reported to the department of commerce and consumer affairs because of a chemical dependency problem. The diversion program created by this chapter is a component of the Hawaii Nurses Association's peer assistance program, and is intended for nurses who have been reported to the department of commerce and consumer affairs.]~~

~~The purpose of this chapter is to establish a diversion program for nurses with chemical dependency problems and to place the program under the [auspices] oversight of the board of nursing [for oversight purposes. It is the intent~~

of this chapter that nurses who are abiding by the terms and conditions of the diversion program shall not be subject to further disciplinary action for their chemical dependency problems by the board of nursing]. The intent of the diversion program established by this chapter is to develop a voluntary alternative to traditional disciplinary actions that provides adequate protections for the public health, safety, and welfare.”

SECTION 3. Section 334D-3, Hawaii Revised Statutes, is amended to read as follows:

~~“[§334D-3] Diversion program.~~ (a) There is established a diversion program for chemically dependent nurses<sup>[5]</sup> which shall be administered and monitored by a professional association<sup>[-]</sup> or other entity approved by the board. The function of the diversion program shall be to assess and, where appropriate, rehabilitate chemically dependent nurses whose competencies may be impaired and to provide treatment so that nurses are able to return to or continue the practice of nursing in a manner that is beneficial to the public.

(b) The board shall adopt rules in accordance with chapter 91 setting forth the requirements for program approval and maintenance.

(c) Participation in the diversion program shall be voluntary.

(d) If a nurse is subject to penalties, including revocation, suspension, or limitation of license and fines, and desires to effect a compromise settlement, the regulated industries complaint office and the nurse may enter into a settlement agreement subject to approval and order of the board and acceptance by the diversion program.

(e) The names of nurses who fail to comply with the terms and conditions of the diversion program shall be reported to:

(1) The executive ~~secretary~~ officer of the board; and

(2) The regulated industries complaints office<sup>[5]</sup>,

within three business days after the failure to comply becomes known to the individuals monitoring the nurse and the individual designated by the ~~professional association~~ monitoring entity to report the failure to comply.

(f) Nurses who participate in the diversion program pursuant to this chapter shall provide evidence verified by licensed professional health care providers of successful completion of all terms and conditions of the program and of sufficient rehabilitation to safely practice nursing, as provided by rules adopted by the board pursuant to chapter 91.

(g) A nurse who fully complies with this chapter and the rules adopted by the board pursuant to this chapter, and who completes all the requirements of a diversion program approved by the board, shall not be subject to further disciplinary action by the board for the cause described in section 457-12(a)(4).

(h) A nurse admitted to the diversion program who fails to comply with the requirements of this chapter, the rules adopted by the board pursuant to this chapter, or the requirements of the diversion program may be subject to disciplinary action in accordance with section 457-12 and chapter 436B.”

SECTION 4. Section 334D-5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§334D-5] Records.~~ ~~[(a) Nurses who comply with all the terms and conditions of the diversion program shall not be reported to the National Council of State Board of Nursing’s Data Bank unless sanctions have been taken.~~

(b) All records of a nurse participating in a ~~peer assistance~~ diversion program that ~~[do not involve reporting]~~ are not required by law to<sup>[-]</sup> ~~or disciplin-~~

~~ary action by,] be reported to the board [of nursing] or the regulated industries complaints office and do not involve disciplinary action by those entities shall be privileged and shall not be subject to discovery or subpoena[-] by any person or entity other than a law enforcement agency investigating the conduct of the nurse, the board, or the regulated industries complaints office.~~

For purposes of this section:

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

“Law enforcement officer” means any public servant, whether employed by the United States, State, or county, vested by law with a duty to maintain public order or, to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses.”

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 23, 2010.)

#### Note

1. Quote should be underscored.

## ACT 55

S.B. NO. 2611

A Bill for an Act Relating to Vital Statistics.

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

SECTION 1. Section 338-14.3, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The fee for a verification in lieu of a certified copy shall be a maximum of one half of the fee established in section 338-14.5 for the first certified copy of a certificate issued.”

SECTION 2. Section 338-14.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Moneys in the fund shall be used by the department of health for the modernization and automation of the vital statistics system in this State. [These proceeds shall not be used to supplant any other moneys previously allocated to this program necessary for the daily operation of the system of vital statistics.] Moneys in the fund may be used to assist in offsetting costs for the daily operations of the system of vital statistics.”

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, 2010.

(Approved April 24, 2010.)



A Bill for an Act Relating to Lands Controlled by the State.

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

SECTION 1. Section 171-64.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding any law to the contrary, no sale of lands described in subsection (a) in fee simple including land sold for roads and streets, or gift of lands described in subsection (a) in fee simple to the extent such gift is otherwise permitted by law, shall occur without the prior approval of the sale or gift by the legislature by concurrent resolution to be adopted by each house by at least a two-thirds majority vote of the members to which each house is entitled in a regular or special session at which a concurrent resolution is submitted for approval of the sale; provided that the provisions of this section shall not apply to remnants, as that term is defined in section 171-52, or portions thereof; [and] provided further that this section shall not apply to the issuance of licenses, permits, easements, and leases executed in conformance with the laws applicable to the lands listed in subsection (a)[-]; provided further that this section shall not apply to non-ceded lands conveyed to the University of Hawaii after December 31, 1989 to which the University of Hawaii holds title.”

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 24, 2010.)

A Bill for an Act Relating to the Practice of Nursing.

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

SECTION 1. The legislature finds that it is in the interest of the health, safety, and welfare of the citizens of the State that the practice of nursing be subject to regulation and controls to assure that nurses at all levels are qualified and competent and that only qualified persons are permitted to engage in the practice of nursing. The legislature further finds that the practice of nursing, as defined in this Act, merits the confidence of the public. The legislature recognizes that the practice of nursing is continually evolving in response to changes within the health care system.

SECTION 2. Chapter 457, Hawaii Revised Statutes, is amended by adding six new sections to be appropriately designated and to read as follows:

“§457- Practice of nursing. (a) Nursing is a scientific process founded on a body of professional knowledge. It is a learned profession based on an understanding of the human condition across the lifespan of a client and the relationship of a client with others and within the environment. It is also an art dedicated to caring for others. The practice of nursing means assisting clients in attaining or maintaining optimal health, implementing a strategy of care to ac-

comply with defined goals within the context of a client-centered health care plan, and evaluating responses to nursing care and treatment. Nursing is a dynamic discipline that is continually evolving to include more sophisticated knowledge, technologies, and client care activities. Nursing applies evidence-based practice to promote optimal client outcomes.

(b) The scope of nursing practices established in this chapter and by the rules of the board shall serve as general guidelines and are not intended to address the appropriateness of the use of specific procedures in any particular work setting or to grant permission to implement specific procedures in any particular work setting.

**§457- Application of National Council of State Boards of Nursing Model Nursing Practice Act and Model Nursing Administrative Rules.** (a) In accordance with chapter 91, the board shall adopt the provisions of the NCSBN Model Nursing Practice Act and Model Nursing Administrative Rules relating to the scope and standards of nursing practice for registered nurses, licensed practical nurses, and advanced practice registered nurses and shall adopt any subsequent modifications adopted by the Delegate Assembly of the NCSBN; provided that the board shall not be required to adopt rules or provisions that the board finds are inappropriate or inapplicable.

(b) If the board finds that any rule or provision of the NCSBN is inappropriate or inapplicable, the board shall state clearly in the record of the board's proceedings the board's rationale for rejecting or modifying the NCSBN's model rules.

(c) The NCSBN shall have no legal authority over the board and shall have no legal authority or powers of oversight of the board in the exercise of its powers and duties authorized by law.

**§457- Registered nurse.** Practice as a registered nurse means the full scope of nursing, regardless of compensation or personal profit, that incorporates caring for all clients in all settings and is guided by the scope of practice authorized by this chapter, the rules of the board, and nursing standards established or recognized by the board including but not limited to:

- (1) The National Council of State Boards of Nursing Model Nursing Practice Act, Article II, Scope of Nursing Practice, Section 2; and
- (2) The National Council of State Boards of Nursing Model Nursing Administrative Rules, Chapter Two, Standards of Nursing Practice, Sections 2.2.2 through 2.2.6;

provided that NCSBN shall have no legal authority over the board and shall have no legal authority or powers of oversight of the board in the exercise of its powers and duties authorized by law.

**§457- Licensed practical nurse.** Practice as a licensed practical nurse means the directed scope of nursing practice, regardless of compensation or personal profit, that takes place under the direction of a registered nurse, advanced practice registered nurse, licensed physician, or other health care provider authorized by the State, and is guided by the scope of practice authorized by this chapter, the rules of the board, and nursing standards established or recognized by the board including but not limited to:

- (1) The National Council of State Boards of Nursing Model Nursing Practice Act, Article II, Scope of Nursing Practice, Section 3; and
- (2) The National Council of State Boards of Nursing Model Nursing Administrative Rules, Chapter Two, Standards of Nursing Practice, Sections 2.3.1 through 2.3.3;

provided that NCSBN shall have no legal authority over the board and shall have no legal authority or powers of oversight of the board in the exercise of its powers and duties authorized by law.

**§457- Advanced practice registered nurse.** (a) Practice as an advanced practice registered nurse means the scope of nursing in a category approved by the board, regardless of compensation or personal profit, and includes the registered nurse scope of practice. The scope of an advanced practice registered nurse includes but is not limited to advanced assessment and the diagnosis, prescription, selection, and administration of therapeutic measures including over the counter drugs, legend drugs, and controlled substances within the advanced practice registered nurse's role and specialty-appropriate education and certification.

(b) The advanced practice registered nurse's scope of practice supersedes the registered nurse's scope of practice. Advanced practice registered nurses shall practice within standards established or recognized by the board and be guided by the scope of practice authorized by this chapter, the rules of the board, and nursing standards established or recognized by the board including but not limited to:

- (1) The National Council of State Boards of Nursing Model Nursing Practice Act, Article II, Scope of Nursing Practice, Section 4; and
- (2) The National Council of State Boards of Nursing Model Nursing Administrative Rules, Chapter Two, Standards of Nursing Practice, Section 2.4.1;

provided that NCSBN shall have no legal authority over the board and shall have no legal authority or powers of oversight of the board in the exercise of its powers and duties authorized by law.

(c) An advanced practice registered nurse shall comply with the requirements of this chapter; recognize limits of the advanced practice registered nurse's knowledge and experience and planning for the management of situations that exceed the scope of authorized practice; and consult with or refer clients to other health care providers, as appropriate.

**§457- Delegation.** (a) A registered nurse may delegate nursing care tasks, functions, and activities to unlicensed assistive personnel in a manner that is appropriate to the level of knowledge and skill of the unlicensed assistive personnel; provided that the delegation of tasks, functions, and activities complies with applicable federal and state laws; and provided further that the practice-pervasive functions of assessment, evaluation, and nursing judgment shall not be delegated.

(b) The delegating nurse is responsible for individually assessing the patient and the situational circumstances and for ascertaining the competence of the delegatee before delegating any task, function, or activity. The delegating nurse shall supervise, monitor, evaluate, and follow-up on instructions to a delegatee after delegating any task, function, or activity. The delegatee shall assume liability for accepting the delegation and for the delegatee's own actions in carrying out the delegated task, function, or activity.

(c) When delegating a task, function, or activity, a delegating nurse shall use the NCSBN delegation decision-making process as a model for decision-making. The delegating nurse shall consider and carefully analyze:

- (1) Patient needs and circumstances;
- (2) Qualifications of the proposed delegatee;
- (3) The nature of the delegating nurse's delegation authority set forth in this chapter;

- (4) The delegating nurse's personal competence in the area of nursing relevant to the task, function, or activity to be delegated; and
- (5) The protocols contained in NCSBN documents, including but not limited to: Five Rights of Delegation, Delegation-Decision Making Tree, and The Continuum of Care Framework."

SECTION 3. Section 329-1, Hawaii Revised Statutes, is amended by amending the definition of "advanced practice registered nurse with prescriptive authority" to read as follows:

"Advanced practice registered nurse with prescriptive authority" means a person licensed under section 457-8.6 who is registered under this chapter to administer or prescribe a controlled substance~~[-]; provided that an advanced practice registered nurse with prescriptive authority shall not be authorized to request, receive, or sign for professional controlled substance samples.~~"

SECTION 4. Section 329-121, Hawaii Revised Statutes, is amended by amending the definition of "physician" to read as follows:

"Physician" means a person who is licensed to practice [~~medicine or osteopathic medicine~~] under chapter 453 and is licensed with authority to prescribe drugs and is registered under section 329-32. "Physician" does not include physician's assistant or advanced practice registered nurse with prescriptive authority as described in section 453-5.3 or [~~an advanced practice registered nurse with prescriptive authority as described in section~~] 457-8.6."

SECTION 5. Section 457-2, Hawaii Revised Statutes, is amended to read as follows:

"**§457-2 Definitions.** (a) As used in this chapter unless the content otherwise requires:

"Advanced practice registered nurse" means a registered nurse who has met the qualifications for advanced practice registered nurse set forth in this chapter and through rules of the board, which shall include educational requirements.

"Board" means the state board of nursing.

"NCSBN" means the National Council of State Boards of Nursing.

"Nurse" means a person licensed under this chapter or a person who holds a license under the laws of another state or territory of the United States that is equivalent to a license under this chapter.

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

"The practice of nursing as a licensed practical nurse" means the performance of those acts commensurate with the required educational preparation and demonstrated competency of the individual, whereby the individual shall be accountable and responsible to the consumer for the quality of nursing care rendered. The foregoing may include, but shall not be limited to~~[-];~~ implementation of basic nursing procedures in the plan of care; ~~or~~ observing and caring for individuals at all levels of the health spectrum, giving counsel and acting to safeguard life and health and functioning as a part of the health care team, under the direction of a dentist, [~~medical doctor or osteopath.~~] physician, osteopathic physician, registered nurse, or podiatrist licensed in accordance with chapter 448, 453, 457, or 463E; ~~or~~ administration of treatment and medication

as prescribed; ~~or~~ promotion of health maintenance of individuals, families, or groups; or teaching and supervision of auxiliary personnel.

“The practice of nursing as a registered nurse” means the performance of professional services commensurate with the educational preparation and demonstrated competency of the individual having specialized knowledge, judgment, and skill based on the principles of the biological, physical, behavioral, and sociological sciences and nursing theory, whereby the individual shall be accountable and responsible to the consumer for the quality of nursing care rendered. The foregoing may include~~;~~ but shall not be limited to~~;~~ observation, assessment, development, implementation, and evaluation of a plan of care, health counseling, supervision and teaching of other personnel, and teaching of individuals, families, and groups in any stage of health or illness; ~~or~~ administration, supervision, coordination, delegation, and evaluation of nursing practice; ~~or provisions~~ provision of health care to the patient in collaboration with other members of the health care team as autonomous health care professionals providing the nursing component of health care; or ~~utilization~~ use of reasonable judgment in carrying out prescribed medical orders of a licensed dentist, ~~medical doctor or osteopath;~~ physician, osteopathic physician, or podiatrist licensed in accordance with chapter 448, 453, or 463E or the orders of an advanced practice registered nurse recognized in accordance with this chapter.

(b) Definitions applicable to this chapter shall also include those used in the NCSBN Model Nursing Practice Act and the Model Nursing Administrative Rules unless the context otherwise requires. Where a definition in the NCSBN Model Nursing Practice Act or Model Nursing Administrative Rules conflicts with a definition in chapter 457 or 436B, the definitions contained in chapter 457 or 436B and the rules of the board shall apply.”

SECTION 6. Section 457-8.6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Advanced practice registered nurses shall be considered qualified if they have met the requirements of section 457-8.5(a), and have met the advanced pharmacology requirements for initial prescriptive authority pursuant to rules adopted by the board. Only qualified advanced practice registered nurses authorized to diagnose, prescribe, and institute therapy or referrals of patients to health care agencies, health care providers, and community resources and, only as appropriate, to the practice specialty in which the advanced practice nurse is qualified, may:

- (1) Prescribe~~;~~ ~~procure;~~ and administer~~;~~ ~~and dispense~~ over the counter and legend drugs, and controlled substances pursuant to this chapter and to chapter 329; provided that an advanced practice registered nurse shall not request, receive, or sign for professional controlled substance samples;
- (2) Prescribe, order, and dispense medical devices and equipment; and
- (3) Plan and initiate a therapeutic regimen that includes nutritional, diagnostic, and supportive services including home health care, hospice, and physical and occupational therapy.”

SECTION 7. Title 16, chapter 89C, Hawaii Administrative Rules, shall be repealed upon the state board of nursing’s adoption of rules relating to advanced practice registered nurse prescriptive authority; provided that section 16-89C-10, Hawaii Administrative Rules, relating to collegial working relationship and all other references to collegial working relationship in title 16, chapter 89C, Hawaii Administrative Rules, shall be repealed upon the effective date of this Act.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

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

(Approved April 24, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 58

S.B. NO. 2803

A Bill for an Act Relating to the Regents Candidate Advisory Council.

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

SECTION 1. Section 304A-104.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (d) to read:

“(d) In making its presentations, the regents candidate advisory council shall:

- (1) Develop a statement that includes the selection criteria to be applied and a description of the responsibilities and duties of a member of the board of regents and distribute this statement to potential candidates;
- (2) Screen and qualify candidates for each position on the board of regents based on their background, experience, and potential for discharging the responsibilities of a member of the board of regents;
- (3) Publicly advertise pending vacancies and actively solicit and accept applications from potential candidates;
- (4) Develop and implement a fair, independent, and nonpartisan procedure for selecting candidates to serve on the board of regents; [and]
- (5) Ensure student involvement by establishing a student advisory group composed of:

(A) The senior student affairs officer of the University of Hawaii system;

(B) No fewer than three student representatives from the University of Hawaii student caucus who shall represent, to the maximum extent possible, the interests of the various University of Hawaii campuses on each island; and

(C) No fewer than three student life advisors who shall represent, to the maximum extent possible, the interests of the various University of Hawaii campuses on each island,

who shall work with and assist the regents candidate advisory council to recruit and evaluate candidates for the student member of the board of regents and make recommendations to the regents candidate advisory council based on the qualifications of the candidates applying for the position; and

- [~~(5)~~] (6) Require each candidate to disclose any existing or anticipated contracts with the University of Hawaii or any existing or anticipated financial transactions with the University of Hawaii.

Upon submission of the names of candidates to the governor, the regents candidate advisory council shall make available the names of candidates to the public through the University of Hawaii.”

2. By amending subsection (f) to read:

“(f) The regents candidate advisory council shall consist of seven members to be appointed without regard to section 26-34 as follows:

- (1) One member shall be appointed by the president of the senate;
- (2) One member shall be appointed by the speaker of the house of representatives;
- (3) One member shall be appointed by the governor;
- (4) One member shall be appointed by one of the co-chairs of the All Campus Council of Faculty Senate Chairs of the University of Hawaii; provided that beginning on July 1, 2010, a person may not be appointed as a member of the regents candidate advisory council under this paragraph, if within the five years immediately preceding that appointment, the person served on the All Campus Council of Faculty Senate Chairs of the University of Hawaii;
- (5) One member shall be appointed by the chairperson of the Executive Council of the University of Hawaii Student Caucus; provided that beginning on July 1, 2010, a person may not be appointed as a member of the regents candidate advisory council under this paragraph, if within one year immediately preceding that appointment, the person served on the Executive Council of the University of Hawaii Student Caucus;
- (6) One member shall be appointed by the chairperson of the Association of Emeritus Regents; and
- (7) One member shall be appointed by the president of the University of Hawaii Alumni Association;

provided that members appointed under paragraphs (4) to (7) shall be selected from the general public and may include members of the constituencies represented; provided further that each appointee satisfies the requirements for appointment provided in this subsection~~], except that individuals who are or have served as members of the executive councils or boards for the organizations under paragraphs (4) or (5) within the last five years immediately preceding the establishment of or a vacancy on the regents candidate advisory council for which the persons may be qualified to fill shall not be eligible to serve as members of the regents candidate advisory council].~~

The regents candidate advisory council shall be selected in a wholly nonpartisan manner. If any member has not been appointed within one hundred eighty days of May 1, 2007, the sitting members on the regents candidate advisory council shall make an interim appointment to fill the vacant seat. The interim appointee shall satisfy the requirements for appointment provided in this subsection and shall serve until the time when the appropriate appointing authority makes an appointment for the vacant seat as provided in this subsection. Appointees to the regents candidate advisory council shall have a general understanding of the purposes of higher education, the mission of the University of Hawaii system, and the responsibilities of the board of regents. Appointees shall be individuals who are widely viewed as having placed the broad public interest ahead of special interests, having achieved a high level of prominence in their respective professions, and being respected members of the community.”

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, 2010, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 59

H.B. NO. 1985

A Bill for an Act Relating to Taxation.

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

## PART I

SECTION 1. Section 235-7, Hawaii Revised Statutes, is amended to read as follows:

**“§235-7 Other provisions as to gross income, adjusted gross income, and taxable income.** (a) There shall be excluded from gross income, adjusted gross income, and taxable income:

- (1) Income not subject to taxation by the State under the Constitution and laws of the United States;
- (2) Rights, benefits, and other income exempted from taxation by section 88-91, having to do with the state retirement system, and the rights, benefits, and other income, comparable to the rights, benefits, and other income exempted by section 88-91, under any other public retirement system;
- (3) Any compensation received in the form of a pension for past services;
- (4) Compensation paid to a patient affected with Hansen's disease employed by the State or the United States in any hospital, settlement, or place for the treatment of Hansen's disease;
- (5) Except as otherwise expressly provided, payments made by the United States or this State, under an act of Congress or a law of this State, which by express provision or administrative regulation or interpretation are exempt from both the normal and surtaxes of the United States, even though not so exempted by the Internal Revenue Code itself;
- (6) Any income expressly exempted or excluded from the measure of the tax imposed by this chapter by any other law of the State, it being the intent of this chapter not to repeal or supersede any express exemption or exclusion;
- (7) Income received by each member of the reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States of America, and the Hawaii national guard as compensation for performance of duty, equivalent to pay received for forty-eight drills (equivalent of twelve weekends) and fifteen days of annual duty, at an:
  - (A) E-1 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2004;
  - (B) E-2 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2005;



- (C) E-3 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2006;
- (D) E-4 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2007; and
- (E) E-5 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2008;
- (8) Income derived from the operation of ships or aircraft if the income is exempt under the Internal Revenue Code pursuant to the provisions of an income tax treaty or agreement entered into by and between the United States and a foreign country; provided that the tax laws of the local governments of that country reciprocally exempt from the application of all of their net income taxes, the income derived from the operation of ships or aircraft that are documented or registered under the laws of the United States;
- (9) The value of legal services provided by a prepaid legal service plan to a taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
- (10) Amounts paid, directly or indirectly, by a prepaid legal service plan to a taxpayer as payment or reimbursement for the provision of legal services to the taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
- (11) Contributions by an employer to a prepaid legal service plan for compensation (through insurance or otherwise) to the employer's employees for the costs of legal services incurred by the employer's employees, their spouses, and their dependents;
- (12) Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269-16.3 shall not be gross income, adjusted gross income, or taxable income for the acting utility under this chapter. Any amounts retained by the acting utility for collection or other costs shall not be included in this exemption; and
- (13) One hundred per cent of the gain realized by a fee simple owner from the sale of a leased fee interest in units within a condominium project, cooperative project, or planned unit development to the association of owners under chapter 514A or 514B, or the residential cooperative corporation of the leasehold units.

For purposes of this paragraph:

"Fee simple owner" shall have the same meaning as provided under section 516-1; provided that it shall include legal and equitable owners;

"Legal and equitable owner", and "leased fee interest" shall have the same meanings as provided under section 516-1; and

"Condominium project" and "cooperative project" shall have the same meanings as provided under section 514C-1.

(b) There shall be included in gross income, adjusted gross income, and taxable income:

- (1) ~~unless~~ Unless excluded by this chapter relating to the uniformed services of the United States, cost-of-living allowances and other payments exempted by ~~section~~ Section 912 of the Internal Revenue Code, but ~~section~~ Section 119 of the Internal Revenue Code nevertheless shall apply; and

- (2) [~~unless~~] Unless expressly exempted or excluded as provided by subsection (a)(6), interest on the obligations of a State or a political subdivision thereof.
- (c) The deductions of or based on dividends paid or received, allowed to a corporation under [~~chapter~~] Chapter 1, [~~subchapter~~] Subchapter B, Part VIII of the Internal Revenue Code, shall not be allowed. In lieu thereof there shall be allowed as a deduction the entire amount of dividends received by any corporation upon the shares of stock of a national banking association, qualifying dividends, as defined in [~~section~~] Section 243(b) of the Internal Revenue Code, received by members of an affiliated group, or dividends received by a small business investment company operating under the Small Business Investment Act of 1958 (Public Law 85-699) upon shares of stock qualifying under paragraph (3), seventy per cent of the amount received by any corporation as dividends:
- (1) Upon the shares of stock of another corporation, if at the date of payment of the dividend at least ninety-five per cent of the other corporation's capital stock is owned by one or more corporations doing business in this [~~State~~] state and if the other corporation is subjected to an income tax in another jurisdiction (but subsection to federal tax does not constitute subsection to income tax in another jurisdiction); and
  - (2) Upon the shares of stock of a bank or insurance company organized and doing business under the laws of the State;
  - (3) Upon the shares of stock of another corporation, if at least fifteen per cent of the latter corporation's business, for the taxable year of the latter corporation preceding the payment of the dividend, has been attributed to this State.

However, except for national bank dividends, the deductions under this subsection are not allowed when they would not have been allowed under [~~section~~] Section 243 of the Internal Revenue Code, as amended by Public Law 85-866, by reason of subsections (b) and (c) of [~~section~~] Section 246 of the Internal Revenue Code. For the purposes of this subsection fifteen per cent of a corporation's business shall be deemed to have been attributed to this State if fifteen per cent or more of the entire gross income of the corporation as defined in this chapter (which for the purposes of this subsection shall be computed without regard to source in the [~~State~~] state and shall include income not taxable by reason of the fact that it is from property not owned in the [~~State~~] state or from a trade or business not carried on in the [~~State~~] state in whole or in part), under section 235-5 and the other provisions of this chapter, shall have been attributed to the State and subjected to assessment of the taxable income therefrom (including the determination of the resulting net loss, if any).

- (d) (1) For taxable years ending before January 1, 1967, the net operating loss deductions allowed as carrybacks and carryovers by the Internal Revenue Code shall not be allowed. In lieu thereof the net operating loss deduction shall consist of the excess of the deductions allowed by this chapter over the gross income, computed with the modifications specified in paragraphs (1) to (4) of [~~section~~] Section 172(d) of the Internal Revenue Code, and with the further modification stated in paragraph (3) hereof; and shall be allowed as a deduction in computing the taxable income of the taxpayer for the succeeding taxable year;
- (2) (A) With respect to net operating loss deductions resulting from net operating losses for taxable years ending after December 31, 1966, the net operating loss deduction provisions of the

Internal Revenue Code shall apply; provided that there shall be no net operating loss deduction carried back to any taxable year ending prior to January 1, 1967;

- (B) In the case of a taxable year beginning in 1966 and ending in 1967, the entire amount of all net operating loss deductions carried back to the taxable year shall be limited to that portion of taxable income for such taxable year which the number of days in 1967 bears to the total days in the taxable year ending in 1967; and
  - (C) The computation of any net operating loss deduction for a taxable year covered by this subsection shall require the further modifications stated in paragraphs (3), (4), and (5) of this subsection;
- (3) In computing the net operating loss deduction allowed by this subsection, there shall be included in gross income the amount of interest which is excluded from gross income by subsection (a), decreased by the amount of interest paid or accrued which is disallowed as a deduction by subsection (e). In determining the amount of the net operating loss deduction under this subsection of any corporation, there shall be disregarded the net operating loss of such corporation for any taxable year for which the corporation is an electing small business corporation;
  - (4) No net operating loss carryback or carryover shall be allowed by this chapter if not allowed under ~~[section]~~ Section 172 of the Internal Revenue Code;
  - (5) The election to relinquish the entire carryback period with respect to a net operating loss allowed under ~~[section]~~ Section 172(b)(3)(C) of the Internal Revenue Code shall be operative for the purposes of this chapter; provided that no taxpayer shall make such an election as to a net operating loss of a business where such net operating loss occurred in the taxpayer's business prior to the taxpayer entering business in this ~~[State;]~~ state; and
  - (6) The five-year carryback period for net operating losses for any taxable year ending during 2001 and 2002 in ~~[section]~~ Section 172(b) (1) (H) of the Internal Revenue Code shall not be operative for purposes of this chapter.
  - (e) There shall be disallowed as a deduction the amount of interest paid or accrued within the taxable year on indebtedness incurred or continued, (1) to purchase or carry bonds the interest upon which is excluded from gross income by subsection (a); or (2) to purchase or carry property owned without the ~~[State;]~~ state, or to carry on trade or business without the ~~[State;]~~ state, if the taxpayer is a person taxable only upon income from sources in the ~~[State;]~~ state.

(f) Losses of property as the result of tidal wave, hurricane, earthquake, or volcanic eruption, or as a result of flood waters overflowing the banks or walls of a river or stream, or from any other natural disaster, to the extent of the amount deductible, under this chapter, not compensated for by insurance or otherwise, may be deducted in the taxable year in which sustained, or at the option of the taxpayer may be deducted in equal installments over a period of five years, the first such year to be the calendar year or fiscal year of the taxpayer in which such loss occurred.

- ~~[(g) In computing taxable income there shall be allowed as a deduction:~~
- (1) ~~Political contributions by any taxpayer not in excess of \$250 in any year; provided that such contributions are made to a central or county committee of a political party whose candidates shall have~~

- qualified by law to be voted for at the immediately previous general election; or
- (2) Political contributions by any individual taxpayer in an aggregate amount not to exceed \$1,000 in any year; provided that such contributions are made to candidates as defined in section 11-191, who have agreed to abide by the campaign expenditure limits as set forth in section 11-209; and provided further that not more than \$250 of an individual's total contribution to any single candidate shall be deductible for purposes of this section.]”

SECTION 2. Section 11-226, Hawaii Revised Statutes, is repealed.

## PART II

SECTION 3. 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:] 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;
- (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 13.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after July 1, 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 11.00 cents for each little cigar sold, used, or possessed by a wholesaler or dealer on and after October 1, 2009,

- 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 ~~[14.00]~~ 15.00 cents for each cigarette or little cigar sold, used, or possessed by a wholesaler or dealer on and after July 1, 2010, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
  - (11) An excise tax equal to ~~[15.00]~~ 16.00 cents for each cigarette or little cigar sold, used, or possessed by a wholesaler or dealer on and after July 1, 2011, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
  - (12) Except as provided in paragraph (13), an excise tax equal to seventy per cent of the wholesale price of each article or item of tobacco products sold by the 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; and
  - (13) An excise tax equal to fifty per cent of the wholesale price of each cigar with a ring gauge of thirty or more (.467 inches in diameter or more), of any length, 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.

Where the tax imposed has been paid on cigarettes, little cigars, 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.”

PART III

SECTION 4. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

- “(a) The commissioner shall collect in advance the following fees:
- (1) Certificate of authority: Issuance.....\$900
  - (2) Organization of domestic insurers and affiliated corporations:
    - (A) Application and all other papers required for issuance of solicitation permit, filing.....\$1,500
    - (B) Issuance of solicitation permit.....\$150
  - (3) Producer’s license:
    - (A) Issuance, regular license.....\$50
    - (B) Issuance, temporary license .....\$50
  - (4) Nonresident producer’s license: Issuance .....\$75
  - (5) Independent adjuster’s license: Issuance .....\$75
  - (6) Public adjuster’s license: Issuance .....\$75
  - (7) Workers’ compensation claim adjuster’s limited license: Issuance.....\$75
  - (8) Independent bill reviewer’s license:
    - Issuance.....\$80
  - (9) Limited producer’s license: Issuance .....\$60
  - (10) Managing general agent’s license: Issuance .....\$75
  - (11) Reinsurance intermediary’s license: Issuance .....\$75
  - (12) Surplus lines broker’s license: Issuance.....\$150
  - (13) Service contract provider’s registration: Issuance.....\$75
  - (14) Approved course provider certificate: Issuance .....\$100

- (15) Approved continuing education course certificate: Issuance.....\$30
- (16) Vehicle protection product warrantor's registration: Issuance .....\$75
- (17) Criminal history record check; fingerprinting: For each criminal history record check and fingerprinting check, a fee to be established by the commissioner.
- (18) Limited line motor vehicle rental company producer's license: Issuance.....\$1,000
- (19) Life settlement contract provider's license: Issuance.....\$75
- (20) Life settlement contract broker's license: Issuance.....\$75
- ~~(19)~~(21) Examination for license: For each examination, a fee to be established by the commissioner.

(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority, license, or other certificate are as follows:

- (1) \$600 per year for all services (including extension of the certificate of authority) for an authorized insurer;
- (2) \$50 per year for all services (including extension of the license) for a regularly licensed producer;
- (3) \$75 per year for all services (including extension of the license) for a regularly licensed nonresident producer;
- (4) \$45 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
- (5) \$45 per year for all services (including extension of the license) for a regularly licensed public adjuster;
- (6) \$45 per year for all services (including extension of the license) for a workers' compensation claims adjuster's limited license;
- (7) \$60 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
- (8) \$45 per year for all services (including extension of the license) for a producer's limited license;
- (9) \$75 per year for all services (including extension of the license) for a regularly licensed managing general agent;
- (10) \$75 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
- (11) \$45 per year for all services (including extension of the license) for a licensed surplus lines broker;
- (12) \$75 per year for all services (including renewal of registration) for a service contract provider;
- (13) \$65 per year for all services (including extension of the certificate) for an approved course provider;
- (14) \$20 per year for all services (including extension of the certificate) for an approved continuing education course;
- (15) \$75 per year for all services (including renewal of registration) for a vehicle protection product warrantor;
- (16) \$20 for a criminal history record check;<sup>1</sup>
- (17) \$600 per year for all services (including extension of the license) for a regularly licensed limited line motor vehicle rental company producer[-];

- (18) \$75 per year for all services (including extension of the license) for a regularly licensed life settlement contract provider; and
- (19) \$75 per year for all services (including extension of the license) for a regularly licensed life settlement contract broker.

The services referred to in paragraphs (1) to [(17)] (19) 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.”

PART IV

SECTION 5. Section 431:7-101, Hawaii Revised Statutes, is amended to read as follows:

1. By amending subsections (a) and (b) to read:
  - “(a) The commissioner shall collect in advance the following fees:
    - (1) Certificate of authority: Issuance.....[~~\$900~~] \$1,800
    - (2) Organization of domestic insurers and affiliated corporations:
      - (A) Application and all other papers required for issuance of solicitation permit, filing .....[~~\$1,500~~] \$3,000
      - (B) Issuance of solicitation permit..... [~~\$150~~] \$300
    - (3) Producer’s license:
      - (A) Issuance, regular license..... [~~\$50~~] \$100
      - (B) Issuance, temporary license ..... [~~\$50~~] \$100
    - (4) Nonresident producer’s license: Issuance ..... [~~\$75~~] \$150
    - (5) Independent adjuster’s license: Issuance ..... [~~\$75~~] \$150
    - (6) Public adjuster’s license: Issuance ..... [~~\$75~~] \$150
    - (7) Workers’ compensation claim adjuster’s limited license: Issuance..... [~~\$75~~] \$150
    - (8) Independent bill reviewer’s license: Issuance ..... [~~\$80~~] \$160
    - (9) Limited producer’s license: Issuance ..... [~~\$60~~] \$120
    - (10) Managing general agent’s license: Issuance..... [~~\$75~~] \$150
    - (11) Reinsurance intermediary’s license: Issuance ..... [~~\$75~~] \$150
    - (12) Surplus lines broker’s license: Issuance..... [~~\$150~~] \$300
    - (13) Service contract provider’s registration: Issuance ..... [~~\$75~~] \$150
    - (14) Approved course provider certificate: Issuance ..... [~~\$100~~] \$200
    - (15) Approved continuing education course certificate: Issuance..... [~~\$30~~] \$60
    - (16) Vehicle protection product warrantor’s registration: Issuance ..... [~~\$75~~] \$150
    - (17) Criminal history record check; fingerprinting: For each criminal history record check and fingerprinting check, a fee to be established by the commissioner.
    - (18) Limited line motor vehicle rental company producer’s license: Issuance..... [~~\$1,000~~] \$2,000
    - (19) Life settlement contract provider’s license: Issuance ..... [~~\$75~~] \$150
    - (20) Life settlement contract broker’s license: Issuance..... [~~\$75~~] \$150
    - (21) Examination for license: For each examination, a fee to be established by the commissioner.

(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority, license, or other certificate are as follows:

- (1) [~~\$600~~] \$1,200 per year for all services (including extension of the certificate of authority) for an authorized insurer;
- (2) [~~\$50~~] \$100 per year for all services (including extension of the license) for a regularly licensed producer;
- (3) [~~\$75~~] \$150 per year for all services (including extension of the license) for a regularly licensed nonresident producer;
- (4) [~~\$45~~] \$90 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
- (5) [~~\$45~~] \$90 per year for all services (including extension of the license) for a regularly licensed public adjuster;
- (6) [~~\$45~~] \$90 per year for all services (including extension of the license) for a workers' compensation claims adjuster's limited license;
- (7) [~~\$60~~] \$120 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
- (8) [~~\$45~~] \$90 per year for all services (including extension of the license) for a producer's limited license;
- (9) [~~\$75~~] \$150 per year for all services (including extension of the license) for a regularly licensed managing general agent;
- (10) [~~\$75~~] \$150 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
- (11) [~~\$45~~] \$90 per year for all services (including extension of the license) for a licensed surplus lines broker;
- (12) [~~\$75~~] \$150 per year for all services (including renewal of registration) for a service contract provider;
- (13) [~~\$65~~] \$130 per year for all services (including extension of the certificate) for an approved course provider;
- (14) [~~\$20~~] \$40 per year for all services (including extension of the certificate) for an approved continuing education course;
- (15) [~~\$75~~] \$150 per year for all services (including renewal of registration) for a vehicle protection product warrantor;
- (16) [~~\$20~~] \$40 for a criminal history record check;
- (17) [~~\$600~~] \$1,200 per year for all services (including extension of the license) for a regularly licensed limited line motor vehicle rental company producer;
- (18) [~~\$75~~] \$150 per year for all services (including extension of the license) for a regularly licensed life settlement contract provider; and
- (19) [~~\$75~~] \$150 per year for all services (including extension of the license) for a regularly licensed life settlement contract broker.

The services referred to in paragraphs (1) to (19) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs."

2. By amending subsection (e) to read as follows:

"(e) All fees and penalties shall be deposited to the credit of the compliance resolution fund[-]; provided that beginning July 1, 2010, the statutory fees collected pursuant to subsections (a) and (b), not including administratively set fees and assessments as may be authorized under this section, shall be deposited as follows:



- (1) Fifty per cent shall be deposited into the compliance resolution fund; and
- (2) Fifty per cent shall constitute an insurance license and service tax, which shall be deposited into the general fund."

PART V

SECTION 6. Statutory material to be repealed is bracketed and stricken.<sup>2</sup> New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2010; provided that:

- (1) Part I shall be effective on January 1, 2011, and shall apply to taxable years beginning after December 31, 2010; provided that the amendments made to section 235-7, Hawaii Revised Statutes, under section 1 of this Act shall not be repealed when that section is reenacted on January 1, 2013, pursuant to Act 166, Session Laws of Hawaii 2007;
- (2) Part III shall be effective upon the repeal and reenactment of section 431:7-101, Hawaii Revised Statutes, pursuant to Act 177, Session Laws of Hawaii 2008, as amended by Act 11, Session Laws of Hawaii 2009; and
- (3) Part IV shall be repealed on July 1, 2014, and sections 431:7-101(a), (b), and (e), Hawaii Revised Statutes, shall be reenacted as they read on June 30, 2010.

(Approved April 25, 2010.)

Notes

- 1. Prior to amendment "and" appeared here.
- 2. Edited pursuant to HRS §23G-16.5.

ACT 60

S.B. NO. 898

A Bill for an Act Relating to Civil Defense.

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

SECTION 1. One of the policies and purposes of chapter 128, Hawaii Revised Statutes (HRS), is to coordinate all state civil defense functions to the maximum extent possible with the comparable functions of the federal government (including its various departments and agencies), other states and localities, and private agencies, to allow for the most effective preparation and use of all personnel, resources, and facilities for dealing with any disaster or emergency that may occur.

The legislature finds that there is a need to amend the law regarding the liability of an owner or operator of a hospital, community-based care home, home-based care home, or healthcare agency or facility of any type, as well as day care, and educational institutions, when an owner or operator of these facilities permits the use of the property for sheltering persons during disasters and emergencies. The legislature recognizes that there is a shortage of shelter space in Hawaii and that the private industry should be encouraged to assist the public by providing shelter for those persons who by reason of existing relationships may already be in these facilities during disasters and emergencies. Under the

current law, it is unclear whether owners or operators of certain facilities are able to fully comply with the requirements of section 128-19, HRS, when providing shelter to persons in their care, custody, or charge because section 128-19, HRS, requires that shelter be made available without compensation.

The purpose of this Act is to clarify that compensation received by certain private entities for use of facilities as a private shelter is not considered compensation for the purposes of the law pertaining to immunity from liability of private shelter. This Act also includes sheltering of persons during natural or man-made disasters in the category of events that trigger limited liability for private entities that make their facilities available to the public during times of emergency.

SECTION 2. Section 128-19, Hawaii Revised Statutes, is amended to read as follows:

**“§128-19 Immunity from liability of private shelter.** (a) Any individual, partnership, firm, society, unincorporated association, joint venture group, hui, joint stock company, corporation, trustee, personal representative, trust estate, decedent’s estate, trust, or other legal entity whether doing business for itself or in a fiduciary capacity, owning or controlling real property, ~~who~~ that voluntarily and without compensation grants a license or privilege for, or otherwise permits, the designation by the director of civil defense for the use of the whole or any part of the property for the purpose of sheltering persons during an actual, impending, mock, or practice attack, or natural or man-made disaster, shall, together with its successors in interest, if any, not be civilly liable for negligently causing the death of or injury to any person or damage to any personal property on the property of the licensor in connection with the use of the licensed premises for the purposes designated. ~~[For purposes of this section, the consideration paid by any guest or person for transient accommodation lodging shall not be considered compensation.]~~

(b) For the purposes of this section, the following shall not be considered compensation:

- (1) Any compensation or consideration paid by or on behalf of any guest or person for transient accommodation lodging;
- (2) Any compensation or consideration paid for any patient, resident, or ward present or residing in any hospital, community-based care home, home-based care home, or healthcare agency of any type licensed by the department of health or the department of human services and used as a private shelter under this section; provided that the protections afforded by this section shall not extend beyond the use of the private shelter under this section for any other duty or standard of care owed to any patient, resident, or ward; and
- (3) Any compensation or consideration paid by or on behalf of any minor or student of any age in any day care, preschool, elementary school, middle school, or any other educational facility used as a private shelter under 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 April 25, 2010.)

A Bill for an Act Relating to Public Property.

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

SECTION 1. Section 227D-3, Hawaii Revised Statutes, is amended to read as follows:

“§227D-3 Powers of the authority. The authority may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at its pleasure;
- (3) Promote the use of the geothermal energy and natural resources sites for the purposes provided by law;
- (4) Through its executive director appoint officers, agents and employees without regard to chapter 76 and to establish the salaries therefor;
- (5) Adopt rules under chapter 91 necessary to effectuate this chapter in connection with its operation, facilities, parks, properties, and projects;
- (6) Make, execute, enter into, amend, supplement, and carry out contracts and all other instruments, including concessions for cell towers, necessary or convenient for the exercise of its powers and functions under this chapter with 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 authority shall not obligate any funds of the State except as have been appropriated to it. Notwithstanding the foregoing, the authority 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;
- (7) Accept, hold, or expend gifts or grants in any form from any public agency or private source, or from any other source;
- (8) Impose and collect fees pertaining to the use of properties and facilities of the authority;
- (9) Formulate budgets to provide for the operation of the facilities of the authority;
- (10) Submit an annual report to the governor and the legislature at least twenty days prior to the convening of each regular session;
- (11) Acquire, own, lease, hold, clear, improve, and rehabilitate real, personal, or mixed property and assign, exchange, transfer, convey, lease, sublease, or encumber any project including by way of easements;
- (12) Construct, reconstruct, rehabilitate, improve, alter, or repair, or provide for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project and designate a qualified person as its agent for this purpose, and own, hold, assign, transfer, convey, exchange, lease, sublease, or encumber any project;
- (13) Arrange or initiate appropriate action for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, easements, or other places, the furnishings or improvements, the acquisi-

- tion of property or property rights, or the furnishing of property or services in connection with a research and technology park;
- (14) Prepare or cause to be prepared plans, specifications, designs, and estimates of cost for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project or research and technology park, and from time to time, modify these plans, specifications, designs, or estimates;
  - (15) Engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
  - (16) Procure insurance against any loss in connection with its properties and other assets and operations in amounts and from insurers as it deems desirable;
  - (17) Issue bonds pursuant to this chapter in principal amounts as may be authorized from time to time by law to finance the cost of a project, including the repair or addition to its parks and facilities as authorized by law and to provide for the security thereof as permitted by this chapter;
  - (18) Lend or otherwise apply the proceeds of the bonds issued for a project or a research and technology park either directly or through a trustee or a qualified person for use and application in the acquisition, construction, installation, or modification of a project or research and technology park, or agree with the qualified person whereby any of these activities shall be undertaken or supervised by that qualified person or by a person designated by the qualified person;
  - (19) With or without terminating a project agreement, exercise any and all rights provided by law for entry and re-entry upon or to take possession of a project at any time or from time to time upon breach or default by a qualified person under a project agreement;
  - (20) Create an environment that supports appropriate natural resource utilization and results in economic development, including: supporting research projects and facilitating the transition from research and development to pilot scale and then to full commercial operation of companies utilizing the natural resources available at the research and technology parks; developing educational and conservation programs; supporting commercialization of the natural resources available at the research and technology parks, if the commercialization is compatible with the research, development, and other retail, commercial, and tourism activities of the research and technology parks; identifying issues and impediments to the development of natural resource utilization; and providing policy analysis and information important to the development of natural resource utilization in Hawaii;
  - (21) Develop programs that support projects and companies which locate at the research and technology parks;
  - (22) Attract appropriate new uses of the natural resources in Hawaii, including retail, commercial, and tourism activities; and
  - (23) Do any or all other acts reasonably necessary to carry out the purposes of the authority.”

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

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

(Approved April 25, 2010.)

**Note**

1. No bracketed material.

A Bill for an Act Relating to Publicity Rights Names as Distinguished from Trade Names and Specifying Registration Procedures for Publicity Rights Names by Amending Chapter 482P.

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

SECTION 1. The purpose of this Act is to delete the word "trade" from the term "publicity rights trade name" to distinguish trade names and trademarks from the property rights in names and personalities to be protected by the registration procedures established by the department of commerce and consumer affairs under chapter 482P, Hawaii Revised Statutes, and to give the department of commerce and consumer affairs discretion to implement the law in a manner that complies with the law's legislative intent and that is both timely and reasonable given available resources.

SECTION 2. Chapter 482P, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§482P- Recording, issuance, and effect of certificate.** (a) Any person desiring to register a publicity rights name may obtain a certificate of registration of the publicity rights name as provided in this section. The director shall have the power reasonably necessary to perform the duties required of the director under this section, and to administer the section efficiently.

(b) To receive a certificate of registration of a publicity rights name, a person shall file in the office of the director an application for registration. The application for registration shall include a publicity rights name that consists of the assigning individual or personality's full legal name. The application for registration form shall include other information as prescribed by the director.

(c) Upon filing the application form, the applicant shall pay to the director a fee of \$50. A special handling fee of \$20 for expediting registration of a publicity rights name shall be assessed by the director. All fees and special handling fees shall be credited to the compliance resolution fund established under section 26-9(o).

(d) Upon receiving the application form accompanied by the fee, the director shall cause the publicity rights name to be recorded and shall issue a certificate of registration to the applicant.

(e) The term of registration of a publicity rights name shall be five years beginning from the date of registration. The registration may be renewed for additional five-year periods by filing a renewal application within six months prior to the expiration of each current term and complying with the renewal requirements prescribed by the director.

(f) If a document delivered to the director for filing satisfies the requirements of this section, the director shall file it.

(g) The director shall file a document by stamping or otherwise endorsing the document, including the date and time of receipt.

(h) If the director refuses to file a document, the director shall return it to the applicant or the applicant's representative together with a brief, written statement of the reason for the director's refusal.

(i) The director's duty to file documents under this section is ministerial. The director's filing or refusing to file a document shall not:

(1) Affect the validity or invalidity of the document in whole or in part;

- (2) Relate to the correctness or incorrectness of information contained in the document; or
- (3) Create a presumption that the document is valid or invalid, or that information contained in the document is correct or incorrect.

Disputes between applicants with respect to a registered publicity rights name shall be determined by a court of competent jurisdiction.”

SECTION 3. Section 482P-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:  
 ““Director” means the director of commerce and consumer affairs.”

2. By amending the definition of “publicity rights trade name registration” to read:

““Publicity rights [trade] name registration” means a registration with the department of commerce and consumer affairs [of a trade name under chapter 482, using the department’s procedures for trade name registration, wherein the trade name shall consist of the assigning individual or personality’s full legal name and the words “publicity rights”, preferably in all capital letters. In administering publicity rights trade name registrations under this chapter, the department shall be exempt from:

- (1) Any liability in excess of that which the department would have for a trade name registration, other than a “publicity rights trade name registration”;
  - (2) Any duty to decide between competing registrants or the rights established by registration; and
  - (3) Any duty to construe the meaning of any provision of this chapter;
- provided that the duties under paragraphs (2) and (3) shall be duties of the courts of competent jurisdiction.] in the manner provided under this chapter.”

SECTION 4. Section 482P-8, Hawaii Revised Statutes, is amended to read as follows:

~~“[§482P-8] Procedure for identifying transferees, licensees, or assignees; requirement to seek damages or relief. (a) An assignee or transferee of publicity rights shall have the right to make a publicity rights [trade] name registration. [To obtain the benefit of the protection of this section, the assignee or transferee shall keep the publicity rights trade name registration in force and shall diligently maintain the accuracy of the information in the publicity rights trade name registration.]~~

(b) Publicity rights of a deceased person that were not previously assigned or transferred shall be part of the deceased person’s estate and shall be administered by the personal representative of the deceased person as personal property of the deceased person. On or before closing of probate of a deceased person’s estate, the publicity rights of the deceased person shall vest in the transferees of the personal property of the estate in conformity with the deceased person’s will or probate order. If publicity rights are not expressly addressed by the terms of the will or a probate order, and if a publicity rights [trade] name registration is not in effect at the time of the relevant assignment or license, after probate closes, any one of the transferees of the personal property of the deceased person’s estate shall have the right to assign or license the publicity rights of the deceased person, and a valid license from any of the transferees of the personal property of the deceased person’s estate shall constitute a complete defense to any infringement action under this section.

(c) Any person seeking to license publicity rights from a living person shall have the right to presume that a living individual or personality has the right to assign or license the individual's or personality's publicity rights unless there is a publicity rights [trade] name registration for that individual or personality. If there is a publicity rights [trade] name registration for that individual or personality, the person seeking to license publicity rights shall inform the living person in writing that an assignment or license shall be sought from the holder of the publicity rights [trade] name registration before entering into the assignment or license.

(d) If there is a publicity rights [trade] name registration for a given individual or personality, any person seeking to license publicity rights for that individual or personality shall have the right to presume that the holder of the publicity rights [trade] name registration has the right to assign or license the individual's or personality's publicity rights and a valid license from the registered holder of the publicity rights [trade] name registration shall constitute a complete defense to any infringement action under this section[-]; provided that the assignee or transferee has kept the publicity rights name registration active and in force and maintained the accuracy of the information in the publicity rights name registration filing.

(e) A person commits an offense if the person signs, manually or via electronic means, a document the person knows is false in any material respect with the intent that the document be delivered or transmitted to the director [~~of commerce and consumer affairs~~] in connection with a publicity rights [trade] name registration under this section. An offense under this subsection shall be a class C felony and may carry a fine not to exceed \$10,000.

(f) A person commits a misdemeanor if the person negligently and without intent to defraud signs, manually or via electronic means, a document that is false in any material respect with intent that the document be delivered or transmitted to the director [~~of commerce and consumer affairs~~] in connection with a publicity rights [trade] name registration under this section. Commission of a misdemeanor under this subsection may carry a fine not to exceed \$2,000.

(g) Any person who knowingly makes a false or fraudulent representation or declaration in connection with a publicity rights [trade] name registration pursuant to this section shall be liable for all damages sustained as a result of the false or fraudulent publicity rights [trade] name registration as determined by a court of competent jurisdiction.”

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

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

(Approved April 25, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 63

S.B. NO. 2121

A Bill for an Act Relating to the Early Learning Council.

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

SECTION 1. Chapter 302L, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302L- Council meetings by teleconference. (a) Notwithstanding any law to contrary, the council may meet by teleconference.

(b) Each member of the council participating in a meeting by teleconference shall be considered present at the meeting for purposes of determining quorum and participating in all proceedings.

(c) A meeting by teleconference:

(1) Need not have a quorum present at any one location; and

(2) Is subject to the notice requirements applicable to other council meetings.

(d) The notice of each teleconference meeting shall specify all physical locations from which members of the council will participate. The notice shall also specify the physical location from which the presiding officer of the council will preside. All physical teleconference locations shall be open to the public during the open portion of the meeting.

(e) Council materials that are to be considered at the meeting shall be made available at all physical teleconference locations.

(f) Each part of the teleconference meeting that is required to be open to the public shall be audible to the public at each physical location specified in the notice of the meeting.

(g) Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. The vote at a meeting held by teleconference shall be taken by roll call.

(h) The public shall be allowed to participate and speak at a meeting conducted by teleconference in the same manner and to the same extent that the public is allowed to participate and speak at each physical site of the meeting.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

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

(Became law on April 28, 2010, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 64

S.B. NO. 2159

A Bill for an Act Relating to Traffic Abstract Fee.

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

SECTION 1. Section 287-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:



**ACT 65**

“(a) The traffic violations bureaus of the district courts, upon request, shall furnish any person a certified abstract of the bureaus’ record, if any, of any person relating to all alleged moving violations and any convictions resulting therefrom, arising from the operation of a motor vehicle and any administrative license revocation pursuant to chapter 291E, part III and chapter 286, part XIV, as it was in effect on or before December 31, 2001. The traffic violations bureaus may collect a fee, not to exceed [~~\$7,~~] \$20, of which [~~\$5~~] \$18 shall be deposited into the general fund and \$2 shall be deposited into the judiciary computer system special 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, 2010.  
(Vetoed by Governor and veto overridden by Legislature on April 29, 2010.)

**ACT 65**

S.B. NO. 2394

A Bill for an Act Relating to the Board of Trustees of the Deferred Compensation Plan.

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

SECTION 1. Section 88E-4, Hawaii Revised Statutes, is amended to read as follows:

“~~§88E-4~~ **Composition of the board of trustees.** The board of trustees shall consist of seven members as follows:

- (1) The director of human resources development of the State [~~who shall serve as its chairperson;~~] or a designated representative, ex officio;
- (2) The director of finance of the State or a designated representative, ex officio; and
- (3) Five other persons, [~~three of whom~~] who shall be public employees and represent employee interests.”

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

SECTION 3. This Act shall take effect upon its approval.  
(Vetoed by Governor and veto overridden by Legislature on April 29, 2010.)

**ACT 66**

S.B. NO. 2501

A Bill for an Act Relating to Public Accountancy.

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

SECTION 1. The purpose of this Act is to:

- (1) Provide a mechanism for firms engaged in the practice of public accounting to undergo peer review on a regular basis; and

- (2) Grant the state board of public accountancy appropriate power to regulate the peer review process.

SECTION 2. Section 466-3, Hawaii Revised Statutes, is amended as follows:

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

“Attest” means providing the following financial statement services:

- (1) Any audit or other engagement to be performed in accordance with the statements on auditing standards of the American Institute of Certified Public Accountants;
- (2) Any compilation or review of a financial statement to be performed in accordance with the statements on standards for accounting and review services of the American Institute of Certified Public Accountants;
- (3) Any examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements of the American Institute of Certified Public Accountants;
- (4) Any engagement to be performed in accordance with the government auditing standards, also known as the Yellow Book, issued by the United States Government Accountability Office; and
- (5) Any engagement to be performed in accordance with the standards of the Public Company Accounting Oversight Board.

“Peer review” means a study, appraisal, or review of one or more aspects of the professional work of a firm that issues attest reports by a person or persons who hold permits to practice public accountancy under section 466-7 and who are not affiliated with the firm being reviewed.”

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

“Firm” means a sole proprietorship, a corporation, [or] a partnership[-], a limited liability company, or a limited liability partnership.”

3. By deleting the definition of “quality review.”

[“Quality review” means a study, appraisal, or review of one or more aspects of the professional work of a firm in the practice of public accountancy by a person or persons who hold certificates and who are not affiliated with the firm being reviewed.”]

SECTION 3. Section 466-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) An applicant for the initial issuance or renewal of a permit shall have:

- (1) A valid license;
- (2) Completed continuing professional education hours, the content of which shall be specified by the board which may provide for special consideration by the board to applicants for permit renewal when, in the judgment of the board, full compliance with all requirements of continuing education cannot reasonably be met;
- (3) Completed an application; [~~and~~]
- (4) Paid appropriate fees and assessments[-]; and
- (5) Undergone any applicable peer review process approved by the board of accountancy pursuant to section 466-13.”

SECTION 4. Section 466-9, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) In addition to any other actions authorized by law, in accordance with chapter 91, the board may take the following action:

- (1) Cancel or revoke any license or permit issued under section 466-5, 466-6, or 466-7, or corresponding provisions of prior law;
- (2) Suspend a license or permit for a period of not more than two years;
- (3) Refuse to renew a license or permit for a period of not more than two years;
- (4) Reprimand, censure or limit the scope of practice of any licensee or firm;
- (5) Impose an administrative fine not exceeding \$1,000;
- (6) Place a licensee or firm on probation;
- (7) Require a firm to have a [quality] peer review conducted in the manner specified by the board; or
- (8) Require a licensee to attain satisfactory completion of additional continuing professional education hours as specified by the board.”

2. By amending subsection (c) to read:

“(c) Upon application of any person against whom disciplinary action has been taken under subsection (a), the board, in accordance with chapter 91, may reinstate the person’s license or permit to practice which was affected by the disciplinary action.

- (1) The board shall specify the manner in which an application shall be made, the time within which it shall be made, and the circumstances under which the license may be reinstated; and
- (2) Before reinstating, the board may:
  - (A) Require the applicant to show successful completion of specified continuing professional education; and
  - (B) Make the reinstatement of a license or permit conditional and subject to satisfactory completion of a [quality] peer review conducted in a manner as the board may specify.”

SECTION 5. Section 466-13, Hawaii Revised Statutes, is amended to read as follows:

“§466-13 [Quality] Peer review [committee]. (a) Every firm, including the Hawaii offices and Hawaii engagements of foreign or multistate firms, required to obtain a firm permit to practice pursuant to section 466-7 shall undergo a peer review every three years on the firm’s Hawaii attest work and submit evidence of such peer review at the time of the renewal of the firm’s permit to practice under section 466-7.

(b) The board [may appoint a quality review committee] shall establish a peer review process to review [the publicly available professional] attest work of firms [on a random basis, without any requirement of a formal complaint or suspicion of impropriety on the part of any particular firm]. The identity of the person or firm for whom the professional work is done shall be preserved in confidence. [In the event] If the review discloses information that a firm has not met the appropriate professional standards, the board may require further investigation of the firm. The peer review process required by this section shall be for educational or remedial and not punitive purposes.

(c) The board may authorize a third party entity to administer the peer review required under subsection (a); provided that the entity shall not require firms or the firms’ owners or employees to become members of the entity to participate in peer review and shall charge the same rate for peer review services

to both members and nonmembers. If the board chooses to authorize a third party entity to administer peer reviews, the third party shall be held to the highest standards of professionalism, quality, and ethics.

(d) The board shall adopt rules pursuant to chapter 91 to establish requirements and procedures for the qualification of entities to conduct peer reviews and for the performance of peer reviews by these entities. The rules shall include:

- (1) A process for the conduct of peer review to be followed by the board and by an authorized third party entity;
- (2) Definitions, standards, and requirements for an acceptable peer review;
- (3) Standards for certification and qualification of peer reviewers;
- (4) A process for a firm to appeal the findings or conclusions of any peer review process that results in the denial, termination, or non-renewal of a firm permit pursuant to section 466-9; provided that the appeal process shall include the postponement of any adverse action during the pendency of the appeal; and
- (5) Provisions for the grant of an extension of time to a firm for compliance with the peer review requirement based on a showing of hardship including for reasons of health, military service, or other good cause as determined by the board.

(e) Neither the proceedings nor the records of the [quality] peer review [committees] process shall be subject to discovery. Except as hereinafter provided, no person [~~in attendance at a meeting of the committee~~] involved in the peer review process shall be required to testify [~~as to what transpired at the meeting;~~] on that process; provided that [the] statements made by any person [~~in attendance at the meeting~~] in connection with the peer review process who is a party to an action or proceeding the subject matter of which was reviewed [~~at the meeting;~~] in that process, shall be subject to discovery.”

SECTION 6. This Act does not affect rights and duties that have matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. The board of public accountancy shall:

- (1) Adopt rules pursuant to section 466-13(d), Hawaii Revised Statutes, in section 5 of this Act; and
- (2) Report the adoption of the rules under paragraph (1) to the legislature immediately upon adoption of those rules by means of written notice to the speaker of the house of representatives and the president of the senate.

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

SECTION 9. This Act shall take effect upon its approval; provided that sections 2, 3, 4, and 5 shall take effect one year after the board of public accountancy reports the adoption of rules pursuant to section 7 of this Act.

(Vetoed by Governor and veto overridden by Legislature on April 29, 2010.)

A Bill for an Act Relating to the Department of Human Services.

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

SECTION 1. (a) The governor may develop and implement through the department of human services an eligibility-processing operations division pilot project for the department of human services benefit, employment and support services division; social services division; and med-QUEST division that includes the intake, maintenance, and eligibility determination functions for public assistance, the supplemental nutrition assistance program, foster care services, and medicaid services for benefit recipients in any county with a population of five hundred thousand or more.

(b) The eligibility-processing operations division pilot project shall be developed and implemented pursuant to chapter 91, Hawaii Revised Statutes.

SECTION 2. The department of human services shall not implement any reorganization plan, proposed prior to the effective date of this Act or other than the pilot project authorized by this Act, to transfer intake, maintenance, and eligibility determination functions for public assistance, the supplemental nutrition assistance program, foster care services, and medicaid services to an eligibility-processing operations division.

SECTION 3. This Act shall take effect upon its approval and shall be repealed on June 30, 2011.

(Vetoed by Governor and veto overridden by Legislature on April 29, 2010.)

A Bill for an Act Relating to Public Procurement.

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

SECTION 1. The legislature finds that state and local spending on construction procurement drives a significant portion of Hawaii's economy. However, because of Hawaii's higher cost of living, state contractors often find it cheaper to employ nonresidents to work on construction procurement contracts. As a result, Hawaii residents face difficulties acquiring employment in this important sector of the Hawaii's economy. Furthermore, nonresident employees working on construction procurement contracts contribute very little to the state's economy while they work in Hawaii, and return a disproportionately large amount of their wages to their home states upon the completion of their employment in Hawaii.

The legislature further finds that the inability of state residents to acquire employment on construction procurement contracts contributes to unemployment in the state, deprives the state of fiscal resources and capital, and dampens the state's economic development. The intent of this Act is to level the playing field for Hawaii residents and to remedy the adverse effects of nonresident employment on construction procurement contracts, while preserving contractors' flexibility to employ nonresidents where necessary.

The purpose of this Act is to require that state residents compose not less than eighty per cent of the labor force working on construction procurement contracts.

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

**"CHAPTER  
EMPLOYMENT OF STATE RESIDENTS ON  
CONSTRUCTION PROCUREMENT CONTRACTS**

**§ -1 Definitions.** As used in this chapter:

"Contract" means contracts for construction under chapter 103D.

"Contractor" has the same meaning as in section 103D-104; provided that "contractor" includes a subcontractor where applicable.

"Construction" has the same meaning as in section 103D-104.

"Procurement officer" has the same meaning as in section 103D-104.

"Resident" means a person who is physically present in the state at the time the person claims to have established the person's domicile in the state and shows the person's intent is to make Hawaii the person's primary residence.

"Shortage trade" means a construction trade in which there is a shortage of Hawaii residents qualified to work in the trade.

**§ -2 Application of chapter.** (a) This chapter shall apply to all construction procurements under chapter 103D; provided that this chapter shall not apply to procurements for professional services under section 103D-304 and procurements for small purchases under chapter 103D-305.

(b) This chapter shall apply to any subcontract of \$50,000 or more in connection with any general contract otherwise covered by this chapter.

**§ -3 Requirements of contractor.** (a) A contractor awarded any contract shall ensure that Hawaii residents compose not less than eighty per cent of the workforce employed to perform the contract on a particular construction project, as determined under subsection (b).

(b) The eighty per cent requirement under subsection (a) shall be determined by dividing the total number of hours worked on a contract by residents, by the total number of hours worked by all employees of the contractor in the performance of the contract. Hours worked for any subcontractor of the contractor shall count towards the calculation for purposes of this subsection. The hours worked by employees within shortage trades, as determined by the department of labor and industrial relations, shall not be included in the calculations for purposes of this subsection.

(c) Every contractor shall comply with this chapter for the entire duration of the contract. Certification of compliance with this chapter shall be made under oath by an officer of the contractor to the procurement officer on a monthly basis.

(d) A contractor who fails to comply with this chapter shall be subject to any of the following sanctions:

- (1) Temporary suspension of work on the project until the contractor or subcontractor complies with this chapter;
- (2) Withholding of payment on the contract or subcontract, as applicable, until the contractor or subcontractor complies with this chapter;

- (3) Permanent disqualification of the contractor or subcontractor from any further work on the project;
- (4) Recovery by the State or county, as applicable, of any moneys expended on the contract or subcontract, as applicable; or
- (5) Proceedings for debarment or suspension of the contractor or subcontractor under section 103D-702.

§ -4 **Conflict with federal law.** This chapter shall not apply if the application of this chapter is in conflict with any federal law, or if the application of this chapter will disqualify any state or county agency from receiving federal funds or aid.”

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.

(Vetoed by Governor and veto overridden by Legislature on April 29, 2010.)

**ACT 69**

H.B. NO. 1642

A Bill for an Act Relating to the Purchases of Health and Human Services.

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

SECTION 1. The legislature finds that procurement laws regarding request for proposal procedures for the purchase of health and human services need to be clarified. Recently, the request for proposal for the QUEST Expanded Access contract allowed for-profit organizations intending to bid for health and human services contracts to submit a “pre-tax” bid. The ability to submit a “pre-tax” bid does not apply to not-for-profit companies because not-for-profits are not subject to the insurance premium tax which is mandated by Hawaii law.

In 2008, two for-profit companies bid for, and were awarded, the QUEST Expanded Access Program contracts. In addition, the administration and the department of human services agreed to rebate the amount of the insurance premium tax of 4.265 per cent to these companies, resulting in a higher award amount than the companies had bid. It appears that the state administration, during these difficult financial times, will be “rebating” these companies approximately \$25,000,000 – funds that the companies will be able to use to pay their taxes. Concerned groups have argued that this is not proper, if not illegal, because the legislature is the only branch of government with the power to impose, waive, or rebate a tax by exempting certain types of organizations.

Further, under the Hawaii procurement code, a proposed bid should reflect the total amount to be expended by the State on a contract, including all costs and any taxes that may be due and payable. Accordingly, this bill is to ensure transparency in the bidding process.

On December 18, 2008, in *Hawaii Insurers Council v. Lingle*, 120 Hawai‘i 51, 201 P.3d 564 (2008), the Hawaii supreme court held that only the legislature has the power to tax persons or entities. The court further held that “[t]he executive branch is left only with the power to administer and enforce the state’s tax laws, not to levy new taxes.”

The purpose of this Act is to clarify certain award and contract procedures through state procurement laws and the request for proposal process

for purchases of health and human services under Chapter 103F, Hawaii Revised Statutes. It further requires bidders to be properly licensed in the state to conduct the business being sought by the request for proposals, unless the business being sought is not required by the State to be licensed.

SECTION 2. Chapter 103F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§103F- Proposals and awards.** (a) No contract proposals shall be accepted from any applicant who lacks any license necessary to conduct the business being sought by the request for proposals.

(b) Proposals submitted under this chapter shall include all costs, fees, and taxes, and any award or contract shall be for the amount of the proposal. No award or contract shall include any other payment, rebate, or direct or indirect consideration that is not included in the proposal, such as insurance premium or general excise tax rebates to or waivers for an applicant or bidder.”

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

SECTION 4. New statutory material is underscored.<sup>1</sup>

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

(Vetoed by Governor and veto overridden by Legislature on April 29, 2010.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 70

H.B. NO. 1868

A Bill for an Act Relating to Civil Service.

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

SECTION 1. Chapter 76, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§76- Leaves of absence to accept appointed positions exempt from the civil service; prohibited.** Notwithstanding section 78-23, no leave of absence shall be granted to any employee who leaves a position covered under this chapter for a position that is exempt from this chapter under section 76-16(b)(7), (8), (9), (10), or (16) and whose term of appointment is not less than one year; provided that this section shall not apply to any employee whose collective bargaining agreement provides for the granting of a longer leave of absence.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

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

(Vetoed by Governor and veto overridden by Legislature on April 29, 2010.)



Note

1. Edited pursuant to HRS §23G-16.5.

ACT 71

H.B. NO. 2085

A Bill for an Act Relating to Health.

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

SECTION 1. Now that national health care reform legislation has been signed into law, states must be prepared to implement changes to existing federal health care programs. This is especially crucial given the potential for large-scale changes to medicaid plans likely to be initiated through such reform legislation.

The purpose of this Act is to ensure continuity of care for Hawaii's neediest population and to make certain that medicaid contracts reflect expectations outlined in national health care reform by establishing restrictions on the issuance of requests for proposals for QUEST contracts.

SECTION 2. Section 103F-402, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) State agencies to which the legislature has appropriated funds for the purchase of health and human services shall solicit proposals to provide health and human services by purchase of health and human services contracts, by publishing a notice requesting the submission of health and human service proposals[-]; provided that a purchasing agency shall not solicit proposals for any QUEST contract under this section if the anticipated contract sum exceeds \$100,000,000 and the commencement date of the contract is after the expiration of the term of office of the head of the purchasing agency. Notice of the request for proposals shall be given a reasonable time before the date set forth in the request for submission of proposals. The policy board shall adopt rules which specify:

- (1) The form of the notice;
- (2) What constitutes a reasonable interim between notice and the proposal submission deadline; and
- (3) How the notice is to be published, including [~~but not limited to,~~] whether the publication is to be completed in a newspaper of general circulation, by mail, through a public or private telecommunications network, or any other method or combination of methods which the board deems appropriate.”

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.

(Vetoed by Governor and veto overridden by Legislature on April 29, 2010.)

## ACT 72

H.B. NO. 2086

A Bill for an Act Relating to Health Care Data.

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

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§321- Clinical laboratory test results. (a) Clinical laboratory test results may be provided to authorized persons for any purpose permitted under the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, and federal regulations promulgated thereunder.

(b) For purposes of this section, “authorized persons” shall include:

- (1) The provider ordering the test, or the provider’s designee; and
- (2) Any covered entity as defined under 45 Code of Federal Regulations Section 160.103 promulgated under the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

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

(Vetoed by Governor and veto overridden by Legislature on April 29, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 73

H.B. NO. 2421

A Bill for an Act Relating to Government.

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

**PART I**

SECTION 1. Hawaii is at a crossroads. As the most geographically isolated state in the country, we are dangerously dependent on imports for basic food and energy. We import about eighty-five per cent of our food and ninety-five per cent of our energy. It has been estimated that Hawaii exported \$8,600,000,000 for food and oil in 2008, and every dollar exported is a lost opportunity to support and invest in local businesses. Our dependence on imports also exposes residents and businesses to volatile food and energy costs as oil prices fluctuate.

In addition, the mass consumption of fossil fuels, driven by our dependence on food and energy imports, contributes to climate change and the deterioration of the environment, including severe storm events, less rainfall, warmer temperatures that favor invasive species, a rise in sea levels, and ocean acidification that hampers coral growth. These climate changes will likely impose major, but not fully understood, costs and other impacts on Hawaii’s people and the natural capital we depend upon to support our lives in the middle of the Pacific Ocean. Nowhere is it more obvious than in remote island chains like Hawaii that our lives and the economy are intertwined with the health and function of the natural world around us.

Although Hawaii has available renewable resources like solar, wind, ocean, and geothermal energy, we as a community have not taken full advantage of alternative-energy and energy-efficiency solutions to make the state more energy-independent. As an example, despite year-round sunshine, only thirty per cent of Hawaii's residents have solar water heaters.

Similarly, many acres of highly productive agricultural lands are not being farmed. Currently, Hawaii has a fresh supply of produce for no more than ten days. Ninety per cent of the beef, sixty-seven per cent of fresh vegetables, sixty-five per cent of fresh fruits, and seventy per cent of all milk consumed in the state are imported. While Hawaii may never produce one hundred per cent of its food, the risks and costs to society for dependence on imported food cannot be ignored.

Like energy, producing local food would reduce Hawaii's demand for fossil fuels, keep money in our community, and decrease the State's vulnerability to food-supply disruptions caused by natural disasters or worldwide economic events.

Now is the time for bold action to squarely address Hawaii's energy and food requirements and plan for and address the inevitable effects of climate change. It will require long-term commitment, dedication, and the investment of capital and human resources by government, the private sector, and Hawaii's people to dramatically shift our present course of importing food and energy toward a more energy-independent and agriculturally sustainable society. As a state and as a people, we must decide whether we will continue to be dependent on external sources for our basic needs, or whether we will build, invest in, and develop the capacity to become food- and energy-independent.

The legislature finds that it is in the best interests of Hawaii's people to build the capacity we need to become self-sufficient in our energy and food needs and to protect the health and function of our environment. As discussed in the "Hawaii 2050 Sustainability Plan" and the "Hawaii Clean Energy Initiative," Hawaii has all the necessary assets to significantly improve the state's energy and food sustainability and independence over the next twenty years if appropriate personnel resources and funding are used wisely. To succeed, the State must ensure that our long-term strategy is well-resourced, coordinated, and focused.

The purpose of this Act is to:

- (1) Promote economic development for local food and energy businesses by providing necessary funding, guidance, and infrastructure;
- (2) Ensure Hawaii is energy and food self-sufficient and sustainable to the maximum extent feasible;
- (3) Help Hawaii's natural resources and population adapt and be resilient to the inevitable challenges brought on by climate change caused by carbon dioxide and other greenhouse gas emissions from burning fossil fuels;
- (4) Create a Hawaii economic development task force to accelerate and support public and private efforts to make Hawaii energy- and food-self-sufficient, consistent with the "Hawaii 2050 Sustainability Plan," the "Hawaii Clean Energy Initiative," and other government and community planning efforts. The legislature intends for the Hawaii economic development task force to take an interdisciplinary approach to seeking the most efficient and effective pathways for interagency coordination, to ensure that energy and food policy development will be integrated within the overall economic, social, environmental, and cultural aspects of society. With an understanding of these overlapping goals and resources, the State

can maximize the opportunities to ensure food and energy security for generations to come;

- (5) Establish an agricultural development and food security special fund to fund activities intended to increase agricultural production or processing that may lead to reduced importation of food, fodder, or feed from outside the state; and
- (6) Establish a clean energy initiative to manage the state's transition to a clean energy economy.

The legislature finds that undertaking the important task of energy and food security requires a long-term commitment and the investment of substantial financial resources. To that end, this Act also increases the per-barrel tax on petroleum products under the environmental response, energy, and food security tax, formerly known as the environmental response tax.

## PART II

### ENVIRONMENTAL RESPONSE, ENERGY, AND FOOD SECURITY TAX

SECTION 2. Section 128D-2, Hawaii Revised Statutes, is amended to read as follows:

**“§128D-2 Environmental response revolving fund; uses.** (a) There is created within the state treasury an environmental response revolving fund, which shall consist of moneys appropriated to the fund by the legislature, moneys paid to the fund as a result of departmental compliance proceedings, moneys paid to the fund pursuant to court-ordered awards or judgments, moneys paid to the fund in court-approved or out-of-court settlements, all interest attributable to investment of money deposited in the fund, moneys ~~generated by~~ deposited in the fund from the environmental response, energy, and food security tax established in pursuant to section 243-3.5, and moneys allotted to the fund from other sources; ~~provided that when the total balance of the fund exceeds \$20,000,000, the department of health shall notify the department of taxation of this fact in writing within ten days. The department of taxation then shall notify all distributors liable for collecting the tax imposed by section 243-3.5 of this fact in writing, and the imposition of the tax shall be discontinued beginning the first day of the second month following the month in which notice is given to the department of taxation. If the total balance of the fund thereafter declines to less than \$3,000,000, the department of health shall notify the department of taxation which then shall notify all distributors liable for collecting the tax imposed by section 243-3.5 of this fact in writing, and the imposition of the tax shall be reinstated beginning the first day of the second month following the month in which notice is given to the department of taxation.~~

(b) Moneys from the fund shall be expended by the department for response actions and preparedness, including removal and remedial actions, consistent with this chapter; ~~provided that the revenues generated by the [“environmental response tax” and]~~ environmental response, energy, and food security tax deposited into the environmental response revolving fund:

- (1) Shall ~~also~~ be used:
  - (A) For oil spill planning, prevention, preparedness, education, research, training, removal, and remediation; and
  - (B) For direct support for county used oil recycling programs; and
  - ~~[(C) For deposit into the energy security special fund, established under section 201-12.8, as may be appropriated by the legislature; and]~~

- (2) May also be used to support environmental protection and natural resource protection programs, including ~~[but not limited to]~~ energy conservation and alternative energy development, and to address concerns related to air quality, global warming, clean water, polluted runoff, solid and hazardous waste, drinking water, and underground storage tanks, including support for the underground storage tank program of the department and funding for the acquisition by the State of a soil remediation site and facility.”

SECTION 3. Section 201-12.8, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§201-12.8~~ **Energy security special fund; uses.** (a) There is created within the state treasury an energy security special fund, which shall consist of:

- (1) The portion of the environmental response, energy, and food security tax specified under section 243-3.5;
- ~~[(1)]~~ (2) Moneys appropriated to the fund by the legislature;
- ~~[(2)]~~ (3) All interest attributable to investment of money deposited in the fund; and
- ~~[(3)]~~ (4) Moneys allotted to the fund from other sources.

(b) ~~[Moneys]~~ Subject to legislative appropriation, moneys from the fund ~~[shall]~~ may be expended by the department of business, economic development, and tourism for the following purposes and ~~[shall be]~~ used for no other purposes, except for those set forth in this section:

- (1) To support ~~[its]~~ the Hawaii clean energy initiative program, including its energy division, including funding staff positions within the division, and projects that ensure dependable, efficient, and economical energy, promote energy self-sufficiency, and provide greater energy security for the ~~[State; and]~~ state;
- (2) To fund the renewable energy facilitator pursuant to section 201-12.5 and any other positions necessary for the purposes of paragraph (1) as determined by the legislature~~[-]; and~~
- (3) To fund, to the extent possible, the greenhouse gas emissions reduction task force, climate change task force, grants-in-aid to the economic development boards of each county, and grants-in-aid to economic development agencies of each county to meet the stated objectives of the Hawaii clean energy initiative program.

(c) The department of business, economic development, and tourism shall submit a report to the legislature, no later than twenty days prior to the convening of each regular session, on the status and progress of existing programs and activities and the status of new programs and activities funded by the energy security special fund. The report shall also include:

- (1) The spending plan of the energy security special fund;
- (2) All expenditures of energy security special fund moneys; and
- (3) The targeted markets of the expenditures, including the reason for selecting those markets; the persons to be served; and the specific objectives of the expenditures, including measurable outcomes.”

SECTION 4. Section 243-3.5, Hawaii Revised Statutes, is amended as follows:

- 1. By amending its title and subsection (a) to read:

**“§243-3.5 Environmental response, energy, and food security tax; uses.** (a) In addition to any other taxes provided by law, subject to the exemptions set forth

in section 243-7, there is hereby imposed ~~[at times provided in section 128D-2]~~ a state environmental response, energy, and food security tax ~~[of 5 cents]~~ on each barrel or fractional part of a barrel of petroleum product sold by a distributor to any retail dealer or end user~~[-]~~ of petroleum product, other than a refiner~~[-]~~ of petroleum product~~[-]~~. The tax shall be \$1.05 on each barrel or fractional part of a barrel of petroleum product that is not aviation fuel; provided that of the tax collected pursuant to this subsection:

- (1) 5 cents of the tax on each barrel shall be ~~[used pursuant to section 128D-2 to address concerns relating to drinking water.]~~ deposited into the environmental response revolving fund established under section 128D-2;
- (2) 15 cents of the tax on each barrel shall be deposited into the energy security special fund established under section 201-12.8;
- (3) 10 cents of the tax on each barrel shall be deposited into the energy systems development special fund established under section 304A-2169; and
- (4) 15 cents of the tax on each barrel shall be deposited into the agricultural development and food security special fund established under section 141-

The tax imposed by this subsection shall be paid by the distributor of the petroleum product.”

2. By amending subsection (c) to read:

“(c) Notwithstanding section 248-8 to the contrary, the environmental response, energy, and food security tax collected under this section shall be paid over to the director of finance for deposit ~~[into the environmental response revolving fund established by section 128D-2.]~~ as provided in subsection (a).”

SECTION 5. Section 304A-2169, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The special fund shall be funded by:

- (1) Appropriations from the legislature; ~~[and]~~
- (2) The portion of the environmental response, energy, and food security tax specified under section 243-3.5; and
- ~~(2)~~ (3) Investment earnings, gifts, donations, or other income received by the ~~[[Hawaii natural energy]]~~ institute.”

### PART III HAWAII ECONOMIC DEVELOPMENT TASK FORCE

SECTION 6. (a) There is established the Hawaii economic development task force within the department of business, economic development, and tourism for administrative purposes. The purpose of the Hawaii economic development task force shall be to facilitate the accelerated adoption and completion of renewable-energy projects, energy-efficiency programs, agricultural infrastructure and development, and other measures to meet the purposes of this Act. The Hawaii economic development task force shall develop and maintain a broad overview of energy and food security issues that apply an interdisciplinary approach to ensure that Hawaii’s energy and food policy and program development is integrated within the overall economic, social, environmental, and cultural aspects of society. The Hawaii economic development task force shall, with the assistance of the department of business, economic development, and tourism:

- (1) Identify and review each state and county agency's policy objectives, mandates, organizational structure, and resources to address energy and food security issues;
- (2) Identify all federal and private funds available to the State and counties to address energy and food security issues;
- (3) Identify effective measures for interagency cooperation, coordinate efforts with the counties, and promote public- and private-sector partnerships to achieve the objective of energy and food security;
- (4) Identify existing programs and agreements addressing energy and food security that may be enhanced through legislation;
- (5) Investigate alternative institutional mechanisms to promote the efficient execution and implementation of a multi-year strategy to achieve energy and food security;
- (6) Investigate the streamlining of administrative processes to accelerate and achieve energy and food security;
- (7) Provide an appropriate forum for all affected or interested parties to address energy and food security issues;
- (8) Recommend appropriate legislation resulting from its findings to improve, accelerate, and achieve the objective of energy and food security;
- (9) Review whether:
  - (A) The apportionment of the environmental response, energy, and food security tax among the funds listed under section 243-3.5, Hawaii Revised Statutes, is appropriate;
  - (B) The apportionment should be changed; and
  - (C) Any additional special, trust, or revolving fund should receive a share of the tax; and
- (10) Perform any other function necessary to effectuate the purposes of this part.
  - (b) The Hawaii economic development task force shall consist of the following members:
    - (1) The director of business, economic development, and tourism or the director's designee, who shall chair the Hawaii economic development task force;
    - (2) The chairperson of the board of agriculture or the chairperson's designee;
    - (3) The director of the office of planning or the director's designee;
    - (4) The chairperson of the board of land and natural resources or the chairperson's designee;
    - (5) The dean of the University of Hawaii college of tropical agriculture and human resources or the dean's designee;
    - (6) Three members to be designated by the speaker of the house of representatives;
    - (7) Three members to be designated by the president of the senate; and
    - (8) A representative from each county's private economic development board.
  - (c) The Hawaii economic development task force's members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.
  - (d) In the performance of its duties, the Hawaii economic development task force shall consult with appropriate private, nonprofit, community, and government stakeholders.

(e) The department of business, economic development, and tourism may contract with the University of Hawaii for any services to support the work of the Hawaii economic development task force.

(f) The Hawaii economic development task force shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2011.

The task force shall also submit a follow-up report to the legislature no later than twenty days prior to the convening of the regular session of 2012. The report shall include a description of the activities funded by the environmental response, energy, and food security tax, progress made toward energy and food self-sufficiency, and any additional action necessary to achieve energy and food self-sufficiency.

(g) The Hawaii economic development task force shall cease to exist on June 30, 2012.

#### PART IV

### AGRICULTURAL DEVELOPMENT AND FOOD SECURITY

SECTION 7. Chapter 141, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§141- Agricultural development and food security special fund; establishment.** (a) There is established within the state treasury the agricultural development and food security special fund.

(b) The following moneys shall be deposited into the special fund:

- (1) The portion of the environmental response, energy, and food security tax specified under section 243-3.5;
- (2) Any appropriation by the legislature into the special fund;
- (3) Any grant or donation made to the special fund; and
- (4) Any interest earned on the balance of the special fund.

(c) Subject to legislative appropriation, moneys in the special fund may be expended for the following purposes:

- (1) The awarding of grants to farmers for agricultural production or processing activity;
- (2) The acquisition of real property for agricultural production or processing activity;
- (3) The improvement of real property, irrigation systems, and transportation networks necessary to promote agricultural production or processing activity;
- (4) The purchase of equipment necessary for agricultural production or processing activity;
- (5) The conduct of research on and testing of agricultural products and markets;
- (6) The funding of agricultural inspector positions within the department of agriculture;
- (7) The promotion and marketing of agricultural products grown or raised in the state; and
- (8) Any other activity intended to increase agricultural production or processing that may lead to reduced importation of food, fodder, or feed from outside the state.

(d) The department of agriculture shall submit a report to the legislature no later than twenty days prior to the convening of each regular session on the status and progress of existing programs and activities and the status of new



programs and activities funded under the agricultural development and food security special fund. The report shall also include:

- (1) The spending plan of the agricultural development and food security special fund;
- (2) All expenditures of agricultural development and food security special fund moneys;
- (3) The targeted markets of the expenditures, including the reason for selecting those markets;
- (4) The persons to be served using the expenditures; and
- (5) The specific objectives of the expenditures, including measurable outcomes.”

PART V  
HAWAII CLEAN ENERGY INITIATIVE

SECTION 8. Chapter 196, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§196- Hawaii clean energy initiative program. (a) There is established within the department of business, economic development, and tourism, a Hawaii clean energy initiative program to manage the state’s transition to a clean energy economy. The clean energy program shall design, implement, and administer activities that include:

- (1) Strategic partnerships for the research, development, testing, deployment, and permitting of clean and renewable technologies;
- (2) Engineering and economic evaluations of Hawaii’s potential for 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;
- (4) A statewide clean energy public education and outreach plan to be developed in coordination with Hawaii’s institutions of public education;
- (5) Promotion of Hawaii’s clean and renewable resources to potential partners and investors;
- (6) A plan, to be implemented from 2011 to 2030, to transition the state to a clean energy economy; and
- (7) A plan, to be implemented from 2011 to 2030, to assist each county in transitioning to a clean energy economy.

(b) Prior to the initiation of any activities authorized under subsection (a), the department of business, economic development, and tourism shall develop a plan of action with the intent of promoting effective prioritization and focusing of efforts consistent with the State’s energy programs and objectives.

(c) The department of business, economic development, and tourism shall submit a report to the legislature no later than twenty days prior to the convening of each regular session on the status and progress of new and existing clean energy initiatives. The report shall also include:

- (1) The spending plan of the Hawaii clean energy initiative program;
- (2) All expenditures of energy security special fund moneys; and
- (3) The targeted markets of the expenditures, including reasons for selecting those markets, the persons to be served, specific objectives of the program, and program expenditures, including measurable outcomes.”

## PART VI

SECTION 9. Subject to the availability of federal funding for energy programs provided by grants, and subject to the constraints, oversight, and reporting requirements of those federal programs, the governor is authorized to establish positions necessary to accomplish the management of those energy projects funded by federal grants; provided that the positions shall be exempt from chapters 76 and 89, Hawaii Revised Statutes; and provided further that the governor shall submit a report to the legislature on all positions established as of December 31 and June 30 of each fiscal year that the positions exist and are occupied.

## PART VII

SECTION 10. Any unexpended or unencumbered funds remaining in the agricultural development and food security special fund established by this Act, as of the close of business on June 30, 2015, shall lapse to the credit of the general fund.

## PART VIII

SECTION 11. The department of business, economic development, and tourism shall study and analyze the environmental response, energy, and food security tax in section 4 of this Act, including its amount and allocation, and its effectiveness in accomplishing the goals and objectives of this Act. The department shall report its findings and recommendations, including any proposed legislation, to the legislature at least twenty days prior to the convening of each regular session, ending with the regular session of 2015.

## PART IX

SECTION 12. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 14. This Act shall take effect on July 1, 2010; provided that sections 2, 3, 4, and 7 of this Act shall be repealed on June 30, 2015, and sections 128D-2, 201-12.8, and 243-3.5, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 2010.

(Vetoed by Governor and veto overridden by Legislature on April 29, 2010.)

## Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Taxation.

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

SECTION 1. Chapter 236D, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§236D-A Nonresidents not citizens; tax imposed; exemption.** (a) A tax in an amount computed as provided in this section is imposed on the noncitizen transfer of the taxable estate located in Hawaii of every nonresident decedent who was not a citizen at the time of their death.

(b) The tax shall be computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property with a situs in Hawaii, and the denominator of which is the value of the decedent’s gross estate.

(c) The noncitizen transfer of the property of a nonresident not a citizen is exempt from the tax imposed by this section to the extent that the property of residents is exempt from taxation under the laws of the state in which the nonresident not a citizen is domiciled; except that the following shall be subject to tax under this section:

- (1) Real property having an actual situs in this state, whether or not held in a trust the corpus of which is included in a decedent’s gross estate for federal estate tax purposes;
- (2) A beneficial interest in a land trust that owns real property located in the state; and
- (3) Tangible and intangible personal property having a situs in this state.

(d) “Situs” as used in this section means the location of a decedent’s property within the meaning of Section 2104 of the Internal Revenue Code, including regulations and other guidance issued thereunder, substituting “Hawaii” for “the United States”.

**§236D-B Taxation under chapter 236D; applicable exclusion amount.** Notwithstanding any other law to the contrary, a decedent shall be entitled to all applicable exclusion or exemption amounts as determined under the Internal Revenue Code as of December 31, 2009, before being subject to any taxes imposed under this chapter, including up to a \$3,500,000 applicable exclusion amount allowed by Section 2010 of the Internal Revenue Code on December 31, 2009, as further adjusted by law.”

SECTION 2. Section 236D-2, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions to be appropriately inserted and to read:

““Internal Revenue Code” means the Internal Revenue Code of 1986, as amended and renumbered, as of December 31, 2009; provided that Sections 2011, 2102, and 2604 of the Internal Revenue Code shall mean those Sections as of December 31, 2000; and provided further that Section 2058 shall not be operative for purposes of this chapter. “Internal Revenue Code” includes the federal tax principles of alter ego, nominee, sham transaction, substance over form, economic substance, or business purpose, as those principles are developed by statute or common law. The Internal Revenue Code, for purposes of this chapter, shall be applied using changes in nomenclature and other language.

including the omission of inapplicable language or the insertion of interpretive language, where necessary to effectuate the intent of this chapter.

“Noncitizen transfer” means a transfer within the meaning of Section 2101 of the Internal Revenue Code.

“Nonresident not a citizen” means a nonresident who is not a citizen of the United States.”

2. By amending the definitions of “federal credit”, “generation-skipping transfer”, “gross estate”, “personal representative”, “section 2011”, “taxable estate”; and “transfer” to read:

““Federal credit” means:

- (1) For a transfer, the maximum amount of the credit for state death taxes allowed by ~~[section]~~ Section 2011 of the Internal Revenue Code, as it existed on December 31, 2000, for the decedent’s adjusted taxable estate; ~~[and]~~
- (2) For a generation-skipping transfer, the maximum amount of the credit for state taxes allowed by ~~[section]~~ Section 2604 of the [federal] Internal Revenue Code [of 1986, as amended or renumbered.] as it existed on December 31, 2000; and
- (3) For a noncitizen transfer, the maximum amount of the credit for state death taxes allowed by Section 2102 of the Internal Revenue Code, as it existed on December 31, 2000, for the decedent’s adjusted taxable estate.

“Generation-skipping transfer” means a generation-skipping transfer as defined and used in ~~[section]~~ Section 2611 of the [federal] Internal Revenue Code [of 1986, as amended or renumbered].

“Gross estate” means gross estate as defined and used in ~~[sections]~~ Sections 2031 to [2045] 2046 of the [federal] Internal Revenue Code [of 1986, as amended or renumbered]. For purposes of section 236D-A, “gross estate” means gross estate as defined and used in Section 2103 of the Internal Revenue Code.

“Personal representative” means the personal representative of a decedent appointed under chapter 560, and includes an executor (as defined under ~~[section]~~ Section 2203 of the [federal] Internal Revenue Code [of 1986, as amended or renumbered]), administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

“Section 2011” means ~~[section]~~ Section 2011 of the [federal] Internal Revenue Code [of 1986, as amended or renumbered.] as it existed on December 31, 2000.

“Taxable estate” means taxable estate as defined in ~~[sections]~~ Sections 2051 to 2056 of the [federal] Internal Revenue Code [of 1986, as amended or renumbered]. For purposes of section 236D-A, “taxable estate” means taxable estate as defined and used in Section 2106 of the Internal Revenue Code, with situs in Hawaii.

“Transfer” means transfer as defined and used in ~~[section]~~ Section 2001 of the [federal] Internal Revenue Code [of 1986, as amended or renumbered].”

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

## ACT 75

SECTION 5. This Act, upon its approval, shall apply to property interests of persons who die after April 30, 2010.

(Vetoed by Governor and veto overridden by Legislature on April 29, 2010.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 75

H.B. NO. 1862

A Bill for an Act Relating to Public Order.

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

SECTION 1. Act 84, Session Laws of Hawaii 2004, as amended by Act 77, Session Laws of Hawaii 2008, is amended by adding a new section to read as follows:

“SECTION 2A. The Honolulu police department is requested to prepare a report on the offense of urinating and defecating in public within the boundaries of the downtown Honolulu area established by this Act that shall include but not be limited to:

- (1) The effectiveness of the offense established by this Act in deterring the conduct proscribed; and
- (2) The number of citations issued for this offense for the two years preceding the date of the report;

provided that the Honolulu police department is requested to submit the report to the legislature no later than twenty days prior to the convening of the 2012 regular session.”

SECTION 2. Act 84, Session Laws of Hawaii 2004, as amended by section 1 of Act 77, Session Laws of Hawaii 2008, 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, [2012.] 2014.”

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 4, 2010.)

## ACT 76

S.B. NO. 2323

A Bill for an Act Relating to Employment Security.

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

SECTION 1. Chapter 383, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§383- Requirement to post work availability online.** To meet the on-line registration for work requirements under section 383-29(a), the department shall:

- (1) Allow an individual to post the required information independently on the department’s internet job-matching system; or
- (2) Accept information provided by the individual in the form prescribed by the department, and enter the necessary information on the department’s internet job-matching system for the individual.

The employment office shall provide the necessary information to the unemployment office for the purpose of determining whether the individual’s registration for work requirements have been met.”

SECTION 2. Section 383-1, Hawaii Revised Statutes, is amended by amending the definition of “registered for work” or “registration for work” to read as follows:

““Registered for work” or “registration for work” means that an individual shall provide information to the employment office to be posted on the department’s internet job-matching system, including [~~but not limited to~~] the individual’s name, job skills, education, training, prior employment history and work duties, preferred working conditions, occupational licenses, and other relevant occupational information to facilitate work search efforts by the individual and increase job referrals by the employment office. [~~The information shall be posted with the department’s assistance or independently by the individual. The employment office shall provide the necessary information to the unemployment office for purposes of determining that the individual’s registration for work requirements has been met.~~]

SECTION 3. Act 170, Session Laws of Hawaii 2009, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect on July 1, 2009, and shall be repealed on July 1, 2012; provided that on July 1, 2012, sections 383-1 and 383-29(a), Hawaii Revised Statutes, shall be reenacted in the same form in which they read on June 30, 2009[-]; provided further that the definition of “registered for work” shall not be repealed when this Act is repealed and section 383-1 is reenacted pursuant to this section.”

SECTION 3.<sup>1</sup> Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 4.<sup>1</sup> This Act shall take effect upon its approval.

(Approved May 4, 2010.)

#### Notes

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

A Bill for an Act Relating to Marine Life Conservation Districts.

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

SECTION 1. Section 190-4, Hawaii Revised Statutes, is amended to read as follows:

“**§190-4 Permits.** The department of land and natural resources may, in any conservation district, prohibit the taking of marine life or the engaging in activities prohibited by this chapter and rules adopted thereunder, except by permit issued by it for scientific, education, or other public purposes on such terms and conditions deemed necessary to minimize any adverse effect within the conservation district[-]; provided that the department shall provide written notice of any change in permit conditions ninety calendar days prior to the effective date of the change, except, as determined by the department, when an immediate change in permit conditions is necessary to protect or preserve the conservation district. The department may revoke any permit for any infraction of the terms and conditions of the permit. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation.”

SECTION 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 4, 2010.)

A Bill for an Act Relating to Veterans.

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

SECTION 1. Section 249-9.2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In lieu of the number plates contracted on behalf of the counties by the director of finance of the city and county of Honolulu, the director of finance shall provide, for a fee, one set of special number plates upon the receipt of an application together with:

- (1) Specific proof that the applicant was awarded the Purple Heart by the United States Department of Defense for wounds received in military or naval combat against an armed enemy of the United States;
- (2) Certification that the applicant is a veteran;
- (3) Specific proof that the applicant was serving the United States in the military or as a civilian, on Oahu, or offshore at a distance of not more than three miles at the time of the December 7, 1941, attack on Pearl Harbor. Certification from the Hawaii state chairperson of the Pearl Harbor Survivors Association shall constitute sufficient proof;

- (4) Specific proof that the applicant was confined as a prisoner of war while providing military service to the United States; or
- (5) Certification from the United States Department of Veterans Affairs or the state office of veterans' services that the applicant is a combat veteran or a veteran of the Vietnam conflict, the Korean conflict, World War II, or the Persian Gulf conflict[-];

provided that applicants, except civilian applicants under paragraph (3), shall also provide a copy of the applicant's most recent discharge paper or separation document that indicates an honorable discharge or general (under honorable conditions) discharge from active duty."

SECTION 2. Statutory material to be repealed is bracketed and stricken. 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 May 5, 2010.)

## ACT 79

S.B. NO. 2172

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Kaimuki Christian 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 \$20,000,000, in one or more series, for the purpose of assisting Kaimuki Christian School, a Hawaii not-for-profit corporation, to finance or refinance the planning, construction, improvement, and equipping of its educational facilities in the State. The legislature hereby finds and determines that the planning, construction, improvement, and equipping of the educational facilities 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 nonsectarian or sectarian elementary school, secondary school, college, or university that serves the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to 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, 2015, 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. The special purpose revenue bonds may be issued in one or more series for the refunding of the special purpose revenue bonds authorized in section 2 or in this section, and the department may combine into a single issue of special purpose revenue bonds, in one or more series, the refunding special purpose revenue bonds with one or more proposed issues of special purpose revenue bonds authorized by any one or more other separate acts of the legislature pursuant to part VIII, chapter 39A, Hawaii Revised Statutes.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2015.

SECTION 7. This Act shall take effect on July 1, 2010.

(Approved May 5, 2010.)

**ACT 80**

S.B. NO. 2544

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Honolulu Seawater Air Conditioning LLC Projects on the Island of Oahu.

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

SECTION 1. Act 79, Session Laws of Hawaii 2005, is amended by amending sections 4 and 5 to read as follows:

“SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to [~~June 30, 2010;~~] June 28, 2015, 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 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on ~~[June 30, 2010.]~~ June 28, 2015."

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

SECTION 3. This Act shall take effect on June 29, 2010.

(Approved May 5, 2010.)

## ACT 81

S.B. NO. 2400

A Bill for an Act Relating to Funds.

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

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

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000 or so much thereof as is necessary for fiscal year 2009-2010 to support the functions of the office of elections and the elections commission in the 2010 regular elections.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$140,000 or so much thereof as may be necessary for fiscal year 2009-2010 for the office of elections to reimburse the city and county of Honolulu for the 2010 special election.

SECTION 4. The sums appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

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

(Approved May 6, 2010.)

## ACT 82

H.B. NO. 347

A Bill for an Act Relating to the University of Hawaii.

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

SECTION 1. Chapter 304A, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

**“§304A-A Construction projects.** In the solicitation for bids for construction projects with a total estimated contract value of \$1,000,000 or higher, the university shall require each bidder to submit a listing of the bidder’s subcontractors who are to perform work with a value that exceeds five per cent of the total bid amount submitted by the bidder.

**§304A-B Pre-bid conference.** (a) At least fifteen days prior to submission of bids similar to those described in section 103D-302 for a construction or design-build project with a total estimated contract value of \$500,000 or more, and at least fifteen days prior to submission of proposals similar to those described in section 103D-303 for a construction or design-build project with a total estimated contract value of \$100,000 or more, the university shall hold a pre-bid conference and shall invite all potential interested bidders, offerors, subcontractors, and union representatives to attend.

(b) The university shall comply with the rules adopted pursuant to section 103D-303.5, by the procurement policy board established under section 103D-201.

**§304A-C Right to audit records.** (a) The university, at reasonable times and places, may audit the books and records of any person who has submitted cost or pricing data similar to those described in section 103D-312 to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three years from the date of final payment under the contract, unless another period is otherwise authorized in writing.

(b) The university shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. The books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract, unless another period is otherwise authorized in writing.

**§304A-D Preference for small businesses; set-asides; use as subcontractors.** (a)<sup>1</sup> The university shall comply with the rules adopted pursuant to section 103D-906, by the procurement policy board established under section 103D-201.”

SECTION 2. Section 103D-102, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding subsection (a), this chapter shall not apply to contracts made by any regional system board of the Hawaii health systems corporation[-], or except with respect to sections 103D-110, 103D-304 with respect to design professional services furnished by licensees under chapter 464, 103D-324, 103D-707, and 103D-1002, the university or the board of regents of the university.”

SECTION 3. Section 304A-105, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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, which shall be

subject to ~~[chapter 103D.]~~ sections 103D-110, 103D-304 with respect to design professional services furnished by licensees under chapter 464, 103D-324, 103D-707, 103D-1002, 304A-A, 304A-B, 304A-C, and 304A-D. Except as provided in this subsection, chapter 103D shall not apply to any actions or activities undertaken, conducted, or performed under authority of the board of regents or the university; provided that the board of regents and the university are encouraged to use the provisions of chapter 103D as guidelines; and provided further that in using one or more provisions of chapter 103D as guidelines, neither the board of regents nor the university shall be:

- (1) Deemed to have waived in any way the exemption from the requirements and applicability of chapter 103D granted in this subsection;  
or
- (2) Subject to any of the provisions or requirements of chapter 103D other than those provided for in this subsection."

SECTION 4. The board of regents of the University of Hawaii shall submit annual reports to the legislature no later than twenty days prior to the convening of the regular sessions of 2011 and 2012, that shall include but not be limited to the following:

- (1) A description of the University of Hawaii's internal procurement process;
- (2) A description of the University of Hawaii's internal procedures for handling protests of solicitations or awards of contracts, if different from the procedures described under chapter 103D, Hawaii Revised Statutes; and
- (3) A description and summary of any protests or litigation that have arisen during the period of time that the University of Hawaii is exempt from chapter 103D, Hawaii Revised Statutes, with certain exceptions, pursuant to this Act.

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. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 8. This Act shall take effect on July 1, 2010; provided that on July 1, 2012, this Act shall be repealed and sections 103D-102(c) and 304A-105(b), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act.

(Approved May 6, 2010.)

#### Notes

1. No subsection (b).
2. Edited pursuant to HRS §23G-16.5.

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) Commercial driver’s licenses shall expire as follows:

- (1) 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~~[-]; and~~
- (2) All other initial commercial driver’s licenses shall be valid for not ~~[less] more than [[a] two or six year]~~ an eight-year period, [beginning] expiring on the driver’s birthday. All other renewed licenses shall be valid for not more than ~~[[a] two or six year]~~ an eight-year period from the expiration date of the previous valid license. 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]~~ not more than eight years after the date of issuance of the license unless sooner revoked, suspended, or canceled; provided that, unless sooner revoked, suspended, or canceled, 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. There is appropriated out of the state highway fund the sum of \$8,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the purpose of implementing this extension of the commercial driver’s license to prepare for the REAL ID Act.

The sum appropriated shall be expended by the department of transportation for the purposes 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 on July 1, 2010.

(Approved May 6, 2010.)

A Bill for an Act Relating to the Secure and Fair Enforcement for Mortgage Licensing Act.

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

SECTION 1. The purpose of this Act is to allow the State to continue to work toward meeting its obligations under the federal Secure and Fair

Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Mortgage Licensing Act). The S.A.F.E. Mortgage Licensing Act requires states to have a clear system of regulation that complies with the federal law in place to regulate the residential mortgage industry or face federal takeover of the intrastate residential real estate industry. The legislature finds that it is in the best interest of the State that licensing and regulation of the domestic mortgage industry remain with the State and in compliance with federal law. The legislature began the process of compliance with the federal law by creating chapter 454F, Hawaii Revised Statutes, through the passage of Act 32 in the First Special Session of 2009 (Act 32). The legislature finds that Act 32 was a necessary step in meeting the mandates of the S.A.F.E. Mortgage Licensing Act, but that the current measure is also necessary to refine the regulatory system created by Act 32.

The legislature further finds that the fees and appropriations from the compliance resolution fund contained in this Act are adequate to fully fund the regulatory system contained in chapter 454F, Hawaii Revised Statutes. The legislature also finds that the mortgage recovery fund will protect the state's consumers by making it easier to recover losses caused by individuals or companies that violate the law governing fair mortgage lending practices.

Finally, the legislature finds that this Act and Act 32 contain appropriate provisions to effectuate a smooth transfer of the regulatory regime governing mortgage professionals from the system created by chapter 454, Hawaii Revised Statutes, to the new system created by chapter 454F, Hawaii Revised Statutes. The legislature particularly notes that this Act both authorizes the commissioner of financial institutions to hire temporary employees to overcome the initial administrative hurdle of processing a large number of licensing applications and statutorily creates permanent positions in the division of financial institutions of the department of commerce and consumer affairs to carry out the continuing requirements of this Act.

SECTION 2. Chapter 412, Hawaii Revised Statutes, is amended by adding a new section to part V of article 9 to be appropriately designated and to read as follows:

**“§412:9- Registration of nondepository financial services loan companies with Nationwide Mortgage Licensing System.** (a) A nondepository financial services loan company licensed under this chapter is not a mortgage loan originator company as defined in section 454F-1.

(b) A nondepository financial services loan company shall register with the Nationwide Mortgage Licensing System if any employee of the nondepository financial services loan company acts as a mortgage loan originator as defined in section 454F-1 or if the nondepository financial services loan company uses the services of an exclusive independent contractor mortgage loan originator, or loan processor or underwriter, as defined in chapter 454F.

(c) This section does not exempt an employee of a nondepository financial services loan company who originates mortgage loans, or an independent contractor providing mortgage loan originating, processing, or underwriting services to a nondepository financial services loan company, from licensure under chapter 454F.”

SECTION 3. Chapter 454F, Hawaii Revised Statutes, is amended by adding sixteen new sections to be appropriately designated and to read as follows:

**“§454F-A Registration with Nationwide Mortgage Licensing System required.** (a) All mortgage loan originators, mortgage loan originator companies, and any other person in this state that originate a residential mortgage loan, unless exempt under section 454F-2, shall register with the Nationwide Mortgage Licensing System.

(b) Exempt registered mortgage loan originators and exempt mortgage loan originator companies, unless exempt under section 454F-2, shall register and maintain a unique identifier through the Nationwide Mortgage Licensing System, but shall not be required to be licensed under this chapter.

**§454F-B Automatic secondary review of license application.** The commissioner shall establish, by rule pursuant to chapter 91, a procedure for the secondary review of each application that was determined on initial review to fail to meet the criteria for licensure.

**§454F-C Mortgage loan recovery fund; use of fund; fees.** (a) The commissioner shall establish and maintain a fund that shall be known as the mortgage loan recovery fund from which any person aggrieved by an act, representation, transaction, or conduct of a licensee involving fraud, misrepresentation, or deceit may recover by order of the circuit court or district court of the county where the violation occurred, an amount of not more than \$25,000 per transaction, including court costs and fees as set by law and reasonable attorney fees as determined by the court, for damages sustained by the fraud, misrepresentation, or deceit of a licensee.

(b) In addition to application fees and any fees required by the Nationwide Mortgage Licensing System, a licensee shall pay to the division a mortgage loan recovery fund fee as follows for deposit in the mortgage loan recovery fund:

- (1) The sum of \$300 for each principal office location of a mortgage loan originator company;
- (2) The sum of \$250 for each branch office location of a mortgage loan originator company; and
- (3) The sum of \$200 for each mortgage loan originator.

(c) Upon application for renewal of a license under this chapter, a licensee shall pay, in addition to the licensee's license renewal fee and fees required by the Nationwide Mortgage Licensing System, a mortgage loan recovery fund fee as follows for deposit in the mortgage loan recovery fund:

- (1) The sum of \$200 for each principal office location of a mortgage loan originator company;
- (2) The sum of \$100 for each branch office location of a mortgage loan originator company; and
- (3) The sum of \$100 for each mortgage loan originator.

Mortgage loan recovery fees collected pursuant to this subsection shall be refundable upon the denial of a license renewal by the commissioner.

(d) When the mortgage loan recovery fund attains a funding level of \$750,000, the commissioner may, by rule adopted pursuant to chapter 91, adjust the fees generated by renewals or may determine that payments made by renewing licensees shall cease. If the funding level falls below \$250,000 after the first five years of the establishment of the fund, the commissioner may adjust the fees to a reasonable level for the purpose of attaining a funding level of \$750,000.

(e) The commissioner or the commissioner's designee, as the manager of the mortgage loan recovery fund, shall be authorized to expend moneys in the mortgage loan recovery fund to:

- (1) Retain private legal counsel to represent the commissioner or the division in any action that involves or may result in payment from the mortgage loan recovery fund;
- (2) Retain a certified public accountant for accounting and auditing of the mortgage loan recovery fund;
- (3) Employ necessary personnel, not subject to chapter 76, to assist the commissioner in exercising the commissioner's powers and duties with respect to the mortgage loan recovery fund; and
- (4) Retain a consultant to recover and collect any payments from the mortgage loan recovery fund plus interest from the judgment debtor.

**§454F-D Statute of limitation; recovery from fund.** (a) No action for a judgment that subsequently results in an order for collection from the mortgage loan recovery fund shall be commenced later than six years from the accrual of the cause of action. When any aggrieved person commences an action for a judgment that may result in collection from the mortgage loan recovery fund, the aggrieved person shall notify the commissioner in writing at the time of the commencement of the action and shall submit to the commissioner any documents required by the commissioner pursuant to rules issued in accordance with chapter 91.

(b) When any aggrieved person receives a valid judgment upon the grounds of fraud, misrepresentation, or deceit that occurred before the effective date of section 454F-C against any licensee from any circuit or district court where the violation occurred, the aggrieved person shall proceed against the bond covering the license that was in force prior to the enactment of section 454F-C and establishment of the mortgage loan recovery fund.

(c) The court shall proceed upon an application to recover from the mortgage loan recovery fund in a summary manner and, at hearing, the aggrieved person shall be required to show:

- (1) The person is not a spouse of the judgment debtor or the personal representative of a spouse of the judgment debtor;
- (2) The person has complied with all the requirements of this section;
- (3) The person has obtained a judgment or settlement pursuant to section 454F-C(a) that states the amount of the judgment and the amount owed on the judgment debt as of the date of the application;
- (4) The person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment; and
  - (A) The search has uncovered no personal or real property or other assets liable to be sold or applied; or
  - (B) The search has uncovered personal or real property or other assets liable to be sold or applied, the person has taken all necessary action and completed all necessary proceedings for the realization thereof, and the amount realized was insufficient to satisfy the judgment; provided that the person shall state the amount realized and the balance remaining due on the judgment after application of the amount realized; and
- (5) That where the licensee is a judgment debtor in a bankruptcy proceeding, the aggrieved person has obtained an order from the bankruptcy court declaring the judgment against the licensee to be non-dischargeable.



(d) Upon hearing, if the court is satisfied of the truth of all matters required by subsection (c) and that the aggrieved person has fully pursued and exhausted all remedies available to the person for recovering the amount awarded by the judgment of the court, the court shall issue an order directing the commissioner to pay from the mortgage loan recovery fund whatever sum the court finds to be payable upon the claim in accordance with the limitations contained in this section.

(e) Notwithstanding any other provision, the liability of the mortgage loan recovery fund shall not exceed the sum of \$100,000 against any one licensee.

**§454F-E Management of fund.** (a) The sums received by the division pursuant to section 454F-C for deposit into the mortgage loan recovery fund shall be held by the commissioner or the commissioner's designee to carry out the purpose of the mortgage loan recovery fund. These funds may be invested and reinvested in the same manner as funds of the state employees' retirement system.

(b) The commissioner or the commissioner's designee, as the manager of the mortgage loan recovery fund, shall be authorized to expend moneys from the fund to retain private legal counsel to represent the commissioner in any action involving the mortgage loan recovery fund.

**§454F-F Standing.** The commissioner shall have standing to intervene in and defend any action to recover from the mortgage loan recovery fund, including by entering an appearance, filing an answer, appearing at court hearings, and taking any recourse through appropriate methods of review. The commissioner or the commissioner's legal representative shall be served with all pleadings in any action pursuant to this section.

**§454F-G Subrogation of rights.** When, pursuant to court order, the commissioner has paid any sum to a judgment creditor from the mortgage loan recovery fund, the commissioner shall be subrogated to all of the rights of the judgment creditor. The judgment creditor shall assign all of the judgment creditor's rights, title, and interest in the judgment to the commissioner. Any interest collected by the commissioner pursuant to this section shall be deposited into the mortgage loan recovery fund.

**§454F-H Waiver of rights.** The failure of an aggrieved person to comply with sections 454F-C and 454F-D shall constitute a waiver of the rights contained in those sections.

**§454F-I Disciplinary action against licensee.** No provision of this chapter relating to the mortgage loan recovery fund shall limit the authority of the commissioner to take disciplinary action against any licensee for a violation of this chapter or of the rules and orders of the commissioner adopted pursuant to this chapter. Repayment of obligations to the mortgage loan recovery fund by a licensee shall not nullify or modify the effect of any other disciplinary proceeding brought pursuant to this chapter.

**§454F-J Authorized places of business; designation of managers; branch offices.** (a) Every mortgage loan originator company licensed under this chapter shall have and maintain a principal place of business in the state and shall designate a manager.

(b) A mortgage loan originator company shall not maintain any branch offices in the state in addition to its principal place of business without the prior written approval of the commissioner. An application to establish a branch office shall be submitted with a nonrefundable application fee as required by section 454F-N. A mortgage loan originator company that established a branch office pursuant to this subsection shall designate a manager located at each branch office to oversee that branch office.

(c) A mortgage loan originator company shall not relocate any office in this state without the prior written approval of the commissioner. An application to relocate an office shall set forth the reasons for the relocation, the street address of the proposed relocated office, and other information that may be required by the commissioner. An application to relocate an office pursuant to this subsection shall be submitted with a nonrefundable fee as required by section 454F-N.

(d) A mortgage loan originator company shall give the commissioner notice of its intent to close a branch office at least thirty days prior to the closing. The notice shall:

- (1) State the intended date of closing; and
- (2) Specify the reasons for the closing.

**§454F-K Reinstatement of expired licenses.** (a) A license issued pursuant to this chapter that expires due to failure to satisfy the minimum standards for renewal may be reinstated if the licensee meets the following requirements:

- (1) The licensee applies for reinstatement between January 1 and February 28 of the year immediately following the year in which the license expired;
- (2) All continuing education courses required for license renewal for the year in which the license expired shall be completed between January 1 and February 28 of the year immediately following the year in which the license expired; provided that continuing education courses that satisfy the previous year's requirement shall not also be credited toward satisfying the current year's continuing education requirements; and
- (3) The licensee shall pay all applicable licensing, reinstatement, and late fees assessed by the commissioner.

(b) A licensee that fails to meet the requirements for renewal of an expired license established by this section may apply for a new license and shall meet the requirements for new licenses in effect at the time of application.

**§454F-L Presumption of control.** An individual is presumed to control a mortgage loan originator company if that individual is a director, general partner, managing director, or executive officer of that mortgage loan originator company.

**§454F-M Payment of fees.** All fees collected pursuant to section 454F-N, administrative fines, and other charges collected pursuant to this chapter, except fees designated for deposit into the mortgage loan recovery fund shall be deposited into the compliance resolution fund established pursuant to section 26-9(o) and shall be payable through the Nationwide Mortgage Licensing System, to the extent allowed by the Nationwide Mortgage Licensing System. Fees not eligible for payment through the Nationwide Mortgage Licensing System shall be deposited into a separate account within the compliance resolution fund for use by the division.

**§454F-N Mortgage loan originator and mortgage loan originator company fees.** (a) A mortgage loan originator shall pay the following fees to obtain and maintain a valid mortgage loan originator license:

- (1) Initial application fee of \$500;
- (2) Annual license renewal fee of \$300;
- (3) Reinstatement fee of \$100;
- (4) Late fee of \$25 per day; and
- (5) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91.

(b) A mortgage loan originator company shall pay the following fees to maintain a valid mortgage loan originator company license or branch license:

- (1) Fees payable for a principal office of a mortgage loan originator company:
  - (A) Initial application fee of \$900;
  - (B) Annual license renewal fee of \$600;
  - (C) Reinstatement fee of \$100;
  - (D) Late fee of \$25 per day; and
  - (E) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91, for each control person, executive officer, director, general partner, and manager; and
- (2) Fees payable for each branch office of a mortgage loan originator company:
  - (A) Initial application fee of \$250;
  - (B) Annual license renewal fee of \$100;
  - (C) Reinstatement fee of \$100; and
  - (D) Late fee of \$25 per day.

(c) In addition to fees charged by the Nationwide Mortgage Licensing System, a licensee shall pay to the commissioner a fee of \$50 for each of the following amendments to information provided to the Nationwide Mortgage Licensing System that require the review of the commissioner:

- (1) Change of physical location, including address change for branch or principal place of business;
- (2) Addition or deletion of a "d/b/a" assignment;
- (3) Change of manager; or
- (4) Change of legal name.

The commissioner, upon a showing of good cause, may waive any fee set forth in this subsection.

(d) The fees established by this section are nonrefundable and are in addition to any fees established and charged by the Nationwide Mortgage Licensing System, an approved educational course provider, an approved educational testing provider, a law enforcement agency for fingerprints and background checks, or a credit reporting agency used by the Nationwide Mortgage Licensing System.

(e) The commissioner may establish, by rule pursuant to chapter 91, any other fees or charges necessary for the administration of this chapter.

**§454F-O Voluntary cessation of operation; surrender of license.** (a) Subject to the approval of the commissioner, a licensee may voluntarily cease activity for which a license to operate has been issued under this chapter by delivering to the commissioner a written notice of surrender, which shall include but not be limited to:

- (1) A plan of cessation of business;
- (2) Provisions for the transfer or assumption of assets;

- (3) Provisions for pending applications or transactions;
  - (4) Provisions for payment or assumption of liabilities;
  - (5) Provisions for the disposition of individual mortgage loan originator licenses, and
  - (6) Provisions for transfer or assumption of all trust, agency, and other fiduciary relationships and accounts.
- (b) The commissioner shall approve the surrender if:
- (1) The commissioner is satisfied with the plan as set forth by the licensee; and
  - (2) No other reason exists to deny the request for surrender;

provided that the commissioner may impose any restrictions and conditions as the commissioner deems appropriate.

(c) The surrender shall not affect rights and duties that have matured, penalties that were incurred, and proceedings that were begun before the effective date of the surrender of a license under this section.

**§454F-P Change in control of a licensee; fees.** (a) A licensee shall submit to the commissioner an application requesting approval of a proposed change of control of the licensee, accompanied by a nonrefundable application fee of \$500, payable to the division.

(b) 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.”

SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply to the employment or retention of attorneys:

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;
- (2) By any court or judicial or legislative office of the State; provided that if the attorney general is requested to provide representation to a court or judicial office by the chief justice or the chief justice’s designee, or to a legislative office by the speaker of the house of representatives and the president of the senate jointly, and the attorney general declines to provide such representation on the grounds of conflict of interest, the attorney general shall retain an attorney for the court, judicial, or legislative office, subject to approval by the court, judicial, or legislative office;
- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;
- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;

- (7) By the trustees for any action involving the travel agency recovery fund;
- (8) By the office of Hawaiian affairs;
- (9) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485A;
- (10) As grand jury counsel;
- (11) By the Hawaiian home lands trust individual claims review panel;
- (12) By the Hawaii health systems corporation, or its regional system boards, or any of their facilities;
- (13) By the auditor;
- (14) By the office of ombudsman;
- (15) By the insurance division;
- (16) By the University of Hawaii;
- (17) By the Kahoolawe island reserve commission;
- (18) By the division of consumer advocacy;
- (19) By the office of elections;
- (20) By the campaign spending commission;
- (21) By the Hawaii tourism authority, as provided in section 201B-2.5; [of]
- (22) By the division of financial institutions for any action involving the mortgage loan recovery fund; or
- [(22)] (23) By a department, in the event the attorney general, for reasons deemed by the attorney general to be good and sufficient, declines to employ or retain an attorney for a department; provided that the governor thereupon waives the provision of this section."

SECTION 5. Section 237-24.8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) As used in this section:

"Activities relating to the general servicing of [~~fiduciary/custodial~~] fiduciary or custodial accounts" means those activities performed by trust companies which are directly or indirectly performed within the [~~fiduciary/custodial~~] fiduciary or custodial relationship between the trust company or trust department of a financial institution and its client and which are not offered to any person outside of the [~~fiduciary/custodial~~] fiduciary or custodial relationship.

"Annual percentage rate" and "finance charge" have the same meaning as defined in the federal Truth in Lending Act (15 [~~U.S.C. sections~~] United States Code Sections 1605(a) to (c) and 1606).

"Deposit" means:

- (1) Money or its equivalent received or held by a financial institution in the usual course of business and for which it has given or is obligated to give credit to:
  - (A) A commercial (including public deposits), checking, savings, time, or thrift account;
  - (B) A check or draft drawn against a deposit account and certified by the financial institution;
  - (C) A letter of credit; or
  - (D) A traveler's check, on which the financial institution is primarily liable;
- (2) Trust funds received or held by a financial institution, whether held in the trust department or held or deposited in any other department of the financial institution;
- (3) Money received or held by a financial institution, or the credit given for money or its equivalent received or held by a financial institu-

tion in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including, without being limited to, escrow funds, funds held as security for an obligation due the financial institution or others (including funds held as dealers' reserves) or for securities loaned by the financial institution, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States government securities, funds held for distribution or purchase of securities, funds held to meet the financial institution's acceptances or letters of credit, and withheld taxes;

- (4) Outstanding drafts, cashier's checks, money orders, or other officer's checks issued in the usual course of business for any purpose; or
- (5) Money or its equivalent held as a credit balance by a financial institution on behalf of its customer if the financial institution is engaged in soliciting and holding the balances in the regular course of its business.

"Financial institution" means banks, building and loan associations, development companies, financial corporations, financial services loan companies, small business investment companies, financial holding companies, mortgage loan originator companies[;] as defined in chapter 454F, and trust companies all as defined in chapter 241.

"Leasing of personal property" occurs if:

- (1) The lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;
- (2) The property to be leased is acquired specifically for the leasing transaction under consideration, or was acquired specifically for an earlier leasing transaction;
- (3) The lease is on a nonoperating basis[; i.e.,] where the financial institution may not, directly or indirectly:
  - (A) Provide for the maintenance, repair, replacement, or servicing of the leased property during the lease term;
  - (B) Purchase parts and accessories in bulk or for an individual property after the lessee has taken delivery of the property; or
  - (C) Purchase insurance for the lessee;
- (4) At the inception of the lease the effect of the transaction will yield a return that will compensate the lessor financial institution for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease, from:
  - (A) Rentals;
  - (B) Estimated tax benefits [(~~including~~ capital goods excise tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect)]; and
  - (C) The estimated residual value of the property at the expiration of the initial term of the lease;
- (5) The maximum lease term during which the lessor financial institution [~~must~~] shall recover the lessor's full investment in the property, plus the estimated total cost of financing the property, shall be forty years; and
- (6) At the expiration of the lease, [(~~including~~ any renewals or extensions with the same lessee)], all interest in the property shall be either liquidated or leased again on a nonoperating basis as soon as practicable [~~but~~] in no event later than two years from the expira-

tion of the lease~~), but~~; provided that in no case shall the lessor retain any interest in the property beyond fifty years after the lessor's acquisition of the property."

SECTION 6. Section 241-1, Hawaii Revised Statutes, is amended by amending the definition of "mortgage loan company" to read as follows:

"Mortgage loan company" means [any company licensed under chapter 454.] a mortgage loan originator company licensed under chapter 454F."

SECTION 7. Section 412:3-502, Hawaii Revised Statutes, is amended to read as follows:

**"§412:3-502 Foreign financial institution.** No foreign financial institution shall receive deposits, lend money, or pay checks, negotiate orders of withdrawal or share drafts from any principal office, branch, agency, automatic teller machine, or other location in this ~~[State,] state~~, unless expressly authorized by this chapter, other laws of this State, or federal law; provided that nothing in this section shall prohibit any foreign financial institution from participating in the disbursement of cash through an automatic teller machine network or from operating from any location in this ~~[State] state~~ as a ~~[mortgage broker licensed under chapter 454, loan originator licensed]~~ licensee under chapter 454F, or as a real estate collection servicing agent."

SECTION 8. Section 454F-1, Hawaii Revised Statutes, is amended as follows:

1. By adding twelve new definitions to be appropriately inserted and to read:

"Borrower" means a person who has applied for or obtained a residential mortgage loan from or through a licensed mortgage loan originator or mortgage loan originator company or from a person required to be licensed as a mortgage loan originator or mortgage loan originator company under this chapter.

"Branch office" means any location, separate from the principal place of business of the mortgage loan originator company that is identified by any means to the public or customers as a location at which the licensee holds itself out as a mortgage loan originator company.

"Control" means the power, either directly or indirectly, to direct management or policies of a company, whether through ownership of securities, by contract, or otherwise.

"Control person" means an individual who directly or indirectly exercises control over a licensee or applicant.

"Division" means the division of financial institutions of the department of commerce and consumer affairs.

"Employee" means an individual who is:

- (1) Hired to provide services for a licensee on a regular basis in exchange for compensation and who does not provide these services as part of the individual's independent business;
- (2) Subject to tax withholding, the Federal Income Contributions Act, and other lawful deductions by the licensee as a condition of employment; and
- (3) Subject to the right of the licensee to direct and control the actions of the individual.

"Exempt registered mortgage loan originator company" means any person, including an insured depository institution, who is required to be licensed by any other state or federal law but is not required to be licensed under this

chapter, and has the obligation to register with the Nationwide Mortgage Licensing System because one or more of the person's employees engage in the business of a mortgage loan originator.

"Independent contractor" means any person who has a contractual arrangement to perform mortgage loan originating, underwriting, or loan processing services to a licensee, but is not an employee of a licensee.

"License" means a license issued under this chapter.

"Licensee" means a mortgage loan originator, a mortgage loan originator company, or a person who is required to be licensed under this chapter. Licensee does not include an exempt registered mortgage loan originator or exempt registered mortgage loan originator company as defined by this section.

"Mortgage loan originator company" means:

- (1) An individual not exempt under section 454F-2 who engages in the business of a mortgage loan originator as a sole proprietorship; or
- (2) A person not exempt under section 454F-2 who employs or uses the exclusive services of one or more mortgage loan originators licensed or required to be licensed under this chapter.

"Taking a residential mortgage loan application" means receipt of a request or of a response to a solicitation of an offer from a borrower, either directly or indirectly, for the purpose of deciding whether or not to extend an offer of a loan to the borrower. Taking a residential mortgage loan application does not include mere physical handling or transmission of a form."

2. By amending the definitions of "advertisement" or "advertising", "applicant", "insured depository institution", "loan processor or underwriter", "mortgage loan originator", "Nationwide Mortgage Licensing System", "registered mortgage loan originator", and "residential mortgage loan" to read:

"Advertisement" or "advertising" means:

- (1) Issuing any card, sign, or device to any person;
- (2) Causing, permitting, or allowing the placement of any sign or marking on or in any building, vehicle, or structure;
- (3) Placing an advertisement in any newspaper, magazine, or on the Internet;
- (4) Listing or advertising in any directory under a classification or heading that includes the words "mortgage loan originator", "mortgage loan originator company", or the like;
- (5) Broadcasting commercials by airwave or [~~internet~~] Internet transmission; or
- (6) Transmitting any written communication, including:
  - (A) A letter or a postcard that encourages a person to borrow from or through a mortgage loan originator~~;~~ or a mortgage loan originator company; or
  - (B) A written communication that encourages a person to refinance the person's existing residential mortgage loan and mentions that a new residential mortgage loan will reduce the monthly payment the borrower will pay on the new residential mortgage loan or reduce the interest rate on the borrower's existing residential mortgage loan.

"Applicant" means [~~an individual~~] a person applying for the issuance of a license or a renewal of a license under this chapter.

"Insured depository institution" means the same as in 12 United States Code Section 1813(c)(2); provided that it also includes any credit union [whose deposits are insured by the National Credit Union Association].

"Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the



supervision and instruction of a ~~[mortgage loan originator or a]~~ person ~~[who is]~~ licensed or exempt from licensing [as a mortgage loan originator] under this chapter.

“Mortgage loan originator” ~~[means]:~~

- (1) Means an individual who for compensation or gain or in the expectation of compensation or gain:
  - ~~[(1)]~~ (A) Takes a residential mortgage loan application; or
  - ~~[(2)]~~ (B) Offers or negotiates terms of a residential mortgage loan~~[-];~~ and
- (2)<sup>1</sup> Includes an independent contractor as defined in this section.

“Nationwide Mortgage Licensing System” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of ~~[licensed]~~ mortgage loan originators~~[-]~~, mortgage loan originator companies, exempt registered mortgage loan originators, and exempt registered mortgage loan originator companies as defined by this chapter.

~~["Registered"]~~ “Exempt registered mortgage loan originator” means any individual who:

- (1) Meets the definition of mortgage loan originator and is an employee of:
  - (A) An insured depository institution;
  - (B) A subsidiary that is:
    - (i) Owned and controlled by an insured depository institution; and
    - (ii) Regulated by a federal banking agency; or
  - (C) An institution regulated by the Farm Credit Administration; and
- (2) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System ~~[and Registry.]~~ but is not required to be licensed under this chapter.

“Residential mortgage loan” or “residential mortgage transaction” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling as defined in Section 103(v) of the Truth in Lending Act, 15 United States Code ~~[Section 1601 et seq.]~~ Section 1602 or residential real estate.”

SECTION 9. Section 454F-2, Hawaii Revised Statutes, is amended to read as follows:

~~“[§454F-2] Exemptions.~~ This chapter shall not apply to the following:

- (1) ~~[A]~~ An exempt registered mortgage loan originator, when acting for an insured depository institution, a subsidiary of an insured depository institution regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration;
- (2) Any individual who offers or negotiates terms of a residential mortgage loan with, or on behalf of, an immediate family member of the individual;
- (3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual’s residence;
- (4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney’s representation of the client unless the attorney is compensated

- by a lender, a mortgage [~~broker,~~] loan originator company, or other mortgage loan originator or by an agent of a lender, mortgage [~~broker,~~] loan originator company, or other mortgage loan originator;
- (5) ~~An individual engaging solely in loan processor or underwriter activities; provided that an individual, including an independent contractor, who performs the services of a loan processor or underwriter shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator, and any loan processor or underwriter, including an independent contractor, who advertises that the individual can or will perform any of the activities of a mortgage loan originator or engages in the activities of a mortgage loan originator shall not be exempt under this chapter and shall obtain and maintain a license under this chapter and a valid unique identifier issued by the Nationwide Mortgage Licensing System;~~
- (6) (5) A person or entity that only performs real estate brokerage activities and is licensed or registered by the State unless the person or entity is compensated by a lender, a mortgage [~~broker,~~] loan originator company, or other mortgage loan originator or by an agent of the lender, mortgage [~~broker,~~] loan originator company, or other mortgage loan originator; ~~or~~
- (7) (6) A person or entity solely involved in extensions of credit relating to timeshare plans, as the term is defined in Section 101(53D) of Title 11, United States Code[-];
- (7) An exempt registered mortgage loan originator company as defined by this chapter; or
- (8) An insured depository institution.”

SECTION 10. Section 454F-3, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§454F-3]]~~ **Requirement of licensure.** (a) Effective [~~August 1, 2010,~~] January 1, 2011, or such later date approved by the United States Department of Housing and Urban Development pursuant to the authority granted under Public Law 110-289, Section 1508(e), [~~an individual,~~] 12 United States Code Section 5107(e), a person, unless specifically exempted from this chapter, shall not engage in the business of a mortgage loan originator or mortgage loan originator company with respect to any dwelling located in this [~~State~~] state without first obtaining and maintaining annually, a license under this chapter. Each licensed mortgage loan originator or mortgage loan originator company shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System, and shall submit to the Nationwide Mortgage Licensing System any reports that shall be in a form and contain information as the Nationwide Mortgage Licensing System may require.

A mortgage broker or mortgage solicitor who holds a license under chapter 454 that is valid as of December 31, 2010 and who creates a record and obtains a unique identifying number in the Nationwide Mortgage Licensing System by November 30, 2010 shall be determined to be in compliance with the licensing provisions of this chapter until the commissioner makes a final determination on the issuance or denial of the individual's license.

(b) An independent contractor shall not engage in the activities of a loan processor or underwriter without a license pursuant to section 454F-4. Each

independent contractor licensed as a mortgage loan originator shall obtain and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System. An independent contractor who is not an exclusive agent of a mortgage loan originator company, in addition to obtaining a license as a mortgage loan originator, shall obtain a license as a mortgage loan originator company.

(c) A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information, including through business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator, who does not advertise that the individual can or will perform any of the activities of a mortgage loan originator, and who does not engage in the activities of a mortgage loan originator shall not be required to be licensed under this chapter.

(d) Upon obtaining a incensing<sup>2</sup> determination under this chapter, an applicant's license issued under chapter 454 shall automatically terminate.

(e) If this section or any provision of this section conflicts at any time with any federal law, then the federal law shall prevail and this section or the relevant provisions of this section shall become ineffective and invalid. The ineffectiveness or invalidity of this section or any of its provisions shall not affect any other provisions or applications of this chapter which shall be given effect without the invalid provision or application, and to this end, the provisions of this section are severable."

SECTION 11. Section 454F-4, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[~~§454F-4~~]]~~ License and registration; application; issuance.** (a) Applicants for a license shall apply in a form as prescribed by the Nationwide Mortgage Licensing System or by the commissioner.

(b) To fulfill the purposes of this chapter, the commissioner shall establish relationships or contracts with the Nationwide Mortgage Licensing System or other entities designated by the Nationwide Mortgage Licensing System to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(c) For the purpose and the extent necessary to participate in the Nationwide Mortgage Licensing System, the commissioner may waive or modify, in whole or in part, by rule or order, any or all of the requirements of this chapter and [tø] establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System.

(d) In connection with an application for [~~licensing as a mortgage loan originator,~~] a license under this chapter, the applicant, at a minimum, shall furnish to the commissioner and to the Nationwide Mortgage Licensing System information concerning the applicant's identity, including:

- (1) Fingerprints of the applicant and, in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive the fingerprints for a state, national, and international criminal history background check; and
- (2) Personal history and experience of the applicant and, in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members in a form prescribed by the Nationwide Mortgage Li-

censing System including the submission of authorization for the Nationwide Mortgage Licensing System and the commissioner to obtain:

- (A) An independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act, 15 United States Code 1681 et seq.; and
  - (B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.
- (e) The commissioner may use the Nationwide Mortgage Licensing System as an agent for requesting information from and distributing information to the Department of Justice or any governmental agency.
- (f) The commissioner may use the Nationwide Mortgage Licensing System as an agent for requesting and distributing information to and from any source directed by the commissioner.

(g) An applicant for a license as a mortgage loan originator company that is a person other than an individual shall be registered with the business registration division of the department of commerce and consumer affairs to do business in this state before a license pursuant to this chapter shall be granted.

SECTION 12. Section 454F-5, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§454F-5]]~~ Issuance of license. (a) The commissioner shall not issue a ~~[mortgage loan originator]~~ license pursuant to this chapter unless the commissioner makes at a minimum the following findings:**

- (1) The applicant, or in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has never had a mortgage loan originator or a mortgage loan originator company license revoked in any jurisdiction; provided that a subsequent formal vacation of a revocation shall not be deemed a revocation;
- (2) The applicant, or in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has not been convicted of, or pled guilty or nolo contendere, or been granted a deferred acceptance of a guilty plea under chapter 853 to a felony in a domestic, foreign, or military court:
  - (A) During the seven-year period preceding the date of the application for licensing and registration; or
  - (B) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering;

provided that any pardon of a conviction shall not be deemed a conviction for purposes of this section;

- (3) The applicant, or in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has demonstrated financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the ~~[mortgage loan originator]~~ applicant shall operate honestly, fairly, and efficiently pursuant to this chapter. For purposes of this paragraph, a person is not financially responsible when the person has shown a disregard in the management of the person's financial

condition. A determination that ~~[an individual]~~ a person has not shown financial responsibility may be based on:

- (A) Current outstanding judgments, except judgments solely as a result of medical expenses;
  - (B) Current outstanding tax liens or other government liens and filings;
  - (C) Foreclosures within the past three years; and
  - (D) A pattern of seriously delinquent accounts within the past three years;
- (4) The applicant, or in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has not been convicted of any misdemeanor involving an act of fraud, dishonesty, breach of trust, or money laundering;
- [(4)] (5) The applicant, or in the case of an applicant that is not an individual, each individual mortgage loan originator who is employed by the mortgage loan originator company or who provides exclusive services to the applicant as a mortgage loan originator, has completed the pre-licensing education requirement described in section 454F-6;
- [(5)] (6) The applicant, or in the case of an applicant that is not an individual, each individual mortgage loan originator who is employed by the mortgage loan originator company or who provides exclusive services to the applicant as a mortgage loan originator, has passed a written test that meets the test requirements in section 454F-7; and
- [(6)] (7) The applicant has met the ~~[surety bond]~~ mortgage loan recovery fund requirement as required in section ~~[454F-13.]~~ 454F-C.

(b) The applicant, or in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managers, shall submit authorization to the commissioner for the commissioner to conduct background checks to determine or verify the information in subsection (a) in each state where the person has conducted mortgage loan origination activities. Authorization pursuant to this subsection shall include consent to provide additional fingerprints, if necessary, to law enforcement or regulatory bodies in other states."

SECTION 13. Section 454F-6, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:
 

"(a) ~~[A person]~~ An applicant for licensure as a mortgage loan originator shall complete at least twenty hours of pre-licensing education approved in accordance with subsection (b) that includes:

  - (1) Three hours of federal law and regulations;
  - (2) Three hours of ethics, that shall include instruction on fraud, consumer protection, and fair lending issues; and
  - (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace."
  2. By amending subsection (e) to read:
 

"(e) The pre-licensing education requirements approved by the Nationwide Mortgage Licensure System ~~[in subsection (a)]~~ for any state shall be accepted as credit towards completion of pre-licensing education requirements in this ~~[State.]~~ state."

SECTION 14. Section 454F-7, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) ~~[In order to]~~ To meet the passing of the written test requirement in section 454F-5, an applicant for licensure as a mortgage loan originator shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and administered by a test provider approved by the Nationwide Mortgage Licensing System based upon reasonable standards.”

2. By amending subsection (d) to read:

“(d) An individual shall have passed a qualified written test if the individual achieves a test score of seventy-five per cent of the correct answers to questions or better. An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test. After failing three consecutive tests, an individual shall wait at least six months before taking the test again. A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer not taking into account any time during which the individual is ~~[a]~~ an exempt registered mortgage loan originator, shall retake the test.”

SECTION 15. Section 454F-8, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§454F-8]]~~ **Standards for license renewal.** (a) The minimum standards for license renewal for mortgage loan originators shall include the following:

- (1) The mortgage loan originator continues to meet the minimum standards for licensure under section 454F-5;
- (2) The mortgage loan originator has satisfied the annual continuing education requirements in section 454F-9; and
- (3) The mortgage loan originator has paid all required fees for renewal of the license.

(b) The minimum standards for license renewal for mortgage loan originator companies shall include the following:

- (1) The mortgage loan originator company continues to meet the minimum standards for licensure established pursuant to section 454F-5;
- (2) The mortgage loan originator company's qualified manager has satisfied the minimum standards for license renewal; and
- (3) The mortgage loan originator company has paid all required fees for renewal of the license.

~~[(b)]~~ (c) The license of a mortgage loan originator [who] or mortgage loan originator company that fails to satisfy the minimum standards for license renewal shall expire. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with section 454F-K and the standards established by the Nationwide Mortgage Licensing System.”

SECTION 16. Section 454F-9, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (d) and (e) to read:

“(d) Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System ~~[and Registry].~~

(e) A licensed mortgage loan originator:

- (1) May only receive credit for a continuing education course in the year in which the course is taken, except for continuing education credits received pursuant to this chapter; and
- (2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education[-]; provided that the term "successive years" shall mean the two years following the year in which a mortgage loan originator takes an approved course."

2. By amending subsection (i) to read:

"(i) [A person] The license of a licensee meeting the requirements of section 454F-8(a)(1) and (3) [may make up any deficiency in continuing education as established by rule adopted by the commissioner] shall expire if the licensee fails to meet the minimum requirements for continuing education. Reinstatement of the expired license shall be allowed as provided for in section 454F-K."

SECTION 17. Section 454F-10, Hawaii Revised Statutes, is amended to read as follows:

**"[§454F-10] Authority to require license.** In addition to any other duties imposed upon the commissioner, the commissioner shall require mortgage loan originators and mortgage loan originator companies to be licensed and registered through the Nationwide Mortgage Licensing System. The commissioner is authorized to participate in the Nationwide Mortgage Licensing System. The commissioner may establish by rule pursuant to chapter 91, requirements for mortgage loan originators[-] and mortgage loan originator companies, including:

- (1) Background checks of:
  - (A) Criminal history through fingerprint or other databases;
  - (B) Civil or administrative records;
  - (C) Credit history; and
  - (D) Any other source deemed necessary by the Nationwide Mortgage Licensing System ~~[and Registry]~~;
- (2) Fees to apply for or renew licenses through the Nationwide Mortgage Licensing System;
- (3) The setting or resetting as necessary of license renewal and reporting dates;
- (4) Requirements for amending or surrendering a license; and
- (5) Any other activity the commissioner deems necessary to participate in the Nationwide Mortgage Licensing System."

SECTION 18. Section 454F-11, Hawaii Revised Statutes, is amended to read as follows:

**"[§454F-11] Nationwide Mortgage Licensing System; registry information; challenge process.** The commissioner shall establish a process by rule pursuant to chapter 91 whereby ~~[mortgage loan originators]~~ a licensee may challenge information entered into the Nationwide Mortgage Licensing System by the commissioner."

SECTION 19. Section 454F-12, Hawaii Revised Statutes, is amended to read as follows:

**“[§454F-12] Enforcement authorities; violations; penalties.** (a) [~~In order to~~] To ensure the effective supervision and enforcement of this chapter, the commissioner may, pursuant to chapter 91:

- (1) Deny, suspend, revoke, condition, or decline to renew a license because of a violation of this chapter, rules, an order, or a directive entered under this chapter;
- (2) Deny, suspend, revoke, condition, or decline to renew a license if an applicant or [~~licensed mortgage loan originator~~] licensee fails at any time to meet the requirements of section 454F-6 or section 454F-8, violates section 454F-17, or withholds information or makes a material misstatement in an application for a license or renewal of a license;
- (3) Order restitution against persons subject to this chapter for violations of this chapter;
- (4) Impose fines on persons subject to this chapter; and
- (5) Issue orders or directives under this chapter as follows:
  - (A) Order or direct persons subject to this chapter to cease and desist from conducting business, including immediate temporary orders to cease and desist;
  - (B) Order or direct persons subject to this chapter to cease any harmful activities or violations of this chapter, including immediate temporary orders to cease and desist;
  - (C) Enter immediate temporary orders to cease doing business under a license [~~or interim license~~] issued pursuant to the authority granted under this chapter if the commissioner determines that the license was erroneously granted or the licensee is currently in violation of this chapter; or
  - (D) Order or direct any other affirmative action as the commissioner deems necessary.

(b) The commissioner may impose [~~a civil penalty~~] an administrative fine on a [~~mortgage loan originator~~] licensee or person subject to this chapter if the commissioner finds on the record after notice and opportunity for hearing that the [~~mortgage loan originator~~] licensee or person subject to this chapter has violated or failed to comply with any requirement of this chapter or any rule prescribed by the commissioner under this chapter or order issued under the authority of this chapter.

(c) The maximum [~~penalty~~] fine for each act or omission described in subsection (b) shall be \$25,000.

(d) Each violation or failure to comply with any directive or order of the commissioner shall be a separate and distinct violation.

(e) Notwithstanding section 480-13.5, any violation of this chapter that is directed toward, targets, or injures an elder, may be subject to an additional civil penalty not in excess of \$10,000 for each violation in addition to any other fines or penalties assessed for the violation.”

SECTION 20. Section 454F-15, Hawaii Revised Statutes, is amended to read as follows:

**“[§454F-15] Investigation and examination authority.** (a) In addition to any other authority under this chapter, the commissioner shall have the authority to conduct investigations and examinations. The commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including:



- (1) Criminal, civil, and administrative history information, including nonconviction data under chapter 853;
- (2) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and
- (3) Any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation, regardless of the location, possession, control, or custody of the documents, information, or evidence.

(b) For the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the commissioner may review, investigate, or examine any ~~[licensed mortgage loan originator, individual,]~~ licensee or person subject to this chapter, as often as necessary ~~[in order]~~ to carry out the purposes of this chapter. The commissioner may direct, subpoena, or order the attendance of, and examine under oath all persons whose testimony may be required about loans or the business or subject matter of any examination or investigation, and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner deems relevant to the inquiry.

(c) Each ~~[licensed mortgage loan originator, individual,]~~ licensee or person subject to this chapter shall provide to the commissioner upon request, the books and records relating to the operations of the licensee~~[-individual,]~~ or person subject to this chapter. The commissioner shall have access to the books and records and shall be permitted to interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensed mortgage loan originator, individual, or person subject to this chapter concerning their business.

(d) Each ~~[licensed mortgage loan originator, individual,]~~ licensee or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including:

- (1) Accounting compilations;
- (2) Information lists and data concerning loan transactions in a format prescribed by the commissioner; or
- (3) Other information deemed necessary to carry out the purposes of this section.

(e) In making any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the ~~[licensed mortgage loan originator]~~ licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no ~~[individual or]~~ person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the ~~[licensed mortgage loan originator]~~ licensee or person under examination or investigation have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the ~~[licensed mortgage loan originator]~~ licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(f) ~~[The]~~ To carry out the purposes of this chapter, the commissioner may:

- (1) Retain attorneys, accountants, or other professionals and specialists, who may be exempt from chapter 76, as examiners, auditors, or

investigators to conduct or assist in the conduct of examinations or investigations;

- (2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;
- (3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the [~~licensed mortgage loan originator, individual,~~] licensee or person subject to this chapter;
- (4) Accept and rely on examination or investigation reports made by other government officials, within or without this [State:] state; and
- (5) Accept audit reports made by an independent certified public accountant for the [~~licensed mortgage loan originator, individual,~~] licensee or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.

(g) The authority of this section shall remain in effect, whether [~~such licensed mortgage loan originator, individual,~~] a licensee or person subject to this chapter acts or claims to act under any licensing or registration law of this [State:] state, or claims to act without such authority.

(h) No [~~licensed mortgage loan originator, individual,~~] licensee or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(i) The commissioner may charge an examination or investigation fee, payable to the division, based upon the cost per hour per examiner for all [~~mortgage loan originators~~] licensees and persons subject to this chapter examined or investigated by the commissioner or the commissioner's staff. The hourly fee shall be \$40 or an amount as the commissioner shall establish by rule pursuant to chapter 91. In addition to the examination or investigation fee, the commissioner may charge any person that is examined or investigated by the commissioner or the commissioner's staff pursuant to this section additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination or investigation, payable to the division.

(j) Any person having reason to believe that this chapter or the rules adopted pursuant thereto have been violated, or that a license issued under this chapter should be suspended or revoked, may file a written complaint with the commissioner setting forth the details of the alleged violation or grounds for suspension or revocation."

SECTION 21. Section 454F-16, Hawaii Revised Statutes, is amended to read as follows:

**"[~~§~~454F-16] Mortgage call reports.** Each [~~licensed mortgage originator~~] licensee, as may be required by 12 United States Code Sections 5101 to 5116, shall submit to the Nationwide Mortgage Licensing System reports of condition, using the form entitled "REPORT OF CONDITION", which shall be in [~~such~~] the form and contain [~~such~~] the information as the Nationwide Mortgage Licensing System may require."

SECTION 22. Section 454F-17, Hawaii Revised Statutes, is amended to read as follows:

**“~~§~~454F-17 Prohibited practices.** It shall be a violation of this chapter for a ~~[mortgage loan originator]~~ licensee or person subject to this chapter to:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (2) Engage in any unfair or deceptive practice toward any person;
- (3) Obtain property by fraud or misrepresentation;
- (4) Solicit or enter into any contract with a borrower that provides in substance that the person or individual subject to this chapter may earn a fee or commission through “best efforts” to obtain a loan even though no loan is actually obtained for the borrower;
- (5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
- (6) Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter;
- (7) Fail to make disclosures as required by this chapter and any other applicable state or federal law including rules or regulations thereunder;
- (8) Fail to comply with this chapter or ~~[rules]~~ any order or rule issued or adopted under the authority of this chapter, or fail to comply with any other state or federal law, including the rules and regulations adopted thereunder, applicable to any business authorized or conducted pursuant to this chapter;
- (9) Make, in any manner, any false or deceptive statement or representation, including with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;
- (10) Negligently make any false statement or provide any misleading information or knowingly and wilfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System, including an application for a license under this chapter, or in connection with any examination or investigation conducted by the commissioner or another government agency;
- (11) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property for the purpose of influencing the independent judgment of the appraiser with respect to the value of a property;
- (12) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter;
- (13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;
- (14) Fail to truthfully account for moneys belonging to a party to a residential mortgage loan transaction; or

- (15) Deliver a misleading or deceptive communication or advertisement, whether written, electronic, or oral, when marketing or soliciting a residential mortgage loan. A communication or advertisement that uses the name or trademark of a financial institution as defined in section 412:1-109 or its affiliates or subsidiaries, or infers that the communication or advertisement is from, endorsed by, is related to, or is the responsibility of the financial institution is a misleading or deceptive communication. Advertising that a specific interest rate, points, or financial terms are available when the rates, points, or financial terms are not actually available is a misleading or deceptive communication.”

SECTION 23. Section 454F-18, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to any other powers provided by law, the commissioner shall have the authority to:

- (1) Administer and enforce the provisions and requirements of this chapter;
- (2) Adopt, amend, or repeal rules and issue declaratory rulings or informal nonbinding interpretations;
- (3) Develop requirements for licensure through rules, including establishing the content of the written tests required under section 454F-7;
- (4) Investigate and conduct hearings regarding any violation of this chapter or any rule or order of, or agreement with, the commissioner;
- (5) Create fact-finding committees that may make recommendations to the commissioner for the commissioner’s deliberations;
- (6) Require an applicant or any of its control persons, officers, directors, employees, partners, members, managers, and agents to disclose their relevant criminal history and request a criminal history record check in accordance with chapter 846;
- (7) Contract with or employ qualified persons, including investigators, examiners, or auditors who may be exempt from chapter 76 and who shall assist the commissioner in exercising the commissioner’s powers and duties;
- (8) Require that all fees, fines, and charges collected by the commissioner under this chapter, except for fees designated for deposit into the mortgage loan recovery fund pursuant to section 454F-C, be deposited into the compliance resolution fund established pursuant to section 26-9(o);
- (9) ~~[Subpoena]~~ Process and investigate complaints, subpoena witnesses and documents, administer oaths, and receive affidavits and oral testimony, including telephonic communications, and do any and all things necessary or incidental to the exercise of the commissioner’s power and duties, including the authority to conduct contested case proceedings under chapter 91; and
- (10) Require a ~~[mortgage loan originator]~~ licensee to comply with any rule, guidance, guideline, statement, supervisory policy or any similar proclamation issued or adopted by the Federal Deposit Insurance Corporation to the same extent and in the same manner as a bank chartered by the State or in the alternative, any policy position of the Conference of State Bank Supervisors.”

SECTION 24. Section 454F-19, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§454F-19]]~~ **Unique identifier shown.** The unique identifier of any person originating a residential mortgage loan, except a person who is exempt from this chapter, shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or websites, and any other documents as established by rule or order of the commissioner.”

SECTION 25. Section 477E-2, Hawaii Revised Statutes, is amended by amending the definition of “creditor” to read as follows:

““Creditor” means any bank; savings and loan association; trust company; financial services loan company; credit union; ~~[mortgage banker, broker, or sealer;]~~ mortgage loan originator; mortgage loan originator company; pawnbroker; mutual benefit society or fraternal benefit society; debt adjuster; the issuer of a credit card as defined in section 708-800; any person who initiates, extends, renews, or continues loans of money or credit; any person who regularly arranges for the initiation, extension, renewal, or continuation of a loan of money or credit; or any assignee of an original creditor who participates in the decision to grant, extend, renew, or to continue a loan of money or credit.”

SECTION 26. 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 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, and, in the case of any of the ~~[above related]~~ above facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;
  - (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;
  - (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;
  - (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
  - (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;

- (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (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;
- (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;
- (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;
- (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (13) 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-4.3;
- (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (15) 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;
- (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (17) 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 pursuant to section 302C-1;
- (18) 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;
- (19) 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, vulnerable 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;
- (20) 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 346-97;
- (21) 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 346-97;

- (22) The department of human services on foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants as provided by section 346-97;
- (23) 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 [(Title, 42 United States Code Section 1396n(c)[)], or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;
- (24) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
- (25) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
- (26) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
- (27) The department of commerce and consumer affairs on:
  - (A) Each principal of every non-corporate applicant for a money transmitter license; and
  - (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license,
 as provided by section 489D-9;
- (28) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;
- (29) The Hawaii health systems corporation on:
  - (A) Employees;
  - (B) Applicants seeking employment;
  - (C) Current or prospective members of the corporation board or regional system board; or
  - (D) Current or prospective volunteers, providers, or contractors, in any of the corporation's health facilities as provided by section 323F-5.5;
- [(30)] The department of commerce and consumer affairs on [an]:
  - (A) An applicant for a mortgage loan [originator's] originator license [as provided by chapter 454F]; and
  - (B) Each control person, executive officer, director, general partner, and manager of an applicant for a mortgage loan originator company license,  
as provided by chapter 454F; and
- [(31)] Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

SECTION 27. Section 454F-13, Hawaii Revised Statutes, is repealed.

SECTION 28. Section 454F-21, Hawaii Revised Statutes, is repealed.

SECTION 29. Chapter 454, Hawaii Revised Statutes, is repealed.

SECTION 30. Act 32, Special Session Laws of Hawaii 2009, is amended by amending section 8 to read as follows:

“SECTION 8. Effective [~~August 1, 2010;~~ January 1, 2011:

- (1) No new license shall be issued and no license renewal shall be effected under chapter 454, Hawaii Revised Statutes; and
- (2) An individual who is subject to this Act shall be required to be licensed under chapter 454F<sup>1</sup>, Hawaii Revised Statutes, or<sup>1</sup> by such later date approved by the United States Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, section 1508(e). [~~As of the date that an individual is required to be licensed under chapter —, Hawaii Revised Statutes, the remaining pro-rata balance of the fees paid by the individual under chapter 454, Hawaii Revised Statutes, shall be applied to the individual's fees due under chapter —, Hawaii Revised Statutes, until exhausted.]”~~]

SECTION 31. Act 32, Special Session Laws of Hawaii 2009, is amended by amending section 11 to read as follows:

“SECTION 11. There is appropriated out of the compliance resolution fund established under section 26-9(o), Hawaii Revised Statutes, the sum of \$159,400 or so much thereof as may be necessary for fiscal year 2009-2010 for all expenses, including the hiring in the division of financial institutions of one permanent working supervisor exempt from chapter 76, Hawaii Revised Statutes; three permanent examiners exempt from chapter 76, Hawaii Revised Statutes; three temporary examiners exempt from chapter 76, Hawaii Revised Statutes; and two permanent office assistants, to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.”

SECTION 32. A person licensed under chapter 454F, Hawaii Revised Statutes, shall not be required to be licensed under chapter 454, Hawaii Revised Statutes, and shall not be subject to the provisions of that chapter upon the effective date of the person's licensure under chapter 454F, Hawaii Revised Statutes; provided that this section shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before the effective date of the person's licensure under chapter 454F, Hawaii Revised Statutes.

SECTION 33. There is appropriated out of the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes, the sum of \$894,077 or so much thereof as may be necessary for fiscal year 2010-2011 for all expenses for establishing and maintaining the licensing regime created by chapter 454F, Hawaii Revised Statutes, and the hiring of and continued funding for positions in the division of financial institutions authorized under Act 32, Special Session Laws of Hawaii 2009, for which moneys were appropriated under section 11, Act 32, Special Session Laws of Hawaii 2009, including one permanent working supervisor exempt from chapter 76, Hawaii Revised Statutes; three permanent examiners exempt from chapter 76, Hawaii Revised Statutes; three temporary examiners exempt from chapter 76, Hawaii Revised Statutes; and two permanent office assistants, one of whom may be paid out of the mortgage loan recovery fund established by section 454F-C, Hawaii Revised Statutes.

The sum appropriated shall be expended by the division of financial institutions of the department of commerce and consumer affairs for the purposes of this Act.



SECTION 34. To timely implement the licensure requirements of chapter 454F, Hawaii Revised Statutes, the director of commerce and consumer affairs, pursuant to the authority granted by section 78-27, Hawaii Revised Statutes, may execute agreements with the director of human resources development and the director of taxation to participate in a program of temporary exchange of employees that allows employees of the department of human resources development and the department of taxation to assist the division of financial institutions of the department of commerce and consumer affairs in processing applications for licensure under chapter 454F, Hawaii Revised Statutes. The director of human resources development and the director of taxation shall exercise their respective authority under section 78-27, Hawaii Revised Statutes, to participate fully and in good faith in agreements entered into pursuant to this section.

SECTION 35. This Act, including the repeal of chapter 454, Hawaii Revised Statutes, effectuated by section 29, does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 36. In codifying the new sections added by section 3 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 37. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>4</sup>

SECTION 38. This Act shall take effect on July 1, 2010; provided that sections 6, 7, 25, and 29 shall take effect on January 1, 2011; provided further that sections 30 and 31 shall take effect upon approval.

(Approved May 7, 2010.)

Notes

- 1. Should be underscored.
- 2. So in original.
- 3. Period should not be underscored.
- 4. Edited pursuant to HRS §23G-16.5.

ACT 85

S.B. NO. 2449

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 by amending subsection (f) to read as follows:

“(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[;] or has attained the age of eighteen, whichever comes first;
- (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.”

SECTION 2. Act 72, Session Laws of Hawaii 2005, is amended by amending section 15 to read as follows:

“SECTION 15. This Act shall take effect on January 9, 2006~~], provided that on January 9, 2011, this Act shall be repealed and sections 286-102, 286-104, 286-106, 286-108, 286-110, 286-111, 286-112, 286-113, 286-114, and 286-117, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act].”~~

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

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

(Approved May 7, 2010.)

## ACT 86

H.B. NO. 2094

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Hawaii Pacific Health.

*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 is beneficial to the public health, safety, and general welfare.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$75,000,000, in one or more series, for the purpose of assisting Hawaii Pacific Health, a nonprofit corporation, the obligated group in which Hawaii Pacific Health is a member, one or more of its not-for-profit affiliates, or any combination thereof, in financing, refinancing, or reimbursing costs related to the acquisition or construction of health care facilities. The legislature finds and determines that the activities and facilities of Hawaii Pacific Health, its obligated group and its affiliates constitute projects as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing, refinancing and/or reimbursing thereof constitutes assistance to a not-for-profit corporation that provides health care facilities to the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2015, 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

## ACT 87

bonds for the projects 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. Such refunding special purpose revenue bonds may be issued in one or more series for the refunding of the special purpose revenue bonds authorized in section 2 or this section and may be combined into a single issue of refunding special purpose revenue bonds, in one or more series, with refunding special purpose revenue bonds to be issued by the department to refund any other special purpose revenue bonds authorized by any one or more other separate acts of the legislature pursuant to part II, chapter 39A, Hawaii Revised Statutes.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2015.

SECTION 6. This Act shall take effect on July 1, 2010.

(Approved May 7, 2010.)

## ACT 87

S.B. NO. 2702

A Bill for an Act Relating to a Major Disaster Trust Account.

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

SECTION 1. During a disaster, the state civil defense division of the department of defense advances payments for disaster relief out of the major disaster fund, which is usually supplemented by department of defense operating funds and general fund moneys, until the moneys are reimbursed by the Federal Emergency Management Agency. However, reimbursements can take up to a year or more. Moreover, federal reimbursements received after June 30 are lapsed into the general fund of the State, which places further strain on the department's already tight budget.

Allowing federal reimbursements to be held in a trust account would ensure that those funds do not lapse at the end of the fiscal year, which means the department would no longer have to use operating funds for emergency disaster relief.

The purpose of this Act is to allow federal reimbursement moneys for disaster relief to be deposited into a trust account for disaster relief.

SECTION 2. Section 127-11, Hawaii Revised Statutes, is amended to read as follows:

“§127-11 Major disaster fund. (a) 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 \$2,000,000 for immediate relief of any single major disaster or emergency; and
- (2) In addition to the funds in paragraph (1), an additional \$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.

(b) Federal reimbursement moneys for disaster relief shall be deemed to be trust moneys and may be deposited into a trust account with and under the control of the department of defense. These moneys and any interest earned thereon shall be used for the purpose identified in subsection (a) and shall not lapse into the general fund.

SECTION 3. New statutory material is underscored.

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

(Approved May 10, 2010.)

## ACT 88

H.B. NO. 1900

A Bill for an Act Relating to Military Personnel.

*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:

**“§ - Prisoner of war and missing in action designations.** The State of Hawaii hereby recognizes the designations of prisoner of war and missing in action as valid descriptions of casualty status and category classification for military personnel.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

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

(Approved May 10, 2010.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 89

S.B. NO. 910

A Bill for an Act Relating to the Transfer of Homeless Programs Within the Department of Human Services.

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

SECTION 1. The purpose of this Act is to transfer the functions and duties of the homeless programs branch of the Hawaii public housing authority, an agency attached to the department of human services, to the benefit, employment, and support services division of the department of human services. The benefit, employment, and support services division is the appropriate place within the department of human services to embed homeless programs since

the division offers programs that give homeless individuals the tools to attain self-sufficiency, such as employment and job training, child care, and general assistance. This realignment will improve the department of human services' coordination and delivery of homeless services to Hawaii's homeless population, both individuals and families.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . HOMELESS PROGRAMS**

**§346-A 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 a specified period of time.

“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 department 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 department 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
- (2) A nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax; that has a governing board whose members have no material conflict of interest and who serve without compensation, and that has adopted bylaws or policies that describe the manner in which business is conducted, includ-

ing 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.

**§346-B Duties.** (a) The department of human services 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 department 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.

**§346-C Exception to liability for donors.** (a) Any donor who gives money to a provider agency, to a homeless facility to or through the department, 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 department, 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 department a full disclosure of all the dangers concerning the land and improvements known to the donor, 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 department shall be responsible for inspecting, reviewing, analyzing, qualifying, and determining that the land, structures, materials, or services donated to the department for use by the department in facilities for the homeless are reasonably safe for public use.

**§346-D Contract or conveyance to the department.** 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 department or its designee. The land and improvements shall be used by the department or its designee for homeless facilities or for any other program for the homeless authorized by this part.

**§346-E Program administration.** To the extent that appropriations are made available, the department 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, and 103. The selection of provider agencies shall be subject to qualifying standards and criteria established by rule.

The provider agency shall be qualified by the department 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.

**§346-F 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 three days after a vacancy occurs, 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 department for a maximum period of fourteen days for the purpose of implementing repairs to the subject shelter that the department deems major or extensive.

**§346-G 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 department 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 department 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 department may establish by rule standards and criteria for eligibility, need, and priority for each program; provided that the department may establish by rule exceptions to these eligibility requirements based on special circumstances.

**§346-H 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 department 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 for 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 department or its designee, or provider agencies together with the department, may act to bar homeless families or individuals from participating further in any homeless facility or services, may issue a writ of possession, and take other actions as provided by rule.

The enforcement of a writ of possession shall be effected either by an officer appointed by the department, 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 department or its designee, or the provider agency designated by the department, 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 department or its designee or the provider agency. The department or its designee or the provider agency shall have a lien on the property so removed for the expenses incurred 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 department 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. 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.

**§346-I 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.

**§346-J 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 department 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.



**§346-K Annual performance audits.** (a) The department 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 department a financial audit and report when requested, but no later than every three years. The audit shall be 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 department.

(c) Failure to carry out the recommendations made by the auditing agency may be grounds for the department to bar a provider agency from further contracts for programs authorized by this part until the barred provider has addressed all deficiencies.

**§346-L 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.

**§346-M Construction of part.** If there is any conflict between this part and any other law, this part shall control.

**§346-N Homeless shelter stipends.** (a) The stipend limits per shelter unit of zero bedrooms shall be adjusted by the department 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 proportional to the difference in unit size.

(b) The department 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, if the department itself operates and manages a homeless facility, to the department 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.

(c) In making homeless shelter stipend payments to a provider agency, the department may establish minimum services to be provided by the provider agency to homeless families or individuals at the provider agency's shelter. The department may also direct provider agencies to establish and manage a savings account program as described in subsection (d). Additionally, the department 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 department 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 department 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.

**§346-O Temporary emergency shelter.** (a) In addition to any other duties prescribed by law, the department 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 department 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, state, and federal lands.

**§346-P Additional powers.** The powers conferred upon the department 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.”

SECTION 3. Section 46-1.5, Hawaii Revised Statutes, is amended to read as follows:

**“§46-1.5 General powers and limitation of the counties.** Subject to general law, each county shall have the following powers and shall be subject to the following liabilities and limitations:

- (1) Each county shall have the power to frame and adopt a charter for its own self-government that shall establish the county executive, administrative, and legislative structure and organization, including but not limited to the method of appointment or election of officials, their duties, responsibilities, and compensation, and the terms of their office;
- (2) Each county shall have the power to provide for and regulate the marking and lighting of all buildings and other structures that may be obstructions or hazards to aerial navigation, so far as may be necessary or proper for the protection and safeguarding of life, health, and property;
- (3) Each county shall have the power to enforce all claims on behalf of the county and approve all lawful claims against the county, but shall be prohibited from entering into, granting, or making in any manner any contract, authorization, allowance payment, or liability contrary to the provisions of any county charter or general law;
- (4) Each county shall have the power to make contracts and to do all things necessary and proper to carry into execution all powers vested in the county or any county officer;
- (5) Each county shall have the power to:
  - (A) Maintain channels, whether natural or artificial, including their exits to the ocean, in suitable condition to carry off storm waters;
  - (B) Remove from the channels, and from the shores and beaches, any debris that is likely to create an unsanitary condition or become a public nuisance; provided that, to the extent any of

the foregoing work is a private responsibility, the responsibility may be enforced by the county in lieu of the work being done at public expense;

- (C) Construct, acquire by gift, purchase, or by the exercise of eminent domain, reconstruct, improve, better, extend, and maintain projects or undertakings for the control of and protection against floods and flood waters, including the power to drain and rehabilitate lands already flooded; and
- (D) Enact zoning ordinances providing that lands deemed subject to seasonable, periodic, or occasional flooding shall not be used for residence or other purposes in a manner as to endanger the health or safety of the occupants thereof, as required by the Federal Flood Insurance Act of 1956 (chapter 1025, Public Law 1016);
- (6) Each county shall have the power to exercise the power of condemnation by eminent domain when it is in the public interest to do so;
- (7) Each county shall have the power to exercise regulatory powers over business activity as are assigned to them by chapter 445 or other general law;
- (8) Each county shall have the power to fix the fees and charges for all official services not otherwise provided for;
- (9) Each county shall have the power to provide by ordinance assessments for the improvement or maintenance of districts within the county;
- (10) Except as otherwise provided, no county shall have the power to give or loan credit to, or in aid of, any person or corporation, directly or indirectly, except for a public purpose;
- (11) Where not within the jurisdiction of the public utilities commission, each county shall have the power to regulate by ordinance the operation of motor vehicle common carriers transporting passengers within the county and adopt and amend rules the county deems necessary for the public convenience and necessity;
- (12) Each county shall have the power to enact and enforce ordinances necessary to prevent or summarily remove public nuisances and to compel the clearing or removal of any public nuisance, refuse, and uncultivated undergrowth from streets, sidewalks, public places, and unoccupied lots. In connection with these powers, each county may impose and enforce liens upon the property for the cost to the county of removing and completing the necessary work where the property owners fail, after reasonable notice, to comply with the ordinances. The authority provided by this paragraph shall not be self-executing, but shall become fully effective within a county only upon the enactment or adoption by the county of appropriate and particular laws, ordinances, or rules defining "public nuisances" with respect to each county's respective circumstances. The counties shall provide the property owner with the opportunity to contest the summary action and to recover the owner's property;
- (13) Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and to preserve the order and security of the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute where the statute does not disclose an express or implied intent that the statute shall be exclusive or uniform throughout the State;

- (14) Each county shall have the power to:
- (A) Make and enforce within the limits of the county all necessary ordinances covering all:
    - (i) Local police matters;
    - (ii) Matters of sanitation;
    - (iii) Matters of inspection of buildings;
    - (iv) Matters of condemnation of unsafe structures, plumbing, sewers, dairies, milk, fish, and morgues; and
    - (v) Matters of the collection and disposition of rubbish and garbage;
  - (B) Provide exemptions for homeless facilities and any other program for the homeless authorized by part of chapter [356D,] 346 for all matters under this paragraph;
  - (C) Appoint county physicians and sanitary and other inspectors as necessary to carry into effect ordinances made under this paragraph, who shall have the same power as given by law to agents of the department of health, subject only to limitations placed on them by the terms and conditions of their appointments; and
  - (D) Fix a penalty for the violation of any ordinance, which penalty may be a misdemeanor, petty misdemeanor, or violation as defined by general law;
- (15) Each county shall have the power to provide public pounds; to regulate the impounding of stray animals and fowl, and their disposition; and to provide for the appointment, powers, duties, and fees of animal control officers;
- (16) Each county shall have the power to purchase and otherwise acquire, lease, and hold real and personal property within the defined boundaries of the county and to dispose of the real and personal property as the interests of the inhabitants of the county may require, except that:
- (A) Any property held for school purposes may not be disposed of without the consent of the superintendent of education;
  - (B) No property bordering the ocean shall be sold or otherwise disposed of; and
  - (C) All proceeds from the sale of park lands shall be expended only for the acquisition of property for park or recreational purposes;
- (17) Each county shall have the power to provide by charter for the prosecution of all offenses and to prosecute for offenses against the laws of the State under the authority of the attorney general of the State;
- (18) Each county shall have the power to make appropriations in amounts deemed appropriate from any moneys in the treasury, for the purpose of:
- (A) Community promotion and public celebrations;
  - (B) The entertainment of distinguished persons as may from time to time visit the county;
  - (C) The entertainment of other distinguished persons, as well as, public officials when deemed to be in the best interest of the community; and
  - (D) The rendering of civic tribute to individuals who, by virtue of their accomplishments and community service, merit civic commendations, recognition, or remembrance;

- (19) Each county shall have the power to:
  - (A) Construct, purchase, take on lease, lease, sublease, or in any other manner acquire, manage, maintain, or dispose of buildings for county purposes, sewers, sewer systems, pumping stations, waterworks, including reservoirs, wells, pipelines, and other conduits for distributing water to the public, lighting plants, and apparatus and appliances for lighting streets and public buildings, and manage, regulate, and control the same;
  - (B) Regulate and control the location and quality of all appliances necessary to the furnishing of water, heat, light, power, telephone, and telecommunications service to the county;
  - (C) Acquire, regulate, and control any and all appliances for the sprinkling and cleaning of the streets and the public ways, and for flushing the sewers; and
  - (D) Open, close, construct, or maintain county highways or charge toll on county highways; provided that all revenues received from a toll charge shall be used for the construction or maintenance of county highways;
- (20) Each county shall have the power to regulate the renting, subletting, and rental conditions of property for places of abode by ordinance;
- (21) Unless otherwise provided by law, each county shall have the power to establish by ordinance the order of succession of county officials in the event of a military or civil disaster;
- (22) Each county shall have the power to sue and be sued in its corporate name;
- (23) Each county shall have the power to establish and maintain waterworks and sewer works; to collect rates for water supplied to consumers and for the use of sewers; to install water meters whenever deemed expedient; provided that owners of premises having vested water rights under existing laws appurtenant to the premises shall not be charged for the installation or use of the water meters on the premises; to take over from the State existing waterworks systems, including water rights, pipelines, and other appurtenances belonging thereto, and sewer systems, and to enlarge, develop, and improve the same;
- (24) (A) Each county may impose civil fines, in addition to criminal penalties, for any violation of county ordinances or rules after reasonable notice and requests to correct or cease the violation have been made upon the violator. Any administratively imposed civil fine shall not be collected until after an opportunity for a hearing under chapter 91. Any appeal shall be filed within thirty days from the date of the final written decision. These proceedings shall not be a prerequisite for any civil fine or injunctive relief ordered by the circuit court;
- (B) Each county by ordinance may provide for the addition of any unpaid civil fines, ordered by any court of competent jurisdiction, to any taxes, fees, or charges, with the exception of fees or charges for water for residential use and sewer charges, collected by the county. Each county by ordinance may also provide for the addition of any unpaid administratively imposed civil fines, which remain due after all judicial review rights under section 91-14 are exhausted, to any taxes, fees, or charges, with the exception of water for residential use and

sewer charges, collected by the county. The ordinance shall specify the administrative procedures for the addition of the unpaid civil fines to the eligible taxes, fees, or charges and may require hearings or other proceedings. After addition of the unpaid civil fines to the taxes, fees, or charges, the unpaid civil fines shall not become a part of any taxes, fees, or charges. The county by ordinance may condition the issuance or renewal of a license, approval, or permit for which a fee or charge is assessed, except for water for residential use and sewer charges, on payment of the unpaid civil fines. Upon recordation of a notice of unpaid civil fines in the bureau of conveyances, the amount of the civil fines, including any increase in the amount of the fine which the county may assess, shall constitute a lien upon all real property or rights to real property belonging to any person liable for the unpaid civil fines. The lien in favor of the county shall be subordinate to any lien in favor of any person recorded or registered prior to the recordation of the notice of unpaid civil fines and senior to any lien recorded or registered after the recordation of the notice. The lien shall continue until the unpaid civil fines are paid in full or until a certificate of release or partial release of the lien, prepared by the county at the owner's expense, is recorded. The notice of unpaid civil fines shall state the amount of the fine as of the date of the notice and maximum permissible daily increase of the fine. The county shall not be required to include a social security number, state general excise taxpayer identification number, or federal employer identification number on the notice. Recordation of the notice in the bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in land court under chapter 501. After the unpaid civil fines are added to the taxes, fees, or charges as specified by county ordinance, the unpaid civil fines shall be deemed immediately due, owing, and delinquent and may be collected in any lawful manner. The procedure for collection of unpaid civil fines authorized in this paragraph shall be in addition to any other procedures for collection available to the State and county by law or rules of the courts;

- (C) Each county may impose civil fines upon any person who places graffiti on any real or personal property owned, managed, or maintained by the county. The fine may be up to \$1,000 or may be equal to the actual cost of having the damaged property repaired or replaced. The parent or guardian having custody of a minor who places graffiti on any real or personal property owned, managed, or maintained by the county shall be jointly and severally liable with the minor for any civil fines imposed hereunder. Any such fine may be administratively imposed after an opportunity for a hearing under chapter 91, but such a proceeding shall not be a prerequisite for any civil fine ordered by any court. As used in this subparagraph, "graffiti" means any unauthorized drawing, inscription, figure, or mark of any type intentionally created by paint, ink, chalk, dye, or similar substances;

- (D) At the completion of an appeal in which the county's enforcement action is affirmed and upon correction of the violation if requested by the violator, the case shall be reviewed by the county agency that imposed the civil fines to determine the appropriateness of the amount of the civil fines that accrued while the appeal proceedings were pending. In its review of the amount of the accrued fines, the county agency may consider:
    - (i) The nature and egregiousness of the violation;
    - (ii) The duration of the violation;
    - (iii) The number of recurring and other similar violations;
    - (iv) Any effort taken by the violator to correct the violation;
    - (v) The degree of involvement in causing or continuing the violation;
    - (vi) Reasons for any delay in the completion of the appeal; and
    - (vii) Other extenuating circumstances.

The civil fine that is imposed by administrative order after this review is completed and the violation is corrected shall be subject to judicial review, notwithstanding any provisions for administrative review in county charters;
  - (E) After completion of a review of the amount of accrued civil fine by the county agency that imposed the fine, the amount of the civil fine determined appropriate, including both the initial civil fine and any accrued daily civil fine, shall immediately become due and collectible following reasonable notice to the violator. If no review of the accrued civil fine is requested, the amount of the civil fine, not to exceed the total accrual of civil fine prior to correcting the violation, shall immediately become due and collectible following reasonable notice to the violator, at the completion of all appeal proceedings;
  - (F) If no county agency exists to conduct appeal proceedings for a particular civil fine action taken by the county, then one shall be established by ordinance before the county shall impose the civil fine;
- (25) Any law to the contrary notwithstanding, any county mayor, by executive order, may exempt [~~by executive order~~] donors, provider agencies, homeless facilities, and any other program for the homeless under part of chapter ~~[356D]~~ 346 from real property taxes, water and sewer development fees, rates collected for water supplied to consumers and for use of sewers, and any other county taxes, charges, or fees; provided that any county may enact ordinances to regulate and grant the exemptions granted by this paragraph;
  - (26) Any county may establish a captive insurance company pursuant to article 19, chapter 431; and
  - (27) Each county shall have the power to enact and enforce ordinances regulating towing operations."

SECTION 4. Section 237-23, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) This chapter shall not apply to the following persons:
  - (1) Public service companies as that term is defined in section 239-2, with respect to the gross income, either actual gross income or gross income estimated and adjusted, that is included in the measure of the tax imposed by chapter 239;

- (2) Public utilities owned and operated by the State or any county, or other political subdivision thereof;
- (3) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, prepaid legal services, or other benefits to the members of the societies, orders, or associations, and to their dependents;
- (4) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959, as amended, as well as that of operating a prepaid legal services plan, as well as that of operating or managing a homeless facility, or any other program for the homeless authorized under part [VII] \_\_\_ of chapter [356D;] 346;
- (5) Business leagues, chambers of commerce, boards of trade, civic leagues, agricultural and horticultural organizations, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare that shall include the operation of a prepaid legal service plan, and from which no profit inures to the benefit of any private stockholder or individual;
- (6) Hospitals, infirmaries, and sanitarium;
- (7) Cooperative associations incorporated under chapter 421 or Code section 521 cooperatives which fully meet the requirements of section 421-23, except Code section 521 cooperatives need not be organized in Hawaii; provided that:
  - (A) The exemption shall apply only to the gross income derived from activities that are pursuant to purposes and powers authorized by chapter 421, except those provisions pertaining to or requiring corporate organization in Hawaii do not apply to Code section 521 cooperatives;
  - (B) The exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all those persons shall be so taxable; and
  - (C) As used in this paragraph, "section 521 cooperatives" mean associations that qualify as a cooperative under section 521 (with respect to exemption of farmers' cooperatives from tax) of the Internal Revenue Code of 1986, as amended;
- (8) Persons affected with Hansen's disease and kokuas, with respect to business within the county of Kalawao;
- (9) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stockholder or individual; provided that the exemption shall apply only to the activities of those persons in the conduct of cemeteries and shall not apply to any activity the primary purpose of which is to produce income, even though the income is to be used for or in the furtherance of the exempt activities of those persons; and



- (10) Nonprofit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations.”

SECTION 5. Section 346-152, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Nothing in this part shall be construed to include:

- (1) A person caring for children related to the caregiver by blood, marriage, or adoption;
- (2) A person, group of persons, or facility caring for a child less than six hours a week;
- (3) A kindergarten, school, or program licensed by the department of education;
- (4) A program that provides exclusively for a specialized training or skill development for children, including but not limited to programs providing activities such as athletic sports, foreign language, the Hawaiian language, dance, drama, music, or martial arts;
- (5) A multiservice organization or community association, duly incorporated under the laws of the State that operates for the purpose of promoting recreation, health, safety, or social group functions for eligible pupils in public and private schools through seventeen years of age;
- (6) Programs for children four years of age and older that operate for no more than two consecutive calendar weeks in a three-month period;
- (7) A provider agency operating or managing a homeless facility or any other program for homeless persons authorized under part [VII of chapter 356D;] \_\_\_;
- (8) After-school, weekend, and summer recess programs conducted by the department of education pursuant to section 302A-408;
- (9) Child care programs for children five years of age and older conducted by counties pursuant to section 302A-408; provided that each county adopts rules for its programs;
- (10) Any person who enters a home in a child caring capacity and only cares for children who are of that household; and
- (11) A person caring for two or fewer children unrelated to the caregiver by blood, marriage, or adoption.”

SECTION 6. Section 467-2, Hawaii Revised Statutes, is amended to read as follows:

“§467-2 Exceptions. The provisions requiring licensing as a real estate broker or salesperson shall not apply:

- (1) To any individual who, as owner of any real estate or acting under power of attorney from the owner, performs any of the acts enumerated in the definitions of real estate broker and real estate salesperson with reference to the real estate; provided that the term “owner” as used in this paragraph shall not include any individual engaged in the business of real estate development or brokerage or include an individual who acquires any interest in any real estate for the purpose or as a means of evading the licensing requirements of this chapter; and provided further that the term individual “acting under power of attorney” as used in this paragraph shall not include

any individual engaged in the business of real estate development or brokerage or any individual who acts under a power of attorney for the purpose or as a means of evading the licensing requirements of this chapter;

- (2) To any person acting as a receiver, trustee in bankruptcy, personal representative, or trustee acting under any trust agreement, deed of trust, or will, or otherwise acting under any order of authorization of any court;
- (3) To any individual who leases, offers to lease, rents, or offers to rent, any real estate or the improvements thereon of which the individual is the custodian or caretaker;
- (4) To any person who manages, rents, or operates a hotel; or
- (5) To any provider agency owning, leasing, operating, or managing a homeless facility or any other program for the homeless authorized under part [VH] \_\_ of chapter [356D:] 346.”

SECTION 7. Section 480-11, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) This chapter shall not apply to:

- (1) Any provider agencies or donors under part [VH] \_\_\_ of chapter [356D:] 346;
- (2) Any provider agency or donor method or act that complies with part [VH] \_\_ of chapter [356D:] 346; or
- (3) Any cooperation or agreement authorized pursuant to rule under part [VH] \_\_ of chapter [356D:] 346.”

SECTION 8. Section 514A-14.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) This section shall not apply:

- (1) To apartments developed under chapter 201H, 346, or 356D;
- (2) To apartments in a mixed-use project developed under chapter 206E that has a shared parking program approved by the Hawaii community development authority; provided that such a program shall require the availability of the use of not less than one parking space per apartment; and
- (3) To apartments designated in the declaration of condominium property regime for hotel, time share, transient vacation rental, or commercial use.”

SECTION 9. Section 514A-108, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This part shall not apply to a project developed pursuant to section 46-15 or 46-15.1, or chapter 53, 201H, 206, 346, or 356D; provided that the developer of the project may elect to be subject to this part through a written notification to the commission.”

SECTION 10. Section 514B-99.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This subpart shall not apply to:

- (1) A project developed pursuant to section 46-15 or 46-15.1, or chapter 53, 201H, 206, 346, or 356D; provided that the developer of the project may elect to be subject to this subpart through a written notification to the commission;

- (2) Condominium projects where the developer conveys all of the residential units in the project to a spouse, or family members related by blood, descent, or adoption; and
- (3) Condominium projects consisting of two or fewer units.”

SECTION 11. 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 that 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 part [VII] \_\_\_ of chapter [356D:] 346;
- (10) Residence or occupancy in a public housing project or complex directly controlled, owned, or managed by the Hawaii public housing authority 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 12. Chapter 356D, part VII, Hawaii Revised Statutes, is repealed.

SECTION 13. The department of human services shall transfer four permanent full time positions (4.0 FTE) from the Hawaii public housing authority to its benefit, employment, and support services division to carry out the purposes of this Act. Any position that was exempt from chapter 76, Hawaii Revised Statutes, under section 356D-2, Hawaii Revised Statutes, may remain exempt under part \_\_\_ of chapter 346, Hawaii Revised Statutes.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regu-

lar duties upon their transfer, subject to the state personnel laws and this Act. No officer or employee of the State shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act.

In the event that an office or position held by an officer or employee having tenure is abolished, the office or employee 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 director of human resources development.

All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the agencies, divisions, or offices transferred or placed for administrative purposes under this Act relating to the functions transferred to the department of human services shall be transferred with the functions to which they relate.

All rules, policies, procedures, guidelines, and other material adopted or developed by the agencies, divisions, or offices transferred or placed for administrative purposes under this Act, shall remain in full force and effect until amended or repealed by the department of human services pursuant to chapter 91, Hawaii Revised Statutes; provided that the amended rules or any new rules relating directly to homelessness adopted by the department of human services shall be exempt from the public notice, public hearing, and gubernatorial approval requirements for chapter 91.

All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the agencies, divisions, or offices transferred or placed for administrative purposes with the department of human services by this Act, shall remain in full force and effect.

The provisions of this section are to be liberally construed to effectuate its purposes.

SECTION 14. All acts passed by the legislature during this regular session of 2010, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act unless such acts specifically provide that this Act is being amended.

SECTION 15. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 17. This Act shall take effect on July 1, 2010.

(Approved May 10, 2010.)

## ACT 90

S.B. NO. 1230

A Bill for an Act Relating to Taxation.

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

SECTION 1. The purpose of this Act is to:

- (1) Provide a new definition for "large cigars" and include large cigars in the definition of "tobacco products";
- (2) Amend the current definition of "little cigars" to a definition that is more appropriate to these products; and
- (3) Limit to large cigars the general excise tax on the wholesale price of each cigar sold, used, or possessed by a wholesaler or dealer.

SECTION 2. Section 245-1, Hawaii Revised Statutes, is amended as follows:

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

"Large cigar" means any roll for smoking made wholly or in part of tobacco if such product is wrapped in any substance containing tobacco and weighs more than four pounds per thousand."

2. By amending the definitions of "little cigar" and "tobacco products" to read:

"Little cigar" means any roll for smoking made wholly or in part of tobacco if such product is wrapped in any substance containing tobacco, [with a ring gauge of less than thirty (less than .467 inches in diameter), of any length.] other than natural leaf tobacco, and weighs not more than four pounds per thousand rolls.

"Tobacco products" means tobacco in any form, other than cigarettes or little cigars, that is prepared or intended for consumption or for personal use by humans, including large cigars and any substitutes thereof other than cigarettes that bear the semblance thereof, snuff, chewing or smokeless tobacco, and smoking or pipe tobacco."

SECTION 3. 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] state<sup>1</sup>:

- (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;
- (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 13.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after July 1, 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 11.00 cents for each little cigar sold, used, or possessed by a wholesaler or dealer on and after October 1, 2009, 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 14.00 cents for each cigarette or little cigar sold, used, or possessed by a wholesaler or dealer on and after July 1, 2010, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
  - (11) An excise tax equal to 15.00 cents for each cigarette or little cigar sold, used, or possessed by a wholesaler or dealer on and after July 1, 2011, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
  - (12) ~~[Except as provided in paragraph (13), an]~~ An excise tax equal to seventy per cent of the wholesale price of each article or item of tobacco products, other than large cigars, sold by the 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; and
  - (13) An excise tax equal to fifty per cent of the wholesale price of each large cigar ~~[with a ring gauge of thirty or more (.467 inches in diameter or more);]~~ of any length, 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.

Where the tax imposed has been paid on cigarettes, little cigars, 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 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, 2010.

(Approved May 11, 2010.)

#### Note

1. Should be underscored.

A Bill for an Act Relating to General Excise Tax.

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

SECTION 1. Act 239, Session Laws of Hawaii 2007, as amended by Act 196, Session Laws of Hawaii 2009, section 5, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect on January 1, 2008; provided that this Act shall be repealed on December 31, ~~2010,~~ 2014, and section 237-24.3, Hawaii Revised Statutes, and section 237-24.7, Hawaii Revised Statutes, shall be reenacted in the form in which they read on December 31, 2007.”

SECTION 2. Act 196, Session Laws of Hawaii 2009, is amended by amending section 6 to read as follows:

SECTION 6. The aggregate amount of tax ~~[exemption from]~~ exempted by the amendment to section 237-24.7(1) in section 2 of Act 239, Session Laws of Hawaii 2007, shall not exceed \$400,000 per ~~[taxable]~~ calendar year ~~[ending on or between January 1, 2010 and January 1, 2011].~~”

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, 2010.

(Approved May 11, 2010.)

A Bill for an Act Relating to Counties.

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

SECTION 1. Article VIII, section 2, of the Hawaii constitution states, in relevant part, that “[E]ach political subdivision shall have the power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be provided by general law. . . . Charter provisions with respect to a political subdivision’s executive, legislative and administrative structure and organization shall be superior to statutory provisions, subject to the authority of the legislature to enact general laws allocating and reallocating powers and functions.”

The purpose of this Act is to authorize the counties to appoint and remove their respective county police chiefs pursuant to the county’s charter. The legislature finds that the grant of such authority is within the purview of the counties’ executive and administrative structure and organization, and is therefore supported by and consistent with the principle of county self-governance established in article VIII, section 2, of the Hawaii constitution.

SECTION 2. Section 52D-2, Hawaii Revised Statutes, is amended to read as follows:

~~“[§52D-2] Chief of police. [The police commission shall appoint a chief of police.] A chief of police shall be appointed and may be removed as prescribed by the charter of each county. The chief of police shall annually make a report to the police commission on the state of affairs and condition of the police department.”~~

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, 2010.)

## ACT 93

H.B. NO. 1992

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

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

SECTION 1. Act 148, Session Laws of Hawaii 2008, is amended by amending section 4 to read as follows:

~~“SECTION 4. This Act shall take effect upon its approval [and shall be repealed on June 30, 2010].”~~

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

SECTION 3. This Act shall take effect on June 29, 2010.

(Approved May 11, 2010.)

## ACT 94

S.B. NO. 2691

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

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

SECTION 1. Section 88-6, Hawaii Revised Statutes, is amended by amending subsection (a) read as follows:

“(a) Notwithstanding any other provision of this chapter:

(1) All retirees and beneficiaries of the state retirement system or county pension funds shall be paid semimonthly; ~~[and effective January 1, 2003, all]~~ provided that:

(A) All retirees and beneficiaries of the state retirement system who either retire or become beneficiaries after January 1, 2003, shall be paid monthly; and

(B) Effective July 1, 2011, all retirees and beneficiaries of the state retirement system shall be paid monthly; provided that this subparagraph shall not apply to any retiree or beneficiary who:

(i) Became a retiree or beneficiary prior to January 1, 2003;

(ii) Is eighty years of age or older on January 1, 2011; and



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- (iii) Receives \$800 or less of pension benefits each month; and
- (2) Any ~~retirant~~ retiree or beneficiary of the state retirement system whose benefit commences after June 30, 2001, shall designate a financial institution account into which the system shall be authorized to deposit their retirement benefit[-]; and effective April 1, 2011, all retirees and beneficiaries of the state retirement system shall designate a financial institution account into which the system shall be authorized to deposit their state retirement system benefits. This method of payment may be waived by the system [~~if another method is determined to be more appropriate.~~]

SECTION 2. The employees' retirement system of the State of Hawaii shall provide for the transition from semimonthly payments to monthly payments pursuant to this Act by adjusting the dates on which the semimonthly payments are made between January 2011 and June 2011.

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

SECTION 4. This Act shall take effect on January 1, 2011.

(Approved May 11, 2010.)

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H.B. NO. 1863

A Bill for an Act Relating to Prostitution.

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

SECTION 1. Act 192, Session Laws of Hawaii 2008, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect upon its approval, and shall be repealed on June 30, ~~[2010.] 2012.~~”

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

SECTION 3. This Act shall take effect on June 29, 2010.

(Approved May 11, 2010.)

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S.B. NO. 358

A Bill for an Act Relating to Firearms.

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

SECTION 1. Chapter 134, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§134- **Prohibition against seizure of firearms or ammunition during emergency or disaster; suspension of permit or license.** (a) Notwithstanding any

provision of chapter 128 or any other law to the contrary, no person or government entity shall seize or confiscate, under any civil defense, emergency, or disaster relief powers or functions conferred, or during any civil defense emergency period, as defined in section 128-2, or during any time of national emergency or crisis, as defined in section 134-34, any firearm or ammunition from any individual who is lawfully permitted to carry or possess the firearm or ammunition under part I of this chapter and who carries, possesses, or uses the firearm or ammunition in a lawful manner and in accordance with the criminal laws of this state.

(b) Notwithstanding any provision of chapter 128 or any other law to the contrary, no person or government entity shall suspend, revoke, or limit, under any civil defense, emergency, or disaster relief powers or functions conferred, any lawfully acquired and maintained permit or license obtained under and in accordance with part I of this chapter.

(c) 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."

SECTION 2. Section 128-6, Hawaii Revised Statutes, is amended to read as follows:

**"§128-6 Civil defense powers, in general.** The governor may:

- (1) Plans and programs. Prepare comprehensive plans and programs for the civil defense of this [~~State.~~] state, the plans and programs to be integrated into and coordinated with the civil defense plans of the federal government and of other states to the fullest possible extent; and coordinate the preparation of plans and programs for civil defense by the political subdivisions of the State, the plans to be integrated into and coordinated with the civil defense plans and programs of the State to the fullest possible extent[-];
- (2) Training, public information. Institute training programs and public information programs[-];
- (3) Direct operational control, when. In the event of disaster or emergency beyond local control, or which in the opinion of the governor is such as to make state operational control necessary, assume direct operational control over all or any part of the civil defense functions within this [~~State.~~] state;
- (4) Insignia. Provide or authorize suitable insignia of authority for all authorized personnel[-];
- (5) Registration and blood typing. Provide for:
  - (A) Compulsory registration and identification to the extent that voluntary registration and identification has not been accomplished under chapter 846, part II; and
  - (B) Compulsory RHO blood typing on females of child bearing age or younger, and such other compulsory blood typing as may be approved by competent medical authority[-];
- (6) Protection of facilities. Require each public utility, or any person owning, controlling, or operating a vital facility, to protect and safeguard its or the person's property, or to provide for the protection and safeguarding; and provide for the protection and safeguarding of all public properties, or such other properties as the governor

may consider advisable; provided that without prejudice to the generality of the foregoing two clauses, the protecting and safeguarding may include the regulation or prohibition of public entry thereon, or the permission of the entry upon such terms and conditions as the governor may prescribe[-].

- (7) Explosives, etc. [~~Whenever~~] Except as provided in section 134- , whenever in the governor's opinion the laws of the State do not adequately provide for the common defense, public health, safety, and welfare, investigate, regulate, or prohibit the storage, transportation, use, possession, maintenance, furnishing, sale, or distribution of, as well as any transaction related to, explosives, firearms, and ammunition [~~(including the power to require the reregistration of firearms)~~], inflammable materials and other objects, implements, substances, businesses, or services of a hazardous or dangerous character, or particularly capable of misuse by disloyal persons or the enemy, or obstructive of or tending to obstruct military operations or civil defense, including, without limitation, intoxicating liquor and the liquor business; and authorize the seizure and forfeiture of any such objects, implements, or substances unlawfully possessed, as provided in section 128-28[-].
- (8) Air raid drills, etc. Direct or control, as may be necessary for civil defense:
  - (A) Air raid drills, and other alerts, tests, and exercises;
  - (B) Blackouts and practice blackouts;
  - (C) Partial or full mobilization of civil defense organizations in advance of actual disaster;
  - (D) Warnings and signals for drills, alerts, or attacks, and the mechanical devices to be used in connection therewith;
  - (E) Shutting off water mains, gas mains, electric power connections, or suspension of other services; and to the extent permitted by or under federal law, suspension of radio transmission;
  - (F) The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, before, and after blackouts, drills, alerts, or attacks;
  - (G) Traffic control;
  - (H) The congregation of the public in stricken or danger areas or under dangerous conditions; and
  - (I) The evacuation and reception of the civilian population[-]; provided that only during a civil defense emergency period shall there be instituted under this paragraph mandatory or prohibitory requirements having the force and effect of law."

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

SECTION 4. This Act shall take effect on July 1, 2010.

(Approved May 12, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 97

A Bill for an Act Relating to Limiting Civil Liability.

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

SECTION 1. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§663- Owner to felon; limited liability.** (a) An owner, including but not limited to a public entity, of any estate or any other interest in real property, whether possessory or nonpossessory, or any agent of the owner lawfully on the premises by consent of the owner, shall not be liable to any perpetrator engaged in any of the felonies set forth in subsection (b) for any injury or death to the perpetrator that occurs upon that property during the course of or after the commission of such felony, or when a reasonable person would believe that commission of a felony as set forth in subsection (b) is imminent; provided that if the perpetrator is injured, the perpetrator is charged with the criminal offense and convicted of the criminal offense or of a lesser included felony or misdemeanor.

(b) This section applies to the following felonies:

- (1) Murder in the first or second degree;
- (2) Attempted murder in the first or second degree;
- (3) Any class A felony as provided in the Hawaii Penal Code, including any attempt or conspiracy to commit a crime classified as a class A felony;
- (4) Any class B felony involving violence or physical harm as provided in the Hawaii Penal Code;
- (5) Any felony punishable by imprisonment for life;
- (6) Any other felony in which the person inflicts serious bodily injury on another person; and
- (7) Any felony in which the person personally used a firearm or a dangerous or deadly weapon.

(c) The limitation on liability under this section arises:

- (1) At the moment the perpetrator commences the felony to which this section applies; or
- (2) At the moment the owner or agent of the owner lawfully on the premises by consent of the owner believes that a commission of a felony under subsection (b) is imminent;

and extends to the moment the perpetrator is no longer upon the property.

(d) The limitation on liability under this section applies only when the perpetrator's conduct in furtherance of the commission of a felony specified in subsection (b) proximately or legally causes the injury or death.

(e) This section does not limit the liability of an owner that otherwise exists for:

- (1) Wilful, wanton, or criminal conduct; or
- (2) Wilful or malicious failure to guard or warn against a dangerous condition, use, or structure; or
- (3) Injury or death caused to individuals other than the perpetrator of the felony.

(f) Except with regard to paragraphs (e)(1) and (e)(3), the limitation of liability under this section shall not be affected by the failure of the owner to warn the perpetrator of the felony that the owner is armed and ready to cause bodily harm or death.

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(g) For purposes of this section, "owner" means the owner, the occupant, tenant, or anyone authorized to be on the property by the owner or the occupant, including a guest or a family or household member, employee, or agent of the owner lawfully on the premises.

(h) The limitation on liability provided by this section shall be in addition to any other available defense."

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon approval.

(Approved May 12, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 98**

S.B. NO. 2661

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 2009-2010 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:

<b>JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:</b>	<b>AMOUNT</b>
1. DEPARTMENT OF PUBLIC SAFETY:	
Botelho, et al. v. State of Hawaii, et al. Civil No. 06-00096 DAE-BMK, USDC	\$30,454.33 Judgment
DeJesus, et al. v. State of Hawaii, et al., Civil No. 06-1-1070-06, First Circuit	\$80,000.00 Settlement
<b>SUBTOTAL:</b>	<b>\$110,454.33</b>
2. DEPARTMENT OF LAND AND NATURAL RESOURCES:	
Consolidated Cases:	
Fehring, et al. v. Pflueger, et al. Civil No. 06-1-0082, Fifth Circuit	\$1,500,000.00 Settlement
Midler, et al. v. Pflueger, et al. Civil No. 06-1-0110, Fifth Circuit	
Pflueger, et al. v. State of Hawaii Civil No. 07-1-0117, Fifth Circuit	

Calisher, et al. v. Pflueger, et al. Civil No. 07-1-0106, Fifth Circuit	
Fehring, et al. v. Pflueger, et al. Civil No. 08-1-0050, Fifth Circuit	
Fehring, et al. v. Pflueger, et al. Civil No. 08-1-0051, Fifth Circuit	
Bosma, et al. v. Pflueger, et al. Civil No. 08-1-0052, Fifth Circuit	
Midler, et al. v. Pflueger, et al. Civil No. 08-1-0053, Fifth Circuit	
Roque v. Dickman, et al. Civil No. 07-1-0497-03, First Circuit	\$93,850.00 Settlement
<b>SUBTOTAL:</b>	<hr/> \$1,593,850.00

## 3. DEPARTMENT OF HUMAN SERVICES:

Manalo v. Wells, et al. Civil No. 08-1-2212-10, First Circuit Amount of judgment: 4% interest from 10/21/09	\$32,478.37 Judgment
Henson v. State of Hawaii Civil No. 06-1-0794, First Circuit	\$ 30,000.00 Settlement
Ayala, et al. v. Wilson, et al. Civil No. 04-1-0250, Third Circuit	\$ 50,000.00 Settlement
McMillon, et al. v. State of Hawaii, et al., Civil No. 08-00578, USDC and Faletogo, et al., v. State of Hawaii, et al., Civil No. 08-1-2608-12, First Circuit	\$610,000.00 Settlement
Kong-Guillermo v. Hefferman, et al. Civil No. 07-1-2406-12, First Circuit	\$110,000.00 Settlement
Perez v. Karr, et al. Civil No. 07-1-2418-12, First Circuit	\$213,333.00 Settlement
Wolters v. Carroll, et al. Civil No. 07-1-2358-12, First Circuit	\$213,333.00 Settlement
Toomey v. Karr, et al. Civil No. 07-1-2407-12, First Circuit	\$213,333.00 Settlement
Ra v. State of Hawaii Civil No. 08-1-2111-10, First Circuit	\$ 39,500.00 Settlement
Hadley v. Torney, et al. Civil No. 08-1-1074-05 KKS, First Circuit	\$100,000.00 Settlement
Robinson v. Tripler Army Medical Center, et al. Civil No. 04-00672 DAE-KSC, USDC	\$ 12,000.00 Settlement
<b>SUBTOTAL:</b>	<hr/> \$1,623,977.37

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4.	<b>DEPARTMENT OF EDUCATION:</b>	
	Cabanting, et al. v. Poouahi, et al., Civil No. 07-1-0038, Third Circuit	\$3,485,815.38 Settlement
	Clark v. State of Hawaii, et al. Civil No. 07-1-2124, First Circuit	\$ 30,000.00 Settlement
	Conley v. Mahuna, et al. Civil No. 06-1-0112, Third Circuit	\$ 15,000.00 Settlement
	T.N. v. Department of Education, et al. Civil No. 10-00159 DAE-LEK, USDC	\$ 75,000.00 Settlement
	<b>SUBTOTAL:</b>	<hr/> \$3,605,815.38
5.	<b>DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM:</b>	
	Brandt v. Department of Business, Economic Development & Tourism ICA Appeal No. 30072, AB 2006-131	\$ 80,000.00 Settlement
	<b>SUBTOTAL:</b>	\$ 80,000.00
6.	<b>MISCELLANEOUS CLAIMS:</b>	
	Kathleen M. Gillett	\$1,379.31
	June S. Hashizaki	\$150.00
	DB Structured Products, Inc.	\$499,999.91
	<b>SUBTOTAL:</b>	<hr/> \$501,529.22
	Total (SECTION 1):	\$7,515,626.30

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 2009-2010 are appropriated out of the state harbor 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:

<b>JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:</b>	<b>AMOUNT</b>
<b>DEPARTMENT OF TRANSPORTATION, HARBORS DIVISION:</b>	
Flores, et al. v. Department of Transportation, et al., Civil No. 07-1-0204, Fifth Circuit	\$ 23,225.34 Judgment
<b>SUBTOTAL:</b>	<hr/> \$ 23,225.34
Total (SECTION 2):	\$ 23,225.34

The sums appropriated shall be expended by the department of transportation, harbors division, for the purposes of this Act.

SECTION 3. The following sums or so much thereof as may be necessary for fiscal year 2009-2010 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:

<b>JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:</b>	<b>AMOUNT</b>
<b>DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION:</b>	
Cabrera, et al. v. State of Hawaii, et al., Civil No. 06-1-0317-02, First Circuit	\$ 75,000.00 Settlement
D&J Ocean Farms, Inc. v. Pedro, et al., Civil No. 06-1-0373(3), Second Circuit	\$ 25,000.00 Settlement
Morales v. Department of Transportation, et al., Civil No. 06-1-2206-12, First Circuit	\$ 25,000.00 Settlement
Bartolome v. Tagalicod, et al. Civil No. 08-1-0086K, Third Circuit	\$500,000.00 Settlement
Farris v. State of Hawaii Civil No. 06-1-0249-02, First Circuit	\$475,000.00 Settlement
Pinion v. State of Hawaii, et al. Civil No. 08-1-0460(1), Second Circuit	\$475,000.00 Settlement
<b>SUBTOTAL:</b>	<b>\$1,575,000.00</b>
<b>TOTAL (SECTION 3)</b>	<b>\$1,575,000.00</b>

The sums appropriated shall be expended by the department of transportation, highways division, for the purposes of this Act.

**PART III**

SECTION 4. The sums hereinabove may be paid to the respective persons, or for the satisfaction or settlement of the respectively identified cases, and in several amounts hereinabove set forth or in lesser amounts deemed appropriate, upon checks issued by the comptroller; provided departments shall obtain the approval of the attorney general before payment of any claim can be made.

SECTION 5. 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 Act, as provided in section 662-8, Hawaii Revised Statutes, for those cases to which the statute applies.

SECTION 6. All unexpended and unencumbered balances of the appropriations made in this Act as of the close of business on June 30, 2011, shall lapse.

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other



## ACT 99

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

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

(Approved May 12, 2010.)

## ACT 99

H.B. NO. 2129

A Bill for an Act Relating to Graffiti.

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

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

**“§708- Graffiti; sentencing.** (1) Whenever a person is sentenced under section 708-821, 708-822, 708-823, or 708-823.5, for an offense in which the damage is caused by graffiti, in addition to any penalty prescribed by those sections, the person shall be required to:

- (a) Remove the graffiti from the damaged property within thirty days of sentencing, if it has not already been removed and where consent from the respective property owner or owners has been obtained; and
- (b) For a period of time not to exceed two years from the date of sentencing, along with any other person or persons who may be sentenced under this section for the same property, perform community service removing, within fourteen days, any graffiti applied to other property within one hundred yards of the site of the offense for which the person was sentenced, where consent from the respective property owner or owners has been obtained, even if the property was damaged by another person.

(2) For purposes of this section, “graffiti” means any unauthorized drawing, inscription, figure, or mark of any type intentionally created by paint, ink, chalk, dye, or similar substances.”

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

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon approval.

(Approved May 12, 2010.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 100

S.B. NO. 2937

A Bill for an Act Relating to Information Practices.

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

SECTION 1. Section 92F-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours[-]; provided that an agency shall not be required to make government records available or respond to a person’s subsequent duplicative request, if:

- (1) After conducting a good faith review and comparison of the earlier request and the pending request, the agency finds that the pending request is duplicative or substantially similar in nature;
- (2) The pending request has already been responded to within the past year; and
- (3) The agency’s response to the pending request would remain unchanged.”

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 be repealed on July 1, 2014; provided that section 92F-11(b), 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 12, 2010.)

## ACT 101

H.B. NO. 2505

A Bill for an Act Relating to the Access Hawaii Committee.

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

SECTION 1. Chapter 27G, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§27G- Access Hawaii committee special fund. There is established in the state treasury the access Hawaii committee special fund, into which shall be deposited fees collected by the information and communication services division within the department of accounting and general services for the purpose of supporting the access Hawaii committee. Expenditures from the access Hawaii committee special fund shall be approved by the access Hawaii committee; provided that information on income and expenditures shall be subject to legislative review and oversight in each budget submittal from the department of accounting and general services.”

SECTION 2. There is appropriated out of the access Hawaii committee special fund the sum of \$185,000 or so much thereof as may be necessary, for fiscal year 2010-2011 for the purposes of supporting the access Hawaii committee.

## ACT 102

The sum appropriated shall be expended by the access Hawaii committee for the purposes of this Act.

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 2010.

(Approved May 12, 2010.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 102

S.B. NO. 2187

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 201B-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The authority shall be responsible for:

- (1) Promoting, marketing, and developing the tourism industry in the State;
- (2) Arranging for the conduct of research through contractual services with the University of Hawaii or any agency or other qualified persons concerning social, economic, and environmental aspects of tourism development in the State; provided that, where public disclosure of information gathered by the authority may place businesses at a competitive disadvantage and impair or frustrate the authority's ability to obtain information for a legitimate government function, the authority may withhold from public disclosure competitively sensitive information, including:
  - (A) Completed survey and questionnaire forms;
  - (B) Coding sheets; and
  - (C) Database records of the information;
- (3) Providing technical or other assistance to agencies and private industry upon request;
- (4) Creating a vision and developing a long-range strategic plan for tourism in Hawaii; and
- (5) Reviewing annually the expenditure of public funds by any visitor industry organization with which the authority contracts to perform tourism promotion, marketing, and development and making recommendations necessary to ensure the effective use of the funds for the development of tourism. The authority shall also prepare annually a report of expenditures, including descriptions and evaluations of programs funded, together with any recommendations the authority may make and shall submit the report to the governor and the legislature as part of the annual report required under section 201B-16.”

SECTION 2. Section 201B-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The meetings of the board shall be open to the public as provided in section 92-3, except that when it is necessary for the board to receive ~~information~~:

- (1) Information that is proprietary to a particular enterprise or the disclosure of which might be harmful to the business interests of the enterprise~~;~~ or
- (2) Information that is necessary to protect Hawaii’s competitive advantage as a visitor destination; provided that information relating to marketing plans and strategies may be disclosed after the execution of the marketing plans and strategies.

the board may enter into an executive meeting that is closed to the public~~;~~ in accordance with the procedures provided for holding an executive meeting under part I of chapter 92.”

SECTION 3. Section 201B-6, Hawaii Revised Statutes, is amended to read as follows:

“**§201B-6 Tourism marketing plan; measures of effectiveness.** (a) The authority shall be responsible for developing a tourism marketing plan that shall be updated every year and includes the following:

- (1) Statewide promotional efforts and programs;
- (2) Targeted markets;
- (3) Efforts to enter into brand marketing projects that make effective use of cooperative advertising programs;
- (4) ~~[Measures of effectiveness for]~~ Program performance goals and targets that can be monitored as market gauges and used as attributes to evaluate the authority’s promotional programs; and
- (5) Coordination of marketing plans of all destination marketing organizations receiving state funding prior to finalization of the authority’s marketing plan.

(b) In accordance with subsection (a), the authority shall develop measures of effectiveness to assess the overall benefits and effectiveness of the marketing plan and include documentation of the ~~[directly attributable benefits of the plan to the following:~~

- (1) ~~Hawaii’s tourism industry;~~
- (2) ~~Employment in Hawaii;~~
- (3) ~~State taxes; and~~
- (4) ~~The State’s lesser known and underused destinations.]~~

progress of the marketing plan towards achieving the authority’s strategic plan goals.”

SECTION 4. Section 201B-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The authority may enter into contracts and agreements that include the following:

- (1) Tourism promotion, marketing, and development;
- (2) Market development-related research;
- (3) Product development and diversification issues focused on visitors;
- (4) Promotion, development, and coordination of sports-related activities and events;
- (5) Promotion of Hawaii, through a coordinated statewide effort, as a place to do business, including high technology business, and as a business destination;
- (6) Reduction of barriers to travel;

- (7) Marketing, management, use, operation, or maintenance of the convention center facility, including the purchase or sale of goods or services, logo items, concessions, sponsorships, and license agreements, or any use of the convention center facility as a commercial enterprise; provided that effective January 1, 2003, and thereafter, the contract for management of the convention center facility shall include marketing for all uses of the facility;
- (8) Tourism research and statistics to:
  - (A) Measure and analyze tourism trends;
  - (B) Provide information and research to assist in the development and implementation of state tourism policy;
  - (C) Provide tourism information on:
    - (i) Visitor arrivals, visitor characteristics, and expenditures;
    - (ii) The number of transient accommodation units available, occupancy rates, and room rates;
    - (iii) Airline-related data including seat capacity and number of flights;
    - (iv) The economic, social, and physical impacts of tourism on the State; and
    - (v) The ~~[impact of ongoing]~~ effects of the marketing programs of the authority on [Hawaii's tourism industry, employment in Hawaii, state taxes, and the State's lesser known and underused destinations]; the measures of effectiveness developed pursuant to section 201B-6(b); and
- (9) Any and all other activities necessary to carry out the intent of this chapter;

provided that ~~[for any contract or agreement valued at \$25,000 and over,]~~ the authority shall ~~[provide notice]~~ periodically submit a report of the contracts and agreements entered into by the authority to the governor, the speaker of the house of representatives, and the president of the senate [on the same day that such notification is given to the governor]."

SECTION 5. Act 58, Session Laws of Hawaii 2004, as amended by section 50 of Act 22, Session Laws of Hawaii 2005, as amended by section 1 of Act 306, Session Laws of Hawaii 2006, as amended by section 12 of Act 5, Special Session Laws of Hawaii 2009, is amended by amending section 14 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, 2006, by section 1 of Act 137, Session Laws of Hawaii 2005;
- (2) Sections 3, 4, 5, 6, and 7 of ~~[Part]~~ part I shall be repealed on ~~[June 30, 2010,]~~ June 30, 2015, and:
  - (A) Sections 201B-2 and 201B-11, Hawaii Revised Statutes, shall be reenacted in the form in which they read on May 5, 2004; except that the amendments made by ~~[Act,]~~ Act 5, Special Session Laws of Hawaii 2009, to section 201B-2, Hawaii Revised Statutes, and subsection (c) of section 201B-11, Hawaii Revised Statutes, shall not be repealed; and
  - (B) 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 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 May 12, 2010.)

## ACT 103

H.B. NO. 2297

A Bill for an Act Relating to Motor Vehicle Sun Screening Devices.

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

SECTION 1. Section 291-21.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- “(d) This section shall not apply to:
- (1) Rearview mirrors;
  - (2) Adjustable nontransparent sun visors which are mounted forward of the side windows and are not attached to the glazing material;
  - (3) Signs, stickers, or other materials which are displayed in a seven-inch square in the lower corner of the windshield farthest removed from the driver or signs, stickers, or other materials which are displayed in a five-inch square in the lower corner of the windshield nearest the driver;
  - (4) Rear trunk lid handle or hinges;
  - (5) Window wipers and window wiper motors;
  - (6) Transparent sun screening film materials which are installed, affixed, or applied along the top edge of the windshield so long as such materials do not encroach upon the AS-1 portion of the windshield as provided by ~~the~~ Federal Motor Vehicle Safety ~~Standards~~ Standard 205 or no lower than four inches below the top of the windshield, when measured from the middle point of the bottom edge of the top windshield moulding if no AS-1 markings can be found in the left or right upper margin of the windshield;
  - (7) Sun screening devices for front side wing vents and windows which, when used in conjunction with the glazing material have a light transmittance of no less than thirty-five per cent plus or minus six per cent;
  - (8) Sun screening devices for side windows necessary for driving visibility which are to the rear of the driver and for rear windows necessary for driving visibility which, when used in conjunction with the glazing material, have a light transmittance of no less than thirty-five per cent plus or minus six per cent;
  - (9) Side windows which are to the rear of the driver and rear windows on vans, minivans, trucks, or buses; provided that the vehicles are equipped with rearview mirrors on both sides;
  - (10) Privacy drapes, curtains, or blinds, or any combination, installed on the interior of motor homes~~[-]; or~~
  - (11) Transparent sun screening materials, when applied to the AS-1 portion of the windshield, which meets the requirements of Federal Motor Vehicle Safety Standard 205.”

**ACT 104**

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 12, 2010.)

**ACT 104**

H.B. NO. 1190

A Bill for an Act Relating to Traffic Accident Investigation.

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

SECTION 1. The legislature finds that traffic accident management is of utmost public importance, especially when a fatality occurs. Although the evidence collected at traffic accident scenes may be crucial to determining the cause of the accident, these accident investigations proceed at a slower rate in Hawaii than in comparable metropolitan areas in the United States. The average length of time for lane closures in Hawaii ranges from two to four hours for major traffic accidents to over eight hours when a fatality occurs.

The legislature also finds that these prolonged closures of traffic lanes adversely affect the public and our economy because students cannot reach school and school activities or return home afterwards; employees cannot reach their place of work or attend meetings at remote locations; and businesses cannot receive or deliver products necessary to conduct business.

The purpose of this Act is to expedite the investigation of major, especially fatal, traffic accidents.

SECTION 2. (a) The police department of each county shall:

- (1) Identify the roadways, or class of roadways, that are most critical to the free movement of persons and commerce; and
- (2) Establish protocols necessary to coordinate major traffic accident investigations by law enforcement and other authorities having jurisdiction over the location of a major traffic accident, including immediately notifying the medical examiner in the case of fatal traffic accidents so that the medical examiner or coroner can conduct the appropriate accident scene investigation simultaneously with law enforcement, to the extent practical.

(b) Nothing in this Act shall be construed to restrict a police department's authority to enforce any of the powers otherwise granted to it by law.

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

(Approved May 13, 2010.)

**ACT 105**

H.B. NO. 1854

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 existing state law does not allow the use of food distribution program revolving funds for consultant or personal

services, travel expenses, and the purchase of furniture, equipment, computer hardware, or office supplies. The legislature finds that these uses may be allowed under 7 Code of Federal Regulations Section 250.15, which includes program-related expenses as allowable costs for which recipient agencies may be required to pay in full or in part. These program-related expenses are “administrative costs such as fringe benefits, travel expenses, rent, utilities, accounting/auditing services, computer services, and the costs of providing program services to recipient agencies such as the cost for administering and monitoring the State’s processing program, and technical assistance workshops.” The legislature finds that current state law is unnecessarily restrictive and places a financial strain on the department of education’s funds.

The purpose of this Act is to remove unnecessary restrictions on the use of food distribution program revolving funds and allow the use of the funds to support the administration and operation of the food distribution program pursuant to 7 Code of Federal Regulations Section 250.15.

SECTION 2. Section 302A-1315, Hawaii Revised Statutes, is amended to read as follows:

~~“[§302A-1315]~~ **Food distribution program revolving fund.** (a) There is established the food distribution program revolving fund to be administered by the department.

(b) The food distribution program revolving fund shall consist of:

- (1) Administrative fees collected by the department for administering and operating the food distribution program;
- (2) All interest earned on the deposit or investment of moneys in the food distribution program revolving fund; and
- (3) Any other moneys made available to the food distribution program revolving fund from other sources.

(c) The food distribution program revolving fund shall be used by the department for the collection and disbursement of generated revenue to support the administration and operation of the food distribution program~~[-] pursuant to 7 Code of Federal Regulations Section 250.15.~~

(d) The balance in the food distribution program revolving fund shall not exceed \$2,000,000 to pay for services rendered by state-contracted warehouses for the distribution of federal commodity foods to the recipient agencies. Any moneys remaining in the revolving fund in excess of \$2,000,000 at the end of each fiscal year shall lapse to the credit of the general fund.

~~[(e) The food distribution program revolving fund shall not be used for:~~

- ~~(1) Consultant or personal services rendered;~~
- ~~(2) Travel expenses that may include conference registration, per diem, or airfare costs; or~~
- ~~(3) The purchase of furniture, equipment, computer hardware, or office supplies.]”~~

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, 2010.

(Approved May 13, 2010.)



A Bill for an Act Relating to the Budget.

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

SECTION 1. The legislature finds that the staff of the Hawaii employer-union health benefits trust fund is encountering difficulties performing its duties. The legislature believes that these difficulties are the result of an increased and more complex workload, shortage of personnel, and absence of board and administrative leadership.

The legislature further finds that the enabling law for the voluntary employees' beneficiary association trust, an alternative health-benefits system used by the employee organization for public school teachers, will sunset on July 1, 2010. The legislature declares that it does not intend to make the enabling law permanent or extend the sunset date for another pilot testing period.

Notwithstanding this intent, the legislature finds that the staff of the Hawaii employer-union health benefits trust fund will experience extreme difficulty assisting in the transition of public school teachers and their dependents from the voluntary employees' beneficiary association trust to the Hawaii employer-union health benefits trust fund on July 1, 2010, while continuing to perform its normal duties. The legislature does not want to place an excessive burden on the staff or cause uncertainty for these public school teachers and their dependents.

Thus, the purpose of this Act is to:

- (1) Extend the enabling law for the voluntary employees' beneficiary association trust for six months to provide for a smoother transition to the Hawaii employer-union health benefits trust fund;
- (2) Appropriate funds for five temporary positions to assist in the transition of public employees and their dependents from the voluntary employees' beneficiary association trust to the Hawaii employer-union health benefits trust fund;
- (3) Appropriate funds for five permanent positions to assist in the performance of Hawaii employer-union health benefits trust fund duties; and
- (4) Appropriate funds to cover costs associated with the transition from the voluntary employees' beneficiary association trust to the Hawaii employer-union health benefits trust fund.

SECTION 2. Act 245, Session Laws of Hawaii 2005, section 8, as amended by Act 294, Session Laws of Hawaii 2007, section 2, as amended by Act 16, Session Laws of Hawaii 2008, section 18, as amended by Act 5, First Special Session Laws of Hawaii 2008, section 1, is amended to read as follows:

"SECTION 8. This Act shall take effect upon its approval, for the purpose of establishing a voluntary employees' beneficiary association trust pilot program in March, 2006 and shall be repealed on ~~[July 1,]~~ December 31, 2010; provided that sections 89-2, 89-3, 89-6, and 89-9, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the effective date of this Act; and provided further that the amendments made to section 89-6, Hawaii Revised Statutes, by Act 202, Session Laws of Hawaii 2005, shall not be repealed when that section is reenacted on ~~[July 1, 2009.]~~ December 31, 2010."

SECTION 3. There is appropriated out of the Hawaii employer-union health benefits trust fund of the State of Hawaii the sum of \$232,542 or so much thereof as may be necessary for fiscal year 2010-2011 for five temporary

positions under the Hawaii employer-union health benefits trust fund to assist in the transition of public employees and their dependents from the voluntary employees' beneficiary association trust to the Hawaii employer-union health benefits trust fund on January 1, 2011.

The sum appropriated shall be expended by the Hawaii employer-union health benefits trust fund for the purposes of this Act.

SECTION 4. There is appropriated out of the Hawaii employer-union health benefits trust fund of the State of Hawaii the sum of \$244,359 or so much thereof as may be necessary for fiscal year 2010-2011 for five permanent positions under the Hawaii employer-union health benefits trust fund to assist in the performance of duties of the trust fund.

The sum appropriated shall be expended by the Hawaii employer-union health benefits trust fund for the purposes of this Act.

SECTION 5. There is appropriated out of the Hawaii employer-union health benefits trust fund of the State of Hawaii the sum of \$223,099 or so much thereof as may be necessary for fiscal year 2010-2011 for costs associated with the transition from the voluntary employees' beneficiary association trust to the Hawaii employer-union health benefits trust fund.

The sum appropriated shall be expended by the Hawaii employer-union health benefits trust fund 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 June 29, 2010.

(Approved May 13, 2010.)

## ACT 107

S.B. NO. 2831

A Bill for an Act Relating to the Procurement Code.

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

SECTION 1. Act 175, Session Laws of Hawaii 2009, is amended by amending section 14 to read as follows:

“SECTION 14. This Act shall take effect on July 1, 2009; provided that:

- (1) Part I shall be repealed on July 1, 2012, and sections 103D-102 and 103D-305, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act; and
- (2) ~~[Part III]~~ Sections 7, 9, and 10 of this Act shall be repealed on July 1, 2011, and sections ~~[103-32.1,]~~ 103D-709, 103D-710(c), and 103D-710(e), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.”

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, 2010.

(Approved May 13, 2010.)

A Bill for an Act Relating to Athletic Trainers.

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

SECTION 1. The legislature finds that athletic trainers routinely work with children as young as twelve but are one of the few types of health professionals not regulated in Hawaii. Regulation of athletic trainers would ensure that Hawaii's athletes receive specialized emergency care and appropriate treatment and rehabilitation and meet appropriate criteria before being returned to play and provide a mechanism to report and remedy malpractice and ethical violations, thereby reducing an existing threat of harm to the public.

As Hawaii is one of the few states that does not regulate athletic trainers, there is no entity to which the National Athletic Trainers' Association Board of Certification, Inc., can report disciplinary actions to ensure that appropriate action is taken to protect the public.

The purpose of this Act is to require the auditor to perform a sunrise analysis of the proposed regulation of athletic trainers.

SECTION 2. (a) Notwithstanding the requirement of a referring concurrent resolution pursuant to section 26H-6, Hawaii Revised Statutes, the auditor shall analyze the probable effects of a proposed regulatory measure to regulate the profession of athletic trainers in Hawaii and assess whether its enactment is consistent with the policies under section 26H-2, Hawaii Revised Statutes. The proposed measure to be analyzed shall be S.B. No. 2601, S.D. 1 (2010)<sup>1</sup>. The auditor shall analyze, at minimum, the issues entailed in the definition and scope of practice of an athletic trainer, and make recommendations on whether athletic trainers should be regulated.

(b) The auditor shall consider alternatives to the proposed regulation, as appropriate.

(c) The auditor shall submit reports of the analyses requested in section 1(a) and 1(b) of this Act to the legislature no later than twenty days prior to the convening of the 2011 regular session.

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

(Approved May 14, 2010.)

Note

1. Act 108.

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, as amended by section 1 of Act 94, Session Laws of Hawaii 2006, 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. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect on June 29, 2010.

(Approved May 14, 2010.)

**Note**

1. No underscored material.

**ACT 110**

H.B. NO. 2721

A Bill for an Act Relating to Court Reporters.

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

SECTION 1. Chapter 606, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§606- Certified shorthand reporter; administration of oaths or affirmations.** A certified shorthand reporter may administer oaths or affirmations and may perform the duties of a deposition officer pursuant to rules of court relating to persons before whom depositions may be taken.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

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

(Approved May 14, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 111**

S.B. NO. 2257

A Bill for an Act Relating to Electronic Warrant Vouchers.

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

SECTION 1. The legislature finds that the State of Hawaii is slowly progressing into the electronic/digital age. Some private vendors that do business with the State of Hawaii are trying to streamline their invoicing of goods and services by sending electronic documents to the various departments to be used as original vouchers, bills of materials, and other supporting documents. The legislature further finds that in the future, if a new, state-of-the-art accounting system is implemented in state departments, there may be options to attach electronic documents to purchase orders or other contract encumbrances for review and authorization without having to automatically print the documents, which would save paper.

The purpose of this Act is to provide flexibility to the department of accounting and general services, University of Hawaii, and department of edu-

cation to accept electronically-mailed warrant vouchers, bills of materials, and other supporting documents as original documents.

SECTION 2. Section 40-56, Hawaii Revised Statutes, is amended to read as follows:

**“§40-56 Warrants for supplies, incidentals.** Warrants for bills of materials, supplies, and incidentals of every kind and character, shall be made payable to the order of each individual person to whom the State is indebted, except as provided in section 40-58, and only after an original warrant voucher shall have been presented to the comptroller or, in the case of the University of Hawaii and the department of education, to their respective chief financial officers accompanied by all original bills and any other supporting document as may be required by the comptroller[-] or the respective chief financial officers of the University of Hawaii and the department of education. The comptroller or the respective chief financial officers of the University of Hawaii and department of education may accept an electronically-mailed warrant voucher or other bill or supporting document as an original warrant voucher, bill, or supporting document. The original warrant voucher shall have indorsed thereon the approval of the officer in whose department the liability or expense has been incurred, and the appropriation to which it is chargeable; and further, each original bill shall be specially certified [tø] by the subordinate officer of the State directly incurring the liability or expense that all the materials, supplies, and incidentals have been received in good order and condition, unless the bill is for an advance payment or a deposit to be paid as specified in the department’s purchase order, in which case the certification of the original bill by the subordinate officer is not required. Any advance payment made under this section must conform to the common business practice for making such payment as determined by the comptroller[-] or the respective chief financial officers of the University of Hawaii and the department of education.”

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, 2010.

(Approved May 17, 2010.)

## ACT 112

H.B. NO. 2594

A Bill for an Act Relating to Conformity of the Hawaii Income Tax Law to the Internal Revenue Code.

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

SECTION 1. The purpose of this Act is to conform Hawaii income tax law to the Internal Revenue Code.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§235-A Operation of certain Internal Revenue Code provisions not operative under section 235-2.3.** Notwithstanding the meaning of “Internal Revenue Code” as that term is used in section 231-2.3, beginning April 1, 2010, the fol-

lowing Sections of the federal Internal Revenue Code of 1986, as amended as of April 1, 2010, shall be operative for purposes of this chapter:

- (1) Section 6041 as applicable to persons under Section 6041(h) (with respect to information returns at the source for certain corporations);
- (2) Section 6038D (with respect to information with respect to foreign financial assets). With respect to persons required to report information under this Section, Section 6662(j) (with respect to imposition of accuracy-related penalties on underpayments) and Section 6501(e)(1)(A)(ii) (with respect to limitations on assessment and collection) shall also be operative for purposes of this chapter and shall be applied consistently with the correlating provisions of 231-36.6 and 235-111;
- (3) Section 6045B (with respect to returns relating to actions affecting basis in securities); and
- (4) Section 6050W (with respect to returns relating to payments made in settlement of payment card and third party network transactions)."

SECTION 3. Section 232-24, Hawaii Revised Statutes, is amended to read as follows:

**"§232-24 Taxes paid pending appeal.** The tax paid upon the amount of any assessment, actually in dispute and in excess of that admitted by the taxpayer, and covered by an appeal to the tax appeal court duly taken, shall, pending the final determination of the appeal, be paid by the director of finance into the "litigated claims fund". If the final determination is in whole or in part in favor of the appealing taxpayer, the director of finance shall repay to the taxpayer out of the fund, or if investment of the fund should result in a deficit therein, out of the general fund of the State, the amount of the tax paid upon the amount held by the court to have been excessive or nontaxable, together with ~~interest at the rate of eight per cent a year~~ from the date of each payment into the litigated claims fund, the interest to be paid from the general fund of the State. For purposes of this section, the rate of interest shall be computed by reference to Section 6621(a) (with respect to interest rate determination) of the Internal Revenue Code of 1986, as of January 1, 2010. The balance, if any, of the payment made by the appealing taxpayer, or the whole of the payment, in case the decision is wholly in favor of the assessor, shall, upon the final determination become a realization under the tax law concerned.

In a case of an appeal to a board of review, the tax paid, if any, upon the amount of the assessment actually in dispute and in excess of that admitted by the taxpayer, shall during the pendency of the appeal and until and unless an appeal is taken to the tax appeal court, be held by the director of finance in a special deposit. In the event of final determination of the appeal in the board of review, the director of finance shall repay to the appealing taxpayer out of the deposit the amount of the tax paid upon the amount held by the board to have been excessive or nontaxable, if any, the balance, if any, or the whole of the deposit, in case the decision is wholly in favor of the assessor, to become a realization under the tax law concerned."

SECTION 4. 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, ~~[2008,] 2009,~~ as used in this chapter, except as provided in section 235-A, "Internal Revenue Code" means subtitle A, chapter 1, of the federal Internal Revenue Code of

1986, as amended as of December 31, [2008,] 2009, 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]~~ 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~~] (Sections 1 to 59A) (with respect to determination of tax liability), except ~~[section]~~ Section 1(h)(2) (relating to net capital gain reduced by the amount taken into account as investment income), except ~~sections~~ Sections 2(a), 2(b), and 2(c) (with respect to the definition of "surviving spouse" and "head of household"), except ~~[section]~~ Section 41 (with respect to the credit for increasing research activities), except ~~[section]~~ Section 42 (with respect to low-income housing credit), [and] ~~except~~ ~~sections~~ Sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property)[-], and except Section 48(d)(3), as amended, as of February 17, 2009 (with respect to the treatment of United States Department of Treasury grants made under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009). 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~~] 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~~] 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) Section 139C (with respect to COBRA premium assistance);
- ~~[(9)]~~ ~~(10)~~ Subchapter B [~~sections~~] (Sections 141 to 150) (with respect to tax exemption requirements for state and local bonds);
- ~~[(10)]~~ ~~(11)~~ Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54;
- ~~[(11)]~~ ~~(12)~~ Section 179B (with respect to expensing of capital costs incurred in complying with Environmental Protection Agency sulphur regulations);
- ~~[(12)]~~ ~~(13)~~ Section 181 (with respect to special rules for certain film and television productions);
- ~~[(13)]~~ ~~(14)~~ Section 196 (with respect to deduction for certain unused investment credits);
- ~~[(14)]~~ ~~(15)~~ Section 199 (with respect to the U.S. production activities deduction);
- ~~[(15)]~~ ~~(16)~~ Section 222 (with respect to qualified tuition and related expenses);
- ~~[(16)]~~ ~~(17)~~ Sections 241 to 247 (with respect to special deductions for corporations). For treatment, see section 235-7(c);
- ~~[(17)]~~ ~~(18)~~ Section 280C (with respect to certain expenses for which credits are allowable). For treatment, see section 235-110.91;
- ~~[(18)]~~ ~~(19)~~ Section 291 (with respect to special rules relating to corporate preference items);
- ~~[(19)]~~ ~~(20)~~ Section 367 (with respect to foreign corporations);
- ~~[(20)]~~ ~~(21)~~ Section 501(c)(12), (15), (16) (with respect to exempt organizations);
- ~~[(21)]~~ ~~(22)~~ Section 515 (with respect to taxes of foreign countries and possessions of the United States);
- ~~[(22)]~~ ~~(23)~~ Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders);
- ~~[(23)]~~ ~~(24)~~ Subchapter H (sections 581 to 597) (with respect to banking institutions), except [~~section~~] Section 584 (with respect to common trust funds). For treatment, see chapter 241;
- ~~[(24)]~~ ~~(25)~~ 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)]~~ ~~(26)~~ Section 646 (with respect to tax treatment of electing Alaska Native settlement trusts);
- ~~[(26)]~~ ~~(27)~~ Section 668 (with respect to interest charge on accumulation distributions from foreign trusts);
- ~~[(27)]~~ ~~(28)~~ Subchapter L (sections 801 to 848) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204;
- ~~[(28)]~~ ~~(29)~~ Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55;
- (30) Section 853A (with respect to credits from tax credit bonds allowed to shareholders);
- ~~[(29)]~~ ~~(31)~~ Subchapter N [~~sections~~] (Sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except [~~sections~~] 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] (32) Section 1042(g) (with respect to sales of stock in agricultural refiners and processors to eligible farm cooperatives);
- [31] (33) Section 1055 (with respect to redeemable ground rents);
- [32] (34) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange);
- [33] (35) Sections 1291 to 1298 (with respect to treatment of passive foreign investment companies);
- [34] (36) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations);
- [35] (37) Subchapter R (sections 1352 to 1359) (with respect to election to determine corporate tax on certain international shipping activities using per ton rate);
- [36] (38) Subchapter U [~~sections~~] (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;
- [37] (39) Subchapter W [~~sections~~] (Sections 1400 to 1400C) (with respect to District of Columbia enterprise zone);
- [38] (40) Section 1400O (with respect to education tax benefits);
- [39] (41) Section 1400P (with respect to housing tax benefits);
- [40] (42) Section 1400R (with respect to employment relief); ~~and~~
- [41] (43) Section 1400T (with respect to special rules for mortgage revenue bonds)[-];
- (44) Section 1400U-1 (with respect to allocation of recovery zone bonds);
- (45) Section 1400U-2 (with respect to recovery zone economic development bonds); and
- (46) Section 1400U-3 (with respect to recovery zone facility bonds)."

SECTION 5. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

**"§235-2.4 Operation of certain Internal Revenue Code provisions; [~~sections~~] Sections 63 to 530.** (a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, subject to the following:

- (1) Sections 63(c)(1)(B) (relating to the additional standard deduction), 63(c)(1)(C) (relating to the real property tax deduction), 63(c)(1)(D) (relating to the disaster loss deduction), 63(c)(1)(E) (relating to the motor vehicle sales tax deduction, 63(c)(4) (relating to inflation adjustments), 63(c)(7) (defining the real property tax deduction), 63(c)(8) (defining the disaster loss deduction), 63(c)(9) (defining the motor vehicle sales tax deduction), and 63(f) (relating to additional amounts for the aged or blind) of the Internal Revenue Code shall not be operative for purposes of this chapter;
- (2) Section 63(c)(2) (relating to the basic standard deduction) of the Internal Revenue Code shall be operative, except that the standard deduction amounts provided therein shall instead mean:
  - (A) \$4,000 in the case of:
    - (i) A joint return as provided by section 235-93; or
    - (ii) A surviving spouse (as defined in [~~section~~] Section 2(a) of the Internal Revenue Code);
  - (B) \$2,920 in the case of a head of household (as defined in [~~section~~] Section 2(b) of the Internal Revenue Code);

- (C) \$2,000 in the case of an individual who is not married and who is not a surviving spouse or head of household; or
- (D) \$2,000 in the case of a married individual filing a separate return;
- (3) Section 63(c)(5) (limiting the basic standard deduction in the case of certain dependents) of the Internal Revenue Code shall be operative, except that the limitation shall be the greater of \$500 or such individual's earned income; and
- (4) The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5.
- (b) Section 72 (with respect to annuities; certain proceeds of endowment and life insurance contracts) of the Internal Revenue Code shall be operative for purposes of this chapter and be interpreted with due regard to section 235-7(a), except that the ten per cent additional tax on early distributions from retirement plans in ~~section~~ Section 72(t) shall not be operative for purposes of this chapter.

(c) Section 85 (with respect to unemployment compensation) of the Internal Revenue Code shall be operative for purposes of this chapter, except that Section 85(c) shall not be operative for purposes of this chapter.

(d) Section 108 (with respect to income from discharge of indebtedness) of the Internal Revenue Code shall be operative for purposes of this chapter, except that Section 108(i) (relating to deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument) shall not be operative for purposes of this chapter.

~~(e)~~ (e) Section 121 (with respect to exclusion of gain from sale of principal residence) of the Internal Revenue Code shall be operative for purposes of this chapter, except that for the election under ~~section~~ Section 121(f), a reference to ~~section~~ Section 1034 treatment means a reference to section ~~[235-2.4(n)]~~ 235-2.4(s) in effect for taxable year 1997.

(f) Section 132 (with respect to certain fringe benefits) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the provision in Section 132(f)(2) that equalizes the dollar amounts for Sections 132(f)(2)(A) and (B) after February 17, 2009, until January 1, 2011, shall not be operative and except that Section 132(n) shall not apply to United States Department of Defense Homeowners Assistance program payments authorized by the American Recovery and Reinvestment Act of 2009.

~~(d)~~ (g) Section 163 (with respect to interest) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that provisions in ~~section~~ Section 163(d)(4)(B) (defining net investment income to exclude dividends), Section 163(e)(5)(F) (suspension of applicable high-yield discount obligation (AHYDO) rules) and Section 163(i)(1) as it applies to debt instruments issued after January 1, 2010, (defining AHYDO) shall not be operative for the purposes of this chapter.

(h) Section 164 (with respect to taxes) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that Sections 164(a)(6) and 164(b)(6) shall not be operative for the purposes of this chapter.

~~(e)~~ (i) Section 165 (with respect to losses) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the amount prescribed by ~~section~~ Sections 165(h)(1) (relating to the limitation per casualty) of the Internal Revenue Code shall be a \$100 limitation per casualty, and ~~sections~~ Sections 165(h)(3)(A) and 165(h)(3)(B) (both of which relate to special rules for personal casualty gains and losses in federally declared disasters) of the Internal Revenue Code shall not be operative for the purposes of this chapter. Section 165 as operative for this chapter shall also apply to losses sustained from the sale

of stocks or other interests issued through the exercise of the stock options or warrants granted by a qualified high technology business as defined in section 235-7.3.

~~[(f)]~~ (j) Section 168 (with respect to the accelerated cost recovery system) of the Internal Revenue Code shall be operative for purposes of this chapter, except that ~~[sections]~~ Sections 168(j) (relating to property on Indian reservations), 168(k) (relating to the special allowance for certain property acquired during the period specified therein), 168(m) (relating to the special allowance for certain reuse and recycling property), and 168(n) (relating to the special allowance for qualified disaster assistance property) of the Internal Revenue Code shall not be operative for purposes of this chapter.

~~[(g)]~~ (k) Section 172 (with respect to net operating loss deductions) of the Internal Revenue Code shall be operative for purposes of this chapter, as further provided in section 235-7(d), except that ~~[sections]~~ Sections 172(b)(1)(J) and 172(j) (both of which relate to qualified disaster losses) of the Internal Revenue Code shall not be operative for purposes of this chapter.

~~[(h)]~~ (l) Section 179 (with respect to the election to expense certain depreciable business assets) of the Internal Revenue Code shall be operative for purposes of this chapter, except that provisions relating to:

- (1) The increase of the maximum deduction to \$100,000 for taxable years beginning after 2002 and before 2008, and the increase of the maximum deduction to \$125,000 for taxable years beginning after 2006 and before 2011, in ~~[section]~~ Section 179(b)(1);
- (2) The increase of the qualifying investment amount to \$400,000 for taxable years beginning after 2002 and before 2008, and the increase of the qualifying investment amount to \$500,000 for taxable years beginning after 2006 and before 2011, in ~~[section]~~ Section 179(b)(2);
- (3) The increase of the maximum deduction to \$250,000 and the increase of the qualifying investment amount to \$800,000 for taxable years beginning in 2008~~[,]~~ or 2009, in ~~[section]~~ Section 179(b)(7);
- (4) Defining ~~[section]~~ Section 179 property to include computer software in ~~[section]~~ Section 179(d)(1);
- (5) Inflation adjustments in ~~[section]~~ Section 179(b)(5);
- (6) Irrevocable election in ~~[section]~~ Section 179(c)(2); and
- (7) Special rules for qualified disaster assistance property in ~~[section]~~ Section 179(e),

shall not be operative for the purposes of this chapter.

~~[(i)]~~ (m) Section 198A (with respect to the expensing of qualified disaster assistance expenses) of the Internal Revenue Code shall not be operative for purposes of this chapter.

~~[(j)]~~ (n) Section 219 (with respect to retirement savings) of the Internal Revenue Code shall be operative for the purpose of this chapter. For the purpose of computing the limitation on the deduction for active participants in certain pension plans for state income tax purposes, adjusted gross income as used in ~~[section]~~ Section 219 as operative for this chapter means federal adjusted gross income.

~~[(k)]~~ (o) Section 220 (with respect to medical savings accounts) of the Internal Revenue Code shall be operative for the purpose of this chapter, but only with respect to medical services accounts that have been approved by the Secretary of the Treasury of the United States.

~~[(l)]~~ (p) Section 265 (with respect to expenses and interest relating to tax-exempt income) of the Internal Revenue Code shall be operative for purposes of this chapter; except that Sections 265(b)(3)(G) and 265(b)(7) shall not be opera-

ive and that ~~[(#)]~~ Section 265 shall not apply to expenses for royalties and other income derived from any patents, copyrights, and trade secrets by an individual or a qualified high technology business as defined in section 235-7.3. Such expenses shall be deductible.

~~[(q)]~~ Section 382 (with respect to limitation on net operating loss carry-forwards and certain built-in losses following ownership change) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that Section 382(n) shall not be operative for purposes of this chapter.

~~[(m)]~~ ~~[(r)]~~ Section 408A (with respect to Roth Individual Retirement Accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter~~[-]~~, except that Section 408A(d)(3)(A)(iii) shall not be operative for purposes of this chapter. For the purposes of determining the aggregate amount of contributions to a Roth Individual Retirement Account or qualified rollover contribution to a Roth Individual Retirement Account from an individual retirement plan other than a Roth Individual Retirement Account, adjusted gross income as used in ~~[section]~~ Section 408A as operative for this chapter means federal adjusted gross income.

~~[(n)]~~ ~~[(s)]~~ In administering the provisions of ~~[sections]~~ Sections 410 to 417 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.), ~~[sections]~~ Sections 418 to 418E (with respect to special rules for multiemployer plans), and ~~[sections]~~ Sections 419 and 419A (with respect to treatment of welfare benefit funds) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating to the specific requirements under such sections and to such other administrative requirements under those sections as may be necessary for the efficient administration of ~~[sections]~~ Sections 410 to 419A.

In administering ~~[sections]~~ Sections 401 to 419A (with respect to deferred compensation) of the Internal Revenue Code, Public Law 93-406, ~~[section]~~ Section 1017(i), shall be operative for the purposes of this chapter.

In administering ~~[section]~~ Section 402 (with respect to the taxability of beneficiary of employees' trust) of the Internal Revenue Code, the tax imposed on lump sum distributions by ~~[section]~~ Section 402(e) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter.

~~[(o)]~~ ~~[(t)]~~ In administering ~~[section]~~ Section 403 (with respect to taxation of employee annuities) of the Internal Revenue Code, any funds that represent pre-tax employee deferrals or contributions that are distributed from the annuity and used solely to obtain retirement credits under the state ~~[[employees']]~~ retirement system shall not be treated as a rollover for purposes of ~~[section]~~ Section 403(b)(8)(A) of the Internal Revenue Code, and such funds shall be subject to income tax under this chapter.

~~[(p)]~~ ~~[(u)]~~ Section 451 (which provides general rules for taxable year of inclusion) of the Internal Revenue Code shall be operative, except that the provisions of ~~[sections]~~ Sections 451(i)(3) and 451(i)(6), as they relate to a qualified electric utility, shall not be operative for purposes of this chapter.

~~[(q)]~~ ~~[(v)]~~ In administering ~~[section]~~ Section 457 (with respect to compensation plans of state and local governments and tax-exempt organizations) of the Internal Revenue Code, any funds that represent pre-tax employee deferrals or contributions that are distributed from the deferred compensation plan and used solely to obtain retirement credits under the state ~~[[employees']]~~ retirement system shall not be treated as a rollover for purposes of ~~[section]~~ Section 457(e)(16)(A) of the Internal Revenue Code and such funds shall be subject to income tax under this chapter.

~~[(+)]~~ (w) Section 468B (with respect to special rules for designated settlement funds) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at a rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

~~[(s)]~~ (x) Section 469 (with respect to passive activities and credits limited) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of computing the offset for rental real estate activities for state income tax purposes, adjusted gross income as used in section 469 as operative for this chapter means federal adjusted gross income.

~~[(t)]~~ (y) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

“Unrelated business taxable income” means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply, and in the determination of the net operating loss deduction there shall not be taken into account any amount of income or deduction that is excluded in computing the unrelated business taxable income. Unrelated business taxable income shall not include any income from a prepaid legal service plan.

For a person described in ~~[section]~~ Section 401 or 501 of the Internal Revenue Code, as modified by section 235-2.3, the tax imposed by section 235-51 or 235-71 shall be imposed upon the person’s unrelated business taxable income.

~~[(u)]~~ (z) Section 521 (with respect to cooperatives) and subchapter T (~~[sections]~~ Sections 1381 to 1388, with respect to cooperatives and their patrons) of the Internal Revenue Code shall be operative for the purposes of this chapter as to any cooperative fully meeting the requirements of section 421-23, except that Internal Revenue Code ~~[section]~~ Section 521 cooperatives need not be organized in Hawaii.

~~[(v)]~~ (aa) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) of the Internal Revenue Code shall be operative for the purposes of this chapter and the taxes imposed in each section are hereby imposed by this chapter at the rates determined under section 235-71.

~~[(w)]~~ (bb) Section 529 (with respect to qualified tuition programs) shall be operative for the purposes of this chapter, except that ~~[section]~~ Sections 529(c) (6) and 529(e)(3)(A)(iii) shall not be operative.

~~[(x)]~~ (cc) Section 530 (with respect to education individual retirement accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of determining the maximum amount that a contributor could make to an education individual retirement account for state income tax purposes, modified adjusted gross income as used in ~~[section]~~ Section 530 as operative for this chapter means federal modified adjusted gross income as defined in ~~[section]~~ Section 530.”

SECTION 6. Section 235-2.4, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

“§235-2.4 Operation of certain Internal Revenue Code provisions; ~~[sections]~~ Sections 63 to 530. (a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, subject to the following:

- (1) Sections 63(c)(1)(B) (relating to the additional standard deduction), 63(c)(1)(C) (relating to the real property tax deduction), 63(c)(1)

- (D) (relating to the disaster loss deduction), 63(c)(1)(E) (relating to the motor vehicle sales tax deduction), 63(c)(4) (relating to inflation adjustments), 63(c)(7) (defining the real property tax deduction), 63(c)(8) (defining the disaster loss deduction), 63(c)(9) (defining the motor vehicle sales tax deduction), and 63(f) (relating to additional amounts for the aged or blind) of the Internal Revenue Code shall not be operative for purposes of this chapter;
- (2) Section 63(c)(2) (relating to the basic standard deduction) of the Internal Revenue Code shall be operative, except that the standard deduction amounts provided therein shall instead mean:
- (A) \$4,400 in the case of:
- (i) A joint return as provided by section 235-93; or
  - (ii) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code);
- (B) \$3,212 in the case of a head of household (as defined in ~~section~~ Section 2(b) of the Internal Revenue Code);
- (C) \$2,200 in the case of an individual who is not married and who is not a surviving spouse or head of household; or
- (D) \$2,200 in the case of a married individual filing a separate return;
- (3) Section 63(c)(5) (limiting the basic standard deduction in the case of certain dependents) of the Internal Revenue Code shall be operative, except that the limitation shall be the greater of \$500 or such individual's earned income; and
- (4) The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5."

SECTION 7. 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;]~~ state; and
  - (3) The tax imposed by ~~section~~ Section 1(e) of the Internal Revenue Code as applied by ~~section~~ 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~~ Section 103 of the Internal Revenue Code applies in ~~section~~ 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 provid-

ed 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]~~ Section 1(f)(3) of the Internal Revenue Code shall be operative for the purpose of applying ~~[section]~~ 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]~~ Section 704(b)(2) shall not apply to:

- (1) Allocations of the high technology business investment tax credit allowed by section 235-110.9 for investments made before May 1, 2009;
- (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 1202 (with respect to partial exclusion for gain from certain small business stock) of the Internal Revenue Code shall be operative for purposes of this chapter, except that Section 1202(a)(3) shall not be operative for purposes of this chapter.

~~[(e)]~~ (f) 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] Section 1212 shall not be operative and the capital loss carryforward allowed by [section] 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)]~~ (g) Section 1221 (with respect to the definition of capital assets) is operative; provided that the provisions of [section] Section 301 of Public Law 110-343, which provide that gain or loss from the sale or exchange of any applicable preferred stock by any applicable financial institution (such terms being defined by Public Law 110-343) shall be treated as ordinary income or loss, shall not be operative. A sale or exchange of any applicable preferred stock by any applicable financial institution (as those terms are defined by [section] Section 301 of Public Law 110-343) shall be treated as a sale of a capital asset and taxed accordingly.

~~[(g)]~~ (h) Subchapter S (sections 1361 to 1379) (with respect to tax treatment of S corporations and their shareholders) of [chapter] Chapter 1 of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in part VII[-]; except that Sections 1374(d)(7)(B) and 1374(d)(7)(C) shall not be operative for purposes of this chapter.

~~[(h)]~~ (i) 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] Sections 1400N(a) (with respect to tax-exempt bond financing); 1400N(b) (with respect to advance refundings of certain tax-exempt bonds); 1400N(c) (with respect to the low income housing credit); 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] 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.

~~[(j)]~~ (i) 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]~~ Section 1400S(d) (with respect to the special rule for determining earned income) shall not be operative for the purposes of this chapter.

~~[(j)]~~ (k) 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.

~~[(k)]~~ (l) 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.

~~[(h)]~~ (m) Subchapter C (sections 6221 to 6233) (with respect to tax treatment of partnership items) of ~~[chapter]~~ Chapter 63 of the Internal Revenue Code shall be operative for the purposes of this chapter.

~~[(m)]~~ (n) 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]~~ Chapter 232 relating to tax appeals.

~~[(n)]~~ (o) Section 6501(e) (with respect to limitation on assessment and collection where there is a substantial omission of items) of the Internal Revenue Code shall be operative for purposes of this chapter.

~~[(o)]~~ (p) 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.

~~[(p)]~~ (q) 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 8. Section 235-7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- “(d) (1) For taxable years ending before January 1, 1967, the net operating loss deductions allowed as carrybacks and carryovers by the Internal Revenue Code shall not be allowed. In lieu thereof the net operating loss deduction shall consist of the excess of the deductions allowed by this chapter over the gross income, computed with the modifications specified in paragraphs (1) to (4) of ~~[section]~~ Section 172(d) of the Internal Revenue Code, and with the further modification stated in paragraph (3) hereof; and shall be allowed as a deduction in computing the taxable income of the taxpayer for the succeeding taxable year;
- (2) (A) With respect to net operating loss deductions resulting from net operating losses for taxable years ending after December 31, 1966, the net operating loss deduction provisions of the Internal Revenue Code shall apply; provided that there shall be no net operating loss deduction carried back to any taxable year ending prior to January 1, 1967;



- (B) In the case of a taxable year beginning in 1966 and ending in 1967, the entire amount of all net operating loss deductions carried back to the taxable year shall be limited to that portion of taxable income for such taxable year which the number of days in 1967 bears to the total days in the taxable year ending in 1967; and
- (C) The computation of any net operating loss deduction for a taxable year covered by this subsection shall require the further modifications stated in paragraphs (3), (4), and (5) of this subsection;
- (3) In computing the net operating loss deduction allowed by this subsection, there shall be included in gross income the amount of interest which is excluded from gross income by subsection (a), decreased by the amount of interest paid or accrued which is disallowed as a deduction by subsection (e). In determining the amount of the net operating loss deduction under this subsection of any corporation, there shall be disregarded the net operating loss of such corporation for any taxable year for which the corporation is an electing small business corporation;
- (4) No net operating loss carryback or carryover shall be allowed by this chapter if not allowed under ~~[section]~~ Section 172 of the Internal Revenue Code;
- (5) The election to relinquish the entire carryback period with respect to a net operating loss allowed under ~~[section]~~ Section 172(b)(3)(C) of the Internal Revenue Code shall be operative for the purposes of this chapter; provided that no taxpayer shall make such an election as to a net operating loss of a business where such net operating loss occurred in the taxpayer's business prior to the taxpayer entering business in this ~~[State; and]~~ state;
- (6) The five-year carryback period for net operating losses for any taxable year ending during 2001 and 2002 in ~~[section]~~ Section 172(b)(1)(H) of the Internal Revenue Code as it read on December 31, 2008, shall not be operative for purposes of this chapter~~[-]; and~~
- (7) The election for the carryback for 2008 or 2009 net operating losses of small businesses as provided in Section 172(b)(1)(H) of the Internal Revenue Code as it read on December 31, 2009, shall not be operative for purposes of this chapter."

SECTION 9. In codifying the new section added by section 2 of this Act, the revisor of statutes shall substitute the appropriate section number for the letters used in designating the new section in this Act.

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

SECTION 11. This Act shall take effect upon its approval; provided that section 6 shall take effect on January 1, 2011.

(Approved May 17, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Immunization.

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

SECTION 1. Chapter 325, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . IMMUNIZATION REGISTRY**

**§325-A Definitions.** As used in this part:

"Health care provider" means a program, agency, clinic, health care center, physician licensed under the provisions of chapter 453, advanced practice registered nurse recognized under the provisions of chapter 457, pharmacist licensed under the provisions of chapter 461, physician's assistant licensed under the provisions of chapter 453, or person authorized to practice medicine as a physician or physician's assistant, or nursing as an advanced practice registered nurse, in federal facilities located in the state, that administers immunizations in Hawaii.

"Post-secondary school" means any adult education school, business school, trade school, community college, college, or university enrolling or registering students above the age of compulsory attendance.

"Registry" means the Hawaii immunization registry.

"School" means any child care center, preschool, day care center, day nursery, head start program, group child care home, kindergarten, elementary, intermediate, middle, or secondary school that is responsible for ensuring student compliance with mandatory school immunization entrance requirements.

"Student" means any child or adult enrolled in any school or post-secondary school in the state.

**§325-B Hawaii immunization registry; establishment and purposes.** The department of health may establish and maintain an immunization information system to be designated as the Hawaii immunization registry. The purposes of the registry shall be to maintain a single statewide repository of immunization records to aid, coordinate, and help promote efficient and cost-effective screening, prevention, and control of vaccine-preventable diseases, including pandemic influenza.

**§325-C Confidentiality and content of registry records.** (a) All immunization records and reports made for the purposes of this part that directly or indirectly identify a person shall be kept confidential and shall not be disclosed by any person unless:

- (1) The person identified, the person's legal guardian, or in the case of a minor, the minor's parent or legal guardian consents;
- (2) Disclosure is deemed necessary by the director of health to carry out this chapter;
- (3) A court directs upon its determination that disclosure is necessary for the conduct of proceedings before it;
- (4) The disclosure is made between the person's health care provider and payor to obtain reimbursement for services rendered to the person; provided that disclosure shall be made only if the provider informs the person that a reimbursement claim will be made to the

person's payor, the person is afforded an opportunity to pay the reimbursement directly, and the person does not pay; or

- (5) The department of health releases aggregate immunization information that does not disclose any identifying information of persons whose information is maintained in the registry.

(b) Registry information shall be limited to patient name; demographic information, and contact information; information specific to immunizations or medications received by the patient, including types, manufacturers, lot numbers, expiration dates, anatomical sites of administration, routes of administration, vaccine information statement publication dates, doses, dates administered, and adverse reactions to immunizations or medications; and the name and contact information of the vaccination administrator or medication provider and the patient's health care provider.

(c) The department of health shall adopt measures to ensure the security of the registry to prevent unauthorized access to registry information.

**§325-D Purposes for access to registry information; access not a disclosure.** (a) Notwithstanding section 325-C, it shall not be a disclosure for the persons listed in subsections (b), (c), and (d) to have limited access to registry information for the purposes specified in each subsection.

(b) Registry information regarding specific individuals in the registry may be accessed by health care providers who are treating, have treated, or have been assigned to treat those individuals; by employees of these health care providers; and by authorized department of health personnel assigned to monitor the immunization or health status of those individuals for the purposes of:

- (1) Recording the administration of any vaccination, including pandemic influenza vaccine;
- (2) Determining the immunization history of a patient to deliver health care treatment accordingly;
- (3) Notifying individuals or parents or legal guardians of the need to schedule a visit for an immunization;
- (4) Generating official immunization records;
- (5) Ensuring compliance with mandatory immunization requirements; or
- (6) Recording the distribution of prophylactic and treatment medications administered or dispensed in preparation for and in response to a potentially catastrophic disease threat.

(c) Registry information regarding specific individuals in the registry may be accessed by school and post-secondary school personnel authorized by the director of health, the superintendent of education, or the administrator of a private or post-secondary school for the purpose of ensuring compliance with mandatory student immunization requirements.

(d) Registry information regarding specific individuals in the registry may be accessed by the department of health or agents of the department of health for the purposes of:

- (1) Ensuring compliance with mandatory immunization requirements;
- (2) Performing immunization-related quality improvement or quality assessment activities;
- (3) Complying with Hawaii vaccines for children and teen vaccination programs' vaccine accountability policies and procedures;
- (4) Producing aggregate immunization assessment reports to monitor and improve public health;
- (5) Supporting efforts to prevent and manage outbreaks of vaccine-preventable diseases, including pandemic influenza;

- (6) Assisting the department of health in the event of a public health emergency; or
- (7) Managing and maintaining the Hawaii immunization registry system.

(e) The use of registry information accessed pursuant to this section shall be limited to the purposes for which access is granted.

**§325-E Registry record requirements; duration of retention.** (a) The establishment of an individual's record in the registry shall not require the prior consent of a patient or the consent of a patient's parent or legal guardian in the case of a minor or dependent. The department of health shall make available to the patient or the patient's parent or legal guardian in the case of a minor or dependent, via the patient's health care provider or birthing hospital, a written description of the purpose and benefits of the registry as well as the procedure for refusing inclusion in the registry. No registry information shall be established in the registry for any patient who in writing refuses, or, in the case of a minor or dependent, the patient's parent or legal guardian who in writing refuses to allow the information to be included in the registry. Each health care provider or birthing hospital shall maintain the records of refusal of inclusion and shall report any refusal to the department of health in a manner specified by rule.

(b) Registry information for any individual included within the registry shall be retained as a part of the registry for twenty-five years after the last entry, except in the case of minors, whose records shall be retained during the period of minority plus twenty-five years after the minor reaches the age of majority. At the conclusion of the retention period, the data stored in the registry for that individual shall be archived.

**§325-F Civil and criminal liability.** (a) Authorized users of the registry shall not be subject to civil liability for damages by reason of:

- (1) Providing information to the registry in good faith; or
- (2) Accessing and using information from the registry in good faith for the purposes specified in section 325-D.

(b) Any person who intentionally or knowingly discloses registry information contrary to the confidentiality provisions of this part shall be guilty of a misdemeanor."

SECTION 2. Section 325-13, Hawaii Revised Statutes, is amended to read as follows:

**"§325-13 [Regulations.] Rules.** (a) For the purpose of carrying out this chapter, the director of health, with the approval of the governor, may [~~make such regulations~~] adopt, amend, or repeal such rules as the director deems necessary which, when adopted in accordance with [~~section 321-10,~~] chapter 91, shall have the force and effect of law.

(b) The rules shall be designed to:

- (1) Protect the health and safety of the public;
- (2) Establish appropriate levels of access to Hawaii immunization registry information by authorized users;
- (3) Establish data entry and reporting requirements for health care providers; and
- (4) Establish penalties for the failure to comply with any rule."

SECTION 3. In codifying the new sections in the new part added to chapter 325, Hawaii Revised Statutes, by section 1 of this Act, the revisor of

statutes shall substitute appropriate section numbers for the letters used in designating and referring to the new sections in this Act.

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 approval.

(Approved May 17, 2010.)

## ACT 114

H.B. NO. 840

A Bill for an Act Relating to Charging by Written Information.

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

SECTION 1. Section 806-83, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a), (b), and (c) to read:

“(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(a)(1), (2)(A), and (3) (relating to penalties for failure to comply with requirements of sections 132D-7, 132D-10, and 132D-16); section 134-24 (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, etc., of automatic firearms, silencers, etc., prohibited; penalties); 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 and foreign 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—~~penalties~~); section 329-42 (prohibited acts C—~~penalties~~); 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) (relating to fraud involving food stamps or coupons [with a value exceeding \$300]); section 346-43.5 (medical assistance [~~fraud~~ frauds; penalties]); section 383-141 (falsely obtaining benefits, etc.); section 431:2-403(b)(2) (insurance fraud); section 482D-7 (violation of fineness standards and stamping requirements); section 485A-301 (~~registration of~~ securities registration requirement); section 485A-401 (~~broker-dealer registration [of broker-dealers]~~ requirement and exemptions); section 485A-402 (~~agent registration [of agents]~~ requirement and exemptions); section 485A-403 (~~investment advisor registration [of investment advisors]~~ requirement and ex-

emptions); section 485A-404 (investment advisor representative registration [of investment advisor representatives] requirement and exemptions); section 485A-405 ([registration of] federal covered investment [advisors] adviser notice filing requirement); section 485A-501 (general fraud); section 485A-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 708-812.6 (unauthorized entry in a dwelling); 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 in the first degree); section 708-839.5 (theft of utility services); section 708-839.55 (unauthorized possession of confidential personal information); 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~~) theft, forgery, etc., 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~~) 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, or public parks); 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(b) (failure to comply with covered offender registration requirements).

(b) Criminal charges may be instituted by written information for a felony when the charge is a class B felony under section 134-7(b) (ownership or possession prohibited, when; penalty); 134-23 (place to keep loaded firearms

other than pistols and revolvers; penalties); section 134-25 (place to keep pistol or revolver; penalty); section 134-26 (carrying or possessing a loaded firearm on a public highway; penalty); ~~[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]~~ 708-830.5 (theft in the first degree); section 708-839.7 (identify 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 712-1240.8 (methamphetamine trafficking in the second 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).

(c) Criminal charges may be instituted by written information for a felony when the charge is a felony under section 19-3 (election ~~[fraud]~~ frauds); section 480-4 (combinations in restraint of trade, price-fixing and limitation of production prohibited); section 480-6 (refusal to deal); or section 480-9 (monopolization).”

2. By amending subsection (e) to read:

“(e) Criminal charges may be instituted by written information for a felony when the charge is a charge that involves ~~[section]~~ 702-221 (liability for conduct of another), ~~[section]~~ 702-222 (~~[employee]~~ liability for the conduct of another; complicity), ~~[section]~~ 702-223 (liability for the conduct of another; complicity with respect to the result), ~~[section]~~ 705-500 (criminal attempt), ~~[section]~~ 705-510 (criminal solicitation), or ~~[section]~~ 705-520 (criminal conspiracy), and the underlying offense is an offense listed above in subsection (a), (b), (c), or (d).”

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, 2010.)

ACT 115

S.B. NO. 2371

A Bill for an Act Relating to Limited Benefit Health Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10A to be appropriately designated and to read follows:

“**§431:10A- Limited benefit health insurance.** (a) Except as provided in subsection (b) or elsewhere in this article, when used in this article, the terms “accident insurance”, “health insurance”, or “sickness insurance” shall not include an accident-only, specified disease, hospital indemnity, long-term care, disability, dental, vision, medicare supplement, or other limited benefit health insurance contract that pays benefits directly to the insured or the insured’s assigns and in which the amount of the benefit paid is not based upon the actual costs incurred by the insured.

(b) When used in sections 431:10A-104, 431:10A-105, 431:10A-106, 431:10A-107, 431:10A-108, 431:10A-109, 431:10A-110, 431:10A-111, 431:10A-112, 431:10A-113, 431:10A-114, 431:10A-117, 431:10A-118, 431:10A-131, 431:10A-601, 431:10A-602, 431:10A-603, and 431:10A-604, except as otherwise provided, the terms “accident insurance”, “health insurance”, or “sickness insurance” shall include an accident-only, specified disease, hospital indemnity,

long-term care, disability, dental, vision, medicare supplement, or other limited benefit health insurance contract regardless of the manner in which benefits are paid.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon approval.

(Approved May 17, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 116

S.B. NO. 2697

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 as follows:

1. By adding a new section to article 3 to be appropriately designated and to read:

**“§431:3- Statement of actuarial opinion; property and casualty insurance; confidentiality.** (a) The statement of actuarial opinion shall be provided with the annual statement in accordance with the property and casualty annual statement instruction as adopted by the National Association of Insurance Commissioners and shall be treated as a public document.

(b) Documents, materials, or other information related to or provided in connection with an actuarial report, working papers, or actuarial opinion summary that are in possession or control of the commissioner shall be confidential by law and privileged, shall not be made public, subject to subpoena or discovery, and shall not be admissible as evidence in any private civil action; provided that:

- (1) The commissioner may release the documents to the Actuarial Board for Counseling and Discipline or its successor to the extent that the material is required for the purpose of professional disciplinary proceedings and that the Actuarial Board for Counseling and Discipline or its successor establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents;
- (2) This section shall not be construed to limit the commissioner’s authority to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner’s official duties; and
- (3) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to this subsection.

(c) The commissioner may share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsections (a) and (b), with other state, federal, and



international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities; provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or information and has the legal authority to do so.

(d) The commissioner may receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions. The commissioner shall maintain as confidential or privileged, subject to subsection (b)(3), any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(e) The commissioner may enter into agreements governing sharing and use of information consistent with subsections (b), (c), and (d).

(f) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information subject to this section shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsections (b), (c), and (d)."

2. By adding a new section to part II of article 9 to be appropriately designated and to read:

"§431:9- Reporting of actions. (a) A licensee shall report in writing to the commissioner any civil or administrative action taken against the licensee in any jurisdiction or by any governmental agency in the United States within thirty days of the final disposition of the matter.

(b) Within thirty days of arraignment, a licensee shall report in writing to the commissioner any criminal prosecution of the licensee being taken in any jurisdiction.

(c) A report pursuant to this section shall include a copy of the initial complaint or indictment and any and all other relevant legal documents."

3. By amending subsection (c) of section 431:2-208 to read:

"(c) An insurer or licensee shall issue a written response with reasonable promptness, in no case more than fifteen working days, to any written inquiry made by the commissioner regarding a claim ~~[or]~~, consumer complaint~~[-]~~, or sales or marketing practice. The response shall be more than an acknowledgment that the commissioner's communication has been received, and shall adequately address the concerns stated in the communication."

4. By amending subsection (a) of section 431:4F-103 to read:

"(a) An alien insurer may use this [State] state as a state of entry to transact insurance in the United States through a United States branch by:

- (1) Qualifying as an insurer licensed to do business in this [State;] state; and
- (2) Establishing [a] trust [account;] accounts, pursuant to [a] trust [agreement] agreements approved by the commissioner with a United States financial institution approved by the commissioner, in an amount at least equal to the minimum capital and surplus or authorized control level risk-based capital, whichever is greater, required to be maintained by a domestic insurer licensed ~~[to do]~~ for the same kind of insurance."

5. By amending subsection (d) of section 431:9-203 to read:

"(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 ad-

dress, home address, mailing address, business phone number, business fax number, business electronic mail address, business website address, or home phone number.”

6. By amending subsection (b) of section 431:9-228 to read:

“(b) The licensee shall [~~promptly~~] notify the commissioner of any change of business address[~~;~~] within thirty days of the change.”

7. By amending subsection (f) of section 431:9A-107 to read:

“(f) 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 the business registration division of a change of 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, mailing address, business phone number, business fax number, business electronic mail address, or business website address.”

8. By amending subsection (c) of section 431:9A-122 to read:

“(c) The licensee shall [~~promptly~~] notify the commissioner [~~in writing~~] of any change of business address[~~;~~] within thirty days of the change.”

9. By adding a new definition in section 431:9C-101 to be appropriately inserted and to read:

““Producer” has the same meaning as in section 431:9A-102.”

10. By amending section 431:9C-102 to read:

“**§431:9C-102 Licensure.** (a) No person, firm, association, or corporation shall act as a managing general agent, with respect to risks located in this [State] state for an insurer licensed in this [State,] state, unless licensed as a producer in this [State,] state.

(b) No person, firm, association, or corporation shall act as a managing general agent[~~;~~] representing an insurer domiciled in this [State] state with respect to risks located outside this [State,] state unless licensed as a producer in this [State,] state.

~~[(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;~~
- ~~(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;~~
  - ~~(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.]”~~
11. By amending section 431:9C-103 to read:

“**§431:9C-103 Required contract provisions.** No person, firm, association, or corporation acting as a managing general agent shall place business with an insurer unless there is in force[;] a written contract between the managing general agent and the insurer which sets forth the responsibilities of each party [and;]; where both the managing general agent and the insurer share responsibility for a particular function, specifies the division of those responsibilities[;] and which contains at least the following additional provisions:

- (1) The insurer may terminate the contract for cause upon written notice to the managing general agent[. ~~The insurer~~] and may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination;
- (2) The managing general agent shall render accounts to the insurer detailing all transactions and shall remit all funds due under the contract to the insurer on not less than a monthly basis;
- (3) All funds collected for the account of an insurer shall be held by the managing general agent in a fiduciary capacity and shall be deposited in an account in a bank which is a member of the Federal Reserve System. This account shall be used for all payments on behalf of the insurer by the managing general agent. The managing general agent may retain no more than three months estimated claims payments and allocated loss adjustment expenses;
- (4) Separate records of business written by the managing general agent shall be maintained in the [~~licensee's~~] managing general agent's office. The insurer shall have [~~access to and~~] the right to access and to copy all accounts and records of the managing general agent related to the insurer's business in a form usable by the insurer[~~, and~~]; the commissioner shall have access to all books, bank accounts, and records of the managing general agent in a form usable to the commissioner. Records shall be in an organized form according to each class of insurance and shall include the following information to the extent it is applicable:
  - (A) A record of each insurance contract procured or issued, together with the names of the insurers and insureds, the amount of premium paid or to be paid, or the basis of the premium or consideration paid or to be paid, and a statement of the subject of the insurance;
  - (B) The names of any other licensees from whom business is accepted and the names of persons to whom commissions or allowances of any kind are promised or paid;
  - (C) A record of each investigation or adjustment undertaken or consummated and a statement of any fee, commission, or other compensation received or to be received by [~~the~~] an adjuster on account of [~~the~~] each investigation or adjustment;

- (D) A record of each bill reviewed and a statement of any fee, commission, or other compensation received or to be received by the independent bill reviewer on account of the bill reviewed; and
- (E) Any additional information as shall be customary or as may reasonably be required by the commissioner.

This paragraph shall not apply to life or accident and health or sickness insurance if the records required of ~~[such]~~ that insurance are customarily maintained in the offices of the insurer;

- (5) The contract may not be assigned in whole or in part by the managing general agent;
- (6) Appropriate underwriting guidelines including:
  - (A) The maximum annual premium volume;
  - (B) The basis of the rates to be charged;
  - (C) The types of risks which may be written;
  - (D) Maximum limits of liability;
  - (E) Applicable exclusions;
  - (F) Territorial limitations;
  - (G) Policy cancellation provisions; and
  - (H) The maximum policy period.

The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and rules concerning the cancellation and nonrenewal of insurance policies;

- (7) The insurer shall require the managing general agent to obtain and maintain a surety bond for the protection of the insurer. The bond amount shall be \$100,000 or ten per cent of the managing general agent's total nationwide annual written premium for the insurer in the prior calendar year, whichever is greater; provided that the amount of the surety bond shall not exceed \$500,000;
- (8) The insurer shall require the managing general agent to obtain and maintain an errors and omissions policy in the minimum amount of \$1,000,000;

~~(7)~~ (9) If the contract permits the managing general agent to settle claims on behalf of the insurer:

- (A) All claims shall be reported to the insurer in a timely manner;
- (B) A copy of the claim file shall be sent to the insurer ~~[at its]~~ upon request or as soon as it becomes known that the claim:
  - (i) Has the potential to exceed ~~[an]~~ a threshold amount determined by the commissioner or ~~[exceeds the]~~ a limit set by the insurer, whichever is less;
  - (ii) Involves a coverage dispute;
  - (iii) May exceed the managing general agent's claims settlement authority;
  - (iv) Is open for more than six months; or
  - (v) Is closed by payment of ~~[an]~~ a threshold amount set by the commissioner or an amount set by the insurer, whichever is less;
- (C) All claim files shall be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, the files shall become the sole property of the insurer or its estate; provided that the managing general agent shall have reasonable access to and the right to copy the files on a timely basis;

- (D) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract~~[- The]; provided that the insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination; and~~
- (E) Where electronic claims files are in existence, the contract shall address the timely transmission of the data;
- [8] (10) If the contract provides for a sharing of interim profits by the managing general agent~~[-]~~ and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves ~~[or]~~, controlling claim payments, or in any other manner, interim profits shall not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business and, in any event, not until the profits have been verified through examination pursuant to section 431:9C-105; and
- [9] (11) The managing general agent shall not:
  - (A) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with whom those automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;
  - (B) Commit the insurer to participate in insurance or reinsurance syndicates;
  - (C) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed;
  - (D) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one per cent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;
  - (E) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report shall be promptly forwarded to the insurer;
  - (F) Permit its subagent to serve on the board of directors of the insurer;
  - (G) Employ an individual who is also employed by the insurer ~~[also]~~; or
  - (H) Appoint a sub-managing general agent."

12. By amending section 431:9C-104 to read:

"~~[[§431:9C-104]]~~ **Duties of insurers.** (a) An insurer shall have on file an independent financial examination in a form acceptable to the commissioner of each managing general agent with whom it has done business ~~[in a form acceptable to the commissioner]~~.

(b) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an independent actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business pro-

duced by the managing general agent. ~~[This is]~~ The opinion required by this subsection shall be in addition to any other required loss reserve certification required by this chapter.

(c) The insurer shall conduct at least semiannually an on-site review of the underwriting and claims processing operations of the managing general agent.

(d) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the managing general agent.

(e) The insurer shall notify the commissioner in writing within thirty days of entering into or terminating a contract with a managing general agent. ~~[Noti-~~ ties] Notice of the appointment of a managing general agent shall include a statement of the duties [which] that the managing general agent is expected to perform on behalf of the insurer, the lines of insurance for which the managing general agent [is to] shall be authorized to act, and any other information the commissioner may [request.] require.

(f) An insurer shall review its books and records each quarter to determine if any producer ~~[, as defined in section 431:11A-101,]~~ has become a managing general agent ~~[,] of the insurer.~~ If the insurer determines that a producer has become a managing general agent ~~[,] of the insurer,~~ the insurer shall promptly notify the producer and the commissioner ~~[of the determination]~~ and the insurer and producer shall both fully comply with this article within thirty days.

(g) An insurer shall not appoint to its board of directors an officer, director, employee, subagent, or controlling shareholder of any of its managing general agents; provided that this subsection shall not apply to relationships governed by article 11.

(h) The insurer shall keep the bond and the errors and omissions policy required by section 431:9C-103 on file for review by the commissioner or other applicable regulatory agency."

13. By amending section 431:9N-102 to read:

~~"[§431:9N-102]~~ **License denial, nonrenewal, suspension, or revocation.** In addition to ~~[causes in]~~ the authority granted by section 431:9A-112, the commissioner may deny, place on probation, suspend, revoke, or refuse to issue or renew a bail agent's license and may levy a civil fine or penalty in accordance with articles 2 and 9A, or take any combination of these actions, for any of the following causes:

- (1) ~~[Failing]~~ Failure to satisfy, pay, or otherwise discharge a bail forfeiture judgment after ~~[having]~~ the bail agent's name ~~[placed]~~ is on the board for more than forty-five consecutive days for the same forfeiture;
- (2) Failure to satisfy, pay, or otherwise discharge a final, nonappealable bail forfeiture judgment within sixty days following notice of entry of judgment;
- ~~[(2)]~~ ~~[Failing]~~ (3) Failure to report, to preserve without use and retain separately, or to return collateral ~~[taken]~~ received as security on any bond to the principal or depositor of the collateral;
- ~~[(3)]~~ ~~[Failing]~~ (4) Failure to pay a final, nonappealable judgment award for failure to return or repay collateral received to secure a bond;
- ~~[(4)]~~ (5) Continuing ~~[to execute]~~ execution of bail bonds in any court in this ~~[State]~~ state while on the board, where the bail forfeiture judgment that resulted in ~~[being placed]~~ placement on the board has not been paid, stayed, vacated, exonerated, or otherwise discharged; or

- (5) ~~Paying,~~ (6) Payment, directly or indirectly, of any commission, service fee, brokerage, or other valuable consideration to any person selling, soliciting, or negotiating bail within this [State] state unless, at the time the services were performed, the person was [a] duly licensed [~~bail agent~~] for the performance of the services.”
14. By amending section 431:10-244 to read:

“**§431:10-244 Filing procedure for contracts approved by commissioner.** Each insurance contract requiring approval by the commissioner pursuant to this code, section 392-48 [~~and~~], or section 386-124 and each contract certified by the insurer to be in conformity with this code shall be accompanied by a \$20 fee payable to the commissioner, which [fee] shall be deposited [~~in~~] into the commissioner’s education and training fund.”

15. By amending section 431:10A-105 to read:

“**§431:10A-105 Required provisions.** Except as provided in section 431:10A-107, each policy of accident and health or sickness insurance delivered or issued for delivery to any person in this [State] state shall contain the provisions set forth below. These provisions shall be in the words in which they appear below; provided that the insurer may substitute corresponding provisions of different wording [~~approved by the commissioner~~] certified by an officer of the insurer to be in substantial conformance with the wording below that are in each instance not less favorable in any respect to the insured or the beneficiary. The provisions shall be preceded individually by the specified caption, or by [~~such~~] appropriate individual or group captions or subcaptions [~~as the commissioner may approve.~~] that are substantially similar to the specified captions. The provisions required by this section are as follows:

- (1) “Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless the approval is endorsed on or attached to this policy. No agent has authority to change this policy or to waive any of its provisions[-]”;
- (2) (A) “Time Limit on Certain Defenses:
  - (i) After three years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for this policy shall be used to void this policy or to deny a claim for loss incurred or disability [~~as defined in the policy~~] commencing after the expiration of the three-year period[-]; and
  - (ii) No claim for loss incurred or disability [~~as defined in the policy~~] commencing after three years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded on the date of loss from coverage by name or specific description effective [~~on the date of loss~~] had existed prior to the effective date of coverage of this policy[-]”;
- (B) The policy provision set forth in subparagraph (A)(i) shall not be construed to affect any legal requirement for avoidance of a policy or denial of a claim during the initial three-year period, nor to limit the application of section 431:10A-106(1) through (4) in the event of misstatement with respect to age [~~or~~], occupation, or other insurance[-]; and

- (C) A policy that the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of subparagraph (A)(i) the following provision [(from which the clause in parentheses may be omitted at the insurer's option)]; "Incontestable: After this policy has been in force for a period of three years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application[-]";
- (3) (A) "Grace period: A grace period of (insert a number not less than seven for weekly premium policies, ten for monthly premium policies, and thirty-one for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force[-]";
- (B) A policy that contains a cancellation provision may add at the end of the [above] provision[-] required by subparagraph (A): "subject to the right of the insurer to cancel in accordance with the cancellation provision[-]"; and
- (C) A policy in which the insurer reserves the right to refuse any renewal shall have at the beginning of the [above] provision[-] required by subparagraph (A): "Unless not less than thirty days prior to the premium due date the insurer has delivered to the insured or has mailed to the insured's last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted[-]";
- (4) (A) "Reinstatement: If any renewal premium is not paid within the time granted to the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept the premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided that if the insurer or agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy shall be reinstated upon approval of the application by the insurer or, lacking approval, upon the forty-fifth day following the date of conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of the application. The reinstated policy shall cover only loss resulting from accidental injury as may be sustained after the date of reinstatement and loss due to sickness as may begin more than ten days after that date. In all other respects the insured and insurer shall have the same rights as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with the reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement[-]"; and



- (B) The last sentence in subparagraph (A) may be omitted from any policy that the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue[-];
- (5) (A) “Notice of Claim: Written notice of claim [~~must~~] shall be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of the office as the insurer may designate for the purpose) or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer[-]”; and
- (B) In a policy providing a loss of time benefit that may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences in subparagraph (A): “Subject to the qualification set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, the insured shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of the disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of the claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in giving notice shall not impair the insured’s right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which notice is actually given[-]”;
- (6) “Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant [~~the~~] any forms[-] that are usually furnished by it for filing proofs of loss. If the forms are not furnished within fifteen days after the giving of notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made[-]”;
- (7) “Proofs of Loss: In case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss, written proof of loss must be furnished to the insurer at its office within ninety days after the termination of the period for which the insurer is liable, and in case of claim for any other loss within ninety days after the date of loss. Failure to furnish proof of loss within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within the time required, provided proof is furnished as soon as reasonably possible and in no event, except [~~in~~] the absence of legal capacity, later than fifteen months from the time proof is otherwise required[-]”;
- (8) “Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment [~~will~~] shall be paid immediately upon receipt of due written proof of loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic

- payment ~~[will]~~ shall be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability ~~[will]~~ shall be paid immediately upon receipt of due written proof[-]”;
- (9) (A) “Payment of Claims: Indemnity for loss of life ~~[will]~~ shall be payable in accordance with the beneficiary designation and the provisions respecting payment which may be prescribed herein and effective at the time of payment. If no designation or provision is then effective, the indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured’s death may, at the option of the insurer, be paid either to the designated beneficiary or to the estate of the insured. All other indemnities ~~[will]~~ shall be payable to the insured[-]”; and
- (B) ~~[The] Either or both of the following provisions[-], or either of them,-]~~ may be included with the provision set forth in subparagraph (A) at the option of the insurer:
- (i) “If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay the indemnity, up to an amount not exceeding \$2,000 to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of the payment[-]”; and
- (ii) “Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer’s option and unless the insured requests otherwise in writing not later than the time of filing proofs of loss, be paid directly to the hospital or person rendering the services; but it is not required that the service be rendered by a particular hospital or person[-]”;
- (10) “Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law[-]”;
- (11) “Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No action at law or in equity shall be brought after the expiration of three years after the time written proof of loss is required to be furnished[-]”; and
- (12) (A) “Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change ~~[of]~~ the beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy[-]”; and

- (B) The first clause of subparagraph (A), relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option."

16. By amending section 431:10A-106 to read:

"§431:10A-106 **Optional provisions.** Except as provided in section 431:10A-107, no policy of accident and health or sickness insurance delivered or issued for delivery to any person in this [State] state shall contain the provisions set forth below unless the provisions are in the words in which they appear below; provided that the insurer may substitute corresponding provisions of different wording [~~approved by the commissioner~~] certified by an officer of the insurer to be in substantial conformance with the wording below that are in each instance not less favorable in any respect to the insured or the beneficiary. [Such] The provisions listed in this section are optional provisions. Any [~~such provision~~] of the following provisions contained in the policy shall be preceded individually by the specified caption or, at the option of the insurer, by [~~such~~] appropriate individual or group captions or subcaptions [~~as the commissioner may approve.~~] substantially similar to the specified caption. The provisions are as follows:

- (1) "Change of Occupation: If the insured is injured or contracts sickness after having changed occupations to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only [~~such~~] the portion of the indemnities provided in this policy [~~as~~] that the premium paid would have purchased at the rates and within the limits fixed by the insurer for the more hazardous occupation. If the insured's occupation changes to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of [~~such~~] the change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is [~~the~~] more recent. In applying this provision, the classification of occupational risk and the premium shall be [~~such~~] those as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if [~~such~~] a filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in [~~such~~] the state where the insured resided prior to the occurrence of the loss or prior to the date of proof of change in occupation[-]";
- (2) "Misstatement of Age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the insured's correct age[-]";
- (3) Other insurance in this insurer shall be in one of the following forms:
  - (A) "Other Insurance in This Insurer: If an accident and health or sickness policy or policies previously issued by the insurer to the insured [~~be~~] concurrently in force [~~concurrently herewith~~], making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$ (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all

- premiums paid for [such] the excess shall be returned to the insured or to the insured's estate[-]"; or
- (B) "Other Insurance in This Insurer: Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one [such] policy elected by the insured, the insured's beneficiary, or the insured's estate, as the case may be, and the insurer [~~will~~] shall return all premiums paid for all other [such] policies[-]";
- (4) Insurance with other insurers. Either or both of the following forms shall be used:
- (A) (i) "Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for [such] the proportion of the loss [~~as the amount which~~] that would otherwise have been payable [~~hereunder~~] plus the total of the like amounts under all [such] the other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for [such] the loss, and for the return of [such] the portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the like amount of [such] other coverage shall be taken as the amount which the services rendered would have cost in the absence of [such] the other coverage[-]"; and
- (ii) "Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for [such] benefits under this policy shall be for [such] the proportion of the indemnities otherwise provided hereunder for [such] a loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all the indemnities for [such] the loss, and for the return of [such] the portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined[-]";
- (B) If the provision set forth in subparagraph (A)(i) is included in a policy that also contains the provision set forth in subparagraph (A)(ii), there shall be added to the caption of the subparagraph (A)(i) provision the phrase, "expense incurred benefits[-]"<sup>1</sup>;
- (C) The insurer may, at its option, include in the provision set forth in subparagraph (A)(i) a definition of other valid coverage, approved as to form by the commissioner, which [definition] shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this State or any other state or territory of the

United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of ~~[such]~~ a definition the term shall not include group insurance, automobile medical payment insurance, or coverage provided by hospital or medical service organizations, union welfare plans, or employer or employee benefit organizations. For the purpose of applying the provision set forth in subparagraph (A)(i) with respect to any insured, any amount of benefit provided for ~~[such]~~ an insured pursuant to any compulsory benefit statute (including any workers' compensation or employers' liability statute), whether provided by a governmental agency or otherwise, shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the provision set forth in subparagraph (A)(i), no third party liability coverage shall be included as other valid coverage~~[-]~~:

- (D) If the provision set forth in subparagraph (A)(ii) is included in a policy that also contains the provision set forth in subparagraph (A)(i), there shall be added to the caption of the subparagraph (A)(ii) provision the phrase, "other benefits"~~[-]~~; and
- (E) The insurer may, at its option, include in the provision set forth in subparagraph (A)(ii) a definition of other valid coverage, approved as to form by the commissioner, which ~~[definition]~~ shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this ~~[State]~~ state or any other state or territory of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of ~~[such]~~ a definition the term shall not include group insurance, or benefits provided by union welfare plans or employer or employee benefit organizations. For the purpose of applying the provision set forth in subparagraph (A)(ii) with respect to any insured, any amount of benefit provided for ~~[such]~~ an insured pursuant to any compulsory benefit statute (~~[including any workers' compensation or employers' liability statute]~~), whether provided by a governmental agency or otherwise, shall in all cases be deemed to be other valid coverage of which the insurer has had notice. In applying the provision set forth in subparagraph (A)(ii), no third party liability coverage shall be included as other valid coverage~~[-]~~:
- (5) (A) "Relation of Earnings to Insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, ~~[shall exceed]~~ exceeds the monthly earnings of the insured at the time disability commenced or the insured's average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is ~~[the]~~ greater, the insurer ~~[will]~~ shall be liable only for ~~[such]~~ the proportionate amount of ~~[such]~~ benefits under this policy as the amount of ~~[such]~~ the monthly earnings or ~~[such]~~ average monthly earnings of the insured

bears to the total amount of monthly benefits for the same loss under all [such] coverage upon the insured at the time [such] disability commences and for the return of [such] the part of the premiums paid during [such] the two preceding years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all [such] coverage upon the insured below the sum of \$200 or the sum of the monthly benefits specified in [such] the coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time[-]”;

- (B) The policy provision in subparagraph (A) may be inserted only in a policy which the insured has the right to continue in force, subject to its terms by the timely payment of premiums until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue[-]; and
- (C) The insurer may, at its option, include in the provision set forth in subparagraph (A) a definition of valid loss of time coverage approved as to form by the commissioner, which [definition] shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this [State] state or any state, district, or territory of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of [such] approved coverages. In the absence of [such] a definition [such] the terms shall not include any coverage provided for [such] an insured pursuant to any compulsory benefit statute [(including any workers' compensation or employers' liability statute)], or benefits provided by union welfare plans or by employer or employee benefit organizations[-];
- (6) “Unpaid Premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted [~~therefrom.~~] from the claim”;
- (7) “Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to the insured's last address as shown by the records of the insurer[-; stating]. The notice shall state when, not less than five days thereafter, [such] the cancellation shall be effective[-; and after]. After the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on [such] a later date [as may be] specified in [such] the notice. In the event of cancellation, the insurer [~~will~~] shall return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation[-]”;
- (8) “Conformity with State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on [such] the effective date is hereby

amended to conform to the minimum requirements of ~~[such]~~ the applicable statutes[-]”;

- (9) “Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured’s commission of or attempt to commit a felony or to which a contributing cause was the insured’s being engaged in an illegal occupation[-]”; and
  - (10) “Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured’s being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.””
17. By amending section 431:10A-107 to read:

**“§431:10A-107 Inapplicable or inconsistent provisions.** If any provision of section 431:10A-105 to section 431:10A-111 is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer~~[- with the approval of the commissioner,]~~ shall omit from ~~[such]~~ the policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision ~~[in such manner as]~~ to make the provision ~~[as]~~ contained in the policy consistent with the coverage provided by the policy. An officer of the insurer shall certify conformity with the requirements of state statutes in accordance with this section.”

18. By amending section 431:10C-210 to read:

**“§431:10C-210 Publication of premium rates.** The commissioner shall publish annually, in a newspaper of general circulation in the ~~[State,]~~ state, notice of availability of a list of all motor vehicle insurers with representative annual premiums for motor vehicle insurance. ~~[In addition, the]~~ The commissioner shall have information on premiums for motor vehicle insurance which shall be available to the public on request.”

19. By amending subsection (d) of section 431:10C-215 to read:

“(d)(1) Each insurer licensed to transact motor vehicle insurance or optional additional insurance business in this ~~[State]~~ state shall provide the commissioner with periodic reports on every aspect of the motor vehicle insurance and the optional additional insurance business the insurer transacts in ~~[the State,]~~ this state, including, but not limited to~~[-]~~ reports on the investment, reserve, reinsurance, loss and profit experience, ratemaking and schedules, claims received and paid; and

(2) Each insurer subject to this section shall, not less frequently than quarterly, maintain a report ~~[to the commissioner]~~ of the details of each claim received, claim paid, application for and sale of a motor vehicle insurance policy, each termination and renewal refusal notice posted, and each cancellation and refusal to renew effected on both motor vehicle insurance and optional additional insurance policy transactions. The insurer shall make available and submit a report to the commissioner at the commissioner’s request.”

20. By amending subsection (a) of section 431:10D-111 to read:

“(a) A life insurer may, under ~~[such]~~ policy provisions or agreements ~~[as have been approved by the commissioner consistent with this section,]~~ contract for and accept premium deposits in addition to the regular premiums specified in the policy, for the purpose of paying future premiums, ~~[or]~~ to facilitate conversion of the policy, or to increase the benefits ~~[thereof.]~~ of the policy, according to this section.”

21. By amending subsection (c) of section 431:10D-603 to read:

“(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~~] consecutively with any other free-look period provided by law.”

22. By amending subsection (b) of section 431:11-101 to read:

“(b) The commissioner may exempt:

- (1) Any insurer or class of insurers from any provision of this article, when the commissioner deems the exemption consistent with the purposes of this article and in the public interest; or
- (2) Upon request of the person required to supply information or perform an act, that person from any provision of this article, when the commissioner deems the exception consistent with the purposes of this article and in the public interest.”

23. By amending subsection (a) of section 431:11-106 to read:

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

- (A) The terms shall be fair and reasonable;
  - (B) Charges or fees for services performed shall be reasonable;
  - (C) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
  - (D) The books, accounts, and records of each party to all transactions shall be maintained so as to clearly and accurately disclose the nature and details of the transactions including the accounting information necessary to support the reasonableness of the charges or fees to the respective parties; and
  - (E) The insurer’s surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs[-];
- (2) The following transactions involving a domestic insurer and any person in its holding company system [~~may~~] shall not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty days prior thereto, or a shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period:
- (A) Sales, purchases, exchanges, loans[-] or extensions of credit, guarantees, or investments; provided that the transactions are equal to or exceed:
    - (i) With respect to nonlife insurers, the lesser of three per cent of the insurer’s admitted assets or twenty-five per cent of surplus as regards policyholders each as of the thirty-first day of December next preceding; or
    - (ii) With respect to life insurers, three per cent of the insurer’s admitted assets as of the thirty-first day of December next preceding;
  - (B) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the



loans or extensions of credit; provided that the transactions are equal to or exceed:

- (i) With respect to nonlife insurers, the lesser of three per cent of the insurer's admitted assets or twenty-five per cent of surplus as regards policyholders each as of the thirty-first day of December next preceding; or
- (ii) With respect to life insurers, three per cent of the insurer's admitted assets as of the thirty-first day of December next preceding;
- (C) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five per cent of the insurer's surplus as regards policyholders, as of the thirty-first day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;
- (D) All management agreements, service contracts, and all cost-sharing arrangements; and
- (E) Any material transactions, specified by rule, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

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

- (3) A domestic insurer may not enter into transactions[-] which are part of a plan or series of like transactions with persons within the holding company system[-] if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the commissioner determines that the separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise the commissioner's authority under section 431:11-111[-];
- (4) The commissioner, in reviewing transactions pursuant to subsection (a)(2), shall consider whether the transactions comply with the standards set forth in subsection (a)(1) and whether they may adversely affect the interests of policyholders[-]; and
- (5) The commissioner shall be notified within thirty days of any investment of the domestic insurer in any one [~~corporation~~] person if the total investment in the [~~corporation~~] person by the insurance holding company system exceeds ten per cent of the corporation's voting securities."

24. By amending subsection (f) of section 431:13-103 to read:

"(f) An insurer or licensee shall issue a written response with reasonable promptness, in no case more than fifteen working days, to any written inquiry made by the commissioner regarding a claim [~~or~~], consumer complaint[-], or sales or marketing practice. The response shall be more than an acknowledgment that the commissioner's communication has been received, and shall adequately address the concerns stated in the communication."

25. By amending subsection (b) of section 431:19-107 to read:

"(b) Each class 3 captive insurance company shall annually file with the commissioner the following:

- (1) Annual statement and audit:
  - (A) On or before March 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, an annual statement using the National Association of Insurance Commissioners' annual statement blank plus any additional information required by the commissioner, which shall be a true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31. The reported information shall be verified by oaths of at least two of the captive's principal officers;
  - (B) On or before June 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, an audit by a designated independent certified public accountant or accounting firm of the financial statements reporting the financial condition and results of the operation of the captive; and
  - (C) The annual statement and audit shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions, accounting practices and procedures manual, and rules adopted by the commissioner following the [practice] practices and procedures prescribed by the National Association of Insurance [Commissioners' practices and procedures manuals]; Commissioners; and
- (2) On or before each March 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, a risk-based capital report in accordance with section 431:3-402; provided that a class 3 association captive insurance company shall not be required to file risk-based capital reports with the National Association of Insurance Commissioners."

26. By amending the definition of "member" in section 431:30-102 to read:

"Member" means the ~~[person chosen by]~~ commissioner of a compacting state, as its representative to the commission, or the [person's] commissioner's designee."

27. By amending subsection (d) of section 431:30-112 to read:

"(d) A compacting state may opt out of a uniform standard, either by legislation or by rule adopted by the insurance commissioner. If a compacting state elects to opt out of a uniform standard by rule, it shall:

- (1) Give written notice to the commission no later than ten business days after the later of the adoption of the uniform standard or the state becoming a compacting state; ~~and]~~
- (2) Find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state. The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state that warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner shall consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh:
  - (A) The intent of the legislature to participate in, and reap the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this ~~[Act;]~~ article; and

- (B) The presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

Notwithstanding the foregoing, a compacting state may, at the time of its enactment of this compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt out in the enacted compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in this compact. ~~[Such an]~~ An opt out pursuant to this section shall be effective at the time of enactment of this compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently adopted[.]; and

- (3) In accordance with the provisions of paragraph (2), this State does prospectively opt out of all uniform standards involving long-term care insurance products promulgated by the commission, as this State has previously enacted article 10H providing additional standards for federal conformity and universal availability for reciprocal beneficiary and multi-generation populace which facilitates flexibility and innovation in the development of long-term care insurance coverage."

SECTION 2. Section 432:1-404, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each society shall file with the commissioner annually, on or before March 1 in each year, a statement under oath, and in such form and detail as the commissioner shall prescribe; provided that any association or society organized and operating as a nonprofit medical indemnity or hospital service association shall file a report with the commissioner covering the preceding calendar year and verified by at least two principal officers. Each mutual benefit society shall file quarterly with the commissioner, on or before the forty-fifth day after each quarter, a copy of its quarterly report verified by at least two principal officers. The report shall comply with sections 431:3-301 and 431:3-302. The commissioner may prescribe the forms on which the report is to be filed.

In addition, any association or society organized and operating as a nonprofit medical indemnity or hospital service association annually shall file with the commissioner the following by the dates specified:

- (1) An audit, by an independent certified public accountant or an accounting firm designated by the association or society, of the financial statements, reporting the financial condition and results of operations of the association or society on or before June 1, or a later date as the commissioner upon request or for cause may specify. The association or society, on an annual basis and prior to the commencement of the audit, shall notify the commissioner in writing of the name and address of the person or firm retained to conduct the annual audit. The commissioner may disapprove the association's or society's designation within fifteen days of receipt of the association's or society's notice, and the association or society shall be required to designate another independent certified public accountant or accounting firm. The audit required ~~[(a)]~~ by this paragraph shall be prepared in accordance with the National Association of Insurance Commissioners' ~~[annual statement instructions,]~~ accounting practices and procedures manual and rules adopted by the commissioner following the practices and procedures prescribed

- by the National Association of Insurance [~~Commissioners' accounting practices and procedures manuals;~~ Commissioners; and
- (2) A description of the available grievance procedures, the total number of grievances handled through those procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances on or before March 1.”

SECTION 3. Section 432D-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every health maintenance organization shall file annually, on or before March 1, a report verified by at least two principal officers covering the preceding calendar year. Each health maintenance organization shall file quarterly with the commissioner, on or before the forty-fifth day after each quarter, a copy of its quarterly report verified by at least two principal officers. These reports shall comply with sections 431:3-301 and 431:3-302. The commissioner may prescribe the forms on which the reports are to be filed. In addition, the health maintenance organization annually shall file with the commissioner the following by the dates specified:

- (1) An audit, by an independent certified public accountant or an accounting firm designated by the health maintenance organization of the financial statements, reporting the financial condition and results of operations of the health maintenance organization on or before June 1, or a later date as the commissioner upon request or for cause may specify. The health maintenance organization, on an annual basis and prior to the commencement of the audit, shall notify the commissioner in writing of the name and address of the person or firm retained to conduct the annual audit. The commissioner may disapprove the health maintenance organization's designation within fifteen days of receipt of the health maintenance organization's notice, and the health maintenance organization shall be required to designate another independent certified public accountant or accounting firm. The audit required [~~in~~] by this paragraph shall be prepared in accordance with the National Association of Insurance Commissioners' [~~annual statement instructions;~~ accounting practices and procedures manual and rules adopted by the commissioner] following the practices and procedures prescribed by the National Association of Insurance [~~Commissioners' accounting practices and procedures manuals;~~ Commissioners;
- (2) A list of the providers who have executed a contract that complies with section 432D-8(d) on or before March 1; and
- (3) A description of the available grievance procedures, the total number of grievances handled through those procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances on or before March 1.”

SECTION 4. Section 431:30-105, Hawaii Revised Statutes, is repealed.

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

SECTION 6. This Act shall take effect on July 1, 2010.

(Approved May 18, 2010.)

#### Notes

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

A Bill for an Act Relating to Mixed Martial Arts.

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

SECTION 1. Chapter 440E, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§440E- Amateur mixed martial arts. This chapter, with the exception of sections 440E-5(b)(5) and 440E-7(a)(2) and (4), shall apply to amateur mixed martial arts contests.

§440E- Control and supervision of amateur mixed martial arts contests. Amateur mixed martial arts contests may be placed under the control and supervision of any recognized national amateur mixed martial arts association. The director shall adopt rules pursuant to chapter 91 for the purposes of this section.”

SECTION 2. Section 440E-1, Hawaii Revised Statutes, is amended as follows:

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

““Amateur mixed martial arts contestant” means a person who is trained in mixed martial arts, competes in an amateur mixed martial arts contest, and is at least eighteen years of age.

““Professional mixed martial arts contestant” means a person who is trained in mixed martial arts and competes in a mixed martial arts contest in which money, a prize, or purse, or other form of monetary compensation is offered or given to contestants.”

2. By amending the definitions of “amateur mixed martial arts contest” and “mixed martial arts contest” or “contest” to read:

““Amateur mixed martial arts contest” means a mixed martial arts contest in which no money, [~~prize,~~] purse, or other form of monetary compensation is offered or given to contestants[-] and the contestants are at least eighteen years of age.

““Mixed martial arts contest” or “contest” means a contest or exhibition in a mixed martial arts event in which a mixed martial arts contestant competes with another mixed martial arts contestant, using mixed martial arts, [~~and in which any contestant in the mixed martial arts event receives any money, prize, purse, or other forms of compensation; provided that the term does not include] and includes an amateur mixed martial arts contest.”~~

SECTION 3. Section 440E-5, Hawaii Revised Statutes, is amended to read as follows:

“§440E-5 Jurisdiction of director. (a) The director is vested with the sole jurisdiction, direction, management, and control over all mixed martial arts contests to be conducted, held, or given within the State; [~~provided that this excludes amateur mixed martial arts contests].~~ No mixed martial arts contest shall be conducted, held, or given within the State except in accordance with this chapter and the rules adopted by the director pursuant thereto.

(b) No mixed martial arts event shall take place unless the director has granted a permit for the proposed event. In addition, the director shall not allow any mixed martial arts contest unless:

- (1) The contest consists of not more than five rounds of a duration of not more than five minutes each with an interval of at least one minute between each round and the succeeding round;
- (2) Each contestant ~~[is at least eighteen years of age,]~~ is not disqualified from competing in a similar mixed martial arts contest in another jurisdiction at the time of the contest~~;~~ and does not use stimulants or banned substances before or during the contest;
- (3) Each mixed martial arts contestant is examined ~~[one hour prior to]~~ within six hours of the contest by at least one physician or osteopathic physician licensed under chapter 453 who shall certify in writing to the referee of the contest that the contestant is physically fit to engage therein;
- (4) Each contestant furnishes to the director:
  - (A) A medical report of a medical examination completed not less than six months before the contest, ~~[at the sole expense of the promoter,]~~ including the results of HIV and hepatitis testing; and
  - (B) Previous fight records that establish the contestant's fitness to compete in the contest;
- (5) The contest is under the control of a licensed referee in the ring who has at least one year of experience in refereeing a match or exhibition involving mixed martial arts and who has passed a physical examination by a physician or osteopathic physician licensed under chapter 453, including an eye examination, within two years prior to the contest;
- (6) The promoter has complied with sections 440E-6 and 440E-7; and
- (7) All licensees have complied with the requirements of this chapter and rules adopted in accordance with chapter 91, including any rules or requirements that protect the safety of the contestants to the extent feasible."

SECTION 4. Section 440E-7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) In addition to the payment of other fees and moneys due under this chapter, a licensed promoter shall pay:

- (1) ~~[For fiscal years 2009-2010 to 2012-2013, a license]~~ An event fee of [four] two per cent of the [first \$50,000 of the] total gross receipts [and three per cent of the total gross receipts over \$50,000] from admission fees to an event, exclusive of federal, state, and local taxes; and
- ~~[(2) For fiscal years beginning July 1, 2013, a license fee that is six per cent of the total gross receipts from admission fees to an event, exclusive of federal, state, and local taxes;~~
- ~~(3) In addition to the license fees established in paragraphs (1) and (2), a licensed promoter shall also pay two per cent of the gross sales price for the sale, lease, or other exploitation of broadcasting, television, Internet, and motion picture rights for a contest or an event, without any deductions for commission, brokerage fee, distribution fees, advertising, contestants' purses, or any other expenses or charges, including federal, state, or local taxes; and~~
- ~~(4) Two] (2) The lesser of \$50,000 or two per cent of the gross receipts from [subscription or admission fees, exclusive of federal, state, and local taxes,] fees charged for viewing a simultaneous or pay per view~~

telecast of a contest or event[-], exclusive of federal, state, and local taxes.

Payments under this subsection shall be deposited into a separate account in the compliance resolution fund and shall be used to cover the costs of administering this chapter.”

SECTION 5. Section 440E-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person may apply to the director for a license to act as a physician, referee, judge, manager, second, or mixed martial arts contestant to participate, either directly or indirectly, in any mixed martial arts contest[-]; provided that no person may apply for a license as a professional mixed martial arts contestant unless the person is at least eighteen years of age. The application shall be in writing, on a form prescribed by the director, and signed by the applicant. The application shall contain a recital of facts as specified by the director for the director to determine whether or not the applicant possesses the necessary licensure and physical, mental, and moral qualifications to entitle the applicant to a license. The license requirement shall not apply to amateur mixed martial arts contestants; provided that an amateur mixed martial arts contestant shall be required to pass a physical examination conducted by a person licensed to practice medicine under chapter 453 prior to engaging in a mixed martial arts contest. The director shall adopt rules for licensure in accordance with chapter 91.”

SECTION 6. Section 440E-11, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§440E-11] Receipts and reports from promoters.** ~~[(a)]~~ Within three business days after the conclusion of every contest for which admission fees are charged and received, every promoter holding a license to conduct, hold, or give mixed martial arts contests, shall furnish to the director a written report, duly verified, showing the number of tickets sold for the contest, the amount of the gross receipts or proceeds thereof, and other matters as the director prescribes in rules adopted in accordance with chapter 91.

~~[(b) For purposes of this chapter, “gross receipts” includes income received from the sale of print, internet, broadcasting, television, and motion picture rights.]”~~

SECTION 7. Act 238, Session Laws of Hawaii 2008, is amended by repealing section 2.

~~[“SECTION 2. At each promoter’s license renewal period, each promoter shall pay an additional surcharge fee of \$16,750, or any other amount determined by the department of commerce and consumer affairs to be appropriate that shall be deposited into the compliance resolution fund established pursuant to section 26-9(e), Hawaii Revised Statutes. The department may adjust the additional surcharge fee to equitably apportion the cost among the promoters based on the number of licensed promoters. Upon the full payment of \$335,000 for fiscal years 2007-2008 and 2008-2009 to cover the cost of implementing the provisions of chapter 440E, Hawaii Revised Statutes, no surcharge shall be assessed thereafter and any funds in excess of this amount shall remain in the compliance resolution fund.”]~~

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect on July 1, 2010.

(Approved May 18, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 118**

S.B. NO. 2054

A Bill for an Act Relating to Civil Defense.

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

SECTION 1. Chapter 128, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§128- Statewide communications interoperability coordinator; establishment; responsibilities.** (a) There is established within the civil defense agency the position of statewide communications interoperability coordinator, which shall be a full-time position exempt from chapters 76 and 89.

(b) The statewide communications interoperability coordinator shall have the following areas of responsibility:

- (1) Outreach, which shall include:
  - (A) Establishing and maintaining a database of subject matter experts and stakeholders across the State;
  - (B) Acting as liaison among the federal government, state agencies and officials, and state and county emergency response communities;
  - (C) Serving as a point of contact within state government for the federal government and industry on statewide interoperable communications; and
  - (D) Attending national interoperability conferences and workshops;
- (2) Statewide communications interoperability plan program management, which includes:
  - (A) Leveraging all components of the statewide governance structure to facilitate the development of a statewide communications interoperability plan; and
  - (B) Coordinating the effort to implement the statewide communications interoperability plan by setting timelines and project plans for making progress on the initiatives;
- (3) Grant management and policy development, which includes:
  - (A) Coordinating with other elements of the civil defense agency to monitor the State’s interoperable communications grant opportunities; and
  - (B) Seeking additional grant funding opportunities for statewide interoperable communications efforts beyond those that are administered through the civil defense agency; and
- (4) Measurement of the statewide communications interoperability plan, which includes:
  - (A) Measuring progress and results, and revising the statewide communications interoperability plan, as needed;



- (B) Conducting and maintaining a statewide communications capabilities assessment; and
- (C) Developing and measuring long-term and annual performance to show progress towards communications interoperability statewide.”

SECTION 2. There is authorized a federal fund ceiling increase of \$110,000 for the civil defense agency to accommodate federal funds received under the homeland security grant program.

SECTION 3. There is appropriated out of the federal funds received under the homeland security grant program the sum of \$110,000 or so much thereof as may be necessary for fiscal year 2010-2011 to fund the statewide communications interoperability coordinator position established by this Act.

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

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval; provided that section 3 shall take effect on July 1, 2010.

(Approved May 18, 2010.)

**Note**

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

**ACT 119**

H.B. NO. 2692

A Bill for an Act Relating to Disaster Preparedness Planning.

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

SECTION 1. The legislature finds that the leeward coast of Oahu is only accessible by way of Farrington highway. Any closure of the highway due to traffic accidents or other incidents can temporarily disrupt the lives of tens of thousands of commuting residents. The legislature also finds that, if a major disaster closes the freeway for extended periods of time, a host of problems arise that directly impacts the health, safety, and welfare of several leeward communities.

The purpose of this Act is to prepare for a major disaster on the leeward coast by authorizing the director of civil defense to work with the deputy director of civil defense or the mayor of the city and county of Honolulu to prepare a disaster preparedness plan for the forty-fourth and forty-fifth house of representatives districts. This Act is intended to serve as a model for future expansion of the disaster preparedness plan to serve other communities in the state.

SECTION 2. The director of civil defense, as part of the director's statewide responsibilities, may work with the deputy director of civil defense or the mayor of the city and county of Honolulu to prepare a disaster preparedness plan for the leeward coast areas of Oahu, specifically the areas included in the house of representative districts forty-four and forty-five, which include the com-

munities of Waianae, Makaha, Makua, Honokai Hale, Nanakuli, Lualualei, and Maili. The plan may include strategies to address the following concerns:

- (1) The closing of roadway access to the districts with no available alternate routes;
- (2) The use of air and sea transportation services when roads are closed and the coordination of these services, especially the designation of primary and alternate air landing sites and any legal authorization needed to land on those sites;
- (3) The large homeless population living on beaches with limited resources;
- (4) The elderly, some of whom live alone, with limited access to disaster shelters and transportation services;
- (5) The growing population that relies heavily on public transportation to commute to work;
- (6) The coordination, distribution, and delivery of food, products, and services by private and public companies, organizations, and individuals to homes and communities;
- (7) An organization to serve as a community site coordinator, including a local civil defense volunteer team;
- (8) An inventory of existing governmental agencies, private companies, organizations, and individuals who may assist with a disaster preparedness plan;
- (9) Community meetings in the community to gather input and follow-up meetings to disseminate the disaster preparedness plan; and
- (10) Any other issue necessary for a disaster preparedness plan.

**SECTION 3.** If the director of civil defense prepares a disaster preparedness plan authorized by this Act, the director of civil defense shall report the director's findings and recommendations, including costs, to the legislature no later than twenty days prior to the convening of the 2011 regular session.

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

(Approved May 18, 2010.)

## ACT 120

H.B. NO. 2157

A Bill for an Act Relating to Expanded Adult Residential Care Homes.

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

**SECTION 1.** 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 that shall implement a social model of health care designed to:

- (1) Protect the health, safety, civil rights, and rights of choice of 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) A type I home shall consist of five or fewer residents with no more than ~~two~~ three 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; and
- (B) 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 I or 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 2. The department of health shall submit reports to the legislature, including findings and recommendations, regarding the effect of the increased capacity of type I expanded adult residential care homes, as follows:

- (1) An interim report to be submitted no later than twenty days prior to the convening of the regular session of 2011; and
- (2) A final report, including any recommendations for extension, to be submitted no later than twenty days prior to the convening of the regular session of 2013.

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, 2013.

(Approved May 18, 2010.)

**ACT 121**

S.B. NO. 2220

A Bill for an Act Relating to Construction Sites.

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

SECTION 1. The legislature finds that Hawaii's economy is driven by thousands of businesses that provide essential goods, services, and jobs. However, an underground economy exists that threatens the ability of legitimate businesses to effectively compete in the marketplace. Underground business operations typically:

- (1) Avoid licensing requirements;
- (2) Pay wages in cash, therefore avoiding payroll tax, unemployment insurance, disability insurance, personal income tax, and paid family leave requirements;
- (3) Employ vulnerable workers, new immigrants, and economically disadvantaged individuals;
- (4) Fail to pay minimum wages required by state and federal law;
- (5) Fail to carry workers' compensation insurance; and
- (6) Avoid worker and workplace safety requirements.

The legislature further finds that underground business operations drive down wages, create harsh working conditions, and undercut legitimate business' profit margins. Underground business operations are a threat to the State's economy, workforce, and consumers.

The purpose of this Act is to create a construction site inspection task force to analyze the feasibility and potential complications of implementing a task force to investigate and inspect construction sites for unlicensed contractors, undocumented workers, and workplace safety violations.

**SECTION 2.** The director of commerce and consumer affairs (director) shall convene a construction site inspection task force. The director or the director's designee shall serve as chairperson of the construction site inspection task force. The task force shall include at least two representatives each from the office of the attorney general, the department of commerce and consumer affairs, the disability compensation division of the department of labor and industrial relations, the occupational safety and health division of the department of labor and industrial relations, the unemployment insurance division of the department of labor and industrial relations, and the department of taxation. The task force also shall request that a representative from each county permitting department be included in the task force.

The construction site inspection task force shall:

- (1) Discuss, research, and report on the advantages of sharing among the participating agencies information necessary to combat unlicensed contracting, the use of undocumented workers, and workplace safety violations, including a discussion of the potential advantages and disadvantages of a shared automated information database systems, common case numbers, and a centralized debt collection system;
- (2) Discuss, research, and report on ways to improve the coordination of activities among the participating agencies;
- (3) Discuss, research, and report on ways to develop methods to pool, focus, and target the enforcement resources of the participating agencies to deter tax evasion, unlicensed contractor activity, and workplace safety violations and to maximize recovery of penalties for violations of laws and rules; and
- (4) Discuss, research, and report on ways to reduce enforcement costs wherever possible by eliminating duplicative audits and investigations.

The task force shall have the authority to:

- (1) Form joint discussion teams to discuss ways to utilize the existing investigation and enforcement capabilities of the participating members, including the appointment of inspectors by the director or by participating members. The joint discussion teams shall evaluate the efficiencies of conducting site inspections on sites suspected of engaging in tax evasion, unlicensed contractor activity, workplace

- safety violations, and violations of other labor laws as well as random site inspections to ensure compliance with existing laws;
- (2) Solicit the future cooperation and participation of other state and local agencies in carrying out the objectives of the task force;
  - (3) Establish potential procedures, including but not limited to an advertised telephone hotline, for soliciting referrals of suspected violations from the public;
  - (4) Develop procedures to enable the use of civil sanctions in lieu of criminal actions wherever possible;
  - (5) Evaluate the need for statutory changes to achieve the purposes of this section, including:
    - (A) Eliminating barriers to interagency information sharing;
    - (B) Improving the ability of the participating agencies to audit, investigate, and prosecute violations;
    - (C) Deterring violations and improving voluntary compliance;
    - (D) Establishing centralized, automated data collection services for the participating agencies; and
    - (E) Emphasizing civil penalties instead of criminal ones whenever possible; and
  - (6) Evaluate the need for the authority to enter at reasonable times and without prior notice, any property, public or private, for the purpose of investigating and inspecting the condition or operation of a construction site.

SECTION 3. The construction site inspection task force shall submit a report to the legislature no later than sixty days before the commencement of the 2011 regular session on its findings and recommendations on implementing a task force to investigate and inspect construction sites for unlicensed contractors, undocumented workers, and workplace safety violations. The report shall include but not be limited to:

- (1) The scope of potential cases of violations and noncompliance with tax laws that could be identified, audited, investigated, prosecuted through civil action, or referred for criminal prosecution;
- (2) Actions and authority needed by the task force to undertake and publicize its activities;
- (3) Recommendations for any legislation needed to accomplish the goals and to implement the recommendations of the construction site inspection task force; and
- (4) Identification of funding streams and estimated expenditures needed in order to fully implement the recommendations of the construction site inspection task force.

SECTION 4. This Act shall take effect on July 1, 2010.

(Approved May 19, 2010.)

## ACT 122

H.B. NO. 1978

A Bill for an Act Relating to Towing.

*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- **Towing by consent; payment.** Notwithstanding any other law to the contrary, towing companies engaged by the registered owner of a vehicle

for towing services, including storage if any, shall release the towed vehicle to the registered owner, legal owner, insurer, or a designated representative upon payment of fees for towing services and storage of the vehicle; provided that payment may be made in cash or by debit card, credit card, insurance company check, commercial check, or automated teller machine located on the premises.”

SECTION 2. Section 290-11, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Notwithstanding any law or ordinance to the contrary, including subsection (g), and section 46-20.5, any towing company engaged in towing in a county with a population greater than five hundred thousand ~~[shall not be entitled to any overtime charge under subsection (b)(1) if]~~ shall offer towing services to consumers ~~[are not offered]~~ twenty-four hours per day every day of the week; ~~provided that a towing company shall file their hours of operation with the police department in a county with a population greater than five hundred thousand.~~ which services shall include the release of vehicles kept in storage to a registered owner, legal owner, insurer, or a designated representative.”

SECTION 3. Section 291C-135, Hawaii Revised Statutes, is amended to read as follows:

“**§291C-135 Tow trucks; signage and insurance requirements.** Notwithstanding any other law to the contrary, the registered owner or lessee of a tow truck shall:

- (1) Permanently affix on each door of the truck a sign with the name and telephone number of the tow business. The letters and numbers used in the sign shall be no less than two inches in height; and
- (2) Maintain insurance ~~[coverage sufficient]~~ in the following amounts:
  - (A) Bodily injury of not less than \$500,000;
  - (B) Property damage of not less than \$200,000; and
  - (C) On-hook coverage of not less than \$175,000; or
  - (D) A combined single limit of liability of not less than \$1,000,000.

to protect owners of towed vehicles in the event of vehicle loss or damage due to towing~~[-]~~ or bodily injury in the course of towing. If a tow operator fails to comply with the insurance requirements of this section, no charges, including storage charges, may be collected by the tow operator as a result of the tow or as a condition of the release of the towed vehicle. Any person, including the registered owner, lien holder, or insurer of the vehicle, who has been injured by the tow operator’s failure to comply with this section is entitled to sue for damages sustained. If a judgment is obtained by the plaintiff, the court shall award the plaintiff a sum of not less than \$1,000 or threefold damages sustained by the plaintiff, whichever sum is greater, and reasonable attorney’s fees and costs.

This section shall not apply to a county that has adopted ordinances regulating towing operations.”

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

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

(Approved May 19, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Controlled Substances.

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

SECTION 1. Section 329-14, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alpha-ethyltryptamine (AET);
- (2) 2,5-dimethoxy-4-ethylamphetamine (DOET);
- (3) 2,5-dimethoxyamphetamine (2,5-DMA);
- (4) 3,4-methylenedioxy amphetamine;
- (5) 3,4-methylenedioxyamphetamine (MDMA);
- (6) N-hydroxy-3,4-methylenedioxyamphetamine (N-hydroxy-MDA);
- (7) 3,4-methylenedioxy-N-ethylamphetamine (MDE);
- (8) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (9) 4-bromo-2,5-dimethoxy-amphetamine(4-bromo-2,5-DMA);
- (10) 4-Bromo-2,5-dimethoxyphenethylamine (Nexus);
- (11) 3,4,5-trimethoxy amphetamine;
- (12) Bufotenine;
- (13) 4-methoxyamphetamine (PMA);
- (14) Diethyltryptamine;
- (15) Dimethyltryptamine;
- (16) 4-methyl-2,5-dimethoxy-amphetamine;
- (17) Gamma hydroxybutyrate (GHB) (some other names include gamma hydroxybutyric acid; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);
- (18) Ibogaine;
- (19) Lysergic acid diethylamide;
- (20) Marijuana;
- (21) Parahexyl;
- (22) Mescaline;
- (23) Peyote;
- (24) N-ethyl-3-piperidyl benzilate;
- (25) N-methyl-3-piperidyl benzilate;
- (26) Psilocybin;
- (27) Psilocyn;
- (28) 1-[1-(2-Thienyl) cyclohexyl] Pyrrolidine (TCPy);
- (29) Tetrahydrocannabinols;
- (30) Ethylamine analog of phencyclidine (PCE);
- (31) Pyrrolidine analog of phencyclidine (PCPy, PHP);
- (32) Thiophene analog of phencyclidine (TPCP; TCP);
- (33) Gamma-butyrolactone, including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number 96-48-0 when any such substance is intended for human ingestion;
- (34) 1,4 butanediol, including butanediol; butane-1,4-diol; 1,4- butylenes glycol; butylene glycol; 1,4-dihydroxybutane; 1,4- tetramethylene

glycol; tetramethylene glycol; tetramethylene 1,4- diol with Chemical Abstract Service number 110-63-4 when any such substance is intended for human ingestion;

- (35) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts, and salts of isomers;
- (36) N-benzylpiperazine (BZP; 1-benzylpiperazine) its optical isomers, salts, and salts of isomers;
- (37) 1-(3-trifluoromethylphenyl)piperazine (TFMPP), its optical isomers, salts, and salts of isomers;
- (38) Alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers; [and]
- (39) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers[-];
- (40) Salvia divinorum;
- (41) Salvinorin A; and
- (42) Divinorin A.”

SECTION 2. Section 329-16, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk Dextropropoxyphene (nondosage form);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levo-alphaacetylmethadol (LAAM);
- (12) Levomethorphan;
- (13) Levorphanol;
- (14) Metazocine;
- (15) Methadone;
- (16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-dphenyl butane;
- (17) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (18) Pethidine (Meperidine);
- (19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (22) Phenazocine;
- (23) Piminodine;
- (24) Racemethorphan;
- (25) Racemorphan;
- (26) Remifentanil; [and]
- (27) Sufentanil[-]; and
- (28) Tapentadol.”



SECTION 3. 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, including its salts, isomers, esters, ethers, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, that has a degree of danger or probable danger associated with a depressant effect on the central nervous system:

- (1) Alprazolam;
- (2) Barbitol;
- (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) Fospropofol (Lusedra);
- ~~(25)~~ (26) Halazepam;
- ~~(26)~~ (27) Haloxazolam;
- ~~(27)~~ (28) Ketazolam;
- ~~(28)~~ (29) Loprazolam;
- ~~(29)~~ (30) Lorazepam;
- ~~(30)~~ (31) Lormetazepam;
- ~~(31)~~ (32) Mebutamate;
- ~~(32)~~ (33) Medazepam;
- ~~(33)~~ (34) Meprobamate;
- ~~(34)~~ (35) Methohexital;
- ~~(35)~~ (36) Methylphenobarbital (mephobarbital);
- ~~(36)~~ (37) Midazolam;
- ~~(37)~~ (38) Nimetazepam;
- ~~(38)~~ (39) Nitrazepam;
- ~~(39)~~ (40) Nordiazepam;
- ~~(40)~~ (41) Oxazepam;
- ~~(41)~~ (42) Oxazolam;
- ~~(42)~~ (43) Paraldehyde;
- ~~(43)~~ (44) Petrichloral;
- ~~(44)~~ (45) Phenobarbital;
- ~~(45)~~ (46) Pinazepam;

- [(46)] (47) Prazepam;  
 [(47)] (48) Quazepam;  
 [(48)] (49) Temazepam;  
 [(49)] (50) Tetrazepam;  
 [(50)] (51) Triazolam;  
 [(51)] (52) Zaleplon;  
 [(52)] (53) Zolpidem; and  
 [(53)] (54) Zopiclone (Lunesta).”

SECTION 4. Section 329-22, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (1) Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide], (Vimpat); and  
 [(1)] (2) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].”

SECTION 5. Section 329-35, Hawaii Revised Statutes, is amended to read as follows:

“~~§329-35 Order to show cause. (a) [Before denying, suspending, or revoking a registration, or refusing a renewal of registration, the department of public safety shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the department of public safety at a time and place not less than thirty days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty days before the expiration of the registration. These proceedings shall be conducted in accordance with chapter 91 without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.] If, upon examination of the application for registration from any applicant and other information gathered by the department regarding the applicant, the administrator is unable to make the determinations required by the applicable provisions of sections 329-32 and 329-33 and applicable rules to register the applicant, the administrator shall serve upon the applicant an order to show cause why the registration should not be denied.~~

(b) If, upon information gathered by the department regarding any registrant, the administrator determines that the registration of a registrant warrants suspension or revocation pursuant to section 329-34 or applicable rules, the department shall serve upon the registrant an order to show cause why the registration should not be revoked or suspended.

(c) The order to show cause shall call upon the applicant or registrant to:

- (1) Appear before the department at a time and place stated in the order, which shall not be less than thirty days after the date of receipt of the order, to admit to the allegations in the order to show cause;  
 or  
 (2) Request a hearing as provided in subsection (d).

The order to show cause shall also contain a statement of the legal basis for such hearing and the reasons that support the administrator's intent to deny the application, or the revocation or suspension of registration, and a summary of the matters of fact and law asserted.

(d) Upon receipt of an order to show cause, the applicant or registrant, if the registrant or applicant desires a hearing, shall file a request for a hearing with the department within thirty days after service of the order to show cause. Failure to request a hearing shall result in the automatic termination of the registrant's registration and in the case of a new application or renewal the unprocessed application shall be returned to the applicant.

~~[(b) The]~~ (e) Notwithstanding subsections (a) to (d), department of public safety may suspend any registration simultaneously with the institution of proceedings under section 329-34, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the department of public safety or dissolved by a court of competent jurisdiction.

~~[(e)]~~ (f) The department of public safety may subpoena and examine witnesses under oath upon all such charges as may be ~~[preferred]~~ referred before it~~;~~ and the circuit court of the circuit in which the hearing is held shall enforce by appropriate order the attendance and testimony of witnesses so subpoenaed.]”

SECTION 6. Section 329-64, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The requirements imposed by sections 329-62[;] and 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 that contains pseudoephedrine or norpseudoephedrine 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 period].”~~

SECTION 7. Section 329-101, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Intentional or knowing failure to transmit any information as required by this section, including a request by the designated state agency for data corrections, shall be a misdemeanor, may incur administrative fines, and shall result in the immediate suspension of that pharmacy or practitioner’s ability to dispense controlled ~~[[substances]]~~ in the ~~[State]~~ state until authorized by the administrator.”

SECTION 8. Section 329-104, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) and (c) to read:

“(b) Responsibility for limiting access to information in the system is vested in the administrator. Access to the information collected at the central repository pursuant to this part shall be confidential, and access to the information shall be limited to:

- (1) ~~Personnel]~~ personnel of the designated state agency~~]; and~~
- (2) ~~The Drug Enforcement Administration diversion group supervisor].~~

(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, United States attorneys, county 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 or regulatory investigation or prosecution;
- (2) Registrants authorized under chapters 448, 453, 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;
- (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, pharmacist, or authorized government agency under this section shall be transmitted by a secure means determined by the designated agency.”

2. By amending subsection (e) to read:

“(e) The designated state agency shall purge or cause to be purged from the central repository system, no later than ~~[three]~~ five years after the date a patient’s prescription data are made available to the designated state agency, the identification number of the patient, unless the information is part of an active investigation.”

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 May 19, 2010.)

ACT 124

S.B. NO. 2385

A Bill for an Act Relating to the University Of Hawaii.

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

PART I

SECTION 1. This part amends sections of the Hawaii Revised Statutes that are not set for repeal and reenactment by Act 58, Session Laws of Hawaii 2004, as amended.

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.** (a) 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,~~ 2016, may install a different accounting system ~~which~~ that 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~~ that 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.

(b) 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.

(c) The judiciary, the legislature, and each county shall be responsible for the establishment and maintenance of its respective internal control system.”

SECTION 3. Section 40-58, 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 until June 30, 2016, 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 4. 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 until June 30, 2016, or the department of education until June 30, 2011, 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."

## PART II

SECTION 5. This part amends sections of the Hawaii Revised Statutes in the form in which they will read after they are repealed and reenacted under Act 58, Session Laws of Hawaii 2004, as amended, on June 30, 2010.

SECTION 6. Section 40-1, Hawaii Revised Statutes, is amended<sup>1</sup> to read as follows:

**"§40-1 Comptroller to supervise accounts, etc.** (a) The comptroller shall be the general accountant of the State<sup>[s]</sup> and ~~[he]~~ shall cause to be recorded every receipt and disbursement of money made to, by, or through the treasury. ~~[He]~~ The comptroller shall have the power to withhold any disbursement for which no appropriation has been made or which would cause a specific appropriation to be exceeded.

(b) With respect to the executive branch, ~~[he]~~ except the University of Hawaii until June 30, 2016, the comptroller shall have complete supervision of all accounts. ~~[He]~~ The comptroller shall preaudit<sup>2</sup> all proposed payments to determine the propriety of expenditures and compliance with ~~[such]~~ executive orders<sup>[s]</sup> and rules ~~[and regulations as]~~ that may be in effect. ~~[He shall<sup>3</sup> when]~~ When necessary, the comptroller shall withhold [his] approval of any payment. Whenever [he withholds his approval, he shall promptly notify] approval is withheld, the department or agency concerned<sup>[-]</sup> shall be promptly notified.

With respect to the University of Hawaii, the comptroller shall issue warrants for the release of funds for the operating costs of the university in amounts and at times mutually agreed upon by the governor or director of finance and the university; provided that:

- (1) The amounts released shall not exceed the allotment ceilings for the funding sources of the university's appropriations established by the governor for an allotment period pursuant to section 37-34; and
- (2) The comptroller may issue warrants as an advance from the state treasury to the University of Hawaii, 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 University of Hawaii shall preaudit all proposed payments of \$10,000 or more to determine the propriety of expenditures and compliance with applicable laws, executive orders, and rules as may be in effect. The University of Hawaii 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 and the comptroller; provided that when requested by the university, the comptroller shall make all disbursements for the university subject to available allotment. Funds released pursuant to this section shall be deposited by the university in accordance with the provisions applicable to the director of finance by chapter 38. 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.

(c) With respect to the judiciary and the legislature, [~~he~~] the comptroller shall make available to the judiciary and the legislature the total amount appropriated to each, except that the judiciary and the legislature may request [~~his~~] the comptroller's services in maintaining custody of the amount appropriated to each and in making payments therefrom. When such services are requested, [~~he~~] the comptroller shall make all disbursements requested by the judiciary or the legislature, but [~~he~~] shall not make any disbursement<sup>4</sup> for which no appropriation has been made or which would cause a specific appropriation to be exceeded.

(d) Any financial transaction recorded [~~by the comptroller~~] may be inspected by the public."

SECTION 7. Section 40-4, Hawaii Revised Statutes, is amended<sup>1</sup> to read as follows:

**"§40-4 Publication of statements.** The comptroller shall prepare and submit to the governor, and publish in a newspaper of general circulation in the [~~State,~~] state, 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, 2016, and the legislature to provide such information as may be required for the preparation of statements."

SECTION 8. Section 40-6, Hawaii Revised Statutes, is amended<sup>1</sup> 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, 2016, 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.”

### PART III

**SECTION 9.** This part amends sections of the Hawaii Revised Statutes set for repeal and reenactment under Act 58, Session Laws of Hawaii 2004, as amended, in the event that the 2010 legislature either repeals the reenactment provisions of Act 58, Session Laws of Hawaii 2004, as amended, that apply to these sections, or extends the date on which these sections will be repealed and reenacted.

**SECTION 10.** 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,] 2016, 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[-] that:

- (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 shall preaudit all proposed payments of \$10,000 or more and 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 11. 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,] 2016, 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 12. 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,] 2016, 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.”

## PART IV

SECTION 13. Any act passed by the 2010 legislature, whether enacted before or after the effective date of this Act, shall be amended to conform to the provisions of this Act that change the repeal date of the University of Hawaii's authority under sections 40-1, 40-2, 40-4, 40-6, 40-58, and 40-81, Hawaii Revised Statutes, to June 30, 2016.

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

SECTION 15. This Act, upon its approval, shall take effect retroactive to April 30, 2010; provided that:

- (1) Part II shall only take effect upon the repeal and reenactment of sections 40-1, 40-4, and 40-6, Hawaii Revised Statutes, on June 30, 2010, pursuant to Act 58, Session Laws of Hawaii 2004, as amended; and
- (2) Part III shall only take effect upon the repeal of paragraph (2)(B) of section 14 of Act 58, Session Laws of Hawaii 2004, as amended, pursuant to an Act of the 2010 legislature; or in the absence of that repeal, upon the extension of the June 30, 2010, repeal date in paragraph (2) of section 14 of Act 58, Session Laws of Hawaii 2004, as amended, pursuant to an Act of the 2010 legislature.

(Approved May 19, 2010.)

## Notes

1. Amended section is based on how section read on June 30, 1986, prior to amendment by Act 321, Session Laws of Hawaii 1986.
2. Prior to amendment "pre-audit" appeared here.
3. Prior to amendment a comma appeared here.
4. Prior to amendment "disbursements" appeared here.

## ACT 125

S.B. NO. 2811

A Bill for an Act Relating to Pharmacies.

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

SECTION 1. (a) The chair of the board of pharmacy shall establish a task force to conduct a study to determine the feasibility of lowering the age at which vaccinations may be administered by pharmacists; assess the feasibility of requiring every pharmacy and remote dispensing pharmacy to have the capacity to transmit and maintain prescriptions and prescription information electronically; and develop a plan for pharmacy participation in the Hawaii Health Information Exchange. The task force shall conduct research, assess, plan, and evaluate the following:

- (1) The potential benefits and drawbacks of lowering the age restrictions for pharmacists to administer vaccines to children;
- (2) The most effective means to lower such age restrictions;
- (3) Whether additional education or certification requirements for vaccinating pharmacists would be necessary or recommended;
- (4) Schemas of other states' vaccination age restrictions that allow vaccination of minors by pharmacists in all or limited circumstances;

- (5) The feasibility, costs, and benefits of requiring every pharmacy and remote dispensing pharmacy to have the capacity to transmit and maintain prescription and prescription records electronically and a time frame for implementing this requirement; and
- (6) A plan to include pharmacy participation in the Hawaii Health Information Exchange.

The task force shall submit a report of its findings and recommendations, including any implementing legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2011.

(b) The task force shall be situated in the department of health for administrative purposes and the members shall serve without compensation. The task force shall be chaired by the director of health or the director's designee and shall comprise:

- (1) One member of the board of pharmacy;
  - (2) Two members of the Hawaii Pharmacists Association;
  - (3) Two pharmacists from chain store pharmacies, including one pharmacist from a national chain store with experience in pharmacy-administered vaccinations to pediatric recipients as young as nine years of age, and one pharmacist from each of two independent pharmacies; provided that the participating pharmacies shall be selected by the task force;
  - (4) One member of the American Academy of Pediatrics, Hawaii Chapter; and
  - (5) One member from the Hawaii Health Information Exchange.
- (c) The task force shall cease to exist on June 30, 2011.

SECTION 2. This Act shall take effect upon approval and shall be repealed on July 1, 2011.

(Approved May 19, 2010.)

**ACT 126**

H.B. NO. 2397

A Bill for an Act Relating to Primary Elections.

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

SECTION 1. The legislature finds that provisions within the National Defense Authorization Act for Fiscal Year 2010, P.L. 111-84, requires states to mail absentee ballots to uniformed and overseas voters no later than forty-five days prior to elections for federal offices. The legislature also finds that Hawaii law allows only forty-five days between primary and general elections, making meeting the federal mailing deadlines an impossibility.

Federal law allows for states to request a waiver of the requirement on an election-by-election basis, if the State can show that it has alternative means by which it can ensure access to the ballot for overseas voters. The federal law further provides that the waiver request must be made more than ninety days before the general election and that the approval or denial of the request will occur no later than sixty-five days before the general election.

With this in mind, state election officials sought to immediately submit the State of Hawaii's waiver application, but they have been informed that the federal government is still determining the specifics of the waiver application process and, as such, are not receiving applications at this time.

The purpose of this Act is to move Hawaii's primary election date to the second Saturday in August and to move the deadline for filing nomination papers to the first Tuesday in June.

SECTION 2. Section 12-2, Hawaii Revised Statutes, is amended to read as follows:

**“§12-2 Primary held when; candidates only those nominated.** The primary shall be held [at the polling place for each precinct] on the second [to the last] Saturday of [September] August in every even numbered year[; provided that in no case shall any primary election precede a general election by less than forty-five days].

No person shall be a candidate for any general or special general election unless the person has been nominated in the immediately preceding primary or special primary.”

SECTION 3. Section 12-6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) ~~Nomination papers shall be filed as follows:~~

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

[(b)] If after the close of filing there are no candidates who have filed nomination papers for an elective office for the primary, special primary, or any special election held in conjunction with the primary election, the chief election officer or clerk, in the case of a county election, shall accept nomination papers for that office [not later than 4:30 p.m. on the fiftieth day prior to the primary,

~~special primary, or special election.] until 4:30 p.m. on the tenth day after the original close of filing.”~~

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, 2011.

(Approved May 20, 2010.)

ACT 127

S.B. NO. 2825

A Bill for an Act Relating to State Funds.

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

SECTION 1. The legislature finds that the illiquidity of one fourth of the State’s investments during the present economic downturn is attributable to the State’s purchase of student loan auction rate securities with maturity dates of eight to thirty-eight years. State law permits investments of excess moneys in specified financial products; provided that the investments mature not more than five years after the date of investment. However, the State evidently construed the date of maturity on these student loan auction rate securities to be their date of auction, rather than their stated maturity dates of eight to thirty-eight years.

The purpose of this Act is to clarify that the five-year limitation for authorized investments with stated maturity dates also applies to the underlying securities of those investments.

SECTION 2. Section 36-21, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

- (1) Any bonds or interest-bearing notes or obligations:
  - (A) Of the State (including state director of finance’s warrant notes issued pursuant to chapter 40);
  - (B) Of the United States;
  - (C) For which the faith and credit of the United States are pledged for the payment of principal and interest;
- (2) Federal Farm Credit System notes and bonds;
- (3) Federal Agricultural Mortgage Corporation notes and bonds;
- (4) Federal Home Loan Bank notes and bonds;
- (5) Federal Home Loan Mortgage Corporation bonds;
- (6) Federal National Mortgage Association notes and bonds;
- (7) Student Loan Marketing Association notes and bonds;
- (8) Tennessee Valley Authority notes and bonds;
- (9) Securities of a mutual fund whose portfolio is limited to bonds or securities issued or guaranteed by the United States or an agency thereof or repurchase agreements fully collateralized by any such bonds or securities;
- (10) Securities of a money market mutual fund that is rated AAA, or its equivalent, by a nationally recognized rating agency or whose

portfolio consists of securities that are rated as first tier securities by a nationally recognized statistical rating organization as provided in 17 Code of Federal Regulations [section] Section 270.2a-7;

- (11) Federally insured savings accounts;
- (12) Time certificates of deposit;
- (13) Certificates of deposit open account;
- (14) Repurchase agreements with federally insured banks, savings and loan associations, and financial services loan companies;
- (15) Student loan resource securities including:
  - (A) Student loan auction rate securities;
  - (B) Student loan asset-backed notes;
  - (C) Student loan program revenue notes and bonds; and
  - (D) Securities issued pursuant to Rule 144A of the Securities Act of 1933, including any private placement issues; issued with either bond insurance or overcollateralization guaranteed by the United States Department of Education; provided all insurers maintain a triple-A rating by Standard & Poor's, Moody's, Duff & Phelps, Fitch, or any other major national securities rating agency;
- (16) Commercial paper with an A1/P1 or equivalent rating by any national securities rating service; and
- (17) Bankers' acceptances with an A1/P1 or equivalent rating by any national securities rating service;

provided that [the investments] for authorized investments with stated maturity dates, the investment, as well as the underlying securities of those investments, are due to mature not more than five years from the date of investment. Income derived from those investments shall be a realization of the general fund; provided that, except as provided by Act 79, Session Laws of Hawaii 2009, income earned from moneys invested by the general funds, special funds, bond funds, and trust and agency funds on an investment pool basis shall be paid into and credited to the respective funds based on the contribution of moneys into the investment pool by each fund. As used in this section, "investment pool" means the aggregate of state treasury moneys that are maintained in the custody of the director of finance for investment and reinvestment without regard to fund designation."

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 investments made or purchased after December 31, 2009.

(Approved May 20, 2010.)

## ACT 128

H.B. NO. 1684

A Bill for an Act Relating to Invasive Species.

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

SECTION 1. The legislature finds that the unchecked spread of invasive species is one of the greatest threats to Hawaii's economy, natural environment, and the health and lifestyle of Hawaii's people. Invasive pests can cause millions of dollars in crop losses, the extinction of native species, the destruction of na-

tive forests, the spread of disease, and the quarantine of exported agricultural crops.

Despite ongoing efforts to detect and eradicate invasive species, Hawaii's fragile island ecosystems are constantly at risk from insects, disease-bearing organisms, weeds, and other invasive pests. The coqui frog, giant salvinia, miconia, ohia rust, nettle caterpillar, and little fire ant are all present in Hawaii, disrupting the delicate balance of Hawaii's ecosystems, crowding out native species, and reducing the biodiversity of the islands. Other harmful species like the papaya mealybug, erythrina gall wasp, Asian citrus psyllid, and the varroa mite have the potential to devastate Hawaii's environment and agriculture if allowed to become widespread and remain unchecked by natural predators.

The purpose of this Act is to prevent and reduce the intentional introduction and spread of invasive species by establishing and revising penalties appropriate to the harm to the economy, natural environment, and the health and lifestyle of Hawaii's people caused by the intentional introduction and spread of such pests.

SECTION 2. Section 150A-14, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) and (c) to read:

"(b) Any person who violates section 150A-5 shall be guilty of a petty misdemeanor and fined not less than [\$100 and not more than \$10,000.] \$50 and not more than \$5,000. For a second [violation] offense committed within five years of a prior [violation,] offense, the person may be fined not less than [\$500] \$250 and not more than [\$25,000.] \$15,000.

(c) ~~[Notwithstanding section 706-640:~~

~~(1) Any person [or organization that violates] who:~~

~~(1) Violates section 150A-6(3) or 150A-6(4), or owns or intentionally transports, possesses, harbors, transfers, or causes the importation of any snake or other prohibited animal seized under section 150A-7(b), or whose violation involves an animal that is prohibited or a plant, animal, or microorganism that is restricted, without a permit, shall be guilty of a misdemeanor and subject to a fine of not less than \$5,000, but not more than \$20,000; [and]~~

~~(2) [Any person or organization who intentionally] Intentionally transports, harbors, or imports with the intent to propagate, sell, or release any animal that is prohibited or any plant, animal, or microorganism that is restricted, without a permit, shall be guilty of a class C felony and subject to a fine of not less than \$50,000, but not more than \$200,000[-]; or~~

~~(3) Intentionally imports, possesses, harbors, transfers, or transports, including through interisland or intraisland movement, with the intent to propagate, sell, or release, any pest designated by statute or rule, unless otherwise allowed by law, shall be guilty of a class C felony and subject to a fine of not less than \$50,000, but not more than \$200,000."~~

2. By amending subsection (g) to read:

"(g) For purposes of this section, "intent to propagate" shall be presumed when the person [or organization] in question is found to possess, transport, harbor, or import:

(1) Any two or more animal specimens of the opposite sex that are prohibited or restricted, without a permit[-], or are a pest designated by statute or rule;

- (2) Any three or more animal specimens of either sex that are prohibited or restricted, without a permit[;], or are a pest designated by statute or rule;
- (3) Any plant or microorganism having the inherent capability to reproduce and that is restricted, without a permit; or
- (4) Any specimen that is in the process of reproduction.”

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

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

(Approved May 20, 2010.)

## ACT 129

S.B. NO. 1062

A Bill for an Act Relating to Professional Employer Organizations.

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

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

### “CHAPTER PROFESSIONAL EMPLOYER ORGANIZATIONS

§ -1 **Definitions.** Whenever used in this chapter, unless the context otherwise requires:

“Client company” means any person who enters into a professional employer agreement with a professional employer organization.

“Co-employment” means a relationship that is intended to be an ongoing relationship rather than a temporary or project-specific one, wherein the rights, duties, and obligations of an employer that arise out of an employment relationship have been allocated between the client company and the professional employer organization pursuant to a professional employer agreement and this chapter.

“Covered employee” means an individual having a co-employment relationship with a professional employer organization and a client company who meets all of the following criteria:

- (1) The individual has received written notice of co-employment with the professional employer organization; and
- (2) The individual’s co-employment relationship is pursuant to a professional employer agreement subject to this chapter. Individuals who are officers, directors, shareholders, partners, and managers of the client company shall be covered employees to the extent that the professional employer organization and the client company have expressly agreed in the professional employer agreement that the individuals shall be covered employees; provided that the individuals meet the criteria of this definition and act as operational managers or perform day-to-day operational services for the client company.

“Director” means the director of labor and industrial relations.

“Person” means a natural or legal person.



“Professional employer agreement” means a written contract by and between a client company and a professional employer organization that provides for the following:

- (1) The co-employment of covered employees; and
- (2) The allocation of employer rights and obligations between the client company and the professional employer organization with respect to the covered employees.

“Professional employer organization” means any person that is a party to a professional employer agreement with a client company regardless of whether the person uses the term or conducts business expressly as a “professional employer organization”, “PEO”, “staff leasing company”, “registered staff leasing company”, “employee leasing company”, “administrative employer”, or any other similar name.

“Temporary help services” means an arrangement by which a person recruits and hires the person’s own employees and:

- (1) Finds other organizations that need the services of those employees;
- (2) Assigns those employees to perform work or services for other organizations to support or supplement the other organizations’ workforces or to provide assistance in special work situations, including employee absences, skill shortages, seasonal workloads, or special assignments or projects; and
- (3) Customarily attempts to reassign the employees to successive placements with other organizations at the end of each assignment.

**§ -2 Registration required.** (a) Every professional employer organization shall register with the director by providing all of the information required by this section and by rules adopted by the director pursuant to chapter 91 prior to entering into any professional employer agreement with any client company in this state.

- (b) Registration information required by this section shall include:
  - (1) The name or names under which the professional employer organization conducts or will conduct business;
  - (2) The address of the principal place of business of the professional employer organization and the address of each office that the professional employer organization maintains in this state;
  - (3) The professional employer organization’s general excise tax number;
  - (4) A copy of the certificate of authority to transact business in this state issued by the director of commerce and consumer affairs pursuant to title 23 or title 23A, if applicable;
  - (5) A list, organized by jurisdiction, of each name under which the professional employer organization has operated in the preceding five years, including any alternative names; names of predecessors; and, if known, names of successor business entities;
  - (6) A statement of ownership, which shall include the name of each person who, individually or acting in concert with any other person or persons, owns or controls, directly or indirectly, twenty-five per cent or more of the equity interests of the professional employer organization;
  - (7) A statement of management, which shall include the name of any person who serves as president or chief executive officer or who otherwise has the authority to act as a senior executive officer of the professional employer organization;

- (8) Proof of valid workers' compensation coverage in compliance with all laws of this state;
- (9) Proof of compliance with the Hawaii temporary disability insurance law;
- (10) Proof of compliance with the Hawaii prepaid health care act as regards all employees of the professional employer organization;
- (11) Proof of compliance with the Hawaii employment security law, including payment of any applicable employer liability pursuant to chapter 383; and
- (12) A financial statement prepared in accordance with generally accepted accounting principles, audited by an independent certified public accountant licensed to practice in the state, and without qualification as to the going concern status of the professional employer organization.

(c) Registration under this section shall expire on December 31 of each odd-numbered year. Before December 31 of each odd-numbered year, the director or the director's authorized delegate shall mail a renewal application for registration to the address on record of the registrant. In connection with renewal of registration, a professional employer organization shall provide all of the information required by subsection (b).

(d) The director shall establish fees and requirements for registration, maintenance of registration, renewal, and restoration of registration for professional employer organizations by rule pursuant to chapter 91.

**§ -3 Bond required.** (a) No professional employer organization shall enter into a professional employment agreement with a client company in the state unless the professional employer organization posts a bond in the amount of \$250,000, which is a performance or financial guaranty type bond naming the director as the obligee and which may be canceled only if the professional employer organization gives sixty days prior written notice to the surety or if the surety gives thirty days prior written notice to the director of cancellation of the bond. The requirements of this section shall be satisfied by a single bond. If a professional employer organization has more than one branch location, the bond shall cover all locations.

(b) The bond required by this section shall be issued by a surety or federally insured lending institution authorized to do business in the state to indemnify a client company who may suffer loss as a result of nonperformance by a professional employer organization.

(c) Upon cancellation or expiration of the bond, the surety or insurer shall remain liable for any claims against the bond for a period of six months; provided that:

- (1) The debts were incurred while the bond was in effect; and
- (2) The director notifies the surety or insurer, as the case may be, of any claims within ninety days of discovery of any claims.

(d) The surety or insurer is not required to release any moneys or collateral to the professional employer organization during the six months after cancellation of the bond.

(e) Failure to have in effect a current bond shall result in automatic forfeiture of registration pursuant to this chapter and shall require the professional employer organization to immediately cease doing business in the state. A professional employer organization whose registration is forfeited shall apply as a new applicant for registration in order to resume business in the state.

§ -4 **Exemptions.** A person who engages only in the following activities shall not be deemed a professional employer organization for purposes of this chapter and shall be exempt from the requirements of this chapter:

- (1) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements and who does not hold the person's self out as a professional employer organization, shares employees with a commonly-owned company within the meaning of Sections 414(b) and (c) of the Internal Revenue Code;
- (2) Independent contractor arrangements by which a person assumes responsibility for the product produced or service performed by the person or the person's agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under those arrangements; or
- (3) The providing of temporary help services.

§ -5 **Rules.** The director shall adopt rules pursuant to chapter 91 that the director deems necessary for the effective administration and enforcement of this chapter."

SECTION 2. This Act shall take effect upon its approval; provided that the registration requirements of section 1 of this Act shall take effect on July 1, 2011.

(Approved May 21, 2010.)

**ACT 130**

S.B. NO. 2809

A Bill for an Act Relating to Utilities Regulation.

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

SECTION 1. The public utilities commission and the department of commerce and consumer affairs' division of consumer advocacy are funded entirely by fees and other revenues collected by the commission and deposited in the public utilities commission special fund. This fund was established by the legislature by Act 226, Session Laws of Hawaii 1994, to ensure that the public utilities commission and the division of consumer advocacy would have sufficient resources to provide the essential services required to effectively regulate Hawaii's public utilities. At that time, the legislature recognized the need to provide adequate funding for the regulatory agencies, and found that, in addition to the ordinary processing of regulatory cases, adequate funding would allow the agencies to cut regulatory delays and handle the many challenges of the changing environment in public utilities.

The legislature finds that adequate staffing of the public utilities commission and the division of consumer advocacy is essential for these agencies to effectively perform their missions. The legislature acknowledged this in Act 226, Session Laws of Hawaii 1994, when it established the public utilities commission special fund; in Act 143, Session Laws of Hawaii 2006, when it required the public utilities commission and the division of consumer advocacy to prepare reorganization plans; and again in Act 177 and Act 183, Session Laws of Hawaii 2007, when it passed legislation to reorganize the two agencies to revitalize Hawaii's utility regulatory program. The reorganizations approved for these agencies by Act 177 and Act 183 provided for:

- (1) Increased staff levels;

- (2) Agency restructuring and amendments to the descriptions of several positions to modernize the operation of the agencies; and
- (3) Necessary relocation of the commission offices.

In fiscal year 2009-2010, the budget for the public utilities commission was reduced, taking away nine positions, leaving two additional positions unfunded, and leaving the previously-approved relocation of the public utilities commission offices unfunded. The lost positions negatively impact the overall reorganization plan and impede the commission's effectiveness.

Similarly, in fiscal year 2009-2010, the budget for the department of commerce and consumer affairs' division of consumer advocacy was reduced with the result that eight positions were taken away and new positions provided for in the reorganization of the division could not be filled. The legislature finds that this reduction in staff and budget severely impairs the division's ability to effectively meet its duties and objectives. Coupled with the additional effects of furloughs and other associated restrictions and reductions, there has been an approximately 9.5 per cent reduction in the division's employee work hours. At its present level of staffing and approved budget, the division faces difficulties that have required it to delay, as much as possible, participating in all of the matters filed with the commission. In addition, processing times for applications, licenses, registrations, investigations, and case-handling without a statutory time limit have all increased. To date in fiscal year 2009-2010, the division has not had sufficient staff or resources to participate in any applications related to certification of new telecommunications services providers and it has had to request more deadline extensions in matters of public utility regulation than in the past.

Currently, there are fifty-one funded permanent positions in the public utilities commission. Thirty-seven of these positions are filled, and fourteen positions are unfilled. Of these unfilled positions, eleven are new positions created by the reorganization approved by Act 177, Session Laws of Hawaii 2007. The commission is actively trying to obtain necessary approvals and find qualified applicants for the unfilled positions.

Currently, there are fifteen funded positions in the division of consumer advocacy. Eleven of these positions are filled and four positions are unfilled. The division is actively trying to obtain the necessary approvals and find qualified applicants for the remaining vacancies.

The legislature continues to believe that the reorganization of the public utilities commission and the division of consumer advocacy provided by Act 177 and Act 183, Session Laws of Hawaii 2007, is essential to sufficiently regulate Hawaii's public utilities; control utility costs for Hawaii's people, businesses, and government agencies; and successfully implement meaningful energy policy reform in Hawaii. It is especially important for these agencies to have sufficient resources to effectively and efficiently oversee Hawaii's transition from over-reliance on imported fossil fuels to energy efficiency and increased use of renewable energy. The public utilities commission and the division of consumer advocacy will oversee the investment of several billion dollars in public utility-related capital projects as part of this transition in the next several years.

The legislature acknowledges the budgetary difficulties faced by the State and its agencies, but finds that failure to adequately fund the staffing and reorganization of the public utilities commission and the division of consumer advocacy will have consequences beyond the current economic recession. Accordingly, the legislature finds that a vital and effective public utility regulatory program is essential to Hawaii's economic recovery. The public utilities commission regulates, and the division of consumer advocacy advocates for consumers with respect to, electric and telecommunications services worth between \$3,000,000,000 and \$4,000,000,000 annually. Analyses performed by

the Hawaii Energy Policy Forum indicate that the increased effectiveness of the public utilities commission and the division of consumer advocacy that would result from the reorganization approved in Act 177 and Act 183, Session Laws of Hawaii 2007, would reduce the annual utility expenses in the State's budget by more than the annual cost of fully funding the reorganization. The savings that would result from effective regulation and efficient allocation of public utility investments over the next several years would save Hawaii's economy over \$100,000,000 annually.

The legislature finds that the public utilities commission special fund contains sufficient moneys to adequately fund the public utilities commission and the division of consumer advocacy including all aspects of the reorganization required by Act 177 and Act 183, Session Laws of Hawaii 2007.

The purpose of this Act is to authorize sufficient funding for the operation and staffing of the public utilities commission and the department of commerce and consumer affairs' division of consumer advocacy to accomplish the objectives of those agencies and to complete the reorganization that was begun by Act 177 and Act 183, Session Laws of Hawaii 2007.

SECTION 2. There is appropriated out of the public utilities commission special fund the sum of \$1,704,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the operations of the public utilities commission, including funding all positions included in the reorganization approved by Act 177, Session Laws of Hawaii 2007; including the reinstating and funding of the nine positions removed by Act 162, Session Laws of Hawaii 2009.

The sum appropriated shall be expended by the public utilities commission for the purposes of this Act.

SECTION 3. (a) Other state and county agencies shall assist:

- (1) The public utilities commission, upon its request; and
- (2) The department of commerce and consumer affairs' division of consumer advocacy, upon its request,

in carrying out the provisions of this Act.

(b) The department of human resources development shall work cooperatively with:

- (1) The public utilities commission, as the commission deems necessary; and
- (2) The department of commerce and consumer affairs' division of consumer advocacy, as the division deems necessary,

in establishing and amending job descriptions in a timely manner.

SECTION 4. There is appropriated out of the compliance resolution fund the sum of \$634,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the operations of the department of commerce and consumer affairs' division of consumer advocacy, including funding all positions included in the reorganization approved by Act 183, Session Laws of Hawaii 2007; reinstating and funding the positions removed in fiscal year 2009-2010; and necessary training for new and existing division personnel.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 5. This Act shall take effect on July 1, 2010.

(Approved May 21, 2010.)

## ACT 131

S.B. NO. 950

A Bill for an Act Relating to Electric Guns.

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

SECTION 1. Section 134-16, Hawaii Revised Statutes, is amended to read as follows:

**“§134-16 Restriction on possession, sale, gift, or delivery of electric guns.**

(a) It shall be unlawful for any person, including a licensed manufacturer, licensed importer, or licensed dealer, to possess, offer for sale, hold for sale, sell, give, lend, or deliver any electric gun.

(b) Any electric gun in violation of subsection (a) shall be confiscated and disposed of by the chief of police.

(c) This section shall not apply to law enforcement officers of county police ~~[and sheriff] departments [of this State]~~, law enforcement officers of the department of public safety, and conservation and resources enforcement officers of the department of land and natural resources, or vendors providing electric guns to those entities; provided that electric guns shall at all times remain in the custody and control of the law enforcement officers of the county police ~~[or sheriff] departments[-]~~, the law enforcement officers of the department of public safety, or the conservation and resources enforcement officers of the department of land and natural resources.

(d) The county police ~~[and sheriff] departments of this [State] state, the department of public safety, and the department of land and natural resources~~ shall maintain records regarding every electric gun in their custody and control. ~~[Such]~~ The records shall report every instance of usage of the electric guns; in particular, records shall be maintained in a similar manner as for those of discharging of firearms. The county police [and sheriff] departments, the department of public safety, and the department of land and natural resources shall annually report to the legislature regarding these records no later than twenty days before the beginning of each regular session[-] of the legislature.

(e) The department of land and natural resources and the department of public safety shall ensure that each of their conservation and resources enforcement officers and law enforcement officers who is authorized to use an electric gun and related equipment shall first receive training from the manufacturer or from a manufacturer-approved training program, as well as by manufacturer-certified or approved instructors in the use of electric guns prior to deployment of the electric guns and related equipment in public. Training for conservation and resources enforcement officers of the department of land and natural resources and law enforcement officers of the department of public safety may be done concurrently to ensure cost savings.

(f) The conservation and resources enforcement program of the department of land and natural resources shall meet the law enforcement accreditation or recognition standards of the Commission on Accreditation for Law Enforcement Agencies, Inc., in the use of electric guns prior to obtaining electric guns, related equipment, and training for the use of the electric guns.”

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, 2010.

(Approved May 21, 2010.)

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 2010.

SECTION 2. Act 139, Session Laws of Hawaii 2009, 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, 2009, and ending June 30, 2011. 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 2009-2010	FISCAL YEAR 2010-2011
<b>The Judicial System</b>					
1.	JUD101 - COURTS OF APPEAL				
	OPERATING		JUD	79.00* 7,263,297 A	79.00* [-7,260,041 A] <u>6,545,780 A</u>
			JUD	243,261 W	243,261 W
2.	JUD310 - FIRST JUDICIAL CIRCUIT				
	OPERATING		JUD	1,057.50* 76,609,271 A	1,057.50* [-76,668,648 A] <u>67,943,664 A</u>
			JUD	40.00* 3,777,131 B	[-40.00*] 41.00* [-3,784,971 B] <u>3,785,302 B</u>
3.	JUD320 - SECOND JUDICIAL CIRCUIT				
	OPERATING		JUD	205.00* 15,462,417 A	205.00* [-15,460,014 A] <u>14,068,851 A</u>
4.	JUD330 - THIRD JUDICIAL CIRCUIT				
	OPERATING		JUD	223.00* 18,679,648 A	223.00* [-18,676,725 A] <u>16,646,447 A</u>
5.	JUD350 - FIFTH JUDICIAL CIRCUIT				
				97.00*	97.00*

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F	
		OPERATING	JUD	7,246,822 A	[ <del>7,245,750 A</del> 6,389,529 A	
6.	JUD501	JUDICIAL SELECTION COMMISSION				
		OPERATING	JUD	1.00* 99,292 A	1.00* [ <del>99,292 A</del> 85,341 A	
7.	JUD601	ADMINISTRATION				
		OPERATING	JUD	213.00* 13,639,253 A	213.00* [ <del>13,589,530 A</del> 19,051,012 A	
			JUD	1.00* 8,396,900 B	1.00* [ <del>6,930,290 B</del> 6,887,942 B	
		INVESTMENT CAPITAL	JUD	100,000 W	100,000 W	
			JUD	9,775,000 C	C"	

SECTION 3. Part V, section 10, of Act 139, Session Laws of Hawaii 2009, is amended to read as follows:

“SECTION 10. Any law to the contrary notwithstanding, the appropriations under Act 169, Session Laws of Hawaii 2007, section 15, as amended and renumbered by Act 102, Session Laws of Hawaii 2008, section 4, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
JUD601-3	\$ 500,000 C
JUD601-4	\$ 50,000 C
JUD601-4.01	\$ <sup>1</sup> 1,020,000 C”

SECTION 4. 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 5. 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 regular session.

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 21, 2010.)

Note

1. Should be underscored.



A Bill for an Act Relating to Trauma.

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

SECTION 1. The legislature has recognized that in Hawaii, injury is the leading cause of death for persons between the ages of one to forty-four, and, therefore, the improvement of trauma care in Hawaii is a public health priority.

By Act 305, Session Laws of Hawaii 2006, the department of health was charged with the continuing development and operation of a comprehensive statewide trauma system to save lives and improve outcomes of injured patients. To improve patient care, a comprehensive trauma system requires the systematic review of information related to patient care and system performance by all parties involved, in a protected environment that supports participation and frank discussion. The importance of protecting peer review and quality assurance of health care provided is recognized in Hawaii by statute in section 624-25.5, Hawaii Revised Statutes. The department of health's child death review is also protected under sections 321-341 and 321-345, Hawaii Revised Statutes.

The purpose of this measure is to establish that statewide emergency and trauma system multidisciplinary quality assurance subcommittees convened and conducted by the department of health for the purposes of making system improvements, have similar protections as those committees formed by hospitals and health maintenance organizations.

SECTION 2. Section 624-25.5, Hawaii Revised Statutes, is amended to read as follows:

**"§624-25.5 Proceedings and records of peer review committees and quality assurance committees.** (a) As used in this section:

"Case review forum" means any meeting convened by the administrative or professional staff of a licensed hospital or clinic for the presentation and critique of cases for educational purposes.

"Health care review organization" means any organization that gathers and reviews information relating to the procedures and outcomes of health care providers and the care and treatment of patients for the purposes of evaluating and improving quality and efficiency of health care.

"Licensed health maintenance organization" means a health maintenance organization licensed in Hawaii under chapter 432D.

"Peer review committee" means a committee created by a professional society, or by the medical, dental, optometric, or administrative staff of a licensed hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network, whose function is to maintain the professional standards of persons engaged in its profession, occupation, specialty, or practice established by the bylaws of the society, hospital, clinic, health maintenance organization, preferred provider organization; or preferred provider network of the persons engaged in its profession [or], occupation, or area of specialty practice, or in its hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network.

"Preferred provider organization" or "preferred provider network" means a partnership, association, corporation, or other entity that delivers or arranges for the delivery of health services, and that has entered into a written service arrangement or arrangements with health professionals, a majority of whom are licensed to practice medicine or osteopathy.

“Professional society” or “society” means any association or other organization of persons engaged in the same profession, occupation, or a specialty within a profession or occupation, a primary purpose of which is to maintain the professional standards of the persons engaged in its profession [or], occupation, or specialty practice.

“Quality assurance committee” means an interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital, clinic, long-term care facility, skilled nursing facility, assisted living facility, home care agency, hospice, health maintenance organization, preferred provider organization, [or] preferred provider network providing medical, dental, or optometric care, or an authorized state agency whose function is to monitor and evaluate patient care, to identify, study, and correct deficiencies in the health care delivery system to reduce the risk of harm to patients and improve patient safety or otherwise improve the quality of care delivered to patients.

(b) The department of health may establish quality assurance committees for the purpose of monitoring, improving, and evaluating patient care within the statewide trauma care systems. The proceedings of quality assurance committees authorized under this subsection shall not be subject to part I of chapter 92, and, for purposes of chapter 92F, the records of the proceedings shall be confidential.

~~[(b)]~~ (c) Neither the proceedings nor the records of peer review committees, quality assurance committees, or case review forums shall be subject to discovery. For the purposes of this section, “records of quality assurance committees” are limited to recordings, transcripts, minutes, summaries, and reports of committee meetings and conclusions contained therein. Information protected shall not include incident reports, occurrence reports, or similar reports that state facts concerning a specific situation, or records made in the regular course of business by a hospital or other provider of health care. Original sources of information, documents, or records shall not be construed as being immune from discovery or use in any civil proceeding merely because they were presented to, or prepared at the direction of, the committees. Except as hereinafter provided, no person in attendance at a meeting of a committee or case review forum shall be required to testify as to what transpired at the meeting. The prohibition relating to discovery or testimony shall not apply to the statements made by any person in attendance at the meeting who is a party to an action or proceeding the subject matter of which was reviewed at the meeting, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits.

~~[(e)]~~ (d) Information and data relating to a medical error reporting system that is compiled and submitted by a medical provider to a health care review organization for the purpose of evaluating and improving the quality and efficiency of health care, when done through a peer review committee or hospital quality assurance committee, shall not be subject to discovery.

For purposes of this subsection, the information and data protected shall include proceedings and records of a peer review committee, hospital quality assurance committee, or health care review organization that include recordings, transcripts, minutes, and summaries of meetings, conversations, notes, materials, or reports created for, by, or at the direction of a peer review committee, quality assurance committee, or a health care review organization when related to a medical error reporting system.

Information and data protected from discovery shall not include incident reports, occurrence reports, statements, or similar reports that state facts concerning a specific situation and shall not include records made in the regu-

lar course of business by a hospital or other provider of health care, including patient medical records. Original sources of information, documents, or records shall not be construed as being immune from discovery or use in any civil proceeding merely because they were reviewed or considered by a medical provider for submission to, or were in fact submitted to, a health care review organization.

~~[(d)]~~ (e) The prohibitions contained in this section shall not apply to medical, dental, or optometric society committees that exceed ten per cent of the membership of the society, nor to any committee if any person serves upon the committee when the person's own conduct or practice is being reviewed.

~~[(e)]~~ (f) The prohibitions contained in this section shall apply to investigations and discovery conducted by the Hawaii medical board, except as required by ~~[sections]~~ section 92-17, 453-8.7, or 663-1.7(e)."

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 24, 2010.)

ACT 134

S.B. NO. 930

A Bill for an Act Relating to Volunteer Medical Assistance Services.

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

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

**"§321- Volunteer medical assistance personnel.** (a) This section shall apply to all volunteer medical assistance personnel, including:

- (1) Physicians;
- (2) Psychologists;
- (3) Nurses;
- (4) Emergency medical technicians;
- (5) Social workers;
- (6) Mobile intensive care technicians; and
- (7) Physician assistants,

licensed or certified in this state, or employed by a health care facility, while providing volunteer medical assistance services.

(b) Any volunteer medical assistance personnel who is injured in the performance of volunteer medical assistance services, shall be entitled to the benefits in section 386-171.

(c) Except in cases of wilful or criminal misconduct, gross negligence, or reckless misconduct, any volunteer medical assistance personnel providing volunteer medical assistance services shall not be liable for the death of or injury to persons, or for damage to property, as a result of any act or omission in the course of rendering volunteer medical assistance services. No act or omission shall be imputed to the owner of any vehicle by reason of ownership thereof; provided that nothing in this section shall preclude recovery by any person for injury or damage sustained from the operation of any vehicle that may be insured under section 41D-8 to the extent of the insurance.

(d) Nothing in this section shall be construed to affect any civil action brought by the State or a county against any volunteer medical assistance personnel of the State or a county.

(e) In any suit against the State or a county for civil damages based upon the negligent act or omission of volunteer medical assistance personnel, proof of the negligent act or omission shall be sufficient to establish the responsibility of the State or a county therefor under the doctrine of respondeat superior, notwithstanding the immunity granted to the volunteer medical assistance personnel with respect to any act or omission included under subsection (c).

(f) For the purposes of this section:

“Volunteer medical assistance services” means the rendering of professional medical services that are provided on behalf of and authorized by the State or a county, including participation during periods of volunteer medical assistance services and volunteer medical assistance services training; provided that services provided pursuant to section 321-23.3 shall not be considered to be volunteer medical assistance services. Volunteer medical assistance services shall include providing professional medical services in support of vaccination campaigns or outreach clinics.”

SECTION 2. Section 662D-3, Hawaii Revised Statutes, is amended to read as follows:

“~~§662D-3~~ **Exception.** Notwithstanding section 662D-2, if otherwise permitted by law, a person may sue and recover civil damages from a volunteer based upon:

- (1) Any conduct engaged in by the volunteer that would constitute gross negligence, wilful and wanton misconduct, or intentional misconduct;
- (2) Any act or omission in connection with the operation of a motor vehicle;
- (3) Any conduct engaged in by the volunteer while the volunteer is unreasonably interfering with the lawful activities of another;
- (4) Any conduct engaged in by the volunteer that takes place on private property when the volunteer’s presence on the property was not consented to by the owner;
- (5) Any act or omission within a volunteer’s scope of practice for which the volunteer is licensed, certified, permitted, or registered under state law to perform; provided that this paragraph shall not apply to volunteer medical assistance services pursuant to section 321- : and
- (6) Any criminal offense committed by the volunteer.”

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

SECTION 4. This Act shall take effect upon approval.

(Approved May 24, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Child Protective 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  
CHILD PROTECTIVE ACT**

**PART I. SHORT TITLE, PURPOSE, CONSTRUCTION,  
GUIDING PRINCIPLES, AND DEFINITIONS**

§ -1 **Short title.** This chapter shall be known and cited as the Child Protective Act.

§ -2 **Purpose; construction.** This chapter creates within the jurisdiction of the family court a child protective act to make paramount the safety and health of children who have been harmed or are in life circumstances that threaten harm. Furthermore, this chapter makes provisions for the service, treatment, and permanent plans for these children and their families.

The legislature finds that children deserve and require competent, responsible parenting and safe, secure, loving, and nurturing homes. The legislature finds that children who have been harmed or are threatened with harm are less likely than other children to realize their full educational, vocational, and emotional potential, and become law-abiding, productive, self-sufficient citizens, and are more likely to become involved with the mental health system, the juvenile justice system, or the criminal justice system, as well as become an economic burden on the State. The legislature finds that prompt identification, reporting, investigation, services, treatment, adjudication, and disposition of cases involving children who have been harmed or are threatened with harm are in the children's, their families', and society's best interests because the children are defenseless, exploitable, and vulnerable. The legislature recognizes that many relatives are willing and able to provide a nurturing and safe placement for children who have been harmed or are threatened with harm.

The policy and purpose of this chapter is to provide children with prompt and ample protection from the harms detailed herein, with an opportunity for timely reconciliation with their families if the families can provide safe family homes, and with timely and appropriate service or permanent plans to ensure the safety of the child so they may develop and mature into responsible, self-sufficient, law-abiding citizens. The service plan shall effectuate the child's remaining in the family home, when the family home can be immediately made safe with services, or the child's returning to a safe family home. The service plan shall be carefully formulated with the family in a timely manner. Every reasonable opportunity should be provided to help the child's legal custodian to succeed in remedying the problems that put the child at substantial risk of being harmed in the family home. Each appropriate resource, public and private, family and friend, should be considered and used to maximize the legal custodian's potential for providing a safe family home for the child. Full and careful consideration shall be given to the religious, cultural, and ethnic values of the child's legal custodian when service plans are being discussed and formulated. Where the court has determined, by clear and convincing evidence, that the child

cannot be returned to a safe family home, the child shall be permanently placed in a timely manner.

The policy and purpose of this chapter includes the protection of children who have been harmed or are threatened with harm by:

- (1) Providing assistance to families to address the causes for abuse and neglect;
- (2) Respecting and using each family's strengths, resources, culture, and customs;
- (3) Ensuring that families are meaningfully engaged and children are consulted in an age-appropriate manner in case planning;
- (4) Enlisting the early and appropriate participation of family and the family's support networks;
- (5) Respecting and encouraging the input and views of caregivers; and
- (6) Ensuring a permanent home through timely adoption or other permanent living arrangement,

if safe reunification with the family is not possible.

The child protective services under this chapter shall be provided with every reasonable effort to be open, accessible, and communicative to the persons affected by a child protective proceeding without endangering the safety and best interests of the child under this chapter.

This chapter shall be liberally construed to serve the best interests of the children affected and the purpose and policies set forth herein.

**§ -3 Guiding principles for children in foster care.** (a) The department or an authorized agency, as resource family or permanent custodian, shall abide by the following guiding principles and ensure that a child in foster care:

- (1) Lives in a safe and healthy home, free from physical, psychological, sexual, and other abuse;
- (2) Has adequate:
  - (A) Food that is nutritious and healthy;
  - (B) Clothing;
  - (C) Medical care, dental and orthodontic services, and corrective vision care; and
  - (D) Mental health services;
- (3) Has supervised or unsupervised in-person, telephone, or other forms of contact with the child's parents and siblings while the child is in foster care, unless prohibited by court order;
- (4) Has in-person contact with the child's assigned child protective services worker, guardian ad litem, and if applicable, the child's probation officer;
- (5) Meets with the presiding judge in the child's case;
- (6) Is enrolled in a comprehensive health insurance plan and, within forty-five days of out-of-home placement, is provided with a comprehensive health assessment and treatment as recommended;
- (7) May freely exercise the child's own religious beliefs, including the refusal to attend any religious activities and services;
- (8) Has a personal bank account and assistance in managing the child's personal income consistent with the child's age and development, unless safety or other concerns require otherwise;
- (9) Has the right to attend school and participate in appropriate extracurricular activities and, if the child is moved during a school year, has the right to complete the school year at the same school, if practicable; and

- (10) Beginning at age twelve, is provided with age-appropriate life skills training and a transition plan for appropriately moving out of the foster care system, as well as written information concerning independent living programs, foster youth organizations, transitional planning services, and independent living case management programs that are available to all children in foster care who are twelve years of age or older and their resource families.

(b) Sua sponte or upon appropriate motion, the family court may issue any necessary orders to any party, including the department, department of education, or department of health, to ensure adherence to the guiding principles enumerated in subsection (a) above.

**§ -4 Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

“Abandoned infant” means a child who is three years old or younger and:

- (1) The child’s parents, regardless of any incidental contact or communication with the child, have demonstrated an extreme disinterest in or lack of commitment for assuming parental responsibility for the child;
- (2) The persons with whom the child resides have not known the identity or whereabouts of the child’s parents for sixty days or more, and reasonable efforts have been made to identify or locate the child’s parents; or
- (3) The child’s mother also falls under the provisions of paragraph (1) or (2), and the child’s presumed or alleged father has failed to assert a claim or interest as a parent for sixty days or more; provided that the child’s father has knowledge of the child’s birth and that he is the child’s presumed or alleged father.

“Adjudication” means a finding by a court that is supported by a preponderance of the evidence that the child has been harmed or is subjected to threatened harm by the acts or omissions of the child’s family.

“Aggravated circumstances” means that:

- (1) The parent has murdered, or has solicited, aided, abetted, attempted, or conspired to commit the murder or voluntary manslaughter of, another child of the parent;
- (2) The parent has committed a felony assault that results in serious bodily injury to the child or another child of the parent;
- (3) The parent’s rights regarding a sibling of the child have been judicially terminated or divested;
- (4) The parent has tortured the child; or
- (5) The child is an abandoned infant.

“Authorized agency” means the department, other public agency, or a person or organization that is licensed by the department or approved by the court to receive children for control, care, maintenance, or placement.

“Birth parent” and “biological parent” can be used interchangeably and mean the biological parents of the child. The term “birth”, as used in this chapter, is interchangeable with the term “natural”, as that term is used in chapter 578.

“Caregiver” means an adult who is not a child’s parent or legal and physical custodian, and with whom the child has been residing for at least six months with the verbal or written consent of the child’s legal and physical custodian. The status of “caregiver” as used in this chapter does not pertain to court-ordered or voluntary foster placement.

“Case plan” means the combined safe family home factors and the service plan or permanent plan.

“Child” means a person who is born alive and is less than eighteen years of age.

“Clear and convincing evidence” means the degree of proof that will produce in the mind of the trier of fact a firm belief or conviction that the fact sought to be proved is true. This measure falls between the preponderance standard of typical civil cases and the beyond-a-reasonable-doubt standard of criminal cases.

“Court” means one of the family courts established pursuant to chapter 571.

“Court-appointed special advocate” means a responsible adult volunteer who has been trained and is supervised by a court-appointed special advocate program recognized by the court, and who, when appointed by the court, serves as an officer of the court in the capacity of a guardian ad litem.

“Criminal history record check” means an examination of an individual’s criminal history through fingerprint analysis or name inquiry into state and national criminal history records and files, including the files of the Hawaii criminal justice data center.

“Date of entry into foster care” means the date a child was first placed in foster custody by the court or sixty days after the child’s actual removal from the home, whichever is earlier.

“Default” means the status found by the court when a party who has been properly served or notified of a scheduled hearing fails to appear at court for the hearing or fails to plead or otherwise defend, thereby allowing the court to proceed without the absent party.

“Department” means the department of human services and its authorized representatives.

“Family” means each legal parent of a child; the birth mother, unless the child has been legally adopted; the concerned birth father as provided in section 578-2(a)(5), unless the child has been legally adopted; each parent’s spouse or former spouse; each sibling or person related by blood or marriage; each person residing in the dwelling unit; and any other person or legal entity with:

- (1) Legal or physical custody or guardianship of the child, or
- (2) Responsibility for the child’s care.

For purposes of this chapter, the term “family” does not apply to an authorized agency that assumes the foregoing legal status or relationship with a child.

“Family home” means the home of the child’s legal custodian.

“Family supervision” means the legal status in which a child’s legal custodian is willing and able, with the assistance of a service plan, to provide the child with a safe family home.

“Foster care” means continuous twenty-four-hour care and supportive services provided for a child by an authorized agency or the court, including, the care, supervision, guidance, and rearing of a child by a resource family.

“Foster custodian” means the authorized agency that has foster custody of the child.

“Foster custody” means the legal status created when the department places a child outside of the family home with the agreement of the legal custodian or pursuant to court order, after the court has determined that the child’s family is not presently willing and able to provide the child with a safe family home, even with the assistance of a service plan.



“Foster parent” or “foster family” means a person or family licensed by the department or another authorized agency to provide foster care services for children and can be used interchangeably with “resource family”.

“Guardian ad litem” means any person who is appointed by the court under this chapter to protect and promote the needs and interests of a child or a party, including a court-appointed special advocate.

“Hanai relative” means an adult, other than a blood relative, whom the court or department has found by credible evidence to perform or to have performed a substantial role in the upbringing or material support of a child, as attested to by the written or oral designation of the child or of another person, including other relatives of the child.

“Harm” means damage or injury to a child’s physical or psychological health or welfare, where:

- (1) The child exhibits evidence of injury, including, but not limited to:
  - (A) Substantial or multiple skin bruising;
  - (B) Substantial external or internal bleeding;
  - (C) Burn or burns;
  - (D) Malnutrition;
  - (E) Failure to thrive;
  - (F) Soft tissue swelling;
  - (G) Extreme pain;
  - (H) Extreme mental distress;
  - (I) Gross degradation;
  - (J) Poisoning;
  - (K) Fracture of any bone;
  - (L) Subdural hematoma; or
  - (M) Death;

and the injury is not justifiably explained, or the history given concerning the condition or death is not consistent with the degree or type of the condition or death, or there is evidence that the condition or death may not be the result of an accident;
- (2) The child has been the victim of sexual contact or conduct, including sexual assault; sodomy; molestation; sexual fondling; incest; prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation;
- (3) The child’s psychological well-being has been injured as evidenced by a substantial impairment in the child’s ability to function;
- (4) The child is not provided in a timely manner with adequate food; clothing; shelter; supervision; or psychological, physical, or medical care; or
- (5) The child is provided with dangerous, harmful, or detrimental drugs as defined in section 712-1240, except when a child’s family administers drugs to the child as directed or prescribed by a practitioner as defined in section 712-1240.

“Imminent harm” means that without intervention within the next ninety days, there is reasonable cause to believe that harm to the child will occur or reoccur.

“Incapacitated person” means a person who, even with appropriate and reasonably available assistance, is unable to substantially:

- (1) Comprehend the legal significance of the issues or nature of the proceedings under this chapter;
- (2) Consult with counsel; and
- (3) Assist in preparing the person’s case or strategy.

Incapacity shall not be based solely on a person’s status as a minor.

“Ohana conference” means a family-focused, strength-based meeting conducted by trained community facilitators that is designed to build and enhance the network of protection for a child who is subject to a proceeding under this chapter. Ohana conferences include extended family members and other important people in the child’s life and rely on them to participate in making plans and decisions. The purpose of the ohana conference is to establish a plan that provides for the safety and permanency needs of the child.

“Parent” means any legal parent of a child; the birth mother, unless the child has been legally adopted; the adjudicated, presumed, or concerned birth father of the child as provided in section 578-2(a)(5), unless the child has been legally adopted; or the legal guardians or any other legal custodians of the child.

“Party” means an authorized agency; a child who is subject to a proceeding under this chapter; the child’s parents and guardian ad litem; any other person who is alleged in the petition or who is subsequently found at any child protective proceeding to be encouraging, causing, or contributing to the acts or conditions that brought the child within the scope of this chapter; and may include any other person, including the child’s current foster parent or current resource family, if the court finds that such person’s participation is in the best interest of the child; provided that the court may limit a party’s right to participate in any child protective proceeding if the court deems such limitation of such party’s participation to be consistent with the best interests of the child and such party is not a family member who is required to be summoned pursuant to section -13, except as otherwise provided in this chapter.

“Permanent custody” means the legal status created by order of the court after the termination of parental rights as set forth in this chapter.

“Permanent plan” means a specific, comprehensive written plan prepared pursuant to section -32.

“Police officer” means a person employed by any county in the State of Hawaii to enforce the laws and ordinances for preserving the peace and maintaining safety and order in the community, or an employee authorized by the director of public safety under section 329-51 or 353C-4 to exercise the powers set forth in this chapter.

“Preponderance of the evidence” means the degree of proof, which as a whole, convinces the trier of fact that the fact sought to be proved is more probable than not. “Preponderance of the evidence” shall be the standard of proof required in any proceeding, unless otherwise specified.

“Protective custody” means the legal status of a child whose physical custody is assumed by a police officer under this chapter.

“Reasonable cause to believe” means the degree of proof that would cause a person of average caution to believe the evidence is reasonably trustworthy.

“Relative” means a person related to a child by blood or adoption, or a hanai relative as defined in this chapter, who, as determined by the court or the department, is willing and able to safely provide support to the child and the child’s family.

“Resource family” means a person or family licensed by the department or another authorized agency to provide foster care services for children and can be used interchangeably with “foster parent” and “foster family”.

“Safe family home factors” means a list of criteria that must be considered in determining whether a parent is able to provide a safe family home as set out herein in section -7.

“Service plan” means a specific, comprehensive written plan prepared by an authorized agency pursuant to section -27.

“Temporary family supervision” means a legal status created under this chapter pursuant to court order after the department has filed a petition for tem-

porary foster custody, and the court finds it more appropriate to return the child to the child's family home pending an adjudication determination.

"Temporary foster custody" means a legal status created under this chapter with or without a court order, whereby the department temporarily assumes the duties and rights of a foster custodian of a child.

"Termination of parental rights" means the severance of parental rights.

"Threatened harm" means any reasonably foreseeable substantial risk of harm to a child.

## PART II. JURISDICTION AND VENUE

§ -5 **Jurisdiction.** Pursuant to section 571-11(9), the court shall have exclusive original jurisdiction in a child protective proceeding concerning any child who is or was found within the state at the time specified facts and circumstances occurred, are discovered, or are reported to the department. These facts and circumstances constitute the basis for the court's finding that the child's physical or psychological health or welfare is subject to imminent harm, has been harmed, or is subject to threatened harm by the acts or omissions of the child's family.

§ -6 **Venue.** A child protective proceeding under this chapter may be filed in the county in which a child is found or resides when the petition is filed, or in the county in which a parent having legal custody of the child resides or is domiciled when the petition is filed.

## PART III. SAFE FAMILY HOME FACTORS AND PRE-PETITION PROCEDURES

§ -7 **Safe family home factors.** (a) The following factors shall be fully considered when determining whether a child's family is willing and able to provide the child with a safe family home:

- (1) Facts relating to the child's current situation, which shall include:
  - (A) The child's age, vulnerability, and special needs that affect the child's attachment, growth, and development;
  - (B) The child's developmental, psychological, medical, and dental health status and needs, including the names of assessment and treatment providers;
  - (C) The child's peer and family relationships and bonding abilities;
  - (D) The child's educational status and setting, and the department's efforts to maintain educational stability for the child in out-of-home placement;
  - (E) The child's living situation;
  - (F) The child's fear of being in the family home;
  - (G) The impact of out-of-home placement on the child;
  - (H) Services provided to the child and family; and
  - (I) The department's efforts to maintain connections between the child and the child's siblings, if they are living in different homes;
- (2) The initial and any subsequent reports of harm and threatened harm to the child;
- (3) Dates and reasons for the child's out-of-home placement; description, appropriateness, and location of the placement; and who has placement responsibility;

- (4) Facts regarding the alleged perpetrators of harm to the child, the child's parents, and other family members who are parties to the court proceedings, which facts shall include:
  - (A) Birthplace and family of origin;
  - (B) Manner in which the alleged perpetrator of harm was parented;
  - (C) Marital and relationship history; and
  - (D) Prior involvement in services;
- (5) Results of psychiatric, psychological, or developmental evaluations of the child, the alleged perpetrators, and other family members who are parties;
- (6) Whether there is a history of abusive or assaultive conduct by the child's family members and others who have access to the family home;
- (7) Whether there is a history of substance abuse by the child's family or others who have access to the family home;
- (8) Whether any alleged perpetrator has completed services in relation to any history identified in paragraphs (6) and (7), and acknowledged and accepted responsibility for the harm to the child;
- (9) Whether any non-perpetrator who resides in the family home has demonstrated an ability to protect the child from further harm and to ensure that any current protective orders are enforced;
- (10) Whether there is a support system available to the child's family, including adoptive and hanai relatives, friends, and faith-based or other community networks;
- (11) Attempts to locate and involve extended family, friends, and faith-based or other community networks;
- (12) Whether the child's family has demonstrated an understanding of and involvement in services that have been recommended by the department or court-ordered as necessary to provide a safe family home for the child;
- (13) Whether the child's family has resolved identified safety issues in the family home within a reasonable period of time; and
- (14) The department's assessment, which shall include the demonstrated ability of the child's family to provide a safe family home for the child, and recommendations.

(b) The court shall consider the likelihood that the current situation presented in the safe family home factors set forth in subsection (a) will continue in the reasonably foreseeable future.

**§ -8 Protective custody by police officer without court order.** (a) A police officer shall assume protective custody of a child without a court order and without the consent of the child's family, if in the discretion of the police officer, the officer determines that:

- (1) The child is subject to imminent harm while in the custody of the child's family;
- (2) The child has no parent, as defined in this chapter, who is willing and able to provide a safe family home for the child;
- (3) The child has no caregiver, as defined in this chapter, who is willing and able to provide a safe and appropriate placement for the child; or
- (4) The child's parent has subjected the child to harm or threatened harm and the parent is likely to flee with the child.

(b) The department shall assume temporary foster custody of the child when a police officer has completed the transfer of protective custody of the child to the department as follows:

- (1) A police officer who assumes protective custody of a child shall complete transfer of protective custody to the department by presenting physical custody of the child to the department; or
- (2) If the child is or will be admitted to a hospital or similar institution, the police officer shall immediately complete the transfer of protective custody to the department by notifying the department and receiving an acknowledgment from the hospital or similar institution that it has been informed that the child is under the temporary foster custody of the department.

**§ -9 Temporary foster custody without court order.** (a) When the department receives protective custody of a child from the police, the department shall:

- (1) Assume temporary foster custody of the child if, in the discretion of the department, the department determines that the child is subject to imminent harm while in the custody of the child's family;
- (2) Make every reasonable effort to inform the child's parents of the actions taken, unless doing so would put another person at risk of harm;
- (3) Unless the child is admitted to a hospital or similar institution, place the child in emergency foster care while the department conducts an appropriate investigation, with placement preference being given to an approved relative;
- (4) With authorized agencies, make reasonable efforts to identify and notify all relatives within thirty days of assuming temporary foster custody of the child; and
- (5) Within three days, excluding Saturdays, Sundays, and holidays:
  - (A) Relinquish temporary foster custody, return the child to the child's parents, and proceed pursuant to section -11(3), -11(4), or -11(5);
  - (B) Secure a voluntary placement agreement from the child's parents to place the child in foster care, and proceed pursuant to section -11(5) or -11(7); or
  - (C) File a petition with the court.

(b) Upon the request of the department and without regard to parental consent, any physician licensed or authorized to practice medicine in the State shall perform an examination to determine the nature and extent of harm or threatened harm to the child under the department's temporary foster custody.

**§ -10 Relatives; foster placement.** (a) The department shall provide the child's relative an application to be the child's resource family within fifteen days of the relative's request to provide foster placement for the child. If the application is submitted and denied, the department shall provide the applicant with the specific reasons for the denial and an explanation of the procedures for an administrative appeal.

(b) The department and authorized agencies shall make reasonable efforts to identify and notify all relatives of the child within thirty days after assuming foster custody of the child.

**§ -11 Investigation; department powers.** Upon receiving a report that a child is subject to imminent harm, has been harmed, or is subject to threatened

harm, the department shall cause such investigation to be made as it deems to be appropriate. In conducting the investigation, the department may:

- (1) Enlist the cooperation and assistance of appropriate state and federal law enforcement authorities, who may conduct an investigation and, if an investigation is conducted, shall provide the department with all preliminary findings, including the results of a criminal history record check of an alleged perpetrator of harm or threatened harm to the child;
- (2) Interview the child without the presence or prior approval of the child's family and temporarily assume protective custody of the child for the purpose of conducting the interview;
- (3) Resolve the matter in an informal fashion that it deems appropriate under the circumstances;
- (4) Close the matter if the department finds, after an assessment, that the child is residing with a caregiver who is willing and able to meet the child's needs and provide a safe and appropriate placement for the child;
- (5) Immediately enter into a service plan:
  - (A) To safely maintain the child in the family home; or
  - (B) To place the child in voluntary foster care pursuant to a written agreement with the child's parent.

If the child is placed in voluntary foster care and the family does not successfully complete the service plan within three months after the date on which the department assumed physical custody of the child, the department shall file a petition. The department is not required to file a petition if the parents agree to adoption or legal guardianship of the child and the child's safety is ensured; provided that the adoption or legal guardianship hearing is conducted within six months of the date on which the department assumed physical custody of the child;

- (6) Assume temporary foster custody of the child and file a petition with the court within three days, excluding Saturdays, Sundays, and holidays, after the date on which the department assumes temporary foster custody of the child, with placement preference being given to an approved relative; or
- (7) File a petition or ensure that a petition is filed by another appropriate authorized agency in court under this chapter.

#### **PART IV. COURT PROCEEDINGS, EVIDENCE, AND ORDERS**

§ -12 **Petition.** (a) A petition invoking the jurisdiction of the court under this chapter shall:

- (1) Be verified and set forth:
  - (A) A concise statement of the basis for each allegation of harm or threatened harm that brings a child within this chapter;
  - (B) The name, birth date, gender, and residential address of the child;
  - (C) The names and last known residential addresses of the parents and other persons to be made parties to the proceedings under this chapter; and
  - (D) Whether the child is under the temporary foster custody or foster custody of the department and, if so, the date on which the department assumed physical custody of the child;

- (2) State whether any of the facts required by this section cannot be determined prior to filing the petition; provided that the petition may be based on information and belief, but shall state the basis thereof; and
- (3) Include the warning that, if the petition is granted, parental rights may be terminated unless the family is willing and able, with the assistance of a service plan, to provide the child with a safe family home within a reasonable period of time.

(b) If the court determines that the child is subject to imminent harm while in the custody of the child's family, the court shall order that a police officer immediately take the child into protective custody and that the department immediately assume temporary foster custody of the child.

(c) The court shall conduct:

- (1) A temporary foster custody hearing, pursuant to section -26, within two days after the petition is filed, excluding Saturdays, Sundays, and holidays; or
- (2) A return hearing, pursuant to section -28, within fifteen days after the petition is filed or the date a decision is announced by the court during a temporary foster custody hearing, if the petition requests foster custody or family supervision of the child.

(d) The court may adopt rules concerning the titles, filing, investigation, and form and content of petitions and other pleadings and proceedings in cases under this chapter, or any other matter arising in child protective proceedings.

§ -13 **Summons and service of summons.** (a) After a petition has been filed, the court shall issue a summons requiring the presence of the parents and other persons to be parties to the proceeding, as follows:

- (1) A copy of the petition shall be attached to each summons;
- (2) The summons shall notify the parties of their right to retain and be represented by counsel; and
- (3) The summons shall state: "YOUR PARENTAL AND CUSTODIAL DUTIES AND RIGHTS CONCERNING THE CHILD OR CHILDREN WHO ARE THE SUBJECT OF THE ATTACHED PETITION MAY BE TERMINATED IF YOU FAIL TO APPEAR ON THE DATE SET FORTH IN THIS SUMMONS."

(b) The court may issue a summons to a parent or any person having physical custody of the child to bring the child before the court at the temporary foster custody hearing or the return hearing.

(c) The sheriff or other authorized person shall serve the summons by personally delivering a certified copy to the person or legal entity being summoned. A return on the summons shall be filed, showing the date and time and to whom service was made; provided that:

- (1) If the party to be served does not reside in the State, service shall be made by registered or certified mail addressed to the party's last known address; or
- (2) If the court finds that it is impracticable to personally serve the summons, the court may order service by registered or certified mail addressed to the party's last known address, or by publication, or both. When publication is used, the summons shall be published once a week for four consecutive weeks in a newspaper of general circulation in the county in which the party was last known to have resided. In the order for publication of the summons, the court shall designate the publishing newspaper and shall set the date of the last publication at no less than twenty-one days before the return date.

Such publication shall have the same force and effect as personal service of the summons.

(d) Service shall be completed no less than twenty-four hours prior to the time set forth in the summons for a temporary foster custody hearing, or no less than forty-eight hours prior to the time set forth in the summons for any other hearing, unless the party was present when ordered by the court to appear at the hearing.

(e) The court may issue a warrant for the appearance of a person or child, as well as issue an order pursuant to section -16(b), if:

- (1) The summons cannot be personally served;
- (2) The person served fails to obey the summons;
- (3) The court finds that service will not be effective; or
- (4) The court finds that the best interests of the child require that the child be brought into the custody of the court.

**§ -14 Notice of hearings; participation of resource family.** (a) Notice of hearings shall be served on the parties; provided that no further notice is required for any party who defaulted or was given actual notice of a hearing while present in court. Notice of hearings shall be served no less than forty-eight hours before the scheduled hearing, subject to a shortening of time as ordered by the court.

(b) The child's current resource family shall be served written notice of hearings no less than forty-eight hours before a scheduled hearing; provided that no further notice shall be provided to a resource family that was given actual notice of a hearing while present in court, subject to a shortening of time as ordered by the court.

(c) No hearing shall be held until the child, the child's current resource family, and all other parties are given notice of the hearing or are served, as required by this section.

(d) The child's current resource family is entitled to participate in the proceedings to provide information to the court, either in person or in writing, concerning the current status of the child in their care.

(e) The court may not convene a hearing under this chapter unless the court enters a finding that each of the parties required to be notified of the hearing has been served with a copy of the petition; provided that if a party is required to be summoned to a temporary foster custody or return hearing and has not been served with the summons, the court may proceed with the hearing if:

- (1) A reasonable effort has been made to effect personal service;
- (2) It would not be in the best interests of the child to postpone the proceeding until service can be effectuated; and
- (3) The child is represented by a guardian ad litem or counsel.

(f) For purposes of this section, "party" or "parties" shall include the current foster parents.

**§ -15 Duties, rights, and liability of authorized agencies.** (a) If an authorized agency has family supervision, it has the following duties and rights, subject to such conditions or restrictions as the court deems to be in the best interests of a child:

- (1) Monitoring and supervising the child and the child's family members who are parties. Monitoring and supervision shall include reasonable access to each of the family members who are parties and reasonable access into the child's family home; and
- (2) Placement of the child in foster care and thereby assuming temporary foster custody or foster custody of the child. The authorized



agency shall immediately notify the court when such placement occurs. Upon notification, the court shall set the case for:

- (A) A temporary foster custody hearing within three days, excluding Saturdays, Sundays, and holidays; or
- (B) If jurisdiction has been established, a periodic review hearing within ten days of the child's placement.

The temporary foster custody hearing or the periodic review hearing may be held at a later date, only if the court finds it to be in the best interests of the child.

(b) If an authorized agency has foster custody it has the following duties and rights:

- (1) Determining where and with whom the child shall be placed in foster care; provided that the child shall not be placed in foster care outside the State without prior order of the court;
- (2) Permitting the child to return to the family from which the child was removed, unless otherwise ordered by the court. The child's return may occur only if no party objects to such placement and prior written notice is given to the court and to all parties stating that there is no objection of any party to the child's return. Upon the child's return to the family, temporary foster custody or foster custody shall be automatically revoked, and the child and the child's family members who are parties shall be placed under temporary family supervision or the family supervision of the authorized agency;
- (3) Ensuring that the child is provided with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision, and other necessities in a timely manner;
- (4) Monitoring whether the child is being provided with an appropriate education;
- (5) Providing required consents for the child's physical or psychological health or welfare, including ordinary medical, dental, psychiatric, psychological, educational, employment, recreational, or social needs;
- (6) Providing consents for any other medical or psychological care or treatment, including surgery, if the persons who are otherwise authorized to provide consent are unable or unwilling to consent. Before being provided to the child, this care or treatment shall be deemed necessary for the child's physical or psychological health or welfare by two physicians or two psychologists, as appropriate, who are licensed or authorized to practice in the State;
- (7) Providing consent for the child's application for a driver's instructional permit, provisional driver's license, or driver's license;
- (8) Providing consent to the recording of a statement pursuant to section -21; and
- (9) Providing the court with information concerning the child.

The court, in its discretion, may vest foster custody of a child in any authorized agency or subsequently authorized agencies, if the court finds that it is in the child's best interests to do so. The rights and duties that are so assumed by an authorized agency shall supersede the rights and duties of any legal or permanent custodian of the child.

(c) Unless otherwise provided in this section or as otherwise ordered by the court, a child's family shall retain the following rights and responsibilities after a transfer of temporary foster custody or foster custody, to the extent that the family possessed the rights and responsibilities prior to the transfer of temporary foster custody or foster custody:

- (1) The right of reasonable supervised or unsupervised visitation at the discretion of the authorized agency or the court;
  - (2) The right to consent to adoption, to marriage, or to major medical or psychological care or treatment; and
  - (3) The continuing responsibility to support the child, including repayment for the cost of any care, treatment, or other service provided by the authorized agency or the court for the child's benefit.
- (d) If an authorized agency has permanent custody, it has the following duties and rights:
- (1) Assuming the parental and custodial duties and rights of a legal custodian and family member;
  - (2) Determining where and with whom the child shall live; provided that the child shall not be placed outside the State without prior order of the court;
  - (3) Ensuring that the child is provided with adequate food, clothing, shelter, psychological care, physical care, medical care, supervision, and other necessities in a timely manner;
  - (4) Monitoring whether the child is being provided with an appropriate education;
  - (5) Providing all required consents for the child's physical or psychological health or welfare, including medical, dental, psychiatric, psychological, educational, employment, recreational, and social needs;
  - (6) Providing consent for the child's application for a driver's instructional permit, provisional driver's license, or driver's license;
  - (7) Providing consent to adoption, change of name, and marriage; and
  - (8) Submitting a written report to the court if the child leaves the home of the permanent custodian for a period of seven consecutive days or more. The report shall state the child's current situation and shall be submitted on or before the tenth day, excluding Saturdays, Sundays, and holidays, after the child leaves the home.
- (e) An authorized agency shall not be liable to third party persons for the acts of the child solely by reason of the agency's status as foster custodian or permanent custodian of the child.

**§ -16 Guardian ad litem.** (a) The court shall appoint a guardian ad litem for a child to serve throughout the pendency of child protective proceedings under this chapter.

(b) The court may appoint a guardian ad litem for an incapacitated adult party, as set forth below:

- (1) Upon the request of any party or sua sponte, the court may order a professional evaluation of an adult party to determine the party's capacity to substantially:
  - (A) Comprehend the legal significance of the issues and nature of the proceedings under this chapter;
  - (B) Consult with counsel; and
  - (C) Assist in preparing the party's case or strategy;
- (2) If the court orders a professional evaluation, the party shall be examined by a physician, psychologist, or other individual appointed by the court who is qualified to evaluate the party's alleged impairment:
  - (A) Unless otherwise directed by the court, the examiner shall promptly file with the court a written report which shall contain:

- (i) A description of the nature, type, and extent of the party's specific cognitive and functional capabilities and limitations;
  - (ii) An evaluation of the party's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;
  - (iii) A prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and
  - (iv) The dates of any assessments or examinations upon which the report is based;
- (B) Upon the request of any party or sua sponte, and after such hearing as the court deems appropriate, the court may appoint a guardian ad litem for an adult party only after a determination, by clear and convincing evidence, that:
- (i) The party is an incapacitated person; and
  - (ii) The party's identified needs cannot be met by less restrictive means, including the use of appropriate and reasonably available assistance.
- (c) A guardian ad litem shall, unless otherwise ordered by the court:
- (1) Have access to the child or incapacitated adult;
  - (2) Have the authority to inspect and receive copies of any records, notes, and electronic recordings concerning the child or incapacitated adult that are relevant to the proceedings filed under this chapter. This authority shall exist even without the consent of the child, incapacitated adult, or individuals and authorized agencies that have control of the child or incapacitated adult; provided that nothing in this section shall override any attorney-client or attorney work product privilege;
  - (3) Be given notice of all hearings and proceedings involving the child or incapacitated adult, whether civil or criminal, including grand juries, and shall protect the best interests of the child or incapacitated adult;
  - (4) Make face-to-face contact with the child or incapacitated adult in the child's or incapacitated adult's family or resource family home at least once every three months;
  - (5) Report to the court and all parties in writing at six-month intervals, or as ordered by the court, regarding such guardian ad litem's actions taken to ensure the child's or incapacitated adult's best interest, and recommend how the court should proceed in the best interest of that child or incapacitated adult; and
  - (6) Inform the court of the child's opinions and requests. If the child's opinions and requests differ from those being advocated by the guardian ad litem, the court shall evaluate and determine whether it is in the child's best interests to appoint an attorney to serve as the child's legal advocate concerning such issues and during such proceedings as the court deems to be in the best interests of the child.
- (d) The court shall, for an incapacitated adult:
- (1) Grant a guardian ad litem only those powers necessitated by the incapacitated adult's limitations and demonstrated needs; and
  - (2) Make appointive and other orders that will encourage the development of the incapacitated adult's maximum self-reliance and independence.
- (e) Unless otherwise ordered by the court, the attorney for an incapacitated adult shall take instructions from the incapacitated adult's guardian ad

litem. The guardian ad litem for an incapacitated adult shall inform the court of the incapacitated adult's opinions and requests and may recommend how the court should proceed in the best interest of the incapacitated adult.

(f) The fees and costs of a guardian ad litem appointed pursuant to this section may be paid by the court, unless the party for whom counsel is appointed has an independent estate sufficient to pay such fees and costs. The court may order the appropriate parties to pay or reimburse the fees and costs of the guardian ad litem and any attorney appointed for the child.

**§ -17 Court-appointed attorneys.** (a) The court may appoint an attorney to represent a legal parent who is indigent based on court-established guidelines. The court may also appoint an attorney to represent another indigent party based on court-established guidelines, if it is deemed to be in the child's best interest. Attorneys who are appointed by the court to represent indigent legal parents and other indigent qualifying parties may be paid by the court, unless the legal parent or party for whom counsel is appointed has an independent estate sufficient to pay such fees and costs. The court may order the appropriate legal parent or party to pay or reimburse the fees and costs of an attorney appointed for the child or incapacitated adult.

(b) Unless otherwise ordered by the court, the attorney for an incapacitated adult shall take instructions from the incapacitated adult's guardian ad litem.

**§ -18 Reports to be submitted by the department and authorized agencies.**

(a) Unless otherwise ordered by the court, the department or other authorized agencies shall file written reports with the court:

- (1) Concurrent with the filing of a petition invoking the jurisdiction of the court under this chapter; and
- (2) No less than fifteen days before a scheduled return hearing, periodic review hearing, permanency hearing, or termination of parental rights hearing; provided that additional information may be submitted to the court up to the date of the hearing; provided that the department or other authorized agencies make a good cause showing that such additional information was not available to the department or other authorized agency before the fifteen day deadline.

(b) The reports shall include:

- (1) An assessment of each safe family home factor and the family's progress with recommended or court-ordered services;
- (2) A recommended service plan or permanent plan that references the pertinent safe family home factors; and
- (3) A recommendation documenting the basis for any other orders, including protective orders.

(c) The department or other authorized agencies shall submit to the court each report, in its entirety, pertaining to the child or the child's family that has been prepared by a child protective services multidisciplinary team or consultant.

(d) A written report submitted pursuant to this section shall be admissible and relied upon to the extent of its probative value in any proceeding under this chapter, subject to the right of any party to examine or cross-examine the preparer of the report.

**§ -19 Testimony by department social worker.** A person employed by the department as a social worker in the area of child protective services or child welfare services shall be presumed to be qualified to testify as an expert on child

protective or child welfare services. Any party may move the court to qualify a person employed by the department as a social worker in the area of child protective services or child welfare services called to testify as an expert on child protective or child welfare services.

**§ -20 Inadmissibility of evidence in other state actions or proceedings.** The court may order that testimony or other evidence produced by a party in a proceeding under this chapter shall be inadmissible as evidence in any other state civil or criminal action or proceeding if the court deems such an order to be in the best interests of the child.

**§ -21 Admissibility of evidence; testimony by a child.** (a) Any statement relating to an allegation of imminent harm, harm, or threatened harm that a child has made to any person shall be admissible as evidence.

(b) In deciding in temporary foster custody hearings whether there is reasonable cause to believe that a child is subject to imminent harm the court may consider relevant hearsay evidence when direct testimony is unavailable or when it is impractical to subpoena witnesses who will be able to testify to facts based on personal knowledge.

(c) A child's recorded statement shall be admissible in evidence in any proceeding under this chapter; provided that:

- (1) The statement is recorded on film, audiotape, or videotape, or by other reliable electronic means;
- (2) The recording equipment used is capable of producing an accurate recording, was operated by a competent person, and the recording is accurate and has not been altered; and
- (3) Every person on the recording is identified.

(d) A child may be directed by the court to testify under circumstances deemed by the court to be in the best interests of the child and the furtherance of justice. These circumstances may include an on-the-record interview of the child in chambers, with only those parties present during the interview as the court deems to be in the best interests of the child.

**§ -22 Unavailability of specified privileges.** The following privileges shall not be available to exclude evidence of imminent harm, harm, or threatened harm in any proceeding under this chapter:

- (1) The physician-patient privilege;
- (2) The psychologist-client privilege;
- (3) The spousal privilege; and
- (4) The victim-counselor privilege.

**§ -23 Effect of oral orders.** Orders stated orally by the court on the record in a proceeding under this chapter shall have full force and effect from the date of the hearing until further order of the court. All oral orders shall be reduced to writing as soon as is practicable.

**§ -24 Motions to vacate or modify prior orders brought or decided upon pursuant to Rule 59, Hawaii Family Court Rules.** In considering a party's motion to vacate or modify prior orders brought or decided upon pursuant to Rule 59, Hawaii Family Court Rules, the court need not commence a trial or hearing de novo, but rather, after such further hearing as the court deems to be appropriate, may proceed to enter such orders as are in the best interests of the child.

**§ -25 Conduct of hearing in child protective proceedings.** (a) The court shall hear child protective proceedings without a jury at a hearing separate from those for adults.

(b) The general public shall be excluded from child protective proceedings. Only parties found by the court to have a direct interest in the case shall be admitted to the hearing.

(c) The court has discretion to exclude the child from the hearing at any time.

(d) If a party is without counsel or a guardian ad litem, the court shall inform the party of the right to be represented by counsel and the right to appeal.

**§ -26 Temporary foster custody hearing.** (a) When the department assumes temporary foster custody of a child and files a petition pursuant to this chapter, the court shall conduct a temporary foster custody hearing within two days after the petition is filed, excluding Saturdays, Sundays, and holidays. The purpose of a temporary foster custody hearing is to determine whether a child's safety continues to require protection prior to an adjudicatory determination at a return hearing.

(b) The temporary foster custody hearing may be continued for a period not to exceed fifteen days if the court determines that further investigation would be in the child's best interests.

(c) After reviewing the petition and any reports submitted by the department and considering all information pertaining to the safe family home factors, the court shall order:

(1) That the child be immediately released from the department's temporary foster custody, placed in temporary family supervision, and returned to the child's family home with the assistance of services, upon finding that the child's family is able to provide a safe family home with services; or

(2) That the child continue in the department's temporary foster custody, upon finding that there is reasonable cause to believe that continued placement in foster care is necessary to protect the child from imminent harm; provided that in making this determination, the court shall consider whether:

(A) The department made reasonable efforts to prevent or eliminate the need for removing the child from the child's family home before the child was placed in foster care;

(B) The alleged or potential perpetrator of imminent harm, harm, or threatened harm should be removed from the family home rather than continuing the child's placement in foster care. The child's family shall have the burden of establishing that it is in the child's best interests to remove the child, rather than the alleged or potential perpetrator, from the family home; and

(C) Every reasonable effort has been or is being made to place siblings or psychologically-bonded children together, unless such placement is not in the children's best interests.

(d) The court shall conduct a return hearing on the petition within fifteen days after the temporary foster custody hearing.

(e) The court may further order that:

(1) Any party undergo a physical, developmental, psychological, or psychiatric evaluation and that a written or oral report be submitted or communicated to the court and all parties before the next court hearing;

- (2) The child's family members who are parties provide the department or another authorized agency the names and addresses of other relatives and friends who are potential visitation supervisors or resource families for the child;
  - (3) The child's family members who are parties be permitted reasonable supervised or unsupervised visitation with the child at the discretion of the child's guardian ad litem, the department, or another authorized agency;
  - (4) The court and the parties view a video or listen to an audio recording of the child's statements at such time and in such manner as the court deems appropriate;
  - (5) A criminal history record check be conducted by the department or another authorized agency on a party who is an alleged or potential perpetrator of imminent harm, harm, or threatened harm to the child;
  - (6) A protective order be entered;
  - (7) The department or another authorized agency prepare a written supplemental report;
  - (8) The child's guardian ad litem visit the child's family home and resource family home, be present during supervised visitation, and prepare a written report that includes specific recommendations concerning services and assistance to the family; and
  - (9) Any other orders be entered that the court deems necessary and in the best interests of the child.
- (f) Any party may file a motion requesting, or the court may order sua sponte, a temporary foster custody hearing or rehearing at any time after a petition is filed, to determine whether the child should be placed in temporary foster custody to ensure the child's safety pending a scheduled return hearing.

**§ -27 Service plan.** (a) The service plan shall provide:

- (1) The specific steps necessary to facilitate the return of the child to a safe family home, if the proposed placement of the child is in foster care under foster custody. These specific steps shall include treatment and services that will be provided, actions completed, specific measurable and behavioral changes that must be achieved, and responsibilities assumed;
- (2) Whether an ohana conference will be conducted for fact finding and family group decision making;
- (3) The respective responsibilities of the child, the parents, legal guardian or custodian, the department, other family members, and treatment providers, and a description and expected outcomes of the services required to achieve the permanency goal;
- (4) The required frequency and types of contact between the assigned social worker, the child, and the family;
- (5) The time frames during which services will be provided, actions must be completed, and responsibilities must be discharged;
- (6) Notice to the parents that their failure to substantially achieve the objectives described in the service plan within the time frames established may result in termination of their parental rights;
- (7) Notice to the parents that if the child has been in foster care under the responsibility of the department for an aggregate of fifteen out of the most recent twenty-two months from the child's date of entry into foster care, the department is required to file a motion to set a termination of parental rights hearing, and the parents' failure to

provide a safe family home within two years from the date when the child was first placed under foster custody by the court, may result in the parents' parental rights being terminated; and

- (8) Any other terms and conditions that the court or the authorized agency deem necessary to the success of the service plan.

(b) Services and assistance to the family that are required by a service plan shall be presented in a manner that can be understood by and does not overwhelm the parties.

(c) The court shall ensure that each term, condition, and consequence of the service plan has been thoroughly explained to, understood by, and agreed to by each member of the child's family whom the authorized agency deems to be necessary to the success of the service plan. The court shall thereafter order the service plan into effect and order the distribution of copies to each family member or person who is a party to the service plan. If a member of a child's family whom the authorized agency deems to be necessary to the success of the service plan cannot understand or refuses to agree to the terms, conditions, and consequences of the service plan, the court shall conduct a hearing to determine the terms, conditions, and consequences of a service plan that will ensure a safe home for the child.

**§ -28 Return hearing.** (a) When a petition has been filed, the court shall conduct a return hearing within fifteen days of:

- (1) The filing of the petition; or
- (2) The date a decision is announced by the court during a temporary foster custody hearing.

(b) At the return hearing, if it is established that a party required to be notified has not been served prior to the hearing, the court shall:

- (1) Order the method of service of summons that the court deems to be appropriate, based upon the available information; and
- (2) Set a continued return hearing and:

(A) May waive the appearance of any party at the continued return hearing; and

(B) If service of summons is ordered to be made by mail or publication, shall set the continued return hearing no less than twenty-one days after the date of service as evidenced by the signature of the recipient on a return receipt or the date of the last publication.

(c) At a continued return hearing, the court shall:

- (1) Enter the default of the party who was served but failed to appear at the continued return hearing;
- (2) Order the party who was served to appear on the date of the next scheduled hearing in the case; or
- (3) Set a hearing on the oral motion to vacate prior orders, if a party appears at the hearing and moves the court to vacate or modify prior orders. The moving party shall file a written motion and serve the other parties with proper written notice of the motion and the hearing date.

(d) At the return hearing, the court shall decide:

- (1) Whether the child's physical or psychological health or welfare has been harmed or is subject to threatened harm by the acts or omissions of the child's family;
- (2) Whether the child should be placed in foster custody or under family supervision; and
- (3) What services should be provided to the child's parents.



(e) If the court finds that the child's physical or psychological health or welfare has been harmed or is subject to threatened harm by the acts or omissions of the child's family, the court:

- (1) Shall enter a finding that the court has jurisdiction pursuant to section -5;
- (2) Shall enter a finding regarding whether, before the child was placed in foster care, the department made reasonable efforts to prevent or eliminate the need to remove the child from the child's family home;
- (3) Shall enter orders:
  - (A) That the child be placed in foster custody if the court finds that the child's remaining in the family home is contrary to the welfare of the child and the child's parents are not willing and able to provide a safe family home for the child, even with the assistance of a service plan; or
  - (B) That the child be placed in family supervision if the court finds that the child's parents are willing and able to provide the child with a safe family home with the assistance of a service plan;
- (4) Shall determine whether aggravated circumstances are present.
  - (A) If aggravated circumstances are present, the court shall:
    - (i) Conduct a permanency hearing within thirty days, and the department shall not be required to provide the child's parents with an interim service plan or interim visitation; and
    - (ii) Order the department to file, within sixty days after the court's finding that aggravated circumstances are present, a motion to set the case for a termination of parental rights hearing.
  - (B) If aggravated circumstances are not present, the court shall order that the department make reasonable efforts to reunify the child with the child's parents and order an appropriate service plan;
- (5) Shall order reasonable supervised or unsupervised visits for the child and the child's family, including with the child's siblings, unless such visits are determined to be unsafe or detrimental to, and not in the best interests of, the child;
- (6) Shall order each of the child's birth parents to complete the medical information forms and release the medical information required under section 578-14.5, to the department. If the child's birth parents refuse to complete the forms or to release the information, the court may order the release of the information over the parents' objections;
- (7) Shall determine whether each party understands 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;
- (8) Shall determine the child's date of entry into foster care as defined in this chapter;
- (9) Shall set a periodic review hearing to be conducted no later than six months after the date of entry into foster care and a permanency hearing to be held no later than twelve months after the date of entry into foster care;

- (10) Shall set a status conference, as the court deems appropriate, to be conducted no later than ninety days after the return hearing; and
- (11) May order that:
  - (A) Any party participate in, complete, be liable for, and make every good faith effort to arrange payment for such services or treatment as are authorized by law and that are determined to be in the child's best interests;
  - (B) The child be examined by a physician, surgeon, psychiatrist, or psychologist; and
  - (C) The child receive treatment, including hospitalization or placement in other suitable facilities, as is determined to be in the child's best interests.

(f) If the court finds that the child's physical or psychological health or welfare has not been harmed or subjected to threatened harm by the acts or omissions of the child's family, the court shall enter an order to dismiss the petition and shall state the grounds for dismissal.

(g) Nothing in this section shall prevent the court from setting a termination of parental rights hearing at any time the court deems appropriate.

**§ -29 Show cause hearing.** At any stage of the proceeding, the court may set a show cause hearing at which a child's parents shall have the burden of presenting evidence as to why the case should not be set for a termination of parental rights or legal guardianship hearing.

**§ -30 Periodic review hearing.** (a) The court shall set a periodic review hearing to be conducted no later than six months after a child's date of entry into foster care. Thereafter, the court shall conduct periodic review hearings at intervals of no longer than six months until the court's jurisdiction is terminated. The court may set a case for a periodic review hearing upon the motion of a party at any time, if the court deems the hearing to be in the best interests of the child.

(b) At each periodic review hearing, the court shall review the status of the case to determine whether the child is receiving appropriate services and care, whether the case plan is being properly implemented, and whether the department's or authorized agency's activities are directed toward a permanent placement for the child. At the hearing, the court shall:

- (1) Determine whether the child is safe;
- (2) Determine the continued need for and appropriateness of the out-of-home placement;
- (3) Determine the extent to which each party has complied with the case plan and the family's progress in making their home safe for the child;
- (4) Determine the family's progress in resolving the problems that caused the child harm or to be threatened with harm and, if applicable, the necessity for continued out-of-home placement of the child;
- (5) Project a likely date for:
  - (A) The child's return to a safe family home; or
  - (B) The child's permanent placement out of the family home in the following order of preference:
    - (i) Adoption;
    - (ii) Legal guardianship; or
    - (iii) Other permanent out-of-home placement;
- (6) Evaluate visitation arrangements; and

- (7) Issue such further or other appropriate orders as it deems to be in the best interests of the child.
- (c) If the child has been in foster care under the responsibility of the department for an aggregate of fifteen out of the most recent twenty-two months from the date of entry into foster care, the department shall file a motion to set the matter for a termination of parental rights hearing, unless:
  - (1) The department has documented in the safe family home factors or other written report submitted to the court a compelling reason why it is not in the best interest of the child to file a motion; or
  - (2) The department has not provided to the family of the child, consistent with the time period required in the service plan, such services as the department deems necessary for the safe return of the child to the family home.
- (d) Nothing in this section shall prevent the department from filing a motion to set a termination of parental rights hearing if the department determines that the criteria for terminating parental rights are present.

**§ -31 Permanency hearing.** (a) A permanency hearing shall be conducted within twelve months of the child's date of entry into foster care or within thirty days of a judicial determination that the child is an abandoned infant or that aggravated circumstances are present. A permanency hearing shall be conducted at least every twelve months thereafter for as long as the child remains in foster care under the placement responsibility of the department.

(b) The court shall review the status of the case to determine whether the child is receiving appropriate services and care, that case plans are being properly implemented, and that activities are directed toward a permanent placement for the child.

(c) At each permanency hearing, the court shall make written findings pertaining to:

- (1) The extent to which each party has complied with the service plan and progressed in making the home safe;
- (2) Whether the current placement of the child continues to be appropriate and in the best interests of the child or if another in-state or out-of-state placement should be considered;
- (3) The court's projected timetable for reunification or, if the current placement is not expected to be permanent, placement in an adoptive home, with a legal guardian, or under the permanent custody of the department;
- (4) Whether the department has made reasonable efforts, in accordance with the safety and well-being of the child, to:
  - (A) Place siblings who have been removed from the family home with the same resource family, adoptive placement, or legal guardians; and
  - (B) Provide for frequent visitation or other on-going interactions with siblings who are not living in the same household;
- (5) The appropriate permanency goal for the child, including whether a change in goal is necessary;
- (6) Whether the department has made reasonable efforts to finalize the permanency goal in effect for the child and a summary of those efforts;
- (7) The date by which the permanency goal for the child is to be achieved;

- (8) In the case of a child who has attained sixteen years of age, the services needed to assist the child with the transition from foster care to independent living; and
- (9) Consultations with the child in an age-appropriate manner about the proposed plan for permanency or transition from foster care to independent living.
- (d) At each permanency hearing, the court shall order:
  - (1) The child's reunification with a parent or parents;
  - (2) The child's continued placement in foster care, where:
    - (A) Reunification is expected to occur within a time frame that is consistent with the developmental needs of the child; and
    - (B) The safety and health of the child can be adequately safeguarded; or
  - (3) A permanent plan with a goal of:
    - (A) Placing the child for adoption and when the department will file a motion to set the matter for the termination if<sup>1</sup> parental rights;
    - (B) Placing the child for legal guardianship if the department documents and presents to the court a compelling reason why termination of parental rights and adoption are not in the best interests of the child; or
    - (C) Awarding permanent custody to the department or an authorized agency, if the department documents and presents to the court a compelling reason why adoption and legal guardianship are not in the best interests of the child.
- (e) At each permanency hearing where a permanent plan is ordered, the court shall make appropriate orders to ensure timely implementation of the permanent plan and to ensure that the plan is accomplished within a specified period of time.
- (f) A permanency hearing may be held concurrently with a periodic review hearing.
- (g) If the child has been in foster care under the responsibility of the department for a total of twelve consecutive months or an aggregate of fifteen out of the most recent twenty-two months from the date of entry into foster care, the department shall file a motion to set the matter for a termination of parental rights hearing unless:

- (1) The department has documented in the safe family home factors or other written report submitted to the court, a compelling reason why it is not in the best interest of the child to file a motion; or
- (2) The department has not provided to the family of the child, consistent with the time period required in the service plan, such services as the department deems necessary for the safe return of the child to the family home.

Nothing in this section shall prevent the department from filing a motion to set a termination of parental rights hearing if the department determines that the criteria for terminating parental rights are present.

**§ -32 Permanent plan.** (a) The permanent plan shall:

- (1) State whether the permanency goal for the child will be achieved through adoption, legal guardianship, or permanent custody;
- (2) Establish a reasonable period of time by which the adoption or legal guardianship shall be finalized;
- (3) Document:

- (A) A compelling reason why legal guardianship or permanent custody is in the child's best interests if adoption is not the goal; or
- (B) A compelling reason why permanent custody is in the child's best interests if adoption or legal guardianship is not the goal;
- (4) Establish other related goals, including those pertaining to the stability of the child's placement; education; health; therapy; counseling; relationship with the child's birth family, including visits, if any; cultural connections; and preparation for independent living;
- (5) If a child has reached the age of sixteen, describe the services needed to assist the child with the transition from foster care to independent living; and
- (6) Describe the methods for achieving the goals and objectives set forth in paragraphs (4) and (5).
- (b) A permanent plan prepared for a periodic review hearing or a permanency hearing shall describe:
  - (1) Progress toward achieving the goal of the plan;
  - (2) Proposed revisions to the goal of the plan and reasons for the revisions; and
  - (3) Proposed revisions to the methods for achieving the goals of the plan and objectives and the reasons for the revisions.

**§ -33 Termination of parental rights hearing.** (a) At a termination of parental rights hearing, the court shall determine whether there exists clear and convincing evidence that:

- (1) A child's parent whose rights are subject to termination is not presently willing and able to provide the parent's child with a safe family home, even with the assistance of a service plan;
- (2) It is not reasonably foreseeable that the child's parent whose rights are subject to termination will become willing and able to provide the child with a safe family home, even with the assistance of a service plan, within a reasonable period of time, which shall not exceed two years from the child's date of entry into foster care;
- (3) The proposed permanent plan is in the best interests of the child. In reaching this determination, the court shall:
  - (A) Presume that it is in the best interests of the child to be promptly and permanently placed with responsible and competent substitute parents and family in a safe and secure home; and
  - (B) Give greater weight to the presumption that the permanent plan is in the child's best interest, the younger the child is upon the child's date of entry into foster care; and
- (4) The child consents to the permanent plan if the child is at least fourteen years old, unless the court consults with the child in camera and finds that it is in the best interest of the child to proceed without the child's consent.
- (b) If the court determines that the criteria set forth in subsection (a) are established by clear and convincing evidence and the goal of the permanent plan is for the child to be adopted or remain in permanent custody, the court shall order:
  - (1) That the child's parent's parental rights be terminated;
  - (2) Termination of the existing service plan and revocation of the prior award of foster custody;

- (3) That permanent custody of the child be awarded to an appropriate authorized agency;
- (4) An appropriate permanent plan; and
- (5) The entry of any other orders the court deems to be in the best interests of the child, including restricting or excluding unnecessary parties from participating in adoption or other subsequent proceedings;<sup>1</sup>

(c) Unless otherwise ordered by the court or until the child is adopted, the child's family member shall retain, to the extent that the family member possessed the responsibility prior to the termination of parental rights, the continuing responsibility to support the child, including repaying the cost of any and all care, treatment, or any other service provided by the permanent custodian, any subsequent permanent custodian, other authorized agency, or the court for the child's benefit.

(d) A family member may be permitted visitation with the child at the discretion of the permanent custodian. The court may review the exercise of such discretion and may order that a family member be permitted such visitation as is in the best interests of the child.

(e) An order for the termination of parental rights entered under this chapter shall not operate to terminate the mutual rights of inheritance of the child and the child's family members or any other benefit to which the child may be entitled, until the child has been adopted.

(f) The court, in its discretion, may vest permanent custody of a child in an authorized agency or in subsequently authorized agencies, as the court deems to be in the best interests of the child.

(g) If the department receives a report that the child has been harmed or is subject to threatened harm by the acts or omissions of the permanent custodians of the child, the department may automatically assume either family supervision over the child and the child's permanent custodian or foster custody of the child. The department shall immediately notify the court, and the court shall set the case for a permanency hearing within ten days after the department receives such a report, unless the court deems a later date to be in the best interests of the child.

(h) If the court determines that the criteria set forth in subsection (a) are not established by clear and convincing evidence, the court shall order:

- (1) The preparation of a plan to achieve permanency for the child;
- (2) The entry of any orders that the court deems to be in the best interests of the child;
- (3) A periodic review hearing to be held within six months after the date of the last permanency hearing; and
- (4) A permanency hearing to be held within twelve months of the date of the last permanency hearing.

(i) Absent compelling reasons, if the child has been in foster care under the department's responsibility for an aggregate of fifteen out of the most recent twenty-two months from the date of entry into foster care, the department shall file a motion to set the matter for a termination of parental rights hearing.

**§ -34 Reinstatement of parental rights.** (a) A child who is subject to an active proceeding under this chapter, the child's guardian ad litem, the child's attorney, if any, or the department, may file a motion to reinstate the terminated parental rights of the child's parents in a proceeding under this chapter, where the following circumstances exist:

- (1) The child has been in permanent custody for at least twelve months; and

(2) The child is fourteen years of age or older.

(b) A motion to reinstate parental rights shall be filed with the court and shall describe the factors supporting a reinstatement of parental rights. The court shall order a preliminary hearing to be held within ninety days and shall give prior notice to:

- (1) The former parent whose rights are sought to be reinstated;
- (2) The child's guardian ad litem;
- (3) The department; and
- (4) The child's resource family.

(c) The motion shall be denied if the parent whose rights are sought to be reinstated cannot be located.

(d) Within seven days before the preliminary hearing on the motion, the department and the child's guardian ad litem shall submit reports to the court that address:

- (1) The material change in circumstances since the termination of parental rights;
- (2) The reasons parental rights were terminated and the date of the termination order;
- (3) A parent's willingness to resume contact with the child and to have parental rights reinstated;
- (4) The child's willingness to resume contact with the parent and to have parental rights reinstated;
- (5) A parent's willingness and ability to be involved in the child's life and to accept physical custody of the child; and
- (6) Other relevant information.

(e) At a preliminary hearing on the motion, the court may order a trial home placement and a temporary reinstatement of parental rights upon finding that:

- (1) There has been a material change in circumstances;
  - (2) A parent is willing to provide care for the child;
  - (3) A parent is able to provide a safe family home or the home can be made safe with the assistance of services; and
  - (4) A trial home placement is in the child's best interests.
- (f) If the court issues a temporary order of reinstatement of parental

rights:

- (1) The child shall be conditionally placed in the physical care of the parent for a period not to exceed six months;
- (2) The department shall develop a permanent plan for reunification and shall ensure that transition services are provided to the family, as appropriate; and
- (3) The court shall hold a hearing on the motion to reinstate parental rights after the child has been placed with the parent for six months.

(g) The department has the authority to assess the trial home placement and to rescind the trial home placement according to the child's best interests.

(h) At a final hearing on the motion to reinstate parental rights, the court may issue a final order of reinstatement of parental rights and terminate its jurisdiction if the trial home placement has been successful. In making its final decision, the court shall determine whether the moving party has proven by clear and convincing evidence that:

- (1) Reinstatement of parental rights is in the best interests of the child, taking into consideration:
  - (A) Whether a parent has remedied the conditions that caused the termination of parental rights;

- (B) The age and maturity of the child and the child's ability to express a preference; and
- (C) The likelihood of risk to the health, safety, or welfare of the child;
- (2) A parent is able to provide the child with a safe family home;
- (3) Both the parent and child consent to the reinstatement of parental rights; and
- (4) The permanent plan goals for the child have not been and are not likely to be achieved.
- (i) A proceeding to reinstate parental rights shall be a separate action from the proceeding for the termination of parental rights. The granting of the motion to reinstate parental rights shall not affect the validity of the original termination order.

**§ -35 Retention of jurisdiction.** Except as otherwise provided in this chapter, the court may retain jurisdiction under this chapter until the full term for which any order entered expires or until the child attains nineteen years of age, whichever comes first.

**§ -36 Appeal.** An interested party aggrieved by any order or decree of the court under this chapter may appeal as provided in section 571-54.

## PART V. MISCELLANEOUS

**§ -37 Failure to comply with terms and conditions of an order of the court.** If a party fails to comply with the terms and conditions of an order issued by the court under this chapter, the court may apply the provisions of section 710-1077 and any other provisions available under the law.

**§ -38 Protective order.** (a) After a petition has been filed with the court under this chapter, the court, upon such hearing as the court deems to be appropriate, may issue a protective order to restrain any party from contacting, threatening, or physically abusing any other party or a child, if the court finds that a protective order is necessary to prevent domestic abuse (as that term and its component terms are defined in section 586-1) or a recurrence of domestic abuse.

(b) The protective order shall enjoin a party to be restrained from performing any combination of the following acts:

- (1) Contacting, threatening, or physically abusing any protected party or child;
- (2) Contacting, threatening, or physically abusing any person residing at the dwelling or residence of any protected party or child; and
- (3) Entering or visiting the dwelling or residence of any protected party or child.

(c) The protective order may provide for further relief as the court deems necessary to prevent the occurrence or recurrence of domestic abuse.

(d) The protective order may require a party to leave the party's dwelling or residence during the period of time in which the protective order is in effect.

(e) The protective order shall be binding upon not only any party against whom the protective order is directed, but also upon each such party's officers, agents, servants, employees, attorneys, and any other persons in active concert or participation with each such party.



(f) The court may order that an individual be made a party for the limited purpose of issuing a protective order against that individual.

(g) Upon application and a hearing, the court may modify the terms of, or terminate, an existing protective order.

(h) Any party may provide to appropriate law enforcement authorities a copy of a protective order issued pursuant to this section.

(i) The protective order shall become effective upon service pursuant to section -39(a).

**§ -39 Notice and service of protective order.** (a) A protective order issued pursuant to section -38 shall be served either personally or by certified mail on each party to be restrained. In the case where a party was present at the hearing during which the protective order was issued, that party shall be deemed to have notice of the order.

(b) The court may order the police department to serve a protective order issued pursuant to section -38 upon each party to be restrained, to accompany a protected party to that party's dwelling or residence, and to place the protected party in possession of that party's dwelling or residence.

(c) Within twenty-four hours after its issuance, a protective order issued pursuant to section -38 shall be transmitted by the clerk of the court to the appropriate county police department.

**§ -40 Court records.** The court shall keep a record of all child protective proceedings under this chapter. Written reports, photographs, x-rays, or other information that are submitted to the court may be made available to other appropriate persons, who are not parties, only upon an order of the court. The court may issue this order upon determining that such access is in the best interests of the child or serves some other legitimate purpose.

As set forth in rules adopted pursuant to chapter 91 by the department of human services and consistent with applicable laws, the department may disclose information in the court record without order of the court, unless otherwise ordered by the court.

**§ -41 Payment for service or treatment provided to a party or for a child's care, support, or treatment.** (a) Whenever a service or treatment is provided to a party, or whenever care, support, or treatment of a child is provided under this chapter, the court may order the payment of such expenses by the persons or legal entities who are legally responsible for the same, after reasonable notice and hearing as the court directs.

(b) The provisions of section 571-52 and all other remedies available under the law shall be applicable to enforce orders issued pursuant to this section.

**§ -42 Educational, medical, dental, and recreational needs.** Upon the first day of placement, a child's resource family shall have the authority, for the child placed in the resource family's care:

- (1) To consent to routine educational and recreational needs and activities, except for purposes regulated under title 8, chapters 60 and 61, of the Hawaii Administrative Rules, or successor rules; and
- (2) To seek and obtain ordinary medical and dental care, immunizations, and well-baby and well-child medical services.

**§ -43 Child protective review panel.** (a) The department shall establish a child protective review panel to review each case of child abuse or neglect that leads to near fatality or death as a result of acts or omissions of the child's legal

caretaker. Based upon its review, the panel shall submit a report of its findings and recommendations to the director of the department. The department shall appoint members of the child protective review panel, who may include:

- (1) Any physician treating the child for abuse;
- (2) Any child protective services worker assigned to the case and the worker's supervisor;
- (3) The guardian ad litem for the child, appointed under section -16, if applicable;
- (4) The members of the child's multidisciplinary team or a child protective services consultant; and
- (5) Other child protective services workers and supervisors.

(b) Members of the child protective review panel shall serve without compensation and shall not be reimbursed for costs; provided that state employees serving within the scope of their employment shall receive compensation and reimbursement as provided by law or by collective bargaining.

(c) Members of the child protective review panel shall be immune from any liability for injuries and damages arising from the panel's report under subsection (a).

(d) This section shall not be construed as interfering with any authority of the department or the courts to remove, to place, or to order any disposition on custody of an abused child under this chapter."

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**"§346- Health assessment.** The department shall ensure the provision of a comprehensive health assessment for each child in out-of-home placement forty-five days before or after an initial placement.

**§346- 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 3. Chapter 350, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**"§350- Authorization for color photographs, x-rays, and radiological or other diagnostic examination.** (a) Any health professional or paraprofessional, physician licensed or authorized to practice medicine in this State, registered nurse or licensed practical nurse, hospital or similar institution's personnel engaged in the admission, examination, care, or treatment of patients, and any medical examiner, coroner, social worker, or police officer, who has before the person a child the person reasonably believes has been harmed, shall make every good faith effort to take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken x-rays of the child or cause a radiological or other diagnostic examination to be performed on the child.

(b) Color photographs, x-rays, radiological, or other diagnostic examination reports that show evidence of imminent harm, harm, or threatened harm to a child shall immediately be forwarded to the department.

**§350- Disclosure of records.** (a) The department shall disclose to resource parents and the foster child's principal treating physician copies of the foster child's complete medical records in the department's physical custody and relevant social history within thirty days of foster placement.

(b) If a child is active in the child protective services system, physicians may share with other physicians, orally or in writing, or both, medical information without parental consent.

(c) Any records or information released to a foster child's resource parents, or the foster child's principal treating physician pursuant to subsection (a), or any information shared by one physician with another physician pursuant to subsection (b), shall remain confidential in accordance with section 350-1.4."

SECTION 4. Section 578-1, Hawaii Revised Statutes, is amended to read as follows:

**"§578-1 Who may adopt; jurisdiction; venue.** Any proper adult person, not married, or any person married to the legal father or mother of a minor child, or a husband and wife jointly, may petition the family court of the circuit in which the person or persons reside or are in military service or the family court of the circuit in which the individual to be adopted resides or was born or in which a child placing organization approved by the department of human services under the provisions of section 346-17 having legal custody (as defined in section 571-2) of the child is located, for leave to adopt an individual toward whom the person or persons do not sustain the legal relationship of parent and child and for a change of the name of the individual. When adoption is the goal of a permanent plan recommended by the department of human services and ordered pursuant to section [587-73,] -31, the department may petition for adoption on behalf of the proposed adoptive parents. The petition shall be in such form and shall include such information and exhibits as may be prescribed by the family court."

SECTION 5. Section 578-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Persons as to whom consent not required or whose consent may be dispensed with by order of the court.

- (1) Persons as to whom consent not required:
  - (A) A parent who has deserted a child without affording means of identification for a period of ninety days;
  - (B) A parent who has voluntarily surrendered the care and custody of the child to another for a period of two years;
  - (C) A parent of the child in the custody of another, if the parent for a period of at least one year has failed to communicate with the child when able to do so;
  - (D) A parent of a child in the custody of another, if the parent for a period of at least one year has failed to provide for the care and support of the child when able to do so;
  - (E) A natural father who was not married to the child's mother at the time of the child's conception or birth and who does not fall within the provisions of subsection (a)(3), (4), or (5);
  - (F) A parent whose parental rights have been judicially terminated under the provisions of sections 571-61 to 571-63, or under the provisions of any other state or other law by a court or other agency having jurisdiction to take the action;

- (G) A parent judicially declared mentally ill or mentally retarded and who is found by the court to be incapacitated from giving consent to the adoption of the child;
  - (H) Any legal guardian or legal custodian of the child sought to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of sixty days or who, after examination of the person's written reasons for withholding consent, is found by the court to be withholding the person's consent unreasonably;
  - (I) A parent of a child who has been in the custody of a petitioner under this chapter for a period of at least one year and who entered the United States of America as a consequence of extraordinary circumstances in the child's country of origin, by reason of which extraordinary circumstances the existence, identity, or whereabouts of the child's parents is not reasonably ascertainable or there is no reasonable means of obtaining suitable evidence of the child's identity or availability for adoption;
  - (J) Any parent of the individual to be adopted, if the individual is an adult eligible for adoption under subsection (b); and
  - (K) A parent whose parental and custodial duties and rights have been divested by an award of permanent custody pursuant to section [587-73.] -33;
- (2) Persons whose consent may be dispensed with by order of the court. The court may dispense with the consent of a parent who comes within subsection (a)(3), (4), or (5) herein, upon finding that:
- (A) The petitioner is the stepfather of the child and the child has lived with the child's legal mother and the petitioning stepfather for a period of at least one year;
  - (B) The father is a concerned father as provided by subsection (a) (5), herein, and has not filed a petition to adopt the child, or the petition to adopt the child filed by the father has been denied; or
  - (C) The father is an adjudicated, presumed, or concerned father as provided by subsections (a)(3), (4), or (5), herein, and is not a fit and proper person or is not financially or otherwise able to give the child a proper home and education."

SECTION 6. Section 578-14.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) Whenever possible, a completed form with the required information on each natural parent shall accompany any document, to be filed with the family court, which requests the relinquishment, termination, or divestiture of parental rights, as provided under sections 571-61 and [587-73(b)(3);] -31, and the petition for adoption under this chapter. If available, a copy of the hospital or other facility's medical records under subsection (b) shall also accompany the document to be filed in the family court. This copy shall not be disseminated to the parties and shall be sealed by the family court pending transmittal to the department of health."

2. By amending subsection (e) to read:

"(e) If the natural parents have been court ordered to complete the forms required in subsection (c) pursuant to section [587-71(a);] -28(e)(6) and have either failed to complete the forms or have failed to return the completed forms

to the department of human services, the requirement in subsection (c) shall be waived.”

SECTION 7. Effective upon the approval of this Act, sections 321-342, 321-471, 325-101, 346-16, 346-65, 350-2, 350-3, 560:5-205, 560:5-206, 571-2, 571-11, 571-41, 577-28, 586-10.5, 626-1, Rule 505.5, and 706-606.3, Hawaii Revised Statutes, are amended by replacing the reference to chapter 587, Hawaii Revised Statutes, with the reference to the new replacement chapter in section 1 of this Act.

SECTION 8. Chapter 587, Hawaii Revised Statutes, is repealed.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 10. This Act shall take effect on September 1, 2010.

(Approved May 24, 2010.)

Notes

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

ACT 136

H.B. NO. 1987

A Bill for an Act Relating to Fireworks.

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

SECTION 1. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to part V to be appropriately designated and to read as follows:

“**§712- Forfeiture.** In addition to any other penalty that may be imposed for violation of section 132D-14(a)(1) or (3), any property used or intended for use in the commission of, attempt to commit, or conspiracy to commit an offense under section 132D-14(a)(1) or (3), or that facilitated or assisted such activity, and any proceeds or other property acquired or maintained with the proceeds from violation of section 132D-14(a)(1) or (3) may be subject to forfeiture pursuant to chapter 712A.”

SECTION 2. Section 132D-2, Hawaii Revised Statutes, is amended by amending the definition of “import” to read as follows:

““Import” (and any nounal, verbal, adjectival, adverbial, and other equivalent form of the term used interchangeably in this chapter) means to bring or attempt to bring fireworks into the [State] state or to cause fireworks to be brought into the [State.] state, and includes fireworks labeled or designated as samples, even if not intended for retail sale.”

SECTION 3. Section 132D-14, Hawaii Revised Statutes, is amended to read as follows:

“**§132D-14 Penalty.** (a) Any person:

- (1) Importing aerial 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 devices, display fireworks, or articles pyrotechnic without a valid permit under sections 132D-10 and 132D-16, or storing, selling, or possessing aerial devices, display fireworks, or articles pyrotechnic without a valid license under section 132D-7:
    - (A) If the total weight of the aerial 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 devices, display fireworks, or articles pyrotechnic is less than twenty-five pounds, shall be guilty of a misdemeanor;
  - (3) Who transfers or sells aerial 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.
- (b) Except as provided in subsection (a) or as otherwise specifically provided for in this chapter, any person violating any other provision of this chapter, shall be fined not more than \$2,000 for each violation.
- (c) The court shall collect the fines imposed in subsections (a) and (b) for violating this chapter and, of the fines collected, shall pay twenty per cent to the State and eighty per cent to the county in which the fine was imposed which shall be expended by the county for law enforcement purposes.
- (d) Notwithstanding any penalty set forth herein, violations of subsection (a)(1) or (3) may be subject to nuisance abatement proceedings provided in part V of chapter 712.

SECTION 4. Section 712-1270, Hawaii Revised Statutes, is amended to read as follows:

**“§712-1270 Places used to commit offenses against public health and morals, a nuisance.** Every building, premises, or place used for the purpose of violating [~~those~~]:

- (1) Those laws pertaining to offenses against public health and morals contained in parts I, II, and IV of this chapter, except offenses under part IV which do not involve the manufacture or distribution of drugs[;] or
  - (2) Section 132D-14(a)(1) or (3),
- and every building, premises, or place in or upon which the violations are held or occur in parts I, II, and IV, or section 132D-14(a)(1) or (3), is a nuisance that shall be enjoined, abated, and prevented, regardless of whether it is a public or private nuisance.”

SECTION 5. Section 712-1270.3, Hawaii Revised Statutes, is amended to read as follows:

**“[§712-1270.3] Citizen’s rights.** Any citizen who brings a nuisance abatement suit against a place used for the purpose of committing [~~drug~~]:

- (1) Fireworks related offenses contained in section 132D-14(a)(1) or (3); or
- (2) Drug offenses under part IV of this chapter or who files a complaint with the local police or drug nuisance abatement unit of the department of the attorney general,

shall be entitled to the same rights and protections of victims and witnesses in criminal proceedings in accordance with chapter 801D.”

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. 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.<sup>1</sup>

SECTION 9. This Act shall take effect upon its approval.  
(Approved May 24, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 137**

S.B. NO. 2019

A Bill for an Act Relating to the Maximum Term of Commercial Use and Operator Permits for Thrill Craft and Parasailing.

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

SECTION 1. Section 200-37, Hawaii Revised Statutes, is amended to read as follows:

**“§200-37 Operation of thrill craft; parasailing; water sledding; commercial high speed boating.** (a) No person shall operate a thrill craft unless the person is fifteen years of age or older.

(b) The department shall adopt rules to designate areas where, and time periods during which, thrill craft may be operated and parasailing, water sledding, and commercial high speed boating may be engaged in.

(c) No person shall operate a thrill craft in the waters of the State, except:

- (1) In areas and during time periods designated by the department;
- (2) Through areas designated by the department to serve as avenues for the ingress and egress of thrill craft between the areas designated under paragraph (1) and the shore;
- (3) Authorized government personnel conducting operations approved by the department; or

- (4) Authorized film production permit holders conducting operations approved by the department.
- (d) No person shall:
- (1) Engage in parasailing; or
  - (2) Operate a motorized vessel towing a person engaged in parasailing; on or above the waters of the State, except on or above areas and during time periods designated by the department.
- (e) No person shall:
- (1) Engage in water sledding; or
  - (2) Operate a motorized vessel towing a person engaged in water sledding; in the waters of the State, except in areas and during time periods designated by the department.
- (f) No person shall engage in commercial high speed boating or operate an open power boat capable of exceeding forty miles per hour for commercial high speed boating purposes in the waters of the State, except:
- (1) In areas, along routes, and during time periods designated by the department; and
  - (2) In accordance with a permit issued by the department.
- (g) During all weekends and state and federal holidays, no commercial operator shall operate a thrill craft, or engage in parasailing, water sledding, or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding or parasailing in Maunalua Bay on Oahu as provided for in section 200-38.
- (h) On Sundays, all commercial ocean recreation activities, including those listed in this section, shall be prohibited on Oahu in Maunalua Bay as provided for in section 200-38.
- (i) Between December 15 and May 15 of each year, no person shall operate a thrill craft, or engage in parasailing, water sledding, or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding or parasailing on the west and south shore of Maui as provided in section 200-38.
- (j) All commercial use and operator permits issued by the department for commercial thrill craft, and parasailing activities shall be fully transferable upon the payment of a business transfer fee in an amount determined by the department, which shall be no greater than six per cent of the transfer price; provided that no more than one transfer every two years shall be authorized with respect to any given permit, except transfers between family members for the purpose of business reorganization.
- (k) The department may immediately revoke a commercial use permit without a hearing for any activity that endangers or may endanger the health or safety of passengers or the public, and may suspend or revoke a commercial use permit for violation of any rules of the department if, after seventy-two hours notice by the department of the violation, the permit holder fails to cure the violation; provided that the permit holder shall have ten days from receipt of the notice of suspension or revocation to request in writing an administrative hearing. The administrative hearing is solely for the purpose of allowing the permit holder to contest the basis for the suspension or revocation of the permit. The hearing shall be held within five working days of the department's receipt of the written request. The chairperson shall adopt rules pursuant to chapter 91 to implement the procedures governing the administrative hearing process. Within ten days after the conclusion of the hearing, the department shall either:
- (1) Lift the suspension;
  - (2) Suspend the permit for a period of not longer than one year; or



(3) Revoke the permit.

(1) All new commercial use and operator permits issued by the department for commercial thrill craft[;] and parasailing activities after June 18, 1996 shall be issued at public auction.

(m) Each commercial use and operator permit issued by the department for commercial thrill craft[;] and parasailing activities shall be valid for [~~five years~~] one year from the date of issuance and shall be renewed by the department for additional [~~five-year~~] one-year periods[; ~~not to exceed a maximum of twenty years~~]; provided that the permit holder [~~shall have met~~] meets the following conditions:

- (1) The permit holder shall be in compliance with all applicable rules of the department;
- (2) The permit holder shall have timely filed and paid all applicable state taxes during the year; and
- (3) The permit holder shall have a good safety record regarding the operation of a commercial thrill craft, or parasailing activity.

~~[(n) Upon expiration of the twenty-year period, the permit may be offered for public auction as provided in this chapter; provided that the previous permit holder shall be offered the right of first refusal in accordance with departmental rules; and provided further that the permit holder shall agree to match the highest bid offered at the public auction.]~~

~~(e)]~~ (n) All commercial use and operator permits issued by the department for commercial thrill craft, and parasailing activities shall be subject to an annual review by the department which shall include but not be limited to:

- (1) The permit holder's compliance with applicable rules of the department;
- (2) The permit holder's timely filing and payment of all applicable state taxes during the year; and
- (3) The permit holder's safety record regarding the operation of a commercial thrill craft, or parasailing activity.

~~[(p)]~~ (o) The department shall adopt rules to encourage water safety education and programs with respect to thrill craft, or parasailing activities."

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, 2010.

(Approved May 24, 2010.)

**ACT 138**

S.B. NO. 2806

A Bill for an Act Relating to the Emergency and Budget Reserve Fund.

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

SECTION 1. Section 328L-3, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) There is established in the state treasury the emergency and budget reserve fund which shall be a special fund administered by the director of finance, into which shall be deposited:

- (1) Moneys received from the tobacco settlement moneys under section 328L-2; [~~and~~]
- (2) Appropriations made by the legislature to the fund[-]; and

- (3) Five per cent of the state general fund balance at the close of the fiscal year, whenever state general fund revenues for each of two successive fiscal years exceeds revenues for each of the preceding fiscal years by five per cent, pursuant to article VII, section of the Hawaii Constitution. For the purpose of this section, the general fund balance at the close of the fiscal year shall be calculated before any tax refund or tax credit is authorized by the legislature, pursuant to article VII, section 6 of the Hawaii Constitution, that is provided during the same regular session as the transfer depositing such moneys to the emergency and budget reserve fund; provided that transfers shall not be made to the emergency and budget reserve fund whenever the balance of the emergency and budget reserve fund is equal to or more than ten per cent of general fund revenues for the preceding fiscal year. The transfer shall be executed by the director of finance;

provided that all moneys deposited into the emergency and budget reserve fund under paragraphs (1) and (2) and all moneys deposited under paragraph (3) shall be kept in separate and distinct accounts.

(b) All interest earned from moneys in the emergency and budget reserve fund shall be credited to the ~~general~~ emergency and budget reserve fund.

(c) Expenditures from the emergency and budget reserve fund shall be a temporary supplemental source of funding for the State during times of emergency, severe economic downturn, or unforeseen reduction in revenues. No expenditures shall be made from the emergency and budget reserve fund except pursuant to appropriations. The general appropriations bill or the supplemental appropriations bill, as defined in section 9 of article VII of the Hawaii Constitution ~~[of the State of Hawaii]~~, shall not be used to appropriate moneys from the emergency and budget reserve fund. The governor, through an appropriations bill, may recommend expenditures from the emergency and budget reserve fund by setting forth the purposes of the expenditures consistent with subsection (d), the amounts, and the reasons justifying the necessity for the appropriations.”

SECTION 2. Act 119, Session Laws of Hawaii 2009, is amended by amending section 6 to read as follows:

“SECTION 6. This Act shall take effect on July 1, 2009, and shall be repealed on June 30, 2015; provided that section 328L-2, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of Act 264, Session Laws of Hawaii 2007[-]; provided further that section 328L-3, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date 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 on July 1, 2010, and upon ratification of a constitutional amendment requiring the deposit of excess revenues from the general fund into the emergency and budget reserve fund; provided that the amendments made to section 328L-3, Hawaii Revised Statutes, by section 1 of this Act shall not be repealed when section 328L-3, Hawaii Revised Statutes, is reenacted on June 30, 2015, pursuant to section 6 of Act 119, Session Laws of Hawaii 2009.

(Approved May 25, 2010.)

A Bill for an Act Relating to the Hawaii Civil Rights Commission.

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

### PART I

SECTION 1. The legislature finds that Act 30, Special Session Laws of Hawaii 2009, (Act 30) requires the Hawaii civil rights commission to adopt administrative rules to conform state law protections against disability discrimination to the federal Americans with Disabilities Act Amendments Act of 2008, P.L. 110-325, (ADAAA). Through Act 30, the legislature directed the Hawaii civil rights commission to complete this rulemaking process no later than December 31, 2010.

The legislature finds that the United States Equal Employment Opportunities Commission (EEOC), the agency authorized to promulgate federal regulations implementing the ADAAA, has not completed its rulemaking process and is unlikely to do so before July 2010.

The purpose of part I of this Act is to extend the deadline for the Hawaii civil rights commission to complete its rulemaking process to allow the commission to review and conform state law protections against disability discrimination to the final EEOC administrative regulation guidelines.

SECTION 2. Act 30, Special Session Laws of Hawaii 2009, is amended by amending section 3 to read as follows:

“SECTION 3. The [Hawaii] civil rights commission established under section 368-2, Hawaii Revised Statutes, shall complete the rulemaking process for purposes of section 2 of this Act no later than [December 31, 2010.] ~~twelve months after the United States Equal Employment Opportunities Commission publishes final rules in the Federal Register interpreting the Americans with Disabilities Act Amendments Act of 2008, P.L. 110-325.~~”

### PART II

SECTION 3. Section 368-4, Hawaii Revised Statutes, is amended to read as follows:

**“§368-4 Records; confidentiality; disclosure; reporting requirements.** (a) All records of the investigation arising from a complaint filed with the commission shall be kept confidential and shall not be disclosed to anyone; provided that any factual matters provided to the commission during the intake and investigation of the complaint, including complainant and respondent statements and documents, pre-complaint questionnaires, witness statements for which the witness has not requested confidentiality[;] or for whom the commission has not approved confidentiality pursuant to subsection (c). other documents received from witnesses, and correspondence with parties and witnesses may be disclosed:

- (1) As may be required by order of a court with jurisdiction in a case arising from a complaint filed with the commission; or
- (2) As may be requested by a party in a complaint filed with the commission, if a complainant verifies in writing that the complainant has received a notice of right to sue pursuant to section 368-12 and a civil action has been filed or the right to sue has not expired, or if

a respondent verifies in writing that the complainant has filed a civil action.

(b) All records of non-factual matters relating to the investigation and arising from a complaint filed with the commission, including:

- (1) Settlement discussions;
- (2) Financial records;
- (3) Commission attorney communications and work products;
- (4) Confidential witness statements; and
- (5) Commission investigatory procedures, including but not limited to:
  - (A) Training and educational discussions between staff;
  - (B) The case analysis manual;
  - (C) Procedures and standards used in case analysis;
  - (D) Investigatory directives;
  - (E) Investigative plans, strategies, or goals;
  - (F) Case reviews; and
  - (G) Investigator notes, impressions, recommendations, and reports;

shall be considered confidential records except as otherwise provided by law.

(c) In making a determination to approve or deny a request that a witness' identity or statement be kept confidential, the commission shall consider:

- (1) The relevance, materiality, and importance of the witness' statement;
- (2) The likelihood that the witness' statement could not be obtained without approval of a request that the witness' identity or statement be kept confidential; and
- (3) A reasonable and clearly definable fear by the witness that the witness or any other clearly identified person would suffer serious bodily or economic harm, retaliation, or termination of employment, if the witness' identity or statement were not kept confidential.

~~(e)~~ (d) The disclosure of records that are not related to the investigation arising from a complaint filed with the commission shall be subject to chapter 92F.

~~(4)~~ (e) The commission shall maintain complete records of all complaints filed with the commission and shall compile annual statistical data on the number of complaints filed and the status or disposition of those complaints by types of complaints.

(f) As used in this section, a "confidential witness statement" means:

- (1) A statement from a person who is not a complainant or respondent to a complaint filed with the commission;
- (2) Who requests their identity or statement be kept confidential; and
- (3) The commission approves the request for confidentiality pursuant to subsection (c).

~~(e)~~ (g) The commission shall provide to the governor and the legislature a report of that statistical data compiled pursuant to subsection (e) on an annual basis, not less than thirty days prior to the convening of the legislative session."

### PART III

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 25, 2010.)

A Bill for an Act Relating to Procurement.

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

SECTION 1. Section 103D-309, Hawaii Revised Statutes, is amended to read as follows:

**“§103D-309 Contract not binding unless funds available.** (a) Contracts awarded pursuant to section 103D-302, 103D-303, or 103D-306, shall neither be binding nor have any force and effect of law unless the comptroller, the director of finance of a county, or the respective chief financial officers of the department of education, the judiciary, or the legislative branches of the State or county, as the case may be, endorses thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; provided that if the contract is a multi-term contract, the comptroller, director of finance, or chief financial officer shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract; provided further that the administrator of the state procurement office shall attest in writing to any recommendation or solicitations. This section shall not apply to any contract under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded, or to any contract for which consideration is in kind or forbearance, or to any contract awarded pursuant to section 103D-306 that is a one-time payment through a purchase order.

(b) In any contract involving not only state or county funds but supplemental funds from the federal government, this section shall be applicable only to that portion of the contract price as is payable out of state or county funds. As to the portion of the contract price as is expressed in the contract to be payable out of federal funds, the contract shall be construed to be an agreement to pay the portion to the contractor, only out of federal funds to be received from the federal government. This subsection shall be liberally construed so as not to hinder or impede the State in contracting for any project involving financial aid from the federal government.

(c) In any contract pursuant to section 264-33 involving not only state or county funds but supplemental funds from a utility, this section shall be applicable to that portion of the contract price payable out of state or county funds as well as that portion of the contract price payable out of funds from a utility, or payable out of state or county funds paid to a utility. The State or county may certify that there are sufficient funds for the utility's portion of the contract price if the amounts that a utility is obligated to pay under a legal agreement between the utility and the State, or a county, are sufficient to pay that portion of the contract price and the legal agreement:

- (1) Includes a specific description of the utility's share of the payment and terms of that payment;
- (2) Allows the State, county, or utility to provide progress payments or final payment based on the actual cost after a project is completed; and
- (3) Provides that in the event the State, county, or utility is delinquent in payments under the legal agreement, the State, county, or utility

shall be responsible for any and all additional costs attributable to such late payment.

Any such legal agreement shall be executed prior to the execution of the state or county contract and shall not jeopardize any federal, state, or county funds.

For the purposes of this subsection:

“Legal agreement” includes a utility agreement, memorandum of understanding, or memorandum of agreement.

“Utility” means a utility company or entity.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2010.

(Approved May 25, 2010.)

## ACT 141

S.B. NO. 2105

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

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

SECTION 1. Section 291-51, Hawaii Revised Statutes, is amended by amending the definitions of “issuing agency” and “removable windshield placard” to read:

““Issuing agency” means [~~an agency authorized by a county to issue removable windshield placards, temporary removable windshield placards, special license plates, and identification cards pursuant to this part.~~] the disability and communication access board.

“Removable windshield placard” means a two-sided, hanger-style placard issued under this part to a person with a disability who presents a certificate of disability that verifies that the applicant’s disability is expected to last for at least [~~four~~] six years.”

SECTION 2. Section 291-51.3, Hawaii Revised Statutes, is amended to read as follows:

**“§291-51.3 Reimbursement to counties[-]; agreement with counties to provide permits.** The State shall reimburse the counties for the unit cost of [~~issuing~~] providing 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. All fees collected by the counties for issuing removable and temporary removable windshield placards shall be deposited into the state general fund.~~] The reimbursement rate paid to the counties for providing removable windshield placards, temporary removable windshield placards, special license plates, and identification cards shall be established pursuant to section 291-56; provided that a county may retain any fees charged for a transaction.”

SECTION 3. Section 291-51.5, Hawaii Revised Statutes, is amended to read as follows:

**“§291-51.5 Special license plates.** Upon application by a person with a disability, [~~each county~~] the issuing agency shall issue special license plates for the vehicle registered in the applicant’s name if the vehicle is primarily used to

transport that person. The fee for the issuance of special license plates shall not exceed the fee charged for similar license plates for the same class vehicle.”

SECTION 4. Section 291-51.6, Hawaii Revised Statutes, is amended to read as follows:

“**§291-51.6 Issuance of temporary removable windshield placards.** ~~[Each county]~~ The issuing agency 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. ~~[All fees collected by the counties for issuing temporary removable windshield placards shall be deposited into the state general fund. 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.]~~ Upon request of an applicant who was previously issued one temporary removable windshield placard, a second temporary removable windshield placard shall be issued to that applicant upon verification of the applicant’s disability.”

SECTION 5. Section 291-52, Hawaii Revised Statutes, is amended to read as follows:

“**§291-52 Issuance of removable windshield placard.** ~~[Each county]~~ The issuing agency 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]~~ six years. The removable windshield placard shall expire ~~[four]~~ six 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 6. Section 291-52.5, Hawaii Revised Statutes, is amended to read as follows:

“**§291-52.5 Issuance of identification card.** ~~[Each]~~ The issuing agency shall issue one identification card at the same time it issues a removable windshield placard, temporary removable windshield placard, or special license plates to a person with a disability.”

SECTION 7. Section 291-52.6, Hawaii Revised Statutes, is amended to read as follows:

“**§291-52.6 Replacement of a ~~[lost, stolen, or mutilated]~~ removable windshield placard or identification card.** A removable windshield placard, temporary removable windshield placard, or identification card ~~[that is reported lost, stolen, or mutilated]~~ shall be replaced upon:

- (1) Submittal to the issuing agency of:
  - (A) ~~A written statement by a person with a disability that the placard or identification card was either lost, stolen, or mutilated; and~~
  - (B) A] a completed application for a removable windshield placard, temporary removable windshield placard, or identification card to the issuing agency; and

(2) Payment of a fee [to the issuing agency. All fees collected by the counties for replacement of a lost, stolen, or mutilated removable windshield placard shall be deposited into the state general fund].”

SECTION 8. Section 291-56, Hawaii Revised Statutes, is amended to read as follows:

“§291-56 Rules. The disability and communication access board 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 transaction fees for placards;
- (5) Signage and marking of parking spaces; ~~and~~
- (6) Reimbursement rates to the counties; and
- [(6)] (7) Penalties.”

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

SECTION 10. This Act shall take effect upon approval.

(Approved May 25, 2010.)

## ACT 142

H.B. NO. 2831

A Bill for an Act Relating to the Natural Energy Laboratory of Hawaii Authority.

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

SECTION 1. Section 227D-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Qualified security” means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, preorganization certificate of subscription, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or patent application, or in royalty or other payments under such a patent or application, or, in general, any interest or instrument commonly known as a “security” or any certificate for, receipt for, or option, warrant, or right to subscribe to or purchase any of the foregoing.”

SECTION 2. Section 227D-3, Hawaii Revised Statutes, is amended to read as follows:

“§227D-3 Powers of the authority. The authority may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at its pleasure;



- (3) Promote the use of the geothermal energy and natural resources sites for the purposes provided by law;
- (4) Through its executive director appoint officers, agents and employees without regard to chapter 76 and to establish the salaries therefor;
- (5) Adopt rules under chapter 91 necessary to effectuate this chapter in connection with its operation, facilities, parks, properties, and projects;
- (6) Make, execute, enter into, amend, supplement, and carry out contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter with 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 authority shall not obligate any funds of the State except as have been appropriated to it. Notwithstanding the foregoing, the authority 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;
- (7) Accept, hold, or expend gifts or grants in any form from any public agency or private source, or from any other source;
- (8) Impose and collect fees pertaining to the use of properties and facilities of the authority;
- (9) Formulate budgets to provide for the operation of the facilities of the authority;
- (10) Submit an annual report to the governor and the legislature at least twenty days prior to the convening of each regular session;
- (11) Acquire, own, lease, hold, clear, improve, and rehabilitate real, personal, or mixed property and assign, exchange, transfer, convey, lease, sublease, or encumber any project including by way of easements;
- (12) Construct, reconstruct, rehabilitate, improve, alter, or repair, or provide for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project and designate a qualified person as its agent for this purpose, and own, hold, assign, transfer, convey, exchange, lease, sublease, or encumber any project;
- (13) Arrange or initiate appropriate action for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, easements, or other places, the furnishings or improvements, the acquisition of property or property rights, or the furnishing of property or services in connection with a research and technology park;
- (14) Prepare or cause to be prepared plans, specifications, designs, and estimates of cost for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project or research and technology park, and from time to time, modify these plans, specifications, designs, or estimates;
- (15) Engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
- (16) Procure insurance against any loss in connection with its properties and other assets and operations in amounts and from insurers as it deems desirable;
- (17) Issue bonds pursuant to this chapter in principal amounts as may be authorized from time to time by law to finance the cost of a project,

- including the repair or addition to its parks and facilities as authorized by law and to provide for the security thereof as permitted by this chapter;
- (18) Lend or otherwise apply the proceeds of the bonds issued for a project or a research and technology park either directly or through a trustee or a qualified person for use and application in the acquisition, construction, installation, or modification of a project or research and technology park, or agree with the qualified person whereby any of these activities shall be undertaken or supervised by that qualified person or by a person designated by the qualified person;
  - (19) With or without terminating a project agreement, exercise any and all rights provided by law for entry and re-entry upon or to take possession of a project at any time or from time to time upon breach or default by a qualified person under a project agreement;
  - (20) Create an environment that supports appropriate natural resource utilization and results in economic development, including:
    - (A) Supporting research projects and facilitating the transition from research and development to pilot scale and then to full commercial operation of companies utilizing using the natural resources available at the research and technology parks; developing
    - (B) Developing educational and conservation programs; supporting
    - (C) Supporting commercialization of the natural resources available at the research and technology parks, if the commercialization is compatible with the research, development, and other retail, commercial, and tourism activities of the research and technology parks; identifying
    - (D) Identifying issues and impediments to the development of natural resource utilization; and providing
    - (E) Providing policy analysis and information important to the development of natural resource utilization in Hawaii;
  - (21) Develop programs that support projects and companies which locate at the research and technology parks;
  - (22) Attract appropriate new uses of the natural resources in Hawaii, including retail, commercial, and tourism activities; and
  - (23) Acquire, hold, and sell qualified securities; provided that the authority shall not acquire qualified securities using authority funds or capital or moneys of the natural energy laboratory of Hawaii authority special fund; provided further that the authority shall not acquire, hold, or sell qualified securities of its tenants without first obtaining the approval of the board by a simple majority vote in each case considered. The acquisition and sale of qualified securities shall be detailed in the annual report of the natural energy laboratory of Hawaii authority;
  - (24) Accept donations, grants, bequests, and devises of money, property, services, or other things of value that may be received from the United States or any agency thereof, any governmental agency, or any public or private institution, person, firm, or corporation, to be held, used, or applied for any or all of the purposes specified in this chapter. Receipt of each donation, grant, bequest, or devise shall be detailed in the annual report of the natural energy laboratory

of Hawaii authority. The report shall include the identity of the donor or grantor, the nature of the transaction, and any conditions attaching thereto; and

[(23)] (25) Do any or all other acts reasonably necessary to carry out the purposes of the authority.”

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 25, 2010.)

**ACT 143**

S.B. NO. 2124

A Bill for an Act Relating to the Hawaii Hurricane Relief Fund.

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

SECTION 1. Hawaii is facing one of the most challenging economic times it has ever faced and these economic conditions have necessitated difficult decisions by the State to balance an already precarious budget. One such decision reached through collective bargaining between the governor, board of education, department of education, and Hawaii State Teachers Association, was to institute furlough days for Hawaii’s educational system. As a result of this agreement, Hawaii’s keiki have already lost nearly three weeks worth of instructional days during the current school year and are scheduled to lose anywhere from seventeen to twenty-one more days during this and the next school year.

The loss of these instructional days may have a tremendous impact on the youth of the state. It may be devastating to the quality of their education and a loss that may last them a lifetime. In addition to the effect on our youth, these lost days may have far-reaching effects on the prosperity, health, and growth of the entire state for years to come.

Despite the State’s economic difficulties and the great need for additional resources in many areas that would benefit the public welfare, the legislature finds that the education of our youth is of the utmost importance. Accordingly, the legislature is appropriating Hawaii hurricane relief fund moneys to restore instructional days for the 2010-2011 school year that would otherwise be lost to furloughs. By providing these funds, the legislature is enabling a return of students to the classroom.

As required by the Hawaii Constitution, the legislature’s authority and responsibility is to establish funding priorities that will result in a balanced budget. In the current fiscal climate, it is difficult to balance the many needs of the people of Hawaii, but the legislature has made the educational needs of Hawaii’s children a top priority and therefore has appropriated these funds to restore instructional days. In doing so, it is not the intent of the legislature to become a participant in the collective bargaining process. The legislature’s role is to reject or approve funding for the cost items agreed to by collective bargaining.

The legislature declares that the appropriation made under this Act shall not be construed to mean that the legislature, in any way, intends to interfere with the processes of public sector collective bargaining as authorized under the Hawaii Constitution and chapter 89, Hawaii Revised Statutes.

The purpose of this Act is to appropriate Hawaii hurricane relief fund moneys to make funds available to restore instructional days for the 2010-2011 school year if an agreement or agreements to restore instructional days are negotiated pursuant to the collective bargaining process established under chapter 89, Hawaii Revised Statutes. It is the intent of the legislature that the moneys appropriated by this Act be expended solely for the purpose of restoring public school instructional days, and that no moneys appropriated by this Act be transferred or used for any purpose other than restoring these instructional days.

SECTION 2. Notwithstanding provisions of chapter 431P, Hawaii Revised Statutes, to the contrary, there is appropriated out of the Hawaii hurricane relief fund the sum of \$67,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 to restore instructional days for the 2010-2011 school year that have been negotiated pursuant to the collective bargaining process established under chapter 89, Hawaii Revised Statutes; provided that:

- (1) The funds appropriated by this section shall only be released upon the completion of all negotiations of parties necessary to execute the restoration of instructional days pursuant to the collective bargaining process established under chapter 89, Hawaii Revised Statutes; and
- (2) Notwithstanding section 37-41.5, Hawaii Revised Statutes, funds appropriated for the 2010-2011 school year that are not expended at the close of that school year shall not be carried over to the following school year and shall lapse into the Hawaii hurricane relief fund.

The sum appropriated under this section shall be expended by the department of education for the purpose of this section.

SECTION 3. The moneys appropriated by this Act shall only be expended for the purpose of restoring public school instructional days for the 2010-2011 school year and shall not be transferred or used for any other purpose.

SECTION 4. This Act shall take effect upon its approval; provided that section 2 shall take effect on July 1, 2010.

(Approved May 25, 2010.)

## ACT 144

S.B. NO. 2589

A Bill for an Act Relating to Charter Schools.

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

SECTION 1. The legislature finds that the charter school movement has progressed over the past few decades into a system with its own administrative office and review panel to operate, maintain, and develop charter schools. With the growth and maturation of the charter school system, however, the legislature also finds the need for greater accountability and improved processes within the system to ensure that prudent financial decisions are made and that a standard of quality is maintained across all charter schools.

Further, the legislature finds that some public charter schools face daunting obstacles such as the high cost of rent and less-than-desirable locations of their facilities, while the department of education is considering the closure of certain non-charter public schools due to departmental financial constraints.

The purpose of this Act is to:

- (1) Require the charter school review panel to adopt a clear process with rigorous criteria for charter schools to be reauthorized;
- (2) Require the charter school review panel to reauthorize a charter school no later than four years following the initial issue of the charter and every six years thereafter;
- (3) Require the charter school review panel to evaluate and investigate charter schools when concerns arise that necessitate the resolution or assistance with the resolution of legal, fiscal, health, safety, and other serious issues;
- (4) Require the charter school administrative office to withhold not more than two per cent of the annual general fund allocation for its operational expenses, including salaries for staff and the executive director;
- (5) Require the charter school administrative office to report annually to the charter school review panel individual and aggregate expenditures of charter schools, clearly distinguishing between expenditures for operational and instructional purposes;
- (6) Require per-pupil allocation checks paid by the charter school administrative office to individual charter schools to be co-signed by the executive director of the charter school administrative office and an agent of the charter school review panel to encourage more intentional and well-informed financial decision-making;
- (7) Increase the limit on the number of new start-up charter schools;
- (8) Require the department of education to make available vacant school facilities or portions of school facilities for use by charter schools; provided that the department may elect to use the facilities to support public education programs with preference given to instructional uses over administrative uses; and
- (9) Make changes to charter school funding, including the creation of the charter schools account as a separate account in the state treasury, to further encourage fairness in funding and the availability of resources to charter schools.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§302A- Use of vacant public school facilities by charter schools. (a)** When the department considers whether to close any particular public school, it shall simultaneously give reasonable consideration to making all or portions of the facilities of the public school available for the exclusive occupancy and use by a charter school or joint occupancy and use by the charter school and the department; provided that the department may elect to use the facilities for the support of public education programs, with preference given to instructional uses over administrative uses.

(b) The department shall submit a notice of possible availability of a public school to the charter school review panel as early as possible; provided that if a vacancy is established, a notice of vacancy shall be submitted to the charter school review panel no later than thirty days after the establishment of the vacancy.

(c) Pursuant to section 302B-A and upon receipt of a notice pursuant to subsection (b), the charter school review panel shall solicit applications from charter schools interested in using and occupying all or portions of the facilities of the public school and submit a prioritized list of charter schools to the

department for final determination of which charter school, if any, shall be authorized to use and occupy the public school facilities.

(d) Upon the selection of a charter school to use a vacant school facility or portion of a school facility, the department and the charter school review panel shall enter into necessary agreements within ninety days of the selection to carry out the purposes of this section.

(e) After receipt by the charter school review panel of a notice pursuant to subsection (b), if the charter school review panel does not provide a prioritized list of charter schools because no charter school has requested to use the facilities of the public school, or if the department receives the prioritized list but determines that no charter school on the list is an appropriate candidate to occupy and use the facilities, the department shall give reasonable consideration to making all or portions of the facilities of the public school, if closed, available for occupancy and use for other educational purposes.

(f) The department shall adopt rules necessary to carry out the purposes of this section.

(g) For purposes of this section, "public school" means any school that falls within the definition of public schools in section 302A-101, except for charter schools."

SECTION 3. Chapter 302B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§302B-A Occupancy and use of facilities of public schools.** (a) When the department considers whether to close any particular public school, the department shall submit a notice of possible availability of a public school or notice of vacancy of a public school to the charter school review panel pursuant to section 302A- (b); provided that the department has not elected to use the public school to support education programs.

(b) If a charter school exclusively or jointly occupies or uses buildings or facilities of a public school immediately prior to converting to a charter school, upon conversion that charter school shall be given continued exclusive or joint use of the buildings or facilities; provided that:

- (1) The State may reclaim some or all of the buildings or facilities if it demonstrates a tangible and imperative need for such reclamation;
- (2) The State and the conversion charter school voluntarily enter into an agreement detailing the portion of those buildings or facilities that shall be reclaimed by the State and a timetable for the reclamation. If a timetable cannot be reached, the State may petition the panel for the reclamation, and the panel may grant the petition only to the extent that is not possible for the conversion charter school and the department to jointly occupy or use the buildings or facilities.

(c) Upon receipt of a notice pursuant to section 302A- (b), the panel shall solicit applications from charter schools interested in using and occupying all or portions of the facilities of the public school by:

- (1) Promptly notifying all charter schools that the public school is being considered for closure; and
- (2) Affording each charter school an opportunity to submit an application with a written explanation and justification of why the charter school should be considered for possible occupancy and use of the facilities of the public school.

(d) After fully considering each charter school's application and based on the applications received and on other considerations, the panel shall:

- (1) Provide a written response to each charter school's application after each application has been fully considered; and

- (2) Compile a prioritized list of charter schools and submit the list to the department for final determination of which charter school, if any, shall be authorized to use and occupy the public school facilities.
- (e) Upon the selection of a charter school to use a vacant school facility or portion of a school facility, the department and the panel shall enter into necessary agreements within ninety days of the selection to carry out the purposes of this section; provided that any agreement between the panel and the department shall stipulate that a charter school that uses and occupies a public school facility or portion of a public school facility shall be responsible for the full or pro rata share of the repair and maintenance costs for that facility or portion of the facility, as the case may be.
- (f) The panel shall adopt policies and procedures necessary to carry out the purposes of this section, including but not limited to:
  - (1) Procedures for charter schools to apply in writing to use vacant school facilities;
  - (2) Criteria for the panel to use in determining which charter schools to include on the prioritized list to be submitted to the department; and
  - (3) Procedures for the panel to notify charter school applicants that are granted or denied the use of vacant school facilities.
- (g) For purposes of this section, "public school" means any school that falls within the definition of public schools in section 302A-101, except for charter schools."

SECTION 4. Section 302A-1151, Hawaii Revised Statutes, is amended to read as follows:

**“~~§§302A-1151~~ Sale of school lands unnecessary for school purposes.** The chairperson of the board of land and natural resources is hereby requested, upon the recommendation and approval of the superintendent, to sell any state lands, including the buildings thereon, once used but no longer necessary for school purposes~~];~~ provided that no school facility or portion of a school facility shall be sold before that facility or portion of the facility is made available for use by the department or charter schools, pursuant to sections 302A- and 302B-A.”

SECTION 5. Section 302B-3, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

- (i) The powers and duties of the panel shall be to:
  - (1) Appoint and evaluate the executive director and approve staff and salary levels for the charter school administrative office;
  - (2) Review, approve, or deny charter applications for new charter schools in accordance with section 302B-5 for the issuance of new charters; provided that applicants that are denied a charter may appeal to the board for a final decision pursuant to section 302B-3.5;
  - (3) Review, approve, or deny significant amendments to detailed implementation plans to maximize the school's financial and academic success, long-term organizational viability, and accountability. Charter schools that are denied a significant amendment to their detailed implementation plan may appeal to the board for a final decision pursuant to section 302B-3.5;
  - (4) Pursuant to section 302B-A, compile and submit prioritized lists of charter schools to the department and enter into necessary agreements with the department to authorize charter schools to use

- and occupy vacant public school facilities or portions of school facilities;
- [(4)] (5) Adopt reporting requirements for charter schools;
- [(5)] (6) Review annual self-evaluation reports from charter schools and take appropriate action;
- (7) Adopt a clear process and rigorous organizational and educational criteria, including student achievement as a significant factor, for the authorization and reauthorization of school charters;
- (8) Evaluate each school charter, for the purpose of determining reauthorization, no later than four years following the initial issue of a charter and every six years thereafter;
- [(6)] (9) Evaluate any aspect of a charter school that the panel may have concerns with and take appropriate action, which may include probation or revocation;
- [(7)] (10) Periodically adopt improvements in the panel's monitoring and oversight of charter schools;
- [(8)] (11) Periodically adopt improvements in the office's support of charter schools and management of the charter school system;
- [(9)] (12) Review, modify, and approve charter schools' all means of finance budget, based upon criteria and an approval process established by the panel; [and]
- [(10)] (13) Survey all charter school facilities prior to, and in preparation for, determining recommendations to allocate non-per-pupil facilities funds to charter schools with facilities needs. The survey shall include, at minimum, for each charter school facility:
- (A) The current status of the facility;
  - (B) Facilities costs, including all rents, leases, purchases, and repair and maintenance for lands and buildings;
  - (C) A prioritized list of facilities needs;
  - (D) Any capital improvement projects underway or scheduled; and
  - (E) Whether the facility is a conversion or start-up charter school, and current and projected enrollment[-]; and
- (14) Evaluate and investigate charter schools when concerns arise that necessitate the resolution or assistance with the resolution of legal, fiscal, health, safety, and other serious issues."

SECTION 6. Section 302B-4, Hawaii Revised Statutes, is amended to read as follows:

**"§302B-4 [Limits on] Encouraging the growth of successful charter schools.**  
 [The] Upon the approval of administrative rules, the panel may authorize [one] up to three new start-up charter [schœol] schools 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, [œr] and one new start-up charter school for each start-up charter school whose charter is revoked[-] or that voluntarily closes. The total number of conversion charter schools authorized by the panel shall not exceed twenty-five."

SECTION 7. Section 302B-8, Hawaii Revised Statutes, is amended to read as follows:



**“§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 panel 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 panel shall hire the executive director, who may be contracted for a term of up to four years; shall offer the executive director a written contract; and may terminate the executive director’s contract only for cause. The executive director, with the approval of the panel, 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 panel 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 and the capital improvement projects request for the charter schools, including submission of the all means of finance budget request that reflects all anticipated expenditures to the panel, the board, the governor, and the legislature; provided that, in preparing the budget request with regard to facilities funding, the executive director shall ensure that, as a budget item separate from other operating costs, the request provides:
  - (A) Funding for projected enrollment for the next school year for each charter school;
  - (B) A calculation showing the per-pupil funding based on the department of budget and finance’s debt service appropriation for the department of education divided by the department of education’s actual enrollment that school year; and
  - (C) That no less than seventy per cent of the amount appropriated shall be allocated by the office to start-up charter schools on a per-pupil basis; provided that the funds remaining shall be allocated to charter schools with facilities needs as recommended by the office and approved by the panel;
- (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 panel review;
- (10) Assisting charter applicants and charter schools in coordinating their interactions with the panel as needed;

- (11) Assisting the panel to coordinate with charter schools in panel investigations and evaluations of charter schools;
- (12) Serving as the conduit to disseminate communications from the panel, the board, and the department to all charter schools;
- (13) Determining charter school system needs and communicating those needs to the panel, the board, and the department;
- (14) Establishing a dispute resolution and mediation process; 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 panel. The annual evaluation shall be conducted sufficiently in advance of the end of a term to provide the executive director the opportunity to respond to concerns and improve performance.

(d) The office shall withhold funds for its operational expenses, including the salaries of the executive director and staff, from the annual charter school general fund appropriation. The total amount of operational expenses withheld:

- (1) Shall not exceed two per cent of the annual charter school general fund allocation, which shall not include any funds carried over from previous years;
- (2) Shall not include the amount of funds withheld under subsections (g) and (h); and
- (3) Shall be determined annually by the panel.

The' [salary] salaries of the executive director and staff shall be set by the panel 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 general fund allocation at an amount to be determined annually by the panel.] and in accordance with the requirements of this subsection.

(e) The office shall report annually to the review panel individual and aggregate expenditures of charter schools, clearly distinguishing between expenditures for operational purposes and for instructional purposes. The office shall adopt rules to develop a standardized method for charter schools to report the expenditures and to determine expenditures that constitute expenditures for operational expenses and expenditures for instructional purposes. If any charter school fails to meet the reporting requirements under this subsection, the office may retain a portion of that charter school's per-pupil allocation pursuant to section 302B-12(e)(3).

~~(e)~~ (f) 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)~~ (g) The office shall withhold funds for charter school enrollments that are inconsistent with approved detailed implementation plans.

~~(g)~~ (h) 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)~~ (i) The office may carry over funds from previous year allocations. Funds distributed to charter schools shall be considered expended."

SECTION 8. Section 302B-12, Hawaii Revised Statutes, is amended to read as follows:

**“§302B-12 Funding and finance.** (a) Beginning with fiscal year ~~[2009-2010,]~~ 2010-2011, and each fiscal year thereafter, the non-facility general fund per-pupil funding request for charter school students shall ~~[not]~~ be ~~[less than]~~ the same as the general fund per-pupil amount to the department in the most recently approved executive budget recommendation for the department, as set forth in paragraph (2); provided that:

- (1) The general fund per-pupil funding request shall ~~[include funding for]~~ be based upon reasonable projected enrollment figures for ~~[each]~~ all charter [school,] schools; and
- (2) The general fund per-pupil request for each regular education and special education student shall:
  - (A) Include all general fund regular education cost categories, including comprehensive school support services, but excluding special education services~~;~~, adult education, and the after-school plus program; provided that ~~[special education]~~ these services are provided and funded by the department; and
  - ~~[(B) Include all means of financing except federal funds, as reported in the most recently approved executive budget recommendations for the department; provided that in preparing the budget the executive director shall include an analysis of the proposed budget in relationship to the most recently published department consolidated annual financial report; and~~
  - ~~(C)]~~ (B) Exclude fringe benefit costs and debt service.

(b) Fringe benefit costs for charter school employees, regardless of the payroll system utilized by a charter school, 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.

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 and]~~ facility [costs. The legislature may make additional appropriations for other requested amounts that benefit charter schools.] and other costs.

The governor, pursuant to chapter 37, may impose restrictions or reductions on charter school appropriations similar to those imposed on other public schools.

(c) 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 state-level federal grant proposals submitted by the department that include charter schools as potential recipients and timely reports on state-level federal grants received for which charter schools may apply or are entitled to receive. 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.

(d) The office shall calculate a general fund per-pupil amount based upon the amount of general funds appropriated by the legislature and released by the governor and the projected enrollment amount used to calculate the general funds appropriated pursuant to subsection (a); provided that:

- (1) Per-pupil distributions to the charter schools pursuant to subsection (e) shall be based upon the per-pupil amount as calculated by the office pursuant to this subsection. The per-pupil distributions shall be deposited into the charter schools account established by subsection (i); and
- (2) In years when the projected enrollment used to calculate the per-pupil amount pursuant to this subsection exceeds the total actual enrollment as reported by the charter schools as of October 15, the excess funds shall remain in the state treasury in the charter schools account:
  - (A) General funds appropriated pursuant to this section remaining in the charter schools account within the state treasury at the end of each fiscal year and in excess of \$5,000,000 shall lapse to the credit of the state general fund; and
  - (B) General funds remaining in the charter schools account in the state treasury appropriated pursuant to this section that are less than \$5,000,000 shall carry over to subsequent years to be used to provide per-pupil funding in years when the projected enrollment amount is less than the actual per-pupil enrollment reported by the charter schools on October 15 of each year.

The office shall submit a report to the legislature no later than twenty days prior to each regular session that contains each charter school's current school year projection that is used to submit the budget request, the updated May 15 enrollment projection, the actual October 15 enrollment count, the office's reviewed and verified enrollment count, the office's reviewed and verified enrollment count, and the November 15 enrollment count. This report shall also provide an accounting of the use, if any, of state general funds subject to paragraph (2)(B).

~~(d)~~ (e) To enable charter schools to access state funding prior to the start of each school year, foster their fiscal planning, ~~and~~ enhance their accountability, and avoid over-allocating general funds to charter schools based on self-reported enrollment projections, the office shall:

- (1) Provide ~~fifty~~ sixty 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 have submitted to the office a projected student enrollment no later than May 15 of each year;
- (2) Provide an additional ~~forty~~ thirty per cent of a charter school's per-pupil allocation no later than ~~November 15~~ December 1 of each year; provided that the charter school shall have submitted 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;], based on the October 15 student enrollment, as reviewed and verified by the office, only to schools in compliance with the office financial reporting requirements; and
- (3) Retain no more than the balance of the remaining ten per cent of a charter school's per-pupil allocation, as a contingency balance to ensure fiscal accountability and compliance, no later than June 30 of each year [as a contingency balance to ensure fiscal accountability and compliance];

provided that the panel may make adjustments in allocations based on noncompliance with board policies made in the board's capacity as the state education agency, department directives made in the department's capacity as the state education agency, the office's administrative procedures, and board-approved accountability requirements.

(f) Any check transferring a per-pupil allocation from the office to a charter school under this section shall be co-signed by the executive director and an authorized agent of the charter school review panel.

~~[(e)]~~ (g) 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.

~~[(f)]~~ (h) No start-up charter school or conversion charter school may assess tuition.

(i) There is created in the treasury of the State, as a separate account, the charter schools account, into which shall be deposited per-pupil distributions in accordance with subsection (d)."

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 10. In codifying the new section added by section 3 of this Act, the revisor of statutes shall substitute appropriate section number for the letter used in designating the new section in this Act.

SECTION 11. This Act shall take effect on July 1, 2010.

(Approved May 26, 2010.)

Notes

- 1. Prior to amendment "(d)" appeared before "The".
- 2. Edited pursuant to HRS §23G-16.5.

ACT 145

S.B. NO. 2116

A Bill for an Act Relating to Indemnification of County Agencies.

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

SECTION 1. The legislature finds that public schools frequently use county parks and other facilities for school purposes and functions, such as

physical education classes, athletic events, and graduation events. The legislature also finds that the current procedure for the department of education to obtain approval from the governor to agree to indemnify a county when a public school uses a county facility for a school purpose is unnecessarily burdensome, especially for school purposes and functions that occur repeatedly throughout the school year.

The purpose of this Act is to facilitate the process by which the department of education obtains approval for the State to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees for public school purposes and functions on county facilities.

SECTION 2. Section 46-71.5, Hawaii Revised Statutes, is amended to read as follows:

**“~~§~~46-71.5 Indemnification of county agencies.** (a) To receive county aid, assistance, support, benefits, services, and interests in or rights to use county property, a state agency may agree in writing to an indemnity provision by which the State agrees to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees when:

- (1) The governor approves the State’s proposed indemnification; and
- (2) The comptroller, pursuant to section 41D-8.5, has obtained an insurance policy or policies in an amount sufficient to cover the liability of the State that reasonably may be anticipated to arise under the indemnity provision, or has determined that it is not in the best interest of the State to obtain insurance.

(b) Notwithstanding subsection (a), the governor may delegate to the superintendent of education or the deputy superintendent if so designated by the superintendent of education the authority to agree to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees when:

- (1) The use of the county property will be for a public school purpose or a public school function;
- (2) The governor approves, in writing, the indemnity provision to be used by the superintendent of education or the deputy superintendent if so designated by the superintendent of education which provision, upon approval, may serve as approval under this paragraph for all public school purposes or functions on county properties for the remainder of that same school year; and
- (3) The comptroller, pursuant to section 41D-8.5, has obtained an insurance policy or policies in an amount sufficient to cover the liability of the State that reasonably may be anticipated to arise under the indemnity provision, or has determined that it is not in the best interest of the State to obtain insurance.

~~(b)~~ (c) An indemnity provision not in strict compliance with this section shall not give rise to a claim against the State under chapter 661 or otherwise waive the State’s sovereign immunity.”

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 27, 2010.)

A Bill for an Act Relating to Violence Against Health Care Personnel.

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

SECTION 1. 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;
  - (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 with a dangerous instrument;
  - (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 paragraph, “educational worker” means: any administrator, specialist, counselor, teacher, or employee of the department of education or an employee of a charter school; a person who is a volunteer, as defined in 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;
  - (f) The person intentionally or knowingly causes bodily injury to any emergency medical services ~~personnel~~ provider who is engaged in the performance of duty. For the purposes of this paragraph, “emergency medical services ~~personnel~~ shall have the same meaning as in section 321-222;] provider” means emergency medical services personnel, as defined in section 321-222, and physicians, physician’s assistants, nurses, nurse practitioners, certified registered nurse anesthetists, respiratory therapists, laboratory technicians, radiology technicians, and social workers, providing services in the emergency room of a hospital; or
  - (g) The person intentionally or knowingly causes bodily injury to a person employed at a state-operated or -contracted mental health facility. For the purposes of this paragraph, “a person employed at a state-operated or -contracted mental health facility” includes health care professionals as defined in section 451D-2, administrators, orderlies, security personnel, volunteers, and any other person who is engaged in the performance of a duty at a state-operated or -contracted mental health facility.”

SECTION 2. 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;
  - (b) By threats made in a common scheme against different persons;

- (c) Against a public servant 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. "Educational worker" has the same meaning as defined in section 707-711;
- (d) Against any emergency medical services ~~[personnel]~~ provider who is engaged in the performance of duty. For purposes of this paragraph, ~~"emergency medical services [personnel]" shall have the same meaning as in section 321-222;~~ provider" means emergency medical services personnel, as defined in section 321-222, and physicians, physician's assistants, nurses, nurse practitioners, certified registered nurse anesthetists, respiratory therapists, laboratory technicians, radiology technicians, and social workers, providing services in the emergency room of a hospital; or
- (e) With the use of a dangerous instrument."

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

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

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

(Approved May 27, 2010.)

## ACT 147

H.B. NO. 2725

A Bill for an Act Relating to Animals.

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

SECTION 1. The purpose of this Act is to revise laws prohibiting the cruel treatment of pet animals by specifying the standards of care that an owner must provide a pet animal, including the type of pet enclosure and under what conditions and when veterinary care must be provided. A pet animal is defined under section 711-1100, Hawaii Revised Statutes, as "a dog, cat, domesticated rabbit, guinea pig, domesticated pig, or caged birds (passeriformes, piciformes, and psittaciformes only) so long as not bred for consumption." Nothing in this Act is intended to apply to animals that are raised for food, such as any livestock or chickens that are raised for consumption or for eggs, nor to any pigs or rabbits that are raised specifically for consumption.

SECTION 2. Section 711-1100, Hawaii Revised Statutes, is amended as follows:

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

"Primary pet enclosure" means any kennel, cage, or structure used to restrict only a pet animal as defined in this section to a limited area of space, and does not apply to the confinement of any animals that are raised for food, such as any poultry that is raised for meat or egg production and livestock, rabbits, or pigs that are raised specifically for meat production because these animals are not pets when raised for meat or egg production."

2. By amending the definition of "necessary sustenance" to read:



““Necessary sustenance” means care sufficient to preserve the health and well-being of a pet animal, except for emergencies or circumstances beyond the reasonable control of the owner or caretaker of the pet animal, and includes but is not limited to the following requirements:

- (1) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight;
- (2) Open or adequate access to water in sufficient quantity and quality to satisfy the animal’s needs;
- (3) Access to protection from wind, rain, or sun; ~~and~~
- (4) An area of confinement that has adequate space necessary for the health of the animal and is kept reasonably clean and free from excess waste or other contaminants that could affect the animal’s health[-]; provided that the area of confinement in a primary pet enclosure must:
  - (A) Provide access to shelter;
  - (B) Be constructed of safe materials to protect the pet animal from injury;
  - (C) Enable the pet animal to be clean, dry, and free from excess waste or other contaminants that could affect the pet animal’s health;
  - (D) Provide the pet animal with a solid surface or resting platform that is large enough for the pet animal to lie upon in a normal manner, or, in the case of a caged bird a perch that is large enough for the bird to perch upon in a normal manner;
  - (E) Provide sufficient space to allow the pet animal to, at minimum, do the following:
    - (i) Easily stand, sit, lie, turn around, and make all other normal body movements in a comfortable manner for the pet animal, without making physical contact with any other animal in the enclosure; and
    - (ii) Interact safely with other animals within the enclosure; and
- (5) Veterinary care when needed to prevent suffering.”

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

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

SECTION 5. This Act shall take effect on January 1, 2011.  
(Approved May 28, 2010.)

**ACT 148**

S.B. NO. 2169

A Bill for an Act Relating to Shark Fins.

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

SECTION 1. Sharks are one of the top predators in the marine food chain and play an important role in our ocean’s ecosystem. Sharks have characteristics that make them more vulnerable to overfishing than most fish, and

data from state, federal, and international agencies show a decline in the shark populations both locally and worldwide. Unlike other fish species, most sharks do not reach sexual maturity until seven to twelve years of age and then only give birth to a small litter of young. Thus, sharks cannot rebuild their populations quickly once they are overfished.

The practice of shark finning, where a shark is caught, the fin is cut off, and the shark is returned to the water, causes tens of millions of sharks to die a slow death each year. Some sharks starve to death, others are slowly eaten by other fish, and some drown because most sharks need to keep moving to force water through their gills for oxygen.

Sharks are an essential element of the ocean's ecosystem, and by reducing the demand for shark fins, Hawaii can help ensure that sharks will not become extinct.

SECTION 2. Chapter 188, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§188- Shark fins; prohibited.** (a) It shall be unlawful for any person to possess, sell, offer for sale, trade, or distribute shark fins.

(b) Notwithstanding subsection (a), any person who holds a license or permit issued by the department of land and natural resources to conduct research or for educational purposes possesses, sells, offers for sale, trades, or distributes shark fins shall not be subject to the penalties in this section.

(c) Prior to July 1, 2011, any restaurant holding a valid certificate, permit, or license issued by the department of health under section 321-11 may possess, sell, offer for sale, trade, or distribute shark fins possessed by that restaurant as of July 1, 2010 which are prepared for consumption.

(d) Any person violating this section or any rule adopted pursuant to this section shall be penalized as follows:

- (1) For a first offense, by an administrative fine of not less than \$5,000 and not more than \$15,000;
- (2) For a second offense, by an administrative fine of not less than \$15,000 and not more than \$35,000. In addition, shark fins, commercial marine licenses, vessels, fishing equipment, or other property involved in a violation of this section shall be subject to seizure and forfeiture pursuant to chapter 712A; and
- (3) For a third or subsequent offense, by an administrative fine of not less than \$35,000 and not more than \$50,000 or by imprisonment of not more than one year, or both. In addition, shark fins, commercial marine licenses, vessels, fishing equipment, or other property involved in a violation of this section shall be subject to seizure and forfeiture pursuant to chapter 712A.

(e) In addition to any penalties imposed under subsection (d), any person violating this section or any rule adopted under it shall be subject to any other penalties authorized by section 188-70, and may be assessed administrative fees and costs, and attorney's fees and costs.

(f) The department may adopt rules pursuant to chapter 91 necessary for the purposes of this section.

(g) For the purpose of this section, “shark fin” means the raw or dried fin or tail of a shark.”

SECTION 3. Section 188-40.5, Hawaii Revised Statutes, is repealed.

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

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

SECTION 6. This Act shall take effect on July 1, 2010.

(Approved May 28, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 149

S.B. NO. 2154

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 subsections (a) and (b) to read as follows:

“(a) A probation officer shall investigate any case referred to the probation officer for investigation by the court in which the probation officer is serving and report thereon to the court. The probation officer shall instruct each defendant placed on probation under the probation officer’s supervision of the terms and conditions of the defendant’s probation. The probation officer shall keep informed concerning the conduct and condition of the defendant and report thereon to the court, and shall use all suitable methods to aid the defendant and bring about an improvement in the defendant’s conduct and condition. The probation officer shall keep these records and perform other duties as the court may direct. ~~[Upon written request, the victim, or the parent or guardian of a minor victim or incapacitated victim, of a defendant who has been placed on probation for an offense under sections 580-10(d)(1), 586-4(e), 586-11(a), or 709-906, may be notified by the defendant’s probation officer when the probation officer has any information relating to the safety and welfare of the victim.]~~ No probation officer shall be subject to civil liability or criminal culpability for any disclosure or non-disclosure, under this section, if the probation officer acts in good faith and upon reasonable belief.

(b) All adult probation records 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. The records, or the content of the records, shall be divulged only as follows:

- (1) A copy of any adult probation case record or of a portion of it, or the case record itself, upon request, may be provided to:
  - (A) An adult probation officer, court officer, social worker of a Hawaii state adult probation unit, or a family court officer who is preparing a report for the courts; or
  - (B) A state or federal criminal justice agency, or state or federal court program that:
    - (i) Is providing supervision of a defendant or offender convicted and sentenced by the courts of Hawaii; or

- (ii) Is responsible for the preparation of a report for a court;
- (2) The residence address, work address, home telephone number, or work telephone number of a current or former defendant shall be provided only to:
- (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; 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) Upon written request, the victim, or the parent or guardian of a minor victim or incapacitated victim, of a defendant who has been placed on probation for an offense under section 580-10(d)(1), 586-4(e), 586-11(a), or 709-906 may be notified by the defendant's probation officer when the probation officer has any information relating to the safety and welfare of the victim;
- ~~(5)~~ (6) Notwithstanding [subsection (b)(3);] paragraph (3) and 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, with the prior written consent of the defendant for information from a treatment service provider; provided that for any substance abuse records such release shall be subject to Title 42 Code of Federal Regulations Part 2, relating to the confidentiality of alcohol and drug abuse patient records; and information that has therapeutic or rehabilitative benefit, 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[-];
- (7) Probation drug test results may be released with prior written consent of a defendant to the defendant's treating physician when test results indicate substance use which may be compromising the defendant's medical care or treatment;
- ~~(6)~~ (8) 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[-]; and
- ~~(7)~~ (9) 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]~~ the person's official duties shall be fined no more than \$500."

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

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, 2010.

(Approved May 28, 2010.)

**ACT 150**

S.B. NO. 2607

A Bill for an Act Relating to Activity Desks.

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

SECTION 1. Chapter 468M, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§468M- Record keeping requirements for client trust accounts.** (a) An activity desk shall maintain all books and records necessary to comply with this chapter and any rules adopted pursuant to this chapter and shall make all records relating to client trust accounts available for inspection and audit within three business days of a written request by the director. Nothing in this section shall prevent the director from inspecting or auditing the books and records of an activity desk as otherwise provided in this chapter or rules adopted by the director pursuant to chapter 91.

(b) An activity desk shall keep and maintain copies of all bank statements, deposit slips, cancelled checks, drafts, and wire or electronic transaction documents relating to client trust accounts for a period of at least two years."

SECTION 2. Section 468M-3, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§468M-3]]~~ **Prohibited acts.** No activity desk shall engage in any of the following practices:

- (1) Covering, concealing, or obscuring the name, address, or telephone number of an activity provider in any card or brochure;
- (2) Placing a telephone number, address, or other information on any card, brochure, or other advertising material produced or published by an activity provider, whether by decal, sticker, stamp, or otherwise, without identifying the activity desk by name ~~[and]~~, address~~[-]~~, and registration number;
- (3) Using a promotional card or brochure that does not clearly display the name and telephone number of the activity provider whose activity is being sold or booked when the activity is located in this State;
- (4) Withdrawing any funds of a consumer from a client trust account, other than a sales commission up to a maximum of fifteen per cent or to make a refund to the consumer, until the activity provider has been paid; ~~[or]~~
- (5) Failing to possess a current and valid registration prior to engaging in business or advertising as an activity desk~~[-]~~; or
- (6) Failing to obtain full payment for an activity prior to or at the time activity reservations are booked or placed with the activity provider or within three business days thereafter, except where the reservation specifically provides for direct payment of the amounts owed to the activity provider at the time of the activity.”

SECTION 3. Section 468M-9, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§468M-9]]~~ **Client trust accounts; maintenance of and withdrawal from ~~[such]~~ accounts.** (a) Within three business days of receipt, an activity desk shall deposit all sums received from a consumer~~[-]~~ for excursions or activities offered by the activity desk in a trust account maintained in a federally insured financial institution located in Hawaii. All sums paid by any person to an activity desk for activities furnished by an activity provider shall be held in trust for the benefit of the person making the payment and the activity provider. The activity desk shall be considered the trustee of the funds paid into the client trust account, less any commission.

(b) The trust account required by this section shall be established and maintained for the benefit of the consumers paying money to the activity desk~~[-]~~ and the activity provider. The activity desk shall not in any manner encumber the amounts in trust and shall not withdraw money therefrom except:

- (1) In partial or full payment to the activity provider directly providing the services for excursion or activities ~~[to the activity provider directly providing the services];~~ or
- (2) To make refunds as required by this chapter.
- (c) This section shall not prevent the withdrawal from the trust account

of:

- (1) The amount of the sales commission, up to a maximum of fifteen per cent;
- (2) Any interest earned and credited to the trust account;
- (3) Refunds; or
- (4) Remaining funds of a consumer once the activity provider has been paid.

(d) At the time of registration, the activity desk shall file with the department the account number and the name of the financial institution at which the trust account is held or submit a bond or letter of credit as provided in section 468M-10. The activity desk shall notify the department of any change in the account number or location within one business day of the change.

~~[(e) The director may, by rule, allow for the use of other types of funds or accounts provided that the protection for consumers is no less than that provided by this section.]”~~

SECTION 4. Section 468M-10, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read as follows:

“(f) The amount of coverage shall be equal to the average monthly net sales revenues of the activity desk as determined for the twelve-month period ending on the last sales period ending date of the fifth month prior to the anniversary date of the bond or the irrevocable letter of credit; provided that the amount of coverage of the bond or irrevocable letter of credit shall not be less than \$50,000 and shall not be more than ~~[\$100,000.]~~ \$250,000. Any activity desk providing a bond or irrevocable letter of credit for the first time during the period beginning on September 1, 1992, and ending on March 31, 1993, shall base its initial coverage amount on the twelve-month period ending on June 30, 1992. If an activity desk does not have a full twelve-month period on which to base the amount, the amount shall not be less than the average monthly net sales revenues as determined for the months available; provided that this amount shall not be less than \$75,000, notwithstanding the minimum amount of \$50,000 for regularly computed coverage.

(g) No later than four months before the anniversary date of coverage, each activity desk shall submit a notarized annual report to the department verifying the monthly net sales revenue figures for the twelve-month period upon which the amount of the bond or irrevocable letter of credit is based. However, each activity desk shall have the option not to submit the annual report if the activity desk provides a bond or an irrevocable letter of credit for the maximum amount of ~~[\$100,000.]~~ \$250,000.”

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

SECTION 6. This Act shall take effect on July 1, 2010.

(Approved May 28, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 151**

H.B. NO. 2450

A Bill for an Act Relating to Renewable Energy Facilities.

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

SECTION 1. Act 173, Session Laws of Hawaii 2009 (Act 173), recognized that to develop and finance renewable energy facilities, a site for the facilities and access to the site must often be leased, granted as an easement, or mortgaged to provide financing for the project. However, renewable energy projects may

require site acreage or configurations that do not coincide with existing, already subdivided lot boundaries. For instance, land required for a project may constitute only a portion of a large legal lot, and it may be impractical or undesirable to lease or convey the entire legal lot for a renewable energy project, or to encumber the entire legal lot with a mortgage that provides financing for the project.

Therefore, the purpose of Act 173 was to facilitate the financing and development of renewable energy projects by allowing leases and easements pertaining to renewable energy projects, together with mortgages and other conveyances as security for finance, to be created, enforced, and recorded, without requiring the landowner to obtain formal subdivision approval, and instead requiring approval for exemption from subdivision requirements, from the applicable county or other approving agency.

However, the application of Act 173 was limited to solar energy facilities permitted under section 205-2(d)(6), on land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E or wind energy facilities and related appurtenances located within a conservation state land use district. The legislature now finds that there may be other renewable energy projects that have been approved or permitted by the appropriate agencies that are required to go through the subdivision process threatening the financial viability of these projects.

Therefore, the purpose of this Act is to extend the applicability of Act 173 to include any renewable energy facilities approved by the land use commission or county planning commission under chapter 205, or any renewable energy facilities permitted or approved by the board of land and natural resources under chapter 183C. Further, it is the intent of the legislature that the remaining land (i.e. the portion of the original legal lot of record less the area used for the renewable energy facility) receive the same legal lot status as the renewable energy parcel and be recognized as a legal lot of record by the counties, thus allowing for those remaining lands to be put to other use and receive its own mortgage financing and title insurance.

SECTION 2. Section 201N-14, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The exemption from subdivision requirements authorized by this section shall only apply to leases and easements that meet the following requirements and shall be subject to the following limitations:

- (1) The lease or easement shall restrict the use of the leased land or easement area to the development and operation of a renewable energy project; provided that, to comply with section 205-4.6, agricultural uses and activities shall not be restricted on agricultural land;
- (2) The lease shall have an initial term of at least twenty years;
- (3) With respect to leases and easements on lands within an agricultural state land use district, the exemption from subdivision requirements provided by this section shall be for ~~[solar]~~:
  - (A) Solar energy facilities permitted under section 205-2(d)(6), on land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E; and
  - (B) Any renewable energy facilities approved by the land use commission or county planning commission under chapter 205;
- (4) With respect to leases and easements on lands within a conservation state land use district, the exemption from subdivision requirements provided by this section shall be for ~~[wind]~~:



- (A) Wind energy facilities, including the appurtenances associated with the production and transmission of wind-generated energy; and
  - (B) Any renewable energy facilities permitted or approved by the board of land and natural resources under chapter 183C; and
- (5) The county agency charged with administering subdivisions in the county in which the renewable energy project is to be situated or, if the land is in a conservation state land use district, the department of land and natural resources, shall approve the exemption from subdivision requirements within ninety days after the project's developer and the owner of the land on which the renewable energy project is to be situated have submitted the conceptual schematics or preliminary plans and specifications for the renewable energy project to the county agency or the department of land and natural resources, and have provided to such county agency or the department of land and natural resources, as applicable, a certification and agreement that all applicable and appropriate environmental reviews and permitting shall be completed prior to commencement of development of the renewable energy project. If, on the ninety-first day, an exemption has not been approved, it shall be deemed disapproved by the county agency or the department of land and natural resources, whichever is applicable."

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 the same date as section 2 of Act 173, Session Laws of Hawaii 2009.

(Approved May 28, 2010.)

**ACT 152**

H.B. NO. 2631

A Bill for an Act Relating to Energy Industry Reporting.

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

SECTION 1. Section 486H-13, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (l) to read:

"(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~~
  - (B) ~~Enforce] enforce~~ chapter 486B."

2. By amending subsection (n) to read:

"(n) The ~~commission] department of business, economic development, and tourism~~ shall have the power to determine the extent to which a manu-

facturer, 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]~~ department of business, economic development, and tourism to determine ~~[such]~~ compliance. ~~[The commission may use data collected pursuant to chapter 486J in determining such compliance.]~~”

SECTION 2. Chapter 486J, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“CHAPTER 486J**

**[~~PETROLEUM~~] ENERGY INDUSTRY INFORMATION REPORTING ACT”**

SECTION 3. Section 486J-1, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions 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.

“Inventory” means the volume, in barrels, of reserve that is normally maintained by the reporting entity on a monthly basis.

“Storage capacity” means the maximum volume, in barrels, of used and useful facility capacity for storage.”

2. By repealing the definitions of “competitively priced”, “corporate overhead expenses”, “dealer tank wagon price”, “major fuel user”, “major marketer”, “major oil producer”, “major oil storer”, “major oil transporter”, “non-refiner wholesale price”, “refiner wholesale price”, and “wholesale liquid fuel prices”.

~~[““Competitively priced” means fuel grade ethanol for which the wholesale price, minus the value of all applicable federal, state, and county tax credits and exemptions, is not more than the average posted rack price of unleaded gasoline of comparable grade published in the State.~~

~~“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.~~

~~“Major fuel user” means any person who uses fuel in the manufacture of products or for the generation of power in amounts determined by the commission as having a major effect on energy supplies.~~

~~“Major marketer” means any person who sells natural gas, propane, synthetic natural gas, or oil in amounts determined by the commission as having a major effect on energy supplies.~~

~~“Major oil producer” means any person who produces oil in amounts determined by the commission as having a major effect on energy supplies.~~

~~“Major oil storer” means any person who stores oil or other petroleum products in amounts determined by the commission as having a major effect on energy supplies.~~

~~“Major oil transporter” means any person who transports oil or other petroleum products in amounts determined by the commission as having a major effect on energy supplies.~~

“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.”]

SECTION 4. Section 486J-3, Hawaii Revised Statutes, is amended to read as follows:

**§486J-3 Statements.** [(a) Each [week] month, every refiner and distributor [and major fuel user shall file with the commission, on forms prescribed, prepared, and furnished by the commission, a certified statement showing on a statewide consolidated basis, and], on a reporting date established by the director, shall file with the research and economic analysis division of the department, on forms furnished by the department 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 [week,] month, 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, if for ultimate sale or consumption in another county or on another 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; the total volumes of fuel, by type or grade, sold, exchanged, or otherwise transferred or used by the distributor; and if for ultimate sale or consumption in another county or on another 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;
- (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 commission;
- (4) The total number of gallons or units of fuel, 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 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 unleaded regular and premium motor gasoline, and of each other grade of gasoline sold, by island, to retail outlets, by classes of retail trade, and to wholesale 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 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;
- (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; and
- (13) Revenues, expenses, profits and losses, and any other financial or operating information as may be required by the commission.

The commission shall prescribe applicable standards and practices for reporting to facilitate uniformity, consistency, and comparability of the data to be submitted. ]

- (1) The total volume of fuel imported into and exported from Hawaii, and if for ultimate sale or consumption in another county or on another island, the total volume of fuel, in barrels, by import location (foreign and domestic), by specific crude oil imported, and by liquid fuel type, aviation fuel, diesel fuel, biofuels, and other types of fuel as required by the department, that is sold, exchanged, or otherwise transferred or used by the distributor;
- (2) The total volume of fuel refined, manufactured, or compounded by refineries, in barrels, by company, and by specific crude oil and by liquid fuel type, aviation fuel, diesel fuel, biofuels, and other types of fuel as required by the department, including No. 2 diesel fuel, No. 1 distillate, No. 2 fuel oil, No. 4 fuel oil, kerosene, finished aviation

gasoline, kerosene-type jet fuel, residual fuel oil, consumer grade propane, and gasoline (regular, midgrade, and premium);

- (3) The total volume of fuel distributed, in barrels, by company, by island, and by liquid fuel type, aviation fuel, diesel fuel, biofuels, and other types of fuel as required by the department, and by:

(A) Classes of retail trade;

(B) Federal, state, county agencies, ships stores, or base exchanges, commercial agriculture accounts, commercial non-agriculture accounts, retail dealers, and other customers as required by the department; and

(C) Wholesale distributor; and

- (4) The total volume of inventory and storage capacity, in barrels, by reporting entity, by method of transportation of receipts and distribution, by specific crude oil, and by liquid fuel type, aviation fuel, diesel fuel, biofuels, and other types of fuel as required by the department.

(b) Each major marketer shall submit to the commission, at a time and in a form as the commission shall prescribe, information, including petroleum and petroleum product receipts, exchanges, inventories, and distributions.

(c) The commission may require additional information as and when the commission deems necessary to perform 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 this chapter; provided that the commission shall make the information available to the public, to the extent permitted under sections 486J-6 and 486J-8."

SECTION 5. Section 486J-5.5, Hawaii Revised Statutes, is amended to read as follows:

~~"[§486J-5.5]—Petroleum industry monitoring, analysis, and reporting] Energy data collection program. The [commission] department shall establish the [petroleum industry monitoring, analysis, and reporting] energy data collection program that includes development and maintenance of an [automated petroleum industry information reporting] energy database system that meets the requirements of government[;] and industry, [and the public] while promoting sound policy making [and consumer information and protection. The purpose of the petroleum industry monitoring, 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.], energy planning, energy assurance planning, and energy security."~~

SECTION 6. Section 486J-6, Hawaii Revised Statutes, is amended to read as follows:

~~"§486J-6 Confidential information. (a) [Confidential commercial information] Statements provided to the [commission] department pursuant to [this chapter that is] section 486J-3 and the data contained therein shall be deemed confidential and exempt from public disclosure under [section 92F-13 shall be~~

held in confidence by the commission or aggregated to the extent necessary in the commission's discretion to ensure confidentiality as required by] chapter 92F.

(b) No data or information submitted to the [~~commission~~] department shall be deemed confidential if it is shown that 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 department obtained or [is] was provided pursuant to [~~section 486J-3, 486J-4, 486J-4.5, or 486J-5,~~] this chapter, neither the commission or department nor any employee of the commission or department may do any of the following:

- (1) Use the information furnished or obtained for any purpose other than the purposes for which it is supplied;
- (2) Make any publication whereby the data furnished by any person can be identified; or
- (3) Permit 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."

SECTION 7. 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 commission or the department specified in this chapter that is obtained by another state agency, including the department of taxation, 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 commission and shall be treated in a confidential manner."

SECTION 8. Section 486J-9, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) The [~~commission~~] department shall notify those persons who have failed to timely provide the information specified in section 486J-3[, 486J-4, or 486J-4.5] or requested by the [~~commission~~] department under section 486J-3[, 486J-4, or 486J-4.5]. 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.

(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 [~~commission~~] department 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 chapters 480 and 486B.

(c) The [~~commission~~] department shall refer any matter under subsection (a) or (b) to the attorney general, who may exercise any appropriate legal or equitable remedies that may be available to the State."

SECTION 9. Section 486J-4, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 486J-4.5, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 486J-5, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 486J-5.3, Hawaii Revised Statutes, is repealed.

SECTION 13. Section 486J-5.6, Hawaii Revised Statutes, is repealed.

SECTION 14. Section 486J-8, Hawaii Revised Statutes, is repealed.

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

SECTION 16. This Act shall take effect on July 1, 2010.

(Approved May 28, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 153

H.B. NO. 2020

A Bill for an Act Relating to Counties.

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

SECTION 1. Section 46-15.9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any provision of law to the contrary notwithstanding, any county and its authorized personnel may impose and enforce traffic laws and shall enforce chapters 249; 286 [and]; 287; 291; 291C; 291E; 431, articles 10C and 10G; and 486, part III on public streets, roads, or highways whose ownership is in dispute between the State and the county.”

SECTION 2. Section 46-16, Hawaii Revised Statutes, is amended to read as follows:

“**§46-16 Traffic regulation and control over private streets.** Any provision of law to the contrary notwithstanding, any county and its authorized personnel may impose and enforce traffic regulations and place appropriate traffic control devices, and may enforce chapters 249; 286 [and]; 287; 291; 291C; 291E; 431, articles 10C and 10G; and 486, part III on the following categories of private streets, highways, or thoroughfares, except private roads used primarily for agricultural and ranching purposes:

- (1) Any private street, highway, or thoroughfare which has been used continuously by the general public for a period of not less than six months; provided that the county shall not be responsible for the maintenance and repair of the private street, highway, or thoroughfare when it imposes or enforces traffic regulations and highway safety laws or places or permits to be placed appropriate traffic control devices on that street, highway, or thoroughfare; provided further that no adverse or prescriptive rights shall accrue to the general public when the county imposes or enforces traffic regulations and

highway safety laws or places appropriate traffic control devices on that street, highway, or thoroughfare; nor shall county consent to the placement of traffic control signs or markings on a private street be deemed to constitute control over that street; and

- (2) Any private street, highway, or thoroughfare which is intended for dedication to the public use as provided in section 264-1 and is open for public travel but has not yet been accepted by the county.”

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 1, 2010.)

## ACT 154

S.B. NO. 633

A Bill for an Act Relating to Water.

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

SECTION 1. Section 167-23, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§167-23]]~~ **Molokai irrigation system water users advisory board; establishment; meetings.** (a) There is established a Molokai irrigation system water users advisory board, to be appointed by the governor under section 26-34. The advisory board shall consist of ~~[six]~~ seven members, as follows:

- (1) A homestead farmer user on Molokai;
- (2) A nonhomestead farmer user on Molokai;
- (3) The designee (by name rather than office) of the Molokai County Farm Bureau;
- (4) The designee (by name rather than office) of Hikiola Cooperative, Inc.;
- (5) The designee (by name rather than office) of the Molokai-Lanai soil and water conservation district; ~~[and]~~
- (6) ~~[The designee (by name rather than office) of the department of Hawaiian home lands.]~~ A homestead farmer user whose nomination has been recommended by Moku Puni O Molokai, as determined pursuant to a process established by that organization, and approved for submittal to the governor by majority vote of all homesteaders then serving on the advisory board; and
- (7) The supervisor of the Molokai district office of the department of Hawaiian home lands who shall serve as an ex officio voting member.

~~(b) All members of the advisory board shall be:~~

- ~~(1) Molokai irrigation system users;~~
- ~~(2) Residents of the island of Molokai; and~~
- ~~(3) Active general excise tax licensees.~~

~~(c) The members of the advisory board shall serve without compensation, but shall be entitled to reimbursement for necessary expenses, including travel expenses, while attending meetings and while in the discharge of their duties. For administrative purposes, and pursuant to section 26-35, the advisory board shall be placed within the department of agriculture.~~



~~(b)~~ (d) The advisory board shall meet with the department of agriculture at least six times each year. The meetings shall be held on Molokai, whenever possible.

The advisory board's duties and responsibilities shall be to ~~advise~~:

- (1) Advise the department of agriculture on matters of concern to the users of the system~~, to provide~~;
- (2) Provide support for improvements to the irrigation facilities~~, to participate~~;
- (3) Participate in the long-range planning of the system~~; and~~ ~~to act~~;
- (4) Act as liaison between the users and the department ~~of agriculture.~~

(e) Four members of the advisory board shall constitute a quorum at any meeting. No member of the advisory board shall be qualified to act in matters directly involving a company or organization of which the advisory board member is an officer, director, member, or full-time employee, or to which the advisory board member is indebted.

(f) For the purpose of this section:

"Homestead farmer user" means an individual who qualifies under the requirements set forth in the department of Hawaiian home lands administrative rules, farms a homestead parcel owned by the department of Hawaiian home lands, and is served by the Molokai irrigation system.

"Kupuna homestead farmer user" means an individual who resides on a homestead parcel on Molokai, with a Molokai irrigation system water meter. The individual shall be a former or current farmer who is working or has worked in the agricultural industry on Molokai."

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, 2010.

(Approved June 1, 2010.)

**ACT 155**

H.B. NO. 2595

A Bill for an Act Relating to General Excise Tax.

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

SECTION 1. The general excise tax accounts for over fifty per cent of state revenue realizations. Generally, the general excise tax is an efficient tax assessed on businesses for the privilege of doing business in Hawaii. The efficiency of the general excise tax stems from its broad-based application throughout the economy, coupled with its low rate.

Over time, the general excise tax's efficiency has been diminished due to the routine addition of tax exemptions for particular businesses or industries. A majority of these exemptions allow businesses that are otherwise very profitable to avoid paying the general excise tax altogether. Because some businesses pay no tax, they often do not register to do business in Hawaii or file tax returns. Furthermore, out-of-state businesses that claim exemption from the general excise tax also fail to register, file, or otherwise expressly declare the exemption. This lack of data on businesses operating in Hawaii greatly undermines the department of taxation's ability to gather information on businesses claiming tax benefits. Requiring businesses to be "on the radar" of the department of taxation

will greatly assist in tax administration by providing valuable information that the State may use in compliance efforts.

Disallowing any general excise tax benefits unless basic information is filed is rational and justifiable, especially when tax benefits are a matter of legislative grace. In a time when tax incentives are reviewed with scrutiny by policymakers and administrators, it is important to ensure that businesses do not avoid government tax-benefit oversight by assuming that filing is unnecessary when no tax is due as a result of tax benefits. Even when no tax is due, officials should have all necessary data and information about persons conducting business in Hawaii to test the effectiveness of the tax system and accurately account for those that enjoy exemptions from it.

Additionally, though the general excise tax is a tax on businesses, Hawaii businesses are allowed by law to pass on their general excise tax costs to customers as a cost recovery. However, as the economy has declined, more businesses have failed to pay their general excise tax, even though the tax is still visibly passed on to Hawaii consumers under the guise that it would be paid to the government. Businesses that do not timely remit the tax recovery amount are known to use these funds to pay operating expenses, and some disreputable businesses pocket these funds with no intention of paying their taxes. In short, the practice of increasing consumer costs under the pretext of tax recovery now becomes a consumer-protection matter, and businesses should be liable for paying those tax recovery amounts owed to the State. Especially since more businesses are keeping these tax recovery amounts to cover costs during this economic downturn, the government inevitably becomes the last creditor to be paid.

To restore efficiency in Hawaii's general excise tax, without increasing the tax rate, repealing exemptions, or placing additional burdens on businesses other than what is fair and reasonable, this Act strengthens the general excise tax by requiring all businesses that enjoy excise tax exemptions to register to do business in Hawaii, timely file their tax returns, as well as expressly claim their entitlement. These requirements ensure that the proper information is conveyed to the State to monitor a tax exemption's cost and effectiveness. Additionally, this Act creates a personal trust liability for businesses that use the general excise tax as the basis for increasing their prices and ensures that those funds are paid to the State for the benefit of consumers and businesses.

SECTION 2. Chapter 237, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§237- General excise tax benefits; denial of tax benefits for failure to properly claim.** (a) Notwithstanding any other law to the contrary, a person shall not be entitled to any general excise tax benefit under this chapter unless the person claiming the general excise tax benefit:

- (1) Obtains a license to engage in and conduct business as required under section 237-9; and
  - (2) Files the annual general excise tax reconciliation tax return as provided under this chapter or chapter 231 not later than twelve months from the due date prescribed for the return.
- (b) The director may require any taxpayer to furnish information to determine the validity of any general excise tax benefit and may adopt rules pursuant to chapter 91 necessary to effectuate the purposes of this section.
- (c) The director may waive the denial of the general excise tax benefit under subsection (a) if the failure to comply is due to reasonable cause and not to the wilful neglect of the taxpayer.

(d) For purposes of this section, “general excise tax benefit” means any tax exemption, exclusion of a taxable amount, a reduction from the measure of a tax imposed, a tax deduction, a tax credit, a lower rate of tax, a segregation or division of taxable amounts between multiple taxpayers involved in the same transaction, or any income splitting allowed under this chapter.

**§237- Certain amounts held in trust; liability of key individuals.** (a) There shall be personal liability for the taxes imposed under this chapter as provided in this section for the following amounts of gross income or gross proceeds:

- (1) Any amount collected as a recovery of the taxpayer’s liability under this chapter, where the amount is passed on as the tax owed by the taxpayer under this chapter for the transaction and is separately stated or accounted for in a receipt, contract, invoice, billing, or other evidence of the business activity; or
- (2) An amount equal to the tax liability under this chapter on a transaction where a taxpayer does not separately state or account for the amount as a tax recovery as provided in paragraph (1). For purposes of this paragraph, the amount of the imputed tax liability is the result of multiplying the gross income or gross proceeds received in the transaction by the tax rate.

The amounts under paragraphs (1) and (2) shall be held in trust for the benefit of the State and for payment to the State in the manner and at the time required by this chapter.

(b) The personal liability under this section applies to any officer, member, manager, or other person having control or supervision over amounts of gross proceeds or gross income collected to pay the general excise tax and held in trust under subsection (a), or who is charged with the responsibility for the filing of returns or the payment of general excise tax on gross income or gross proceeds collected and held in trust under subsection (a). The person shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if such officer or other person wilfully fails to pay or to cause to be paid any taxes due from the taxpayer pursuant to this chapter.

For purposes of this subsection, “wilfully fails to pay or to cause to be paid” shall be construed in accordance with judicial interpretations given to similar provisions of the Internal Revenue Code; consistent therewith, the term “wilfully” shall mean a voluntary, intentional violation of a known legal duty.

(c) An officer, member, manager, or other responsible person shall be liable only for general excise taxes on gross income or gross proceeds collected, plus interest and penalties on those taxes, that became due during the period the person had control, supervision, responsibility, or a duty to act for the taxpayer as described in subsection (b) of this section.

(d) Persons liable under subsection (b) are exempt from liability when nonpayment of the general excise tax on gross income or gross proceeds held in trust is for good cause as determined by the director.

(e) The voluntary or involuntary dissolution of the taxpayer or the withdrawal or surrender of its right to engage in business in this state shall not discharge the liability hereby imposed.”

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

**SECTION 4.** New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 2010, and shall apply to gross income or gross proceeds received by applicable taxpayers on or after its effective date.

(Approved June 1, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 156**

H.B. NO. 2661

A Bill for an Act Relating to Anatomical Gifts.

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

SECTION 1. The purpose of this Act is to save lives, improve the quality of life for those in Hawaii who need organ transplants, and enhance the quality of medical education in Hawaii by ensuring that the wishes of individuals desiring to provide anatomical gifts on behalf of a decedent are fulfilled.

SECTION 2. Section 327-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Subject to subsection (c), an anatomical gift by a person authorized under section 327-9 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available~~[-]; provided that any response other than an express, contrary indication regarding the decedent’s anatomical gift shall prohibit amendment or revocation of an anatomical gift of the decedent’s body or body parts.~~ If more than one member of the prior class is reasonably available, the gift made by a person authorized under section 327-9 may be amended or revoked only if a majority of the reasonably available members of that class agree to the amending or revoking of the gift ~~[or they are equally divided as to whether to amend or revoke an anatomical gift.]; provided that any response other than an express, contrary indication by the majority of the reasonably available members of that class regarding the decedent’s anatomical gift shall prohibit amendment or revocation of an anatomical gift of the decedent’s body or body parts.”~~

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 1, 2010.)

**ACT 157**

S.B. NO. 2599

A Bill for an Act Relating to Health Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10A to be appropriately designated and to read as follows:

“§431:10A- Colon cancer screening coverage. (a) Each policy of accident and health or sickness insurance providing coverage for health care, except for policies that only provide coverage for specified diseases or other limited benefit coverage, shall provide coverage for colorectal-cancer screening by all A and B grade screening modalities as recommended by the United States Preventive Services Task Force.

(b) Beginning March 1, 2011, all health insurance providers in Hawaii shall inform their insured about the risk associated with undiagnosed colorectal-cancer and encourage the insured to consult with the insured’s physician about available screening options.”

SECTION 2. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to part VI of article 1 to be appropriately designated and to read as follows:

“§432:1- Colon cancer screening coverage. (a) All individual and group hospital and medical service contracts providing health care coverage shall provide coverage for colorectal-cancer screening by all A and B grade screening modalities as recommended by the United States Preventive Services Task Force.

(b) Beginning March 1, 2011, all health insurance providers in Hawaii shall inform their insured of the risk associated with undiagnosed colorectal cancer and encourage the insured to consult with the insured’s physician about available screening options.”

SECTION 3. Section 432D-23, Hawaii Revised Statutes, is amended to read as follows:

“§432D-23 Required provisions and benefits. Notwithstanding any provision of law to the contrary, each policy, contract, plan, or agreement issued in the [State] state after January 1, 1995, by health maintenance organizations pursuant to this chapter, shall include benefits provided in sections 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-116.5, 431:10A-116.6, 431:10A-119, 431:10A-120, 431:10A-121, 431:10A-125, [and] 431:10A-126, and 431:10A-, and chapter 431M.”

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

SECTION 5. This Act shall take effect upon approval and shall apply to policies, contracts, and plans of health insurance issued or renewed after January 1, 2011.

(Approved June 1, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 158

S.B. NO. 2885

A Bill for an Act Relating to Health Savings Accounts.

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

SECTION 1. Health savings accounts are an encouraging development in the health insurance market, creating a new opportunity for affordable cov-

erage and engaging patients as partners in managing costs and achieving high value in health care spending.

Health savings accounts combine a tax-advantaged savings account earmarked for medical expenses with a high-deductible health insurance plan. Lower insurance premiums offset, in part or in full, the amount used to fund the account, which, in turn, are used to pay expenses before the deductible is met.

Health savings account funds belong to the account holder, and unspent balances accumulate and accrue interest tax-free from year to year. After health care costs reach the high deductible, health plan benefits begin, typically through a preferred provider organization, with little to no cost-sharing and limits on total out-of-pocket expenses.

Because patients using health savings account funds are literally spending their own money, they have greater control over their health care decisions, while assuming greater financial responsibility for those decisions. Furthermore, because patients are spending their own money before the deductible is met, high deductibles shift the locus of cost-consciousness, and thus decision-making, from third-party payers to patients and those who care for them. Such cost-consciousness is a welcome antidote to the widening divide between public expectations and rising health care costs and could lessen the need for heavy-handed managed care or government controls. Health savings accounts encourage patients to comparison shop among treatment options, as well as among physicians and hospitals. A critical mass of savvy shoppers is needed to make health care markets more responsive for everyone.

In addition, health savings accounts provide a health coverage option to those who prefer to purchase true insurance protection against the financial consequences of low-probability, high-cost events, rather than coverage that, to a large extent, amounts to prepayment of anticipated and routine health care. High deductibles keep premiums down, bringing coverage within reach for many low-income individuals and families.

Several features of health savings accounts protect against inappropriate underutilization of care. The savings account itself allows enrollees to set aside money to pay for medical expenses, particularly expenses incurred before the deductible has been met. Federal law requires health savings account high-deductible health plans to provide a stop-loss limit on patient out-of-pocket expenses. A person with a chronic or expensive medical condition could find a health savings account more affordable than conventional coverage because of the premium savings, out-of-pocket spending limits, and tax advantages, in addition to greater control over health care decisions.

Although more evidence is needed on the actual impact of health savings accounts on patient behavior and on mechanisms through which such an impact occurs, health savings account coverage may encourage patients to seek health information that prompts greater use of preventive services or adoption of healthy lifestyle habits. Health savings accounts could also increase aversion to behavior that may create future chronic conditions that are expensive to treat.

It is imperative that health care leaders come together to discuss ways in which health savings accounts can assume a more meaningful role in health care coverage in Hawaii. Under the Hawaii Prepaid Health Care Act, the director of labor and industrial relations, after advice from the prepaid health care advisory council, determines whether the benefits that are provided in a prepaid health care plan offered by a Hawaii employer comply with specified standards. Issues with the Hawaii Prepaid Health Care Act need to be addressed to determine the role of health savings accounts in Hawaii's health insurance market. Health savings accounts are currently an option under the Hawaii employer-union

health benefits trust fund, as well as an option for sole proprietors, self-employed individuals, and those working as part-time employees.

The rapidly rising cost of health care is crippling businesses, forcing layoffs and pay reductions. It is important that businesses and health care consumers have access to all health plan options to lower costs and increase the quality of care. Allowing consumers to enroll in a health savings account will help lower the cost of health care, encourage healthier lifestyles, provide greater patient and physician control of health care decisions, and save money for employers and employees alike.

The purpose of this Act is to establish a task force to evaluate the current state of health savings accounts options in Hawaii's health insurance market, and to explore ways to expand access to these accounts in Hawaii.

SECTION 2. (a) There is established the health savings accounts assessment task force within the department of labor and industrial relations for administrative purposes and consisting of the following members:

- (1) The director of labor and industrial relations, who shall appoint the task force members by August 1, 2010;
- (2) Two members of the Hawaii prepaid health care advisory council;
- (3) One member or employee of the Hawaii Medical Association;
- (4) Two representatives from the health insurance industry;
- (5) Two representatives from non-government employee unions;
- (6) One representative from the Hawaii Credit Union League;
- (7) One representative from the Hawaii Bankers Association; and
- (8) Two representatives from other interested organizations or stakeholders, at the discretion of the director of labor and industrial relations.

The task force shall elect from among its members a chairperson and any other officers it deems necessary. Members of the task force shall not be compensated.

The task force shall convene its initial meeting no later than twenty days after the director of labor and industrial relations has appointed all of the members of the task force.

(b) The task force shall:

- (1) Study the current state of health savings account options in Hawaii's health insurance market;
- (2) Establish a plan of action to encourage and expand the use of health savings accounts in Hawaii, including potential amendments to the Hawaii Revised Statutes;
- (3) Identify and recruit health plans that may help expand the availability of health savings accounts in Hawaii;
- (4) Assess the potential economic impact, including costs and benefits, of expanding health savings account options in Hawaii, and estimate the potential monetary savings for individuals and employers who are offered health savings accounts; and
- (5) Work to develop a way to implement flexible spending accounts for employee benefit programs that provide a tax deferred method of payment for eligible health care expenses and dependent care expenses by directing pre-tax money from an employee's paycheck into flexible spending accounts, and providing that money left in the flexible spending accounts after all reimbursements have been processed may be carried forward to the next plan year.

For the purposes of this subsection, "health savings account" means a tax-deferred personal savings account, as set forth in Internal Revenue Code Section

223, linked to a high-deductible health insurance plan and to which employers, sole proprietors, labor unions, or employees may contribute funds for medical expenses.

(c) The task force shall submit to the legislature, through the department of labor and industrial relations, its findings and recommendations, including any proposed legislation, no later than twenty days prior to the convening of the 2011 regular session.

(d) The task force shall cease to exist on June 30, 2011.

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

(Approved June 2, 2010.)

## ACT 159

H.B. NO. 2676

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

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

SECTION 1. Chapter 6K, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§6K- Procurement; exemptions.** Contracts made by the commission for the procurement of food or fuel products necessary to carry out the purposes of this chapter shall be exempt from chapter 103D; provided that the commission shall continue to comply with any reporting requirements under chapter 103D or rules adopted thereunder for contracts entered into pursuant to this section.”

SECTION 2. Section 103D-102, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding subsection (a), this chapter shall not apply to contracts made by [any]:

- (1) Any regional system board of the Hawaii health systems corporation[-]; or
- (2) The Kaho‘olawe island reserve commission, except as provided by section 6K-.”

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

SECTION 4. This Act shall take effect on July 1, 2010; provided that the amendment made to section 103D-102(c), Hawaii Revised Statutes, by this Act shall not be repealed when section 103D-102, Hawaii Revised Statutes, is reenacted on July 1, 2012, by section 14 of Act 175, Session Laws of Hawaii 2009; provided further that this Act shall be repealed on July 1, 2013; and provided further that, on July 1, 2013, section 103D-102, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of Act 175, Session Laws of Hawaii 2009.

(Approved June 2, 2010.)

### Note

1. Edited pursuant to HRS §23G-16.5.



A Bill for an Act Relating to Coastal Areas.

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

SECTION 1. The legislature finds that there are many shoreline areas throughout the state where the overgrowth of vegetation inhibits lateral access and transit along the beach, thereby denying the public of use and enjoyment of the public domain. The area seaward of the shoreline is part of the State's conservation district and is regulated by the department of land and natural resources. Although natural vegetative overgrowth exists along beach areas, there is also evidence in many areas of vegetative overgrowth into the beach area induced or cultivated by private property owners. The department does not have the funding nor should it be financially responsible for the removal of induced or cultivated vegetation by private landowners which interfere or encroach seaward of the shoreline.

The legislature further finds that beach transit corridors are similar to public sidewalks in the sense that they are for public use. To maintain beach transit along the shoreline, provisions similar to those pertaining to the maintenance of sidewalks are needed when induced or cultivated vegetation interferes or encroaches into the beach transit corridor.

The purpose of this Act is to reaffirm a longstanding public policy of extending to public use and ownership as much of Hawaii's shoreline as is reasonably possible by ensuring the public's lateral access along the shoreline, by requiring the removal of the landowners' induced or cultivated vegetation that interferes or encroaches seaward of the shoreline.

SECTION 2. Chapter 115, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§115- Duty to maintain access within beach transit corridors.** (a) The department of land and natural resources shall maintain access within beach transit corridors under this chapter and chapter 183C, by requiring private property owners to ensure that beach transit corridors abutting their lands shall be kept passable and free from the landowner's human-induced, enhanced, or unmaintained vegetation that interferes or encroaches in the beach transit corridors.

(b) In addition to the criminal penalties in section 115-9, the department is authorized to issue notice to landowners who fail to maintain access within beach transit corridors, as set out in subsection (a), abutting their property. If any landowner fails to remove the landowner's human-induced, enhanced, or unmaintained vegetation within twenty-one days of notice being issued, the department shall take any action authorized under section 183C-7 as necessary to maintain access within beach transit corridors; provided that if the landowner contests the basis upon which the notice was issued prior to the expiration of the notice period, the department's enforcement actions under section 183C-7 shall be tolled until the final resolution of the contested matter.

(c) As used in this section, "landowner" means the record owner of the property or the record owner's agent, including a lessee, tenant, property manager, or trustee."

SECTION 3. Section 115-5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§115-5] Transit area and public Beach transit corridor defined. (a) The right of transit [along the shoreline exists below the private property line which is defined as being along the upper reaches of the wash of waves, usually evidenced by the edge of vegetation or by the debris left by the wash of waves;] shall exist seaward of the shoreline and this area shall be defined as a beach transit corridor. For purposes of this section, “shoreline” shall have the same meaning as in section 205A-1.~~

However, in areas of cliffs or areas where the nature of the topography is such that there is no reasonably safe transit for the public along the shoreline below the private property lines, the counties by condemnation ~~shall~~ may establish along the makai boundaries of the property lines public transit corridors which shall be not less than six feet wide.

(b) Along beach transit corridors where the abutting landowner’s human-induced, enhanced, or unmaintained vegetation interferes or encroaches with beach transit corridors, the department of land and natural resources may require the abutting landowner to remove the landowner’s interfering or encroaching vegetation.”

SECTION 4. Section 115-9, Hawaii Revised Statutes, is amended to read as follows:

~~“[§115-9] Obstructing access to public property; penalty. (a) A person commits the offense of obstructing access to public property if the person, by action or by having installed a physical impediment, intentionally prevents a member of the public from traversing:~~

- ~~(1) A public right-of-way;~~
- ~~(2) A transit area; ~~or~~~~
- ~~(3) A public transit corridor; or~~
- ~~(4) A beach transit corridor;~~

~~and thereby obstructs access to and along the sea, the shoreline, or any inland public recreational area.~~

~~(b) Physical impediments that may prevent traversing include but are not limited to the following:~~

- ~~(1) Gates;~~
- ~~(2) Fences;~~
- ~~(3) Walls;~~
- ~~(4) Constructed barriers;~~
- ~~(5) Rubbish;~~
- ~~(6) Security guards; ~~and~~~~
- ~~(7) Guard dogs or animals[-]; and~~
- ~~(8) A landowner’s human-induced, enhanced, or unmaintained vegetation that interferes or encroaches within beach transit corridors.~~

~~(c) Obstructing access to public property is a misdemeanor.~~

~~(d) Minimum fines for violation under this section shall be as follows:~~

- ~~(1) \$1,000 for a second conviction; and~~
- ~~(2) \$2,000 for any conviction after a second conviction.~~

~~(e) As used in this section:~~

~~“Landowner” means the record owner of the property or the record owner’s agent, including a lessee, tenant, property manager, or trustee.~~

~~“Person” means a natural person or a legal entity.~~

~~“Public recreational area” means public lands or bodies of water opened to the public for recreational use.”~~

SECTION 5. Section 205A-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Policies.

(1) Recreational resources;

(A) Improve coordination and funding of coastal recreational planning and management; and

(B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:

(i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;

(ii) Requiring replacement of coastal resources having significant recreational value including, but not limited to[-] surfing sites, fishponds, and sand beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable;

(iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;

(iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;

(v) Ensuring public recreational uses of county, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources;

(vi) Adopting water quality standards and regulating point and nonpoint sources of pollution to protect, and where feasible, restore the recreational value of coastal waters;

(vii) Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing; and

(viii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, and county authorities; and crediting such dedication against the requirements of section 46-6[-];

(2) Historic resources;

(A) Identify and analyze significant archaeological resources;

(B) Maximize information retention through preservation of remains and artifacts or salvage operations; and

(C) Support state goals for protection, restoration, interpretation, and display of historic resources[-];

(3) Scenic and open space resources;

(A) Identify valued scenic resources in the coastal zone management area;

(B) Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;

(C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and

- (D) Encourage those developments that are not coastal dependent to locate in inland areas[-];
- (4) Coastal ecosystems;
  - (A) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;
  - (B) Improve the technical basis for natural resource management;
  - (C) Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;
  - (D) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and
  - (E) Promote water quantity and quality planning and management practices that reflect the tolerance of fresh water and marine ecosystems and maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution control measures[-];
- (5) Economic uses;
  - (A) Concentrate coastal dependent development in appropriate areas;
  - (B) Ensure that coastal dependent development such as harbors and ports, and coastal related development such as visitor industry facilities and energy generating facilities, are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and
  - (C) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:
    - (i) Use of presently designated locations is not feasible;
    - (ii) Adverse environmental effects are minimized; and
    - (iii) The development is important to the State's economy[-];
- (6) Coastal hazards;
  - (A) Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and point and nonpoint source pollution hazards;
  - (B) Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint source pollution hazards;
  - (C) Ensure that developments comply with requirements of the Federal Flood Insurance Program; and
  - (D) Prevent coastal flooding from inland projects[-];
- (7) Managing development;
  - (A) Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;
  - (B) Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements; and
  - (C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life

- cycle and in terms understandable to the public to facilitate public participation in the planning and review process[-];
- (8) Public participation;
    - (A) Promote public involvement in coastal zone management processes;
    - (B) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal issues, developments, and government activities; and
    - (C) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts[-];
  - (9) Beach protection;
    - (A) Locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and minimize loss of improvements due to erosion;
    - (B) Prohibit construction of private erosion-protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities; ~~and~~
    - (C) Minimize the construction of public erosion-protection structures seaward of the shoreline[-];
    - (D) Prohibit private property owners from creating a public nuisance by inducing or cultivating the private property owner's vegetation in a beach transit corridor; and
    - (E) Prohibit private property owners from creating a public nuisance by allowing the private property owner's unmaintained vegetation to interfere or encroach upon a beach transit corridor;
  - (10) Marine resources;
    - (A) Ensure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;
    - (B) Coordinate the management of marine and coastal resources and activities to improve effectiveness and efficiency;
    - (C) Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;
    - (D) Promote research, study, and understanding of ocean processes, marine life, and other ocean resources ~~in order~~ to acquire and inventory information necessary to understand how ocean development activities relate to and impact upon ocean and coastal resources; and
    - (E) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.”

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

SECTION 7. This Act shall take effect upon its approval; provided that on June 30, 2013, this Act shall be repealed and sections 115-5, 115-9, and

205A-2(c), Hawaii Revised Statutes, shall be reenacted in the form in which they read one day prior to the effective date of this Act.

(Approved June 2, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 161**

S.B. NO. 2115

A Bill for an Act Relating to Preaudits for Proposed Payments.

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

**PART I**

SECTION 1. The legislature finds that like the University of Hawaii, the department of education should be required to preaudit all proposed payments of \$10,000 or more, but should have preaudit flexibility for proposed payments of less than \$10,000. The legislature also finds that the fiscal autonomy previously granted to the University of Hawaii and the department of education until June 30, 2011, should be extended.

The purpose of this Act is to:

- (1) Clarify that the department of education is required to preaudit proposed payments of \$10,000 or more;
- (2) Require the University of Hawaii and the department of education to preaudit samples of proposed payments of less than \$10,000 to determine the propriety of expenditures and compliance with applicable laws, executive orders, and rules, as their respective chief financial officers determine to be appropriate; and
- (3) Extend the fiscal autonomy granted to the University of Hawaii and the department of education until June 30, 2015.

**PART II**

SECTION 2. This part amends section 40-1, Hawaii Revised Statutes, in the form in which it will read after it is repealed and reenacted under Act 58, Session Laws of Hawaii 2004, as amended, on June 30, 2010.

SECTION 3. Section 40-1, Hawaii Revised Statutes, is amended<sup>1</sup> to read as follows:

**“§40-1 Comptroller to supervise accounts, etc.** (a) The comptroller shall be the general accountant of the State[.] and [he] shall cause to be recorded every receipt and disbursement of money made to, by, or through the treasury. [He] The comptroller shall have the power to withhold any disbursement for which no appropriation has been made or which would cause a specific appropriation to be exceeded.

(b) With respect to the executive branch, [he] except the University of Hawaii until June 30, 2015, and the department of education until June 30, 2015, the comptroller shall have complete supervision of all accounts. [He] The comptroller shall preaudit<sup>2</sup> all proposed payments of \$10,000 or more to determine the propriety of expenditures and compliance with [such] executive

~~orders[5] and rules [and regulations as] that may be in effect. [He shall<sup>3</sup> when] When necessary, the comptroller shall withhold [his] approval of any payment. Whenever [he withholds his approval, he shall promptly notify] approval is withheld, the department or agency concerned[-] shall be promptly notified. With respect to the University of Hawaii and the department of education, the comptroller shall issue warrants for the release of funds for the operating costs of the university 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 or department of education, as applicable; provided that:~~

- ~~(1) The amounts released shall not exceed the allotment ceilings for the 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; and~~
- ~~(2) The comptroller may issue warrants as an advance from the state treasury to the University of Hawaii 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 and the department of education.~~

~~The University of Hawaii and the department of education shall preaudit all proposed payments of \$10,000 or more and shall preaudit samples of the population of proposed payments of less than \$10,000; provided that the sample size comprises at least five per cent of the population, and is of a size that the chief financial officers of the University of Hawaii and the department of education, as applicable, determine appropriate, to determine the propriety of expenditures and compliance with applicable laws, executive orders, and rules as may be in effect. The University of Hawaii 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 or the superintendent of education, as applicable, and the comptroller; provided that when requested by the university or department of education, the comptroller shall make all disbursements for the university or department of education, as applicable, subject to available allotment. Funds released pursuant to this section shall be deposited by the university or department of education, as applicable, in accordance with the provisions applicable to the director of finance under chapter 38. 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.~~

~~(c) With respect to the judiciary and the legislature, [he] the comptroller shall make available to the judiciary and the legislature the total amount appropriated to each, except that the judiciary and the legislature may request [his] the comptroller's services in maintaining custody of the amount appropriated to each and in making payments therefrom. When such services are requested, [he] the comptroller shall make all disbursements requested by the judiciary or the legislature, but [he] shall not make any disbursement<sup>4</sup> for which no appropriation has been made or which would cause a specific appropriation to be exceeded.~~

~~(d) Any financial transaction recorded [by the comptroller] may be inspected by the public."~~

### PART III

SECTION 4. This part amends section 40-1, Hawaii Revised Statutes, which is set for repeal and reenactment under Act 58, Session Laws of Hawaii 2004, as amended, in the event that the 2010 legislature either repeals the

reenactment provisions of Act 58, Session Laws of Hawaii 2004, as amended, that apply to this section, or extends the date on which this section will be repealed and reenacted.

SECTION 5. 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,] 2015, the Hawaii tourism authority, and the department of education until June 30, [2011,] 2015, 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[-] that:

- (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 and the department of education shall preaudit all proposed payments of \$10,000 or more and [the] shall preaudit samples of the population of proposed payments of less than \$10,000; provided that the sample size comprises at least five per cent of the population, and is of a size that the chief financial officers of the University of Hawaii and the department of education, as applicable, determine appropriate, to determine the propriety of expenditures and compliance with applicable laws, executive orders, and rules. 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 univer-



sity, 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.”

**PART IV**

**SECTION 6.** Any act passed by the legislature during this regular session of 2010, whether enacted before or after the effective date of this Act, shall be amended to conform to the provisions of this Act relating to:

- (1) The repeal date of the department of education’s exemption from the comptroller’s supervision of the department of education’s accounts;
- (2) The requirement that the department of education shall preaudit all proposed payments of \$10,000 or more; and
- (3) The requirement that the University of Hawaii and department of education shall preaudit samples of proposed payments of less than \$10,000.

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

**SECTION 8.** This Act, upon its approval, shall take effect retroactive to April 30, 2010; provided that:

- (1) Part II shall only take effect upon the repeal and reenactment of section 40-1, Hawaii Revised Statutes, on June 30, 2010, pursuant to Act 58, Session Laws of Hawaii 2004, as amended; and
- (2) Part III shall only take effect upon the repeal of paragraph (2)(B) of section 14 of Act 58, Session Laws of Hawaii 2004, as amended, pursuant to an Act of the 2010 legislature; or in the absence of that repeal, upon the extension of the June 30, 2010, repeal date in paragraph (2) of section 14 of Act 58, Session Laws of Hawaii 2004, as amended, pursuant to an Act of the 2010 legislature.

(Approved June 2, 2010.)

**Notes**

1. Amended section is based on section as it read on June 30, 1986, prior to amendment made by Act 321, Session Laws of Hawaii 1986.
2. Prior to amendment “pre-audit” appeared here.
3. Prior to amendment a comma appeared here.
4. Prior to amendment “disbursements” appeared here.

**ACT 162**

S.B. NO. 2472

A Bill for an Act Relating to Mortgage Foreclosures.

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

**SECTION 1.** The legislature finds that the number of mortgage foreclosures of residential property has reached an alarming level. The legislature acknowledges that this situation is not unique to Hawaii and is part of

a nationwide economic downturn and resulting upheaval throughout the home lending industry. Because of these concerns, there have been numerous measures proposed during the 2010 legislative session to address foreclosure-related issues. However, it is unclear whether any of these approaches will improve the conditions relating to foreclosures or improve the current foreclosure laws.

The legislature further finds that a comprehensive evaluation of Hawaii's mortgage foreclosure laws is necessary before the enactment of meaningful legislation that, on balance, addresses the concerns of both borrowers and lenders involved in mortgage foreclosures without further overburdening the courts.

The purpose of this Act is to create a mortgage foreclosure task force to conduct an extensive analysis of all factors affecting mortgage foreclosures in the state and to recommend appropriate legislation.

**SECTION 2.** (a) There is established a mortgage foreclosure task force within the department of commerce and consumer affairs for administrative purposes. The director of commerce and consumer affairs shall select the initial members of the task force and shall invite at least one member from each of the following:

- (1) The department of commerce and consumer affairs' office of consumer protection;
- (2) A mortgage counseling organization approved by the United States Department of Housing and Urban Development, preferably with expertise in consumer credit counseling;
- (3) The Legal Aid Society of Hawaii;
- (4) The Hawaii Financial Services Association;
- (5) The Hawaii Bankers Association;
- (6) The Mortgage Bankers Association of Hawaii;
- (7) The Hawaii Credit Union League;
- (8) The Hawaii Council of Associations of Apartment Owners;
- (9) The Hawaii State Bar Association Collection Law Section;
- (10) The Hawaii State Bar Association Bankruptcy Law Section or the Bankruptcy Court of the United States District of Hawaii; and
- (11) The Hawaii state judiciary.

The members of the mortgage foreclosure task force shall elect a chairperson from among its membership. The chairperson of the task force shall seek to maintain a balanced representation of interests and may select additional task force members at the chairperson's discretion.

(b) The mortgage foreclosure task force shall undertake a study to develop both general and specific policies and procedures necessary to improve the manner in which mortgage foreclosures are conducted in the state. In particular, the task force shall consider the following areas for possible improvements:

- (1) The adequacy of notice given to mortgagors of available mortgage counseling programs and the optimal timing for such notification and counseling;
- (2) The availability of loan documentation to mortgagors from mortgagees prior to and during the foreclosure process;
- (3) The establishment of statutory bidding thresholds for properties sold via foreclosure;
- (4) The statutory timeline for power-of-sale foreclosures;
- (5) Further regulation of distressed property consultants; and
- (6) Revisions to part II of chapter 667, Hawaii Revised Statutes, to make it a viable vehicle for power-of-sale foreclosures.

(c) In undertaking the study, the mortgage foreclosure task force may take into account any of the following factors:

- (1) Existing regulation, on both the state and federal levels;
  - (2) The state of the national and local economy, mortgage loan default rates, and unemployment rates;
  - (3) Local borrowing and lending practices vis-à-vis mainland practices;
  - (4) Standard mortgage loan qualifications;
  - (5) Language barriers and other cultural factors unique to this state;
  - (6) The extent to which predatory mortgage lending, abuse of collection procedures, and otherwise unfair, fraudulent, and deceptive practices have impacted mortgagors;
  - (7) The effect of various mortgage loan terms, interest rates, fees, risk-based pricing, single-premium credit insurance, financing, and payment structures;
  - (8) The extent to which mortgage loan terms and conditions are disclosed to and understood by borrowers;
  - (9) A borrower's ability to negotiate mortgage loan terms and prices;
  - (10) The role of mortgage servicing agents and their practices;
  - (11) The availability, consumer knowledge, and use of mortgage counseling;
  - (12) The availability, consumer knowledge, and use of loan modification processes;
  - (13) The length of time and expense associated with completing the foreclosure process;
  - (14) The extent to which mortgagees provide mortgagors with mortgage documents when requested;
  - (15) The impact on the state's judicial system and the timely resolution of foreclosure disputes;
  - (16) The extent to which mortgage foreclosures go uncontested;
  - (17) The proof required to establish standing for foreclosing mortgagees;
  - (18) Association and maintenance fees and other costs borne by neighbor unit holders in condominium or community associations when mortgagors are in default;
  - (19) Abuses of the existing law by mortgagors and mortgagees;
  - (20) The effect of certain inefficiencies and barriers under the current law relating to foreclosures, such as serving process upon absent or deceased mortgagors; and
  - (21) The extent to which the above factors impact power-of-sale vis-à-vis judicial foreclosures.
- (d) The mortgage foreclosure task force shall analyze the effectiveness and any defects of the foreclosure procedures currently set in statute for both judicial and power-of-sale foreclosures. In this analysis, the task force:
- (1) May consider and recommend alternative procedures for timeshare property;
  - (2) May consider and recommend alternative procedures for foreclosures sought by junior lien holders such as condominiums, co-op apartments, and community associations collecting maintenance fees;
  - (3) May propose measures to clarify the application of chapter 667, Hawaii Revised Statutes, to other property statutes;
  - (4) Shall comment on the extent to which existing law does or does not comply with state and federal constitutional due process guarantees;

- (5) Shall comment on any effect proposed legislative changes will have on borrowers who are current on their mortgage loans; and
- (6) Shall seek to maintain and not erode existing consumer protections.
- (e) The mortgage foreclosure task force shall comment on the feasibility of establishing a state entity or administrator to focus on addressing the concerns of mortgagors, disseminating information, and otherwise engaging in consumer education. The task force shall propose funding mechanisms to enable the operation of this entity.
- (f) Members of the mortgage foreclosure task force shall serve without compensation and shall not be reimbursed for expenses.
- (g) The mortgage foreclosure task force shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the 2011 and 2012 regular sessions, and shall participate in a joint informational session upon request of the legislature.
- (h) The legislative reference bureau shall assist the task force in preparing its findings, recommendations, and proposed legislation; provided that the chairperson of the task force shall submit the task force's proposals to the legislative reference bureau for drafting no later than November 1, 2010 for the report to the 2011 regular session and no later than November 1, 2011, for the report to the 2012 regular session.
- (i) The mortgage foreclosure task force shall cease to exist on June 30, 2012.

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

(Approved June 3, 2010.)

## ACT 163

H.B. NO. 2077

A Bill for an Act Relating to Education.

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

SECTION 1. Section 302A-1134, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

~~“(c) [No child who is seventeen years of age or over shall be admitted to the ninth grade of a public four-year high school, and no child who is eighteen years of age or over shall be admitted to the tenth grade of a public senior high school, except upon the written permission of the superintendent when in the superintendent’s opinion the facts warrant admission.] No person who is twenty years of age or over on the first instructional day of the school year shall be eligible to attend a public school. If a person reaches twenty years of age after the first instructional day of the school year, the person shall be eligible to attend public school for the full school year.”~~

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, 2010.

(Approved June 3, 2010.)

A Bill for an Act Relating to the Motor Vehicle Industry Licensing Act.

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

SECTION 1. Chapter 437, Hawaii Revised Statutes, is amended by designating sections 437-1 through 437-42 as part I, entitled "General Provisions".

SECTION 2. Chapter 437, Hawaii Revised Statutes, is amended by adding a new part II with new sections to be appropriately designated and to read as follows:

**"PART II. MANUFACTURER, DISTRIBUTOR, AND DEALER  
DISPUTES**

**§437-A Dispute resolution.** (a) In any dispute among a manufacturer, distributor, or dealer on matters governed by this part, the manufacturer, distributor, or dealer may seek a hearing from the department of commerce and consumer affairs.

(b) The office of administrative hearings of the department of commerce and consumer affairs shall accept no more than thirty requests for hearing per fiscal year under this section. The office of administrative hearings may reject a request for a hearing if in the opinion of the hearings officer the matter presented does not involve the interpretation or enforcement of the provisions of this chapter. The director of commerce and consumer affairs shall appoint a hearings officer pursuant to section 26-9(f) who shall have jurisdiction to review any request for hearing filed under this section. 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. All information so provided in and for the hearing shall be sealed and not subject to public review or access. The information shall also remain confidential and not subject to public access or review on appeal pursuant to section 91-14.

(c) The party requesting the hearing shall file a petition with the department of commerce and consumer affairs specifying the specific provisions of this chapter that are in issue; the interpretation or enforcement sought; the legal and factual basis for the interpretation or enforcement sought; and the remedy or remedies sought. The party requesting a hearing under this section shall provide a copy of the petition to the board at the time the petition is filed. Each adverse party shall file a response with the department of commerce and consumer affairs.

(d) Hearings under this section shall be conducted pursuant to chapter 91 and rules adopted by the department of commerce and consumer affairs. The burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the party initiating the proceeding, unless otherwise specified in this chapter. The standard of proof required shall be by a preponderance of the evidence.

(e) 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.

(f) The prevailing party in any proceeding brought under this section shall provide a copy of the hearings officer's written findings of fact, conclusions of law, and order to the board within ten days of receipt of the written findings of fact, conclusions of law, and order.

(g) Each party to the hearing shall bear the party's own costs, including attorney's fees. Both parties shall share equally in the cost of the hearing, including any allocable departmental overhead attributable to the hearing.

(h) Any party to a proceeding brought 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. Any party aggrieved by a final decision of a hearings officer who applies for judicial review under this section shall provide a copy of the party's application for judicial review to the board within ten days of filing the application for judicial review.

(i) The department of commerce and consumer affairs may adopt rules, pursuant to chapter 91, to effectuate the purpose of this section and to implement its provisions, including fees to recover the cost of hearings.

**§437-B Reciprocal rights and obligations among dealers, manufacturers, and distributors of motor vehicles.** A manufacturer or distributor shall not:

- (1) Require any dealer in the State to enter into any agreement with the manufacturer or distributor or any other party that requires the law of another jurisdiction to apply to any dispute between the dealer and manufacturer or distributor, or requires that the dealer bring an action against the manufacturer or distributor in a venue outside of Hawaii, or requires the dealer to agree to arbitration or waive its rights to bring a cause of action against the manufacturer or distributor, unless done in connection with a settlement agreement to resolve a matter or pending dispute between a manufacturer or distributor, or officer, agent, or other representative thereof, and the dealer; provided, however, that such agreement has been entered voluntarily for adequate and valuable consideration; and provided further that the renewal or continuation of a franchise agreement shall not by itself constitute adequate and valuable consideration;
- (2) Require any dealer in the State to enter into any agreement with the manufacturer or distributor or any other party, to prospectively assent to a release, assignment, novation, waiver, or estoppel, which instrument or document operates, or is intended by the applicant or licensee to operate, to relieve any person from any liability or obligation of this chapter, unless done in connection with a settlement agreement to resolve a matter or pending dispute between a manufacturer or distributor, or officer, agent, or other representative thereof, and the dealer; provided, however, that such agreement has been entered voluntarily for adequate and valuable consideration; and provided further that the renewal or continuation of a franchise agreement shall not by itself constitute adequate and valuable consideration;
- (3) Cancel or fail to renew the franchise agreement of any dealer in the State without providing notice, and without good cause and good faith, as provided in section 437-H;
- (4) Refuse or fail to offer an incentive program, bonus payment, hold-back margin, or any other mechanism that effectively lowers the net

- cost of a vehicle to any franchised dealer in the State if the incentive, bonus, or holdback is made to one or more same line make dealers in the State;
- (5) Unreasonably prevent or refuse to approve the relocation of a dealership to another site within the dealer's relevant market area. The dealer shall provide the manufacturer or distributor with notice of the proposed address and a reasonable site plan of the proposed location. The manufacturer or distributor shall approve or deny the request in writing no later than sixty days after receipt of the request. Failure to deny the request within sixty days constitutes approval;
  - (6) Require a dealer to construct, renovate, or make substantial alterations to the dealer's facilities unless the manufacturer or distributor can demonstrate that such construction, renovation, or alteration requirements are reasonable and justifiable based on reasonable business consideration, including current and reasonably foreseeable projections of economic conditions existing in the automotive industry at the time such action would be required of the dealer, and agrees to make a good faith effort to make available, at the dealer's option, a reasonable quantity and mix of new motor vehicles, which, after a reasonable analysis of market conditions, are projected to meet the sales level necessary to support the increased overhead incurred by the dealer as a result of the required construction, renovation, or alteration; provided, however, that a dealer may be required by a manufacturer or distributor to make reasonable facility improvements and technological upgrades necessary to support the technology of the manufacturer's or distributor's vehicles. If the dealer chooses not to make such facility improvements or technological upgrades, the manufacturer or distributor shall not be obligated to provide the dealer with the vehicles which require the improvements or upgrades;
  - (7) Require the dealer to establish or maintain an exclusive showroom or facility unless justified by current and reasonably expected future economic conditions existing in the dealer's market and the automobile industry at the time the request for an exclusive showroom or facility is made; provided that the foregoing shall not restrict the terms and conditions of any agreement for which the dealer has voluntarily accepted separate and valuable consideration;
  - (8) Condition the award of an additional franchise on the dealer entering a site control agreement or the dealer waiving its rights to protest the manufacturer's or distributor's award of an additional franchise within the dealer's relevant market area; provided that the foregoing shall not restrict the terms and conditions of any agreement for which the dealer has voluntarily accepted separate and valuable consideration;
  - (9) Require a dealer or the dealer's employees to attend a training program that does not relate directly to the sales or service of a new motor vehicle in the line make of that sold or serviced, or both, by the dealer;
  - (10) Require a dealer to pay all or part of the cost of an advertising campaign or contest, or purchase any promotional materials, showroom, or other display decorations or materials at the expense of the dealer without the consent of the dealer, which consent shall not be unreasonably withheld;

- (11) Implement or establish a customer satisfaction index or other system measuring a customer's degree of satisfaction with a dealer as a sale or service provider unless any such system is designed and implemented in such a way that is fair and equitable to both the manufacturer and the dealer. In any dispute between a manufacturer, distributor, and a dealer, the party claiming the benefit of the system as justification for acts in relation to the franchise shall have the burden of demonstrating the fairness and equity of the system both in design and implementation in relation to the pending dispute. Upon request of any dealer, a manufacturer or distributor shall disclose in writing to such dealer a description of how that system is designed and applied to such dealer;
- (12) Implement or establish an unreasonable, arbitrary, or unfair sales or other performance standard in determining a dealer's compliance with a franchise agreement; or
- (13) Implement or establish a system of motor vehicle allocation or distribution to one or more of its dealers that is unfair, inequitable, or unreasonably discriminatory. As used in this paragraph, "unfair" includes without limitation, requiring a dealer to accept new vehicles not ordered by the dealer or the refusal or failure to offer to any dealer all models offered to its other same line make dealers in the State. The failure to deliver any motor vehicle shall not be considered a violation of this section if such failure is due to an act of God, work stoppage, or delay caused by a strike or labor difficulty, shortage of products or materials, freight delays, embargo, or other causes of which the motor vehicle franchisor shall have no control. Notwithstanding the foregoing, a dealer may be required by a manufacturer or distributor to make reasonable facility improvements and technological upgrades necessary to support the technology of the manufacturer's or distributor's vehicles. If the dealer chooses not to make such facility improvements or technological upgrades, the manufacturer or distributor shall not be obligated to provide the dealer with the vehicles which require the improvements or upgrades.

**§437-C Sale, assignment, or transfer of franchise to qualified purchaser.**

(a) A manufacturer or distributor shall not unreasonably withhold consent to the sale, assignment, or transfer of the franchise to a qualified purchaser capable of being licensed as a dealer.

(b) The dealer shall notify the manufacturer or distributor, in writing, of its desire to sell, assign, or transfer its franchise and identify the proposed transferee's name, address, financial qualifications, and business experience. Along with such notice, the dealer shall also provide the manufacturer or distributor with completed application forms and related information generally used by the manufacturer or distributor to conduct its review of such a proposal, and a copy of all agreements regarding the proposed sale, assignment, or transfer. The manufacturer or distributor shall, within thirty days of receipt of the application and all supporting documentation as specified therein, review the application and identify in writing the additional information, data, or documents, if any, needed by the manufacturer or distributor to complete its review. If the manufacturer or distributor does not reject the application within sixty days of receipt of the completed application and all supporting documentation or within sixty days of receipt of any additional information, data, or documents timely requested by the manufacturer or distributor, the application shall be considered approved,



unless the sixty-day deadline is extended by mutual agreement of the manufacturer or distributor and the dealer.

(c) If a manufacturer or distributor denies a dealer's proposed sale, assignment, or transfer of the franchise, the dealer may file a petition in the manner prescribed in section 437-A, within sixty days of the notice of denial. The manufacturer or distributor shall have the burden of proof to demonstrate at a hearing pursuant to a timely filed complaint that the proposed transferee is not of good moral character or does not meet the written, reasonable, and uniformly applied business standards or qualifications of the manufacturer relating to the financial qualifications of the transferee and business experience of the transferee or the transferee's executive management.

**§437-D Transfer of franchise to successor who is not a qualified purchaser.**

(a) A manufacturer or distributor shall not refuse or fail to give effect, unless it has good cause, to the dealer's designated successor, whether designated by will, other estate planning document, or written notice to the manufacturer or distributor either while the dealer was living or within ninety days of the dealer's death or incapacity.

(b) In determining whether good cause exists for the manufacturer's or distributor's refusal to honor the succession, the manufacturer or distributor shall have the burden to prove that the successor is not of good moral character, is not willing to be bound by the terms of the franchise agreement, and is either not qualified to operate the dealership or fails to demonstrate that the dealership will be operated by a qualified executive manager.

(c) The designated successor shall furnish written notice to the manufacturer or distributor including all necessary application forms and related information customarily required by the manufacturer or distributor of the successor's intention to succeed to the ownership of the new motor vehicle dealership within sixty days prior to the designee's actual proposed succession to dealership ownership for the manufacturer or distributor to determine whether the proposed successor meets the normal, reasonable, and uniformly applied standards for the grant of an application as a new motor vehicle dealer.

(d) The manufacturer or distributor shall notify the proposed successor of its belief that good cause exists to refuse to honor the succession within sixty days after receipt of the notice of the proposed successor's intent to succeed the franchise, and the manufacturer or distributor shall detail its reasons why it believes good cause exists to deny the succession.

(e) A proposed successor may file a petition in the manner prescribed in section 437-A within sixty days after receipt of the manufacturer's or distributor's notice of refusal to honor the succession. The franchise shall continue, and the manufacturer or distributor is prohibited from any action to the contrary, until a final judgment has been rendered on the proposed succession.

**§437-E Establishment or relocation of franchise within relevant market area.** (a) When a manufacturer or distributor establishes or relocates a franchise within the relevant market area of an existing dealer with a franchise for the same line make, the manufacturer or distributor shall provide a notice to such existing dealers, hereinafter "affected dealers". For the purposes of this section, "affected dealer" means a dealer that operates a same line make franchise in a relevant market area wherein the manufacturer or distributor is proposing to add or relocate a franchise. The manufacturer's or distributor's notice shall state the location of the proposed dealership and the date on or after which the franchise intends to be engaged in business.

(b) An affected dealer may file a petition in the manner prescribed in section 437-A within thirty days of receipt of the manufacturer's or distributor's notice for determination of whether the manufacturer or distributor has good cause to establish or relocate an additional franchise within the dealer's relevant market area. When such a petition is filed, the manufacturer or distributor shall not establish or relocate the proposed franchise until a hearing has been held and a determination made whether good cause exists for the proposed addition or relocation. The determination of a petition filed under this subsection shall be made no later than one hundred eighty days from receipt of notice of the petition except for good cause. The manufacturer or distributor shall have the burden of proof to demonstrate good cause exists for the addition or relocation of an additional franchise within the affected dealer's relevant market area.

(c) In determining whether the manufacturer or distributor has good cause to add or relocate the franchise into an affected dealer's relevant market area the hearings officer under section 437-A shall consider and make findings upon evidence including the permanency and size of investment made and the reasonable obligations incurred by the existing new motor vehicle dealers in the relevant market area; the growth or decline in population and new car registrations in the relevant market area; the effect on the consuming public in the relevant market area; whether it is injurious or beneficial to the public welfare for a new dealer to be established; whether the new motor vehicle dealers of the same line make in that area are providing adequate competition and convenient customer care for the motor vehicles of the same line make including the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel; whether the establishment or relocation of the proposed dealership appears to be warranted and justified based on economic and marketing conditions pertinent to dealers competing in the community or territory, including anticipating future changes; the effect on the relocating dealer of a denial of its relocation into the relevant market area; and the reasonably expected market penetration of the line make motor vehicle for the community or territory involved, after consideration of all factors which may affect such penetration, including demographic factors such as age, income, education, size class preference, product popularity, retail lease transactions, or other factors affecting sales to consumers of the community or territory.

(d) This section shall not apply to the relocation of an existing dealer within two miles of the dealer's existing dealership location; the appointment of a successor dealer at the same location as its predecessor or within a two-mile radius from any boundary of the predecessor's former location within one year from the date on which the predecessor ceased operations or was terminated, whichever occurred later; or the relocation of a dealer to a site that is farther away from the protesting affected dealer than the existing location.

**§437-F Reimbursement for parts.** (a) In no event shall any manufacturer or distributor pay its dealers a markup on parts for warranty work that is less than that charged by the dealer to the retail customers of the dealer; provided that such dealer's retail parts markup is not unreasonable when compared with that of same line make authorized franchise dealers of the manufacturer or distributor for identical merchandise or services in the State.

(b) The retail markup charged by the dealer shall be established by submitting to the manufacturer or distributor a sufficient quantity of numerically consecutive repair orders from the most recent months to provide one hundred qualifying customer-paid repair orders. For a dealer unable to provide one hundred qualifying customer-paid repair orders out of all numerically consecutive repair orders within the two-month period prior to the submission, the dealer

shall submit customer service repair orders of all types, including customer pay, warranty, and internal, for that two-month period. The repair orders shall contain the price and percentage markup. Dealers shall declare in their submission the average markup the dealer is declaring as its new parts reimbursement rate. The declared parts reimbursement markup shall take effect within ninety days after initial submission to the manufacturer or distributor and shall be presumed to be fair and reasonable. However, the manufacturer or distributor may make reasonable requests for additional information supporting the submission. The ninety-day timeframe in which the manufacturer or distributor shall make the declared parts reimbursement markup effective shall commence following receipt from the dealer of any reasonably requested supporting information. The dealer shall not request a change in the parts reimbursement markup more than once every twelve months.

(c) In determining qualifying repair orders for parts, the following work shall not be included: repairs for manufacturer or distributor special events; repairs covered by any insurance or service contract; federal, state, or local government legislated vehicle emission or safety inspections; parts sold at wholesale or repairs performed at wholesale, which shall include any sale or service to a fleet of vehicles; engine assemblies and transmission assemblies; routine maintenance not covered under any retail customer warranty, such as fluids, filters, and belts not provided in the course of repairs; nuts, bolts, fasteners, and similar items that do not have an individual part number; tires; and vehicle reconditioning.

(d) Dealers shall have at least thirty days after the repair work is completed to submit a claim for approval. All claims made by the dealers for compensation for delivery, preparation, and warranty work shall be approved or disapproved and if approved, paid within forty-five days after receipt by a manufacturer or distributor of a properly completed claim. All sale incentive claims shall be approved or disapproved and if approved, paid within sixty days after receipt by a manufacturer or distributor of a properly completed claim. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. Failure to disapprove a claim within the required timeframe constitutes approval of the claim.

**§437-G Warranty and incentive audits.** (a) No manufacturer or distributor shall conduct a warranty or incentive audit on previously paid claims or chargeback any warranty or incentive payment previously made more than one year after the date the manufacturer or distributor made the payment to the dealer. This section shall not apply to fraudulent claims.

(b) A manufacturer or distributor shall not chargeback a dealer for sales or warranty payments unless the manufacturer or distributor can satisfy its burden of proof that the dealer's claim was fraudulent or that the dealer did not substantially comply with the reasonable written procedures of the manufacturer or distributor.

(c) The manufacturer or distributor shall provide the dealer a written notice thirty days before imposing a proposed chargeback. The dealer may protest the imposition of a proposed chargeback prior to the imposition of a proposed chargeback. The dealer, manufacturer, or distributor shall conduct any internal dispute resolution process in accordance with the franchise agreement. After the internal dispute resolution process is concluded, the dealer may file a petition in the manner prescribed in section 437-A protesting the proposed chargeback amount. If a petition is filed, the proposed chargeback shall be stayed during the entirety of the action and until a final judgment has been rendered.

**§437-H Cancellation or failure to renew franchise agreement.** (a) A manufacturer or distributor shall give written notice to the dealer and the board of the manufacturer's intent to terminate, discontinue, cancel, or fail to renew a franchise agreement at least sixty days before the effective date thereof, and state with specificity the grounds being relied upon for such discontinuation, cancellation, termination, or failure to renew; provided that the manufacturer or distributor may provide the notice fifteen days before the effective date of termination, discontinuation, cancellation, or non-renewal in the following circumstances:

- (1) The dealer has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against it which has not been discharged within thirty days after the filing, there has been a closeout or sale of a substantial part of the dealer's assets related to the business, or there has been a commencement of dissolution or liquidation of the dealer;
- (2) The dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned the business;
- (3) The dealer has pleaded guilty to or has been convicted of a felony affecting the relationship between the dealer and the manufacturer or distributor;
- (4) The dealer has engaged in conduct that is injurious or detrimental to the dealer's customers or to the public welfare;
- (5) There has been a change, without the prior written approval of the manufacturer or distributor, in the location of the dealer's principal place of business under the dealership agreement; or
- (6) Misrepresentation or fraud upon the manufacturer by the dealer.

(b) A dealer who receives notice of intent to terminate, discontinue, cancel, or fail to renew may, within the sixty-day notice period, file a petition in the manner prescribed in section 437-A for a determination of whether such action is taken in good faith and supported by good cause. The manufacturer or distributor shall have the burden of proof that such action is taken in good faith and supported by good cause.

(c) If the manufacturer's or distributor's notice of intent to terminate, discontinue, cancel, or fail to renew is based upon the dealer's alleged failure to comply with sales or service performance obligations, the dealer shall first be provided with notice of the alleged sales or service deficiencies and afforded at least one hundred eighty days to correct any alleged failure before the manufacturer or distributor may send its notice of intent to terminate, discontinue, cancel, or fail to renew. Good cause shall not be deemed to exist if a dealer substantially complies with the manufacturer's or distributor's reasonable performance provisions within the one hundred eighty-day cure period, or if the failure to demonstrate substantial compliance was due to factors that were beyond the control of the dealer.

(d) Good cause shall not exist absent a breach of a material and substantial term of the franchise agreement. The existence of one or more circumstances enumerated in subsection (a)(1) through (6) above shall be presumed to be good cause, and the dealer shall have the burden of proof to show that the action was not taken in good faith and supported by good cause.

(e) Except in the circumstances enumerated in subsection (a)(1) through (6) above, the franchise agreement shall remain in effect until a final judgment is entered after all appeals are exhausted, and during that time the dealer shall retain all rights and remedies pursuant to the franchise agreement, including the right to sell or transfer the franchise.

(f) Upon the termination, discontinuation, cancellation, or failure to renew the franchise agreement by the manufacturer or distributor, the manufac-

turer or distributor shall compensate the dealer for all new, unused, and undamaged parts listed in the current parts catalog and still in the original, resalable merchandising packages and in unbroken lots; provided that for sheet metal, a comparable substitute may be used. Prices shall be those in effect at the time the manufacturer or distributor receives the parts, less applicable allowances; the fair market value of all undamaged, unmodified special tools, equipment, and signage required by the manufacturer or distributor and acquired by the dealer within the three years prior to the termination; all new, undamaged, and unsold vehicle inventory of the current model year and one model year prior acquired from the manufacturer or distributor or from another same line make dealer in the ordinary course of business prior to the effective date of termination or non-renewal; provided that the vehicle has less than five hundred miles registered on the odometer. The purchase price shall be the dealer's net acquisition cost. The compensation shall be paid to the dealer no later than ninety days from the date of the franchise termination, discontinuation, cancellation, or failure to renew.

(g) In addition to the other compensation set forth in this section, upon the termination, discontinuation, cancellation, or failure to renew the franchise agreement by a manufacturer or distributor without good cause and good faith; or as a result of the discontinuation of a line make, the manufacturer or distributor shall compensate the dealer at the fair market value for the dealer's capital investment, which shall include the going business value of the business, goodwill, property, and improvement owned or leased by the dealer for the purpose of the franchise as of the effective date of the termination or one day prior to the date of the notice, whichever is greater. The compensation shall be paid to the dealer no later than ninety days from the date of the franchise termination, discontinuation, cancellation, or failure to renew.

(h) As used in this section, "good faith" means the duty of each party to any franchise agreement to fully comply with that agreement, and to act in a fair and equitable manner towards each other."

SECTION 3. Section 437-1, Hawaii Revised Statutes, is amended to read as follows:

**"§437-1 Legislative findings and declaration.** The legislature finds that:

- (1) The manufacture, distribution, and sales of motor vehicles in the State vitally affects the general economy of the State and the public interest and public welfare;
- (2) Manufacturers of motor vehicles [~~whose~~] without physical manufacturing facilities [~~are not located~~] within the State[.] and motor vehicle distributors [~~are doing~~] doing business in the State through their control over, and relationships and transactions with their dealers, branches, and representatives; and
- (3) The geographical location of Hawaii makes it necessary to ensure [~~the availability of~~] that motor vehicles [~~and~~], parts and dependable service [~~therefor~~] are available within the State to protect and preserve the transportation system and the investments of its residents.

The legislature declares, on the basis of the foregoing findings, that it is necessary to regulate and to license motor vehicle manufacturers, distributors, dealers, salespersons, and auctions in the State[.] in order to prevent frauds, impositions, and other abuses against its residents[.] and to protect and preserve the economy and the transportation system of the State. In order to further this intent, the legislature finds that this chapter is remedial and shall apply to all franchise agreements existing as of the date of enactment, except to the extent that such application violates any provision of the State or federal constitutions."

SECTION 4. Section 437-1.1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition of "relevant market area" to be appropriately inserted and to read:

"Relevant market area" means the following:

- (1) In a county with a population of less than five hundred thousand persons according to the most recent data of the United States Census Bureau or the data of the department of business, economic development, and tourism, the relevant market area shall be the county in which the dealer is located; or
- (2) In a county with a population of more than five hundred thousand persons according to the most recent data of the United States Census Bureau or the data of the department of business, economic development, and tourism, the relevant market area shall be within a radius of six miles from the dealership location."

2. By amending the definitions of "dealer", "franchise", and "new motor vehicle dealer" to read:

"Dealer" includes "auction" as defined in this section or any person or entity not expressly excluded by this chapter who sells three or more vehicles within a calendar year, or who is engaged in the business of selling, soliciting, offering, or attempting to negotiate sales, purchases, or exchanges of motor vehicles or any interest therein, including options to purchase motor vehicles. The term "dealer" excludes a person who sells or purchases motor vehicles in the capacity of:

- (1) A receiver, trustee, personal representative, guardian, or any other person appointed by or acting under a judgment or order of any court;
- (2) A public officer while performing official duties;
- (3) A holder of an auction license issued under this chapter when acting within the scope of the license;
- (4) An insurance company, finance company, bank, or other financial institution ~~selling~~ that sells or ~~offering~~ offers for sale motor vehicles repossessed or foreclosed by it under the terms of a credit sale contract or security agreement;
- (5) A person not engaged in the business of selling or purchasing motor vehicles ~~when acquiring~~ who acquires or ~~disposing~~ disposes of motor vehicles for the person's own personal, family, or business use; provided that the vehicles are acquired or disposed of for the person's use in good faith and not for the purpose of evading any provision of this chapter;
- (6) A consumer consultant who is not engaged in the business of selling, soliciting, offering, or attempting to negotiate sales or exchanges of motor vehicles or any interest therein for any dealer, and who for a fee provides specialized information and expertise in motor vehicle sales transactions to consumers ~~wishing~~ who wish to purchase or lease motor vehicles~~[- The]~~; provided that the consumer consultant shall register and pay a fee to the board prior to offering consultant services; or
- (7) A Hawaii bank or its affiliate selling or offering for sale motor vehicles surrendered or redelivered to it under the terms of a lease~~[-]~~ or sold by it pursuant to a purchase option contained in a lease.

"Franchise" or "franchise agreement" means any contract or agreement between a dealer and a manufacturer or distributor that authorizes the dealer to engage in the business of selling or purchasing any particular make or makes of

new motor vehicles or motor vehicle parts [~~therefor~~] manufactured or distributed by [~~such~~] the manufacturer or distributor[-], or that establishes rights or obligations, or both, relating to the dealer's new motor vehicle operation, including agreements relating to dealership facilities or site control.

"New motor vehicle dealer" means a dealer who engages in the business of selling, at wholesale or retail, [~~or both,~~] new motor vehicles or new and used motor vehicles."

SECTION 5. Section 437-27, Hawaii Revised Statutes, is amended to read as follows:

**"§437-27 Change of status, notice.** If the status of any licensee changes during the period for which the license is issued [~~in respect to:~~] because of:

- (1) Changes in officers, directors, or limited partners of the licensee or termination of the employment of any licensed salesperson;
- (2) The transfer of more than ten per cent of the ownership of the licensee to one person;
- (3) The termination of a licensed premises by a dealer or auction or the acquiring or termination of a franchise; or
- (4) The assignment of any part of the licensee's assets for the benefit of creditors;

the licensee shall within fifteen days thereafter file with the board notice of such change containing such information as may be required by the board; provided that nothing contained in this section shall limit the power of the board to suspend, revoke, or deny the renewal of such license or impose any other penalty authorized by this chapter. A manufacturer or distributor shall give written notice to the board pursuant to section 437-H, of its intent to terminate, discontinue, cancel, or fail to renew a franchise agreement."

SECTION 6. Section 437-28, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to any other actions authorized by law, the board, after notice and hearing as provided in chapter 91, and subject to appeal to the circuit court of the circuit in which the board has jurisdiction under the procedure and rules prescribed by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, may suspend, revoke, fine, or deny the renewal of any license, or prior to notice and hearing deny the issuance of any license for any cause authorized by law, including but not limited to circumstances where the board finds that the applicant or holder, or any officer, director, general manager, trustee, partner, or stockholder owning more than ten per cent interest of the applicant or holder:

- (1) Has intentionally made a false statement of a material fact in the application for a license or in any other statement required by this chapter or has obtained or attempted to obtain a license by fraud or misrepresentation;
- (2) Has failed to comply with, observe, or adhere to any provision of this chapter or any other law relating to the sale, taxing, or licensing of motor vehicles or any rule or order made pursuant to this chapter;
- (3) Has committed a fraudulent act in selling, purchasing, or otherwise dealing in motor vehicles or has misrepresented the terms and conditions of a sale, purchase, or contract for sale or purchase of a motor vehicle or any interest therein including an option to purchase motor vehicles;

- (4) Has engaged in business under a past or present license issued pursuant to this chapter, in a manner as to cause injury to the public or to those with whom one is dealing;
- (5) Has failed to comply with, observe, or adhere to any law in any other respect ~~[on account whereof]~~ so that the board ~~[may deem]~~ deems the applicant or holder to be an unfit or improper person to hold a license;
- (6) Has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license;
- (7) Is insolvent ~~[or]~~, has filed or is the subject of a petition for bankruptcy, wage earner's plan, or financial reorganization plan~~;~~, or has made or proposes to make an assignment for benefit of creditors;
- (8) ~~[In the case of an individual applicant or holder of a license, if the applicant or holder is]~~ Is not at least eighteen years of age~~;~~, or in the case of a partnership applicant or holder of a license, if any general or limited partner ~~[thereof]~~ is not at least eighteen years of age;
- (9) Has charged more than the legal rate of interest on the sale ~~[or]~~, purchase, or attempted sale or purchase, or in arranging the sale or purchase of a motor vehicle or any interest therein including an option to purchase;
- (10) Has violated any ~~[of the laws]~~ law pertaining to false advertising or to credit sales in the offering, soliciting, selling, ~~[or]~~ purchasing, or arranging to sell or purchase a motor vehicle or any interest therein;
- (11) Has wilfully failed or refused to perform any unequivocal and indisputable obligation under any written agreement involving the sale or purchase of a motor vehicle or any interest therein, including an option to purchase;
- (12) Has been denied the issuance of a license under this chapter for substantial culpable cause or ~~[for having]~~ has had a license issued under this chapter suspended, revoked, or the renewal thereof denied for substantial culpable cause;
- (13) Has entered ~~[or]~~, has attempted to enter, or proposes to enter into any contract or agreement contrary to this chapter or any rule adopted thereunder;
- (14) Has been ~~[or]~~, is engaged, or proposes to engage in the business of selling new motor vehicles as a dealer or auction without a proper franchise therefor;
- (15) Has at any time employed ~~[or]~~, utilized, or attempted or proposed to employ or utilize any person not licensed under this chapter who is required to be so licensed;
- (16) Has entered or attempted to enter any one-payment contract~~;~~ where the contract is required to be signed by the purchaser prior to removal of the motor vehicle for test driving from the seller's premises;
- (17) ~~[Being]~~ Is a salesperson or dealer~~;~~ and:
  - (A) Has required a purchaser of a motor ~~[vehicles]~~ vehicle as a condition of sale and delivery ~~[thereof]~~, to purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; provided that this prohibition shall not apply as to special features, appliances, accessories, or equipment which are ordinarily installed on the vehicle when received or acquired by the dealer;



- (B) Has represented and sold as an unused motor vehicle any motor vehicle which has been leased or operated as a demonstrator~~[-leased,-]~~ or U-drive motor vehicle;
- (C) Has sold a new motor vehicle without providing or securing for the purchaser the standard factory new car warranty for the vehicle~~[-]~~ unless the dealer or salesperson clearly notes in writing on the sales contract that the new motor vehicle is sold without the standard factory warranty;
- (D) Has sold a new motor vehicle covered by a standard factory warranty without informing the purchaser in writing that any repairs or other work necessary on any accessories which were not installed by the manufacturer of the vehicle may not be obtainable in a geographic location other than where the purchase occurred; provided that the notice required by this section shall conform to the plain language requirements of section 487A-1, regardless of the dollar amount of the transaction;
- (E) Has engaged in any improper business conduct, including but not limited to employing, contracting with, or compensating consumer consultants; or
- (F) Has sold or leased a new or used motor vehicle, other than at auction, without written documentation ~~[that contains the following provision printed legibly in at least fourteen point bold typeface print,-]~~ upon which the salesperson or dealer shall appropriately indicate the type of sale, ~~[and upon]~~ which both the customer and salesperson or dealer shall place their initials in the designated spaces~~[-]~~ prior to the signing of the contract of sale or lease~~[-]~~ and that contains the following provision printed legibly in at least fourteen point bold typeface:

“This (IS) (IS NOT) a door-to-door sale. There (IS A) (IS NO) 3-DAY RIGHT TO CANCEL on this purchase.

\_\_\_\_\_ Customer’s Initials                      \_\_\_\_\_ Salesperson’s or Dealer’s Initials”;

- (18) ~~Being~~ Is an applicant or holder of a dealer’s license~~[-]~~ and:
  - (A) Has sold or proposed to sell new motor vehicles without providing for the maintenance of a reasonable inventory of parts for new vehicles or without providing and maintaining adequate repair facilities and personnel for new vehicles at either the main licensed premises or at any branch location;
  - (B) Has employed or proposed to employ any salesperson who is not duly licensed under this chapter; or
  - (C) Has sold or proposed to sell new motor vehicles without being franchised therefor;
- (19) ~~Being~~ Is an applicant or holder of an auction’s license and has sold or proposed to sell new motor vehicles without being franchised therefor; or
- (20) ~~Being~~ Is an applicant for a salesperson’s license~~[-]~~ and:
  - (A) Does not intend to be employed as a salesperson for a licensed motor vehicle dealer; or
  - (B) Intends to be employed as a salesperson for more than one dealer; ~~[or]~~
- (21) Being a manufacturer or distributor:
  - (A) Has ~~[attempted to coerce or has coerced]~~ required any dealer in the State to enter into any agreement with the manufacturer or

distributor or any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with the dealer, by threatening to cancel the franchise agreement or by threatening to refuse, at the expiration of the current franchise agreement, to enter into a new franchise agreement with the dealer;

- (B) Has ~~[attempted to coerce or has coerced]~~ required any dealer in the State to enter into any agreement with the manufacturer or distributor or any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with the dealer, by awarding or threatening to award a franchise to another person for the sale of the same make of any motor vehicle in the ~~[same sales area of responsibility covered by the existing franchise agreement of the dealer;]~~ relevant market area of a dealer;
- (C) Has ~~[attempted to or has]~~ canceled or failed to renew the franchise agreement of any dealer in the State without good faith, as defined herein. ~~[Upon such a cancellation or failure to renew the franchise agreement, the party canceling or failing to renew the franchise agreement, at the dealer's option, shall either:~~
- (i) ~~Compensate the dealer at the fair market going business value for the dealer's capital investment, which shall include but not be limited to the going business value of the business, goodwill, property, and improvement owned or leased by the dealer for the purpose of the franchise, inventory of parts, and motor vehicles possessed by the dealer in connection with the franchise, plus reasonable attorney's fees incurred in collecting compensation; provided that the investment shall have been made with reasonable and prudent judgment for the purpose of the franchise agreement; or~~
  - (ii) ~~Compensate the dealer for damages including attorney's fees as aforesaid, resulting from the cancellation or failure to renew the franchise agreement.]~~

As used in this ~~[paragraph,]~~ subparagraph, "good faith" means the duty of each party to any franchise agreement to fully comply with that agreement, or to act in a fair and equitable manner towards each other;

- (D) Has delayed delivery of or refused to deliver without cause, any new motor vehicle to a dealer, franchised to sell the new motor vehicle, within a reasonable time after receipt of a written order for the vehicle from the dealer. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a dealer who has not received delivery thereof, but who had placed the written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be prima facie evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle without cause. The nondelivery of a new motor vehicle to a dealer within sixty days after receipt of a written order for the vehicle from a dealer shall also be prima facie evidence of delayed delivery of, or refusal to

deliver, a new motor vehicle without cause; provided that the delayed delivery of, or refusal to deliver, a motor vehicle shall be deemed with cause if the manufacturer establishes that the delay or refusal to deliver is due to a shortage or curtailment of material, labor, transportation, utility service, labor or production difficulty, or other similar cause beyond the reasonable control of the manufacturer;

- (E) Has discriminated against any of their franchised dealers in the State by directly or indirectly charging the dealer more for a new motor vehicle or services, parts, or accessories or a higher rate of transportation for transporting the vehicle from the manufacturing or assembly plant to the dealer or any portion of the distance, than is charged to any other of their franchised dealers in the State for the same make, model, and year of a new motor vehicle or for the same devices, parts, or accessories for the similar transportation for the vehicle during the same period. A manufacturer or distributor who provides or causes to be provided greater transportation benefits for a new motor vehicle as aforesaid to any of their franchised dealers in the State than is provided to any of their competing franchised dealers in the State for the same or lesser price or charge than that imposed upon the franchised dealer in the State during the same period is deemed to have so discriminated against the competing franchised dealer in the State. Evidence of similar discriminatory practice against franchised dealers in other states shall not constitute a defense to or justification of the commission of the discriminatory act against the franchised dealer in the State. The intent and purpose of this subparagraph is to eliminate inequitable pricing policies set by manufacturers or distributors which result in higher prices of new motor vehicles to the consumer in the State. This subparagraph shall be liberally interpreted to effect its intent and purpose and in the application thereof, the substance and effect and not the form of the acts and transactions shall be primarily considered in determining whether a discriminatory act has been committed. Nothing contained in this subparagraph shall prohibit establishing delivered prices or destination charges to dealers in the State which reasonably reflect the seller's total transportation costs incurred in the manufacture or delivery of products to the dealers, including costs that are related to the geographical distances and modes of transportation involved in shipments to this State, or which meet those lower prices established by competitors;
- (F) Has required a dealer of new motor vehicles in the State as a condition of sale and delivery of new motor vehicles to purchase special features, appliances, accessories, or equipment not desired or requested by the dealer; provided that this prohibition shall not apply to special features, appliances, accessories, or equipment, except heaters, that are regularly installed on that particular model or new motor vehicles as "standard" equipment or to special features, appliances, accessories, or equipment that are an integral part of the new motor vehicles and cannot be removed therefrom without substantial expense. Nothing in this subparagraph shall make it unlawful for a deal-

- er to sell a vehicle that includes a heater that has been installed as standard equipment;
- (G) Has failed to adequately and fairly compensate its dealers for labor [~~parts, and other expenses~~] incurred by the dealer to perform under and comply with manufacturer's warranty agreements. In no event shall any manufacturer or distributor pay its dealers a labor rate per hour for warranty work that is less than that charged by the dealer to the retail customers of the dealer nor shall the rates be more than the retail rates. All claims made by the dealers for compensation for delivery, preparation, and warranty work shall be paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval;
  - (H) Has wilfully failed to affix the vehicle bumper impact notice pursuant to section 437-4.5(a), or wilfully misstated any information in the notice. Each failure or misstatement is a separate offense;
  - (I) Has wilfully defaced, or removed the vehicle bumper impact notice required by section 437-4.5(a) prior to delivery of the vehicle to which the notice is required to be affixed to the registered owner or lessee. Each wilful defacement, alteration, or removal is a separate offense; or
  - (J) Has required a dealer to refrain from participation in the management of, investment in, or the acquisition of, any other line of new motor vehicle or related products; provided that the new motor vehicle dealer maintains a reasonable line of credit consistent with the requirements of section 437-7(d)(1) for each make or line of new motor vehicle, remains in compliance with reasonable facilities and other franchise requirements of the manufacturer or distributor, and makes no unauthorized change in the principal management of the dealer."

SECTION 7. Section 437-28.5, Hawaii Revised Statutes, is amended to read as follows:

~~"[§437-28.5] Procedures, protections, rights, and remedies made available to licensees. (a) The same procedures, protections, rights, and remedies provided to a dealer under section 437-28(a)(21) and section 437-3.6 shall apply to a distributor that is not a manufacturer; provided that for a distributor that is not a manufacturer, the measure of compensation under section 437-28(a)(21) (C) upon cancellation or failure to renew a franchise agreement shall include compensation related to [that] distributor's dealer operations and franchise agreements with other dealers].~~

(b) Notwithstanding the terms, provisions, or conditions of any dealer or distributor agreement or franchise or the terms or provisions of any waiver[~~]~~ and notwithstanding any other legal or administrative remedies available, any person who is licensed under this chapter and whose business or property is injured by a violation of section 437-28(a)(21), may bring a civil action in a court of competent jurisdiction in the State to enjoin further violations and to recover any damages together with the costs of the suit. Laws of the State of Hawaii shall apply to any action initiated under this section.

(c) Any person that brings or defends against a civil action under subsection (b) [~~shall~~] may be entitled to recover reasonable attorneys' fees as a part

of any damages or injunction; provided that the person substantially prevails in establishing or defending against a violation of section 437-28(a)(21).

(d) Upon a cancellation or failure to renew a distributorship agreement, the party canceling or failing to renew the agreement, at the distributor's option, shall either:

- (1) Compensate the distributor at the fair market value for the distributor's capital investment, which shall include but not be limited to the going business value of the business, goodwill, property, and improvement owned or leased by the distributor for the purpose of the distributorship, inventory of parts, including compensation related to distributor's dealer operations and franchise agreements with other dealers and motor vehicles possessed by the distributor in connection with the distributorship, plus reasonable attorney's fees incurred in collecting compensation; provided that the investment shall have been made with reasonable and prudent judgment for the purpose of the distributorship agreement; or
- (2) Compensate the distributor for damages including attorney's fees as aforesaid, resulting from the cancellation or failure to renew the distributorship agreement.  
As used in this paragraph, "good faith" means the duty of each party to any franchise agreement to fully comply with that agreement, or to act in a fair and equitable manner towards each other."

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

SECTION 9. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

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

SECTION 11. This Act shall take effect on July 1, 2010; provided that section 437-A, Hawaii Revised Statutes, shall take effect on January 1, 2011.

(Approved June 3, 2010.)

**Note**

- 1. So in original.

**ACT 165**

S.B. NO. 2441

A Bill for an Act Relating to Endangered Species.

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

SECTION 1. The number of species of plants, animals, and microorganisms; the enormous diversity of genes in these species; and the different ecosystems on the planet, such as deserts, rainforests, and coral reefs, are all part of

a biologically diverse Earth. Biodiversity ensures natural sustainability for all life forms and healthy ecosystems that can better withstand and recover from a variety of disasters. Human activity is causing a tremendous number of species extinctions, from animal species, forests, and the ecosystems that forests support, to marine life.

The federal Endangered Species Act of 1973, as amended, establishes a process of identifying species that are in danger of becoming extinct. The green sea turtle, the nene, and the Hawaiian monk seal are all endangered species. Despite the protections provided by the federal Endangered Species Act, these animals continue to be at risk. Two recent incidents of intentionally killed Hawaiian monk seals on Kauai and one on Molokai have brought attention to the human threat to Hawaii's endangered species. In September, 2009, an individual pleaded guilty to shooting a Hawaiian monk seal on Kauai in violation of the federal Endangered Species Act. The individual received a ninety-day prison term, one year supervised release, and a \$25 fine. The legislature finds that this sentence is not sufficient to deter future harassment of Hawaii's endangered species, specifically Hawaiian monk seals. To protect Hawaiian monk seals from future harassment and death, stiffer penalties need to be imposed.

The purpose of this Act is to establish the crime of intentionally or knowingly taking (as defined in section 195D-2, Hawaii Revised Statutes) a Hawaiian monk seal as a class C felony.

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

**"§195D- Taking a monk seal prohibited.** (a) A person commits the offense of taking a monk seal if the person intentionally or knowingly takes a Hawaiian monk seal (*Monachus schauinslandi*).

(b) Any person convicted of taking a monk seal shall be guilty of a class C felony; provided that in addition to any other sentence, the court may impose a fine up to \$50,000."

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

SECTION 4. New statutory material is underscored.<sup>1</sup>

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

(Approved June 8, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 166**

S.B. NO. 2897

A Bill for an Act Relating to Highway Safety.

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

SECTION 1. The legislature finds that Act 171, Session Laws of Hawaii 2008, established an ignition interlock program. The purpose of the program is

to require drivers whose licenses have been administratively revoked for, or who have been convicted of, operating a vehicle under the influence of an intoxicant to install an ignition interlock device on their vehicles. The device will prevent these drivers from starting or operating their vehicles when the driver has more than a minimal alcohol concentration.

Act 171 also provided for the probationary supervision of drivers convicted of operating a vehicle under the influence of an intoxicant, stating:

“This Act also provides for an extended period of probation supervision of the driver while using the ignition interlock device so that the person cannot drink and drive during that period. Attempts to do so will be recorded and reported for appropriate action, including extensions of the period of required ignition interlock device use and other sanctions. Most importantly, probation supervision, using test results and other information generated by the device, can be an important bridge to getting the driver into treatment so that, once the device is removed, the driver possesses the tools to refrain from drinking and driving altogether.”

Act 171 established the Hawaii ignition interlock implementation task force to study the issues surrounding implementation of the program and to make recommendations to address them. The Hawaii ignition interlock implementation task force met numerous times in committees and as a whole, had comprehensive discussions on a multitude of issues relating to the implementation of the ignition interlock program, and made recommendations for statutory amendments necessary to implement the program.

The Hawaii ignition interlock implementation task force had multiple discussions about probation supervision of convicted offenders. These discussions resulted in a recommendation to the legislature in 2009 that only second and third offenders be supervised using a probationary model. The task force concluded that these repeat offenders pose the greatest risk to themselves and to the community because they have not shown themselves amenable to changing their behavior, despite intervention following their first offense. This recommendation was adopted by the legislature in Act 88, Session Laws of Hawaii 2009.

The legislature also finds, and the Hawaii ignition interlock implementation task force recognizes, that since the time Acts 171 and 88 established a probationary model of supervision for convicted second and third offenders, the State’s economy has taken a significant downturn. While the Hawaii ignition interlock implementation task force still prefers the probationary model of supervision for convicted second and third time offenders, the task force also recognizes that the availability of resources necessary for implementation of the probationary model on January 1, 2011, is very uncertain, at best.

Accordingly, the Hawaii ignition interlock implementation task force amended its previous recommendation to the legislature and proposed instead that probation be eliminated for convicted second and third offenders and that an existing practice, known as “proof of compliance,” which is less intensive—and less expensive—be used for all convicted offenders. The Hawaii ignition interlock implementation task force recommended that when the State’s fiscal outlook improves, the issue of probation for convicted second and third offenders be revisited and implemented.

The purpose of this Act is to make amendments to the State’s ignition interlock law recommended by the Hawaii ignition interlock implementation task force pursuant to Act 171, Session Laws of Hawaii 2008.

SECTION 2. Chapter 291E, Hawaii Revised Statutes, is amended by adding three new sections to part IV to be appropriately designated and to read as follows:

**“§291E-A Circumvention of, or tampering with, an ignition interlock device by a person who has been restricted to operating a vehicle equipped with an ignition interlock device; penalties.** (a) No person whose driving privileges have been restricted to operating a vehicle equipped with an ignition interlock device shall knowingly:

- (1) Request, solicit, direct, or authorize another person to blow into an ignition interlock device or start a vehicle equipped with the device for the purpose of providing an operable vehicle to a person who has been restricted by law to operating only a vehicle so equipped; or
  - (2) Tamper with an ignition interlock device with the intent to render it inaccurate or inoperable.
- (b) Any person required under subsection (a) to drive using an ignition interlock device, who violates subsection (a) shall be sentenced without possibility of probation or suspension of sentence as follows:
- (1) For a first offense, or any offense not preceded within a five-year period by conviction under this section or section 291E-62(a)(3):
    - (A) A term of imprisonment of not less than three consecutive days but not more than thirty days;
    - (B) A fine of not less than \$250 but not more than \$1,000; and
    - (C) Loss of the privilege to operate a vehicle equipped with an ignition interlock device;
  - (2) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-62(a)(3):
    - (A) Thirty days imprisonment;
    - (B) A \$1,000 fine; and
    - (C) Loss of the privilege to operate a vehicle equipped with an ignition interlock device; and
  - (3) For an offense that occurs within five years of two or more prior convictions for offenses under this section or section 291E-62(a)(3), or any combination thereof:
    - (A) One year imprisonment;
    - (B) A \$2,000 fine; and
    - (C) Loss of the privilege to operate a vehicle equipped with an ignition interlock device.

**§291E-B Assisting or abetting the circumvention of, or tampering with, an ignition interlock device; penalties.** (a) No person shall knowingly:

- (1) Blow into or start a vehicle equipped with an ignition interlock device for the purposes of providing an operable vehicle to another person who has been restricted by law to operating only a vehicle equipped with an ignition interlock device;
- (2) Tamper with an ignition interlock device with the intent to render it inaccurate or inoperable to permit another person, who has been restricted by law to operating only a vehicle equipped with an ignition interlock device, to operate the vehicle; or
- (3) Rent, lease, or lend a vehicle to another person who has been restricted by law to operating only vehicles equipped with an ignition interlock device, when the rented, leased, or loaned vehicle is not equipped with a functioning certified ignition interlock device.



(b) Subsection (a) shall not apply to any act taken for the purpose of safety or mechanical repair of the device; provided that the person who is restricted to operating a vehicle equipped with the interlock device does not operate the vehicle.

(c) Any person who violates this section shall be:

- (1) Fined not more than \$1,000 or imprisoned not more than thirty days, or both, for any offense that does not occur within five years of two prior convictions for this offense; and
- (2) Fined not less than \$500 but not more than \$1,000 or imprisoned not more than one year, or both, if the person has two or more prior convictions for the offense in the preceding five-year period.

**§291E-C Refusal to submit to a breath, blood, or urine test; penalty.** Refusal to submit to a breath, blood, or urine test as required by part II is a petty misdemeanor.”

SECTION 3. Section 286-133, Hawaii Revised Statutes, is amended to read as follows:

“**§286-133 Unlawful to permit unauthorized person to drive.** ~~[No]~~ Except as provided in section 291E-B, no person shall authorize or knowingly permit a motor vehicle or moped owned by that person or under that person’s control to be driven upon any highway by any person who is not authorized under law to drive the motor vehicle or moped.”

SECTION 4. Section 287-20, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever a driver’s license has been suspended or revoked:

- (1) Pursuant to section 291E-65 or part III of chapter 291E, except as provided in section 291E-41(f);
- (2) Upon a conviction of any offense pursuant to law~~[-or]~~, except where the conduct giving rise to the instant offense is also a violation of part III of chapter 291E and a requirement to furnish and maintain proof of financial responsibility has already been imposed pursuant to that part; or
- (3) In the case of minors, pursuant to part V of chapter 571,

the license shall not at any time thereafter be issued to the person whose license has been suspended or revoked, nor shall the person thereafter operate a motor vehicle, unless and until the person has furnished and thereafter maintains proof of financial responsibility; provided that this section shall not apply to a license suspended or revoked pursuant to section 291E-61(b)(1) or 291E-64(b)(1), any conviction of a moving violation, any administrative license suspension pursuant to chapter 291A, or the first conviction within a five-year period for driving without a valid motor vehicle insurance policy.

This subsection shall not apply to a suspension or revocation of a provisional license under section 286-102.6(d).”

SECTION 5. Section 291E-1, Hawaii Revised Statutes, is amended as follows:

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

““Valid license” means a license that:

- (1) Is issued by an authorized licensing official in any state;
- (2) Authorizes an individual to operate a motor vehicle on public streets, roads, or highways; and

(3) Has not expired or been revoked, suspended, or canceled."

2. By amending the definition of "ignition interlock device" to read:

"Ignition interlock device" means a breath alcohol ignition interlock device that is certified [by the director of transportation and approved for use] pursuant to section 291E-6 and rules adopted thereunder that, when affixed to the ignition system of a motor vehicle, prevents the vehicle from being started without first testing, and thereafter from being operated without periodically retesting, a deep-lung breath sample of the person required to use the device that indicates the person's alcohol concentration is less than .02."

3. By repealing the definition of "highly intoxicated driver":

~~["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."]~~

SECTION 6. Section 291E-3, Hawaii Revised Statutes, is amended to read as follows:

**"§291E-3 Evidence of intoxication.** (a) In any criminal prosecution for a violation of section 291E-61 or 291E-61.5 or in any proceeding under part III:

- (1) .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood;
- (2) .08 or more grams of alcohol per two hundred ten liters of the person's breath; or
- (3) The presence of one or more drugs in an amount sufficient to impair the person's ability to operate a vehicle in a careful and prudent manner,

within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the person's blood, breath, or urine shall be competent evidence that the person was under the influence of an intoxicant at the time of the alleged violation.

(b) In any criminal prosecution for a violation of section 291E-61 or 291E-61.5, the amount of alcohol found in the defendant's blood or breath within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the defendant's blood or breath shall be competent evidence concerning whether the defendant was under the influence of an intoxicant at the time of the alleged violation and shall give rise to the following presumptions:

- (1) If there were .05 or less grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .05 or less grams of alcohol per two hundred ten liters of defendant's breath, it shall be presumed that the defendant was not under the influence of alcohol at the time of the alleged violation; and
- (2) If there were in excess of .05 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .05 grams of alcohol per two hundred ten liters of defendant's breath, but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .08 grams of alcohol per two hundred ten liters of defendant's breath, that fact may be considered with other competent evidence in determining whether the defendant was under the influence of alcohol at the time of the alleged violation, but shall not of itself give rise to any presumption.

~~(c) In any criminal prosecution for a violation of section 291E-61 or in any proceeding under part III:~~

- (1) .15 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood; or
- (2) .15 or more grams of alcohol per two hundred ten liters of the person's breath;

within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the person's blood, breath, or urine shall be competent evidence that the person was a highly intoxicated driver at the time of the alleged violation.

(d) (c) Nothing in this section shall be construed as limiting the introduction, in any criminal proceeding for a violation under section 291E-61 or 291E-61.5 or in any proceeding under part III, of relevant evidence of a person's alcohol concentration or drug content obtained more than three hours after an alleged violation; provided that the evidence is offered in compliance with the Hawaii rules of evidence."

SECTION 7. Section 291E-5, Hawaii Revised Statutes, is amended to read as follows:

**"§291E-5 Ignition interlock [special fund; surcharge; indigents.] user affordability.** (a) ~~There is established in the state treasury a special fund to be known as the ignition interlock special fund to be administered by the director of transportation. The fund shall consist of amounts collected under this section and section 291E-6. Moneys in the fund shall be expended by the director of transportation to fund the cost of installing and operating ignition interlock devices in the vehicles of persons who are required to install the device but who are indigent persons, as determined under subsection (d).~~

~~(b) Every person who installs an ignition interlock device pursuant to this chapter shall pay the ignition interlock device vendor a surcharge of \$ — when the device is installed. The surcharge shall be remitted by the ignition interlock device vendor to the director of transportation within ten days following the end of the month in which the surcharge was collected. The surcharges collected by the vendor pursuant to this subsection shall not be subject to any tax, fee, or other assessment, nor are they considered revenue of the vendor. The director of transportation shall deposit the surcharge amounts into the ignition interlock special fund.~~

~~(c) The cost of installing and operating ignition interlock devices required by this chapter for indigent persons shall be paid by the director of transportation from the ignition interlock special fund. Whether a person is an indigent person shall be determined pursuant to subsection (d) by the director or the court, as appropriate.~~

~~(d) For purposes of this section, "indigent person" means:~~

- ~~(1) Any individual whose income is not greater than one hundred twenty-five per cent of the official poverty line established by the Secretary of Health and Human Services under the Community Services Block Grant Act, 42 United States Code Section 9902; or~~
- ~~(2) Any individual who is eligible for free services under the Older Americans Act or Developmentally Disabled Act.~~

~~(e) The director of transportation shall adopt rules pursuant to chapter 91 for the purposes of this section.] The director of transportation shall contract with the selected ignition interlock vendor to provide partial financial relief for the installation and the periodic calibration charges to offenders who apply for such assistance and who are recipients, at the time of license revocation or suspension, of either food stamps under the Supplemental Nutrition Assistance~~

Program, or free services under the Older Americans Act or Developmentally Disabled Assistance and Bill of Rights Act.”

SECTION 8. Section 291E-6, Hawaii Revised Statutes, is amended to read as follows:

“§291E-6 **Ignition interlock devices; certification.** (a) The director of transportation shall establish and administer a statewide program relating to certification and monitoring of ignition interlock devices installed pursuant to chapter 291E and shall select a single vendor to install and maintain them.

(b) The program shall include standards and procedures for the certification of ignition interlock devices installed pursuant to chapter 291E. At a minimum, the standards shall require that the devices:

- (1) Be certified by ~~[a nationally recognized certification organization]~~ an independent laboratory to meet or exceed ~~[all standards and specifications provided as]~~ the guidelines published by the National Highway Traffic Safety Administration~~[-“Nationally recognized certification organization” means a testing laboratory or analytical chemist not affiliated with a manufacturer of ignition interlock devices that is qualified to test ignition interlock devices or reference samples and is approved by the United States Department of Transportation. The nationally recognized certification organization must be able to administer performance tests of an ignition interlock device or a sample provided by the vendor];~~
- (2) Operate using an alcohol-specific sensor technology;
- (3) Employ a digital camera by which a photograph of the person using the device can be incorporated into the electronic record generated by each use of the device;
- (4) Require a rolling retest by which the driver must, within a specified period of time or distance driven after starting the vehicle, be retested and found to have an alcohol concentration of less than .02, with a margin of error of .01; and
- (5) Generate a record of vehicle usage, including dates~~[-]~~ and times~~[-]~~ and distances driven.

(c) The program shall include standards and procedures for the certification of the vendor selected to install and maintain ignition interlock devices pursuant to chapter 291E. At a minimum, the standards shall require that the vendor:

- (1) Install only an ignition interlock device that is certified pursuant to this section;
- (2) Offer or contract for ignition interlock device installation and maintenance statewide;
- (3) Train drivers who are required to install an ignition interlock device, pursuant to chapter 291E ~~[or 804]~~, in how to use the device;
- (4) Schedule the driver for all necessary readings and maintenance of the device; and
- (5) Provide periodic reports regarding the use of each ignition interlock device installed pursuant to chapter 291E, including incidents of test failure, attempts to circumvent the device, and dates, times, and distances the vehicle was driven.

(d) The vendor selected for installation and maintenance of ignition interlock devices pursuant to chapter 291E shall be ~~[certified]~~ audited annually by the director of transportation pursuant to this section and the rules adopted thereunder. ~~[The vendor shall pay a certification fee to the director of transpor-~~

tation who shall deposit the fee into the ignition interlock special fund established pursuant to section 291E-5.] The director may require the vendor to pay for all or part of the costs incurred in conducting the audit.

(e) The director of transportation shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.”

SECTION 9. Section 291E-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to any other civil penalties ordered by the court, a person who violates any offense under this part may be ordered to pay a trauma system surcharge, provided that:

- (1) The maximum of which may be \$10 if the violator is not already required to pay a trauma system surcharge pursuant to the violation of the offense;
- (2) The maximum of which may be \$25 if the violation is an offense under ~~[[section]]~~ 291E-61(a)(1), 291E-61(a)(3), or 291E-61(a)(4);
- (3) The maximum of which may be \$50 if the violation is an offense under ~~[[section]]~~ 291E-61(a)(2) or 291E-61.5 or ~~[the offense under [section] 291E-61(a)(3) or 291E-61(a)(4) was committed by a highly intoxicated driver as defined by section 291E-1, or]~~ if the offense under ~~[[section]]~~ 291E-61(a)(3) or 291E-61(a)(4) is a second or subsequent offense that occurred within five years of the first offense.”

SECTION 10. 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. 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, ~~291E-C,~~ 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 IV.”

SECTION 11. 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[-]; ~~and~~
  - (5) Notifies the respondent that the respondent shall keep an ignition interlock device installed and operating in any vehicle the respondent operates during the revocation period if the respondent had a valid license at the time of the arrest.

SECTION 12. 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~~] the appropriate county agency 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 13. Section 291E-34, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (e) to read:

“(e) The notice shall state that, if the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, are administratively revoked after the review, a decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:

- (1) The reasons why the respondent's license and privilege to operate a vehicle, and motor vehicle registration if applicable, were administratively revoked;
- (2) That the respondent may request the director, within six days of the date the decision is mailed, to schedule an administrative hearing to review the administrative revocation;
- (3) That, if the respondent's request for an administrative hearing is received by the director within six days of the date the decision was mailed, the hearing shall be scheduled to commence:
  - (A) No later than twenty-five days after the date of the issuance of the notice of administrative revocation in the case of an alcohol related offense; and

- (B) No later than thirty-nine days after the date of the issuance of the notice of administrative revocation in the case of a drug related offense;
- (4) The procedure to request an administrative hearing;
- (5) That failure to request an administrative hearing within the time provided shall cause the administrative revocation to take effect for the period and under the conditions established by the director in the decision;
- (6) That the respondent may regain the right to a hearing by requesting the director, within sixty days after the issuance of the notice of administrative revocation, to schedule a hearing;
- (7) That the director shall schedule the hearing to commence no later than thirty days after a request under paragraph (6) is received, but that, except as provided in section 291E-38(k), the temporary permit, and temporary motor vehicle registration and temporary number plates if applicable, shall not be extended if the respondent fails to request an administrative hearing within the initial six-day period provided for that purpose;
- (8) That failure to attend the hearing shall cause the administrative revocation to take effect for the period and under the conditions indicated;
- (9) The duration of the administrative revocation and other conditions that may be imposed, including: referral to the driver's education program for an assessment of the respondent's substance abuse or dependence and the need for treatment; ~~and~~
- (10) That, pursuant to section 291E-48, the director may grant a special motor vehicle registration to a qualified household member or to a co-owner of any motor vehicle owned by the respondent, upon a determination that the person is completely dependent on the motor vehicle for the necessities of life; provided that the special motor vehicle registration shall not be valid for use by the respondent[-]; and
- (11) That the respondent shall obtain an ignition interlock permit in order to operate a vehicle during the revocation period if the respondent had a valid license at the time of the arrest."

2. By amending subsection (h) to read:

"(h) The notice shall state that, if the administrative revocation is sustained at the hearing, a written decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:

- (1) The effective date of the administrative revocation;
- (2) The duration of the administrative revocation;
- (3) If applicable, the date by which any outstanding motor vehicle number plates issued to the respondent must be surrendered to the director;
- (4) If applicable, that failure to surrender any motor vehicle number plates as required is a misdemeanor;
- [3] (5) Other conditions that may be imposed by law, including the use of an ignition interlock device; and
- [4] (6) The right to obtain judicial review."

SECTION 14. Section 291E-38, Hawaii Revised Statutes, is amended by amending subsection (l) to read as follows:

“(1) The director may grant a special motor vehicle registration, pursuant to section 291E-48, to a qualified household member or a co-owner of any motor vehicle upon determination that ~~the~~:

- (1) The person is completely dependent on the motor vehicle for the necessities of life[-]; and
- (2) At the time of the application for a special motor vehicle registration, the respondent does not have a valid ignition interlock permit.

The special motor vehicle registration shall not be valid for use by the respondent.”

SECTION 15. Section 291E-41, Hawaii Revised Statutes, is amended to read as follows:

“**§291E-41 Effective date, conditions, and period of administrative revocation; criteria.** (a) Unless an administrative revocation is reversed or the temporary permit ~~is~~, and temporary motor vehicle registration and temporary number plates, if applicable, are extended by the director, administrative revocation shall become effective on the day specified in the notice of administrative revocation. Except as provided in section ~~[291E-44,]~~ 291E-44.5, no license and privilege to operate a vehicle shall be restored under any circumstances during the administrative revocation period. Upon completion of the administrative revocation period, the respondent may reapply and be reissued a license pursuant to section 291E-45.

(b) Except as provided in paragraph (5) and in section 291E-44.5, the respondent shall keep an ignition interlock device installed and operating ~~on~~ in any vehicle the respondent operates during the revocation period. Except as provided in section 291E-5, installation and maintenance of the ignition interlock device shall be at the respondent's own expense. 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 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) An eighteen month 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) A two-year 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 five years preceding the date the notice of administrative revocation was issued;
- (4) A minimum of five years up to a maximum of ten 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 three or more prior alcohol enforcement contacts or drug enforcement contacts during the ~~five~~ ten years preceding the date the notice of administrative revocation was issued; ~~or~~



- (5) For respondents under the age of eighteen years who were arrested for a violation of section 291E-61 or 291E-61.5, revocation of license and privilege to operate a vehicle for the appropriate revocation period provided in paragraphs (1) to (4) or in subsection ~~[(e)]~~ (d); provided that the respondent shall be prohibited from driving during the period preceding the respondent's eighteenth birthday and shall thereafter be subject to the ignition interlock requirement of this subsection for the balance of the revocation period; or
- (6) For respondents, other than those excepted pursuant to section 491E-44.5(b)<sup>1</sup>, who do not install an ignition interlock device in ~~[the respondent's vehicle]~~ any vehicle the respondent operates during the revocation period, revocation of license and privilege to operate a vehicle for the period of revocation provided in paragraphs (1) to (5) or in subsection (c); provided that:
  - (A) The respondent shall be absolutely prohibited from driving during the revocation period and subject to the penalties provided by section 291E-62 if the respondent drives during the revocation period; and
  - (B) The director shall not issue an ignition interlock permit to the respondent pursuant to section 291E-44.5;

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.

(c) Whenever a motor vehicle registration is revoked under this part, the director shall cause the revocation to be entered electronically into the motor vehicle registration file of the respondent.

- ~~[(e)]~~ (d) If a respondent has refused to be tested after being informed:
  - (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), or (4) shall be for a period of two years, three years, four years, and ten years, respectively.

~~[(e)]~~ (e) Whenever a license and privilege to operate a vehicle is administratively revoked under this part, the respondent shall be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the respondent's substance abuse or dependence and the need for treatment. The counselor shall submit a report with recommendations to the director. If the counselor's assessment establishes that the extent of the respondent's substance abuse or dependence warrants treatment, the director shall so order. All costs for assessment and treatment shall be paid by the respondent.

~~[(e)]~~ (f) Alcohol and drug enforcement contacts that occurred prior to January 1, 2002, shall be counted in determining the administrative revocation period.

~~[(f)]~~ (g) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a revocation under subsection (b)(1)."

SECTION 16. Section 291E-44.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a)(1) Except as provided in paragraph (2), upon proof that the respondent has installed an ignition interlock device in the respondent's

- vehicle, the director shall issue an ignition interlock permit that will allow the respondent to drive a vehicle equipped with an ignition interlock device during the revocation period; or
- (2) Notwithstanding any other law to the contrary, the director shall not issue an ignition interlock permit to:
- (A) A respondent whose license is expired, suspended, or revoked as a result of action other than the instant revocation; [ø]
- (B) A respondent who does not hold a valid license at the time of arrest for the violation of section 291E-61; or
- [ø] (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 ignition interlock permit is restricted to a category 1, 2, or 3 license under section 286-102(b).
- (b)(1) [The] Except as provided in subsection (a)(2), the director may issue a separate permit authorizing a respondent to operate a vehicle owned by the respondent's employer during the period of revocation without installation of an ignition interlock device if the respondent is gainfully employed in a position that requires driving and the respondent will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device.
- (2) A request made pursuant to paragraph (1) shall be accompanied by:
- (A) A sworn statement from the respondent containing facts establishing that the respondent currently is employed in a position that requires driving and that the respondent will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device; and
- (B) A sworn statement from the respondent's employer establishing that the employer will, in fact, discharge the respondent if the respondent is prohibited from driving a vehicle not equipped with an ignition interlock device and identifying the specific vehicle and hours of the day the respondent will drive, not to exceed twelve hours per day, for purposes of employment."

SECTION 17. Section 291E-45, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) To be eligible for reregistration of a motor vehicle, if applicable, after a period of administrative revocation has expired, the person shall:

- (1) Submit proof to the director of compliance with all conditions imposed by the director;
- (2) Obtain a certified statement from the director indicating eligibility for registration of a motor vehicle;
- (3) Present the certified statement to the [~~appropriate county~~] director of [~~finance~~] the appropriate county agency; and
- (4) Successfully complete each requirement, as provided in chapter 286, for obtaining a new certificate of registration for a motor vehicle in this State, including payment of all applicable fees."

SECTION 18. Section 291E-48, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Anytime after the effective date of revocation or after the administrative hearing decision is mailed pursuant to section 291E-38(j), a qualified household member or co-owner of a motor vehicle with a respondent who has had a motor vehicle registration revoked under this part may submit a sworn statement to the director requesting a special motor vehicle registration. The

director may grant the request upon determining that the following conditions have been met:

- (1) The applicant is a household member of the respondent's or a co-owner of the vehicle;
- (2) The applicant has a license that has not expired or been suspended or revoked;
- (3) The applicant is completely dependent on the motor vehicle for the necessities of life; ~~and~~
- (4) The director finds that the applicant will take reasonable precautions to ensure that the respondent will not drive the vehicle~~[-]; and~~
- (5) The respondent does not have a valid ignition interlock permit.

A person to whom a special motor vehicle registration has been granted shall apply to the ~~[appropriate county]~~ director of ~~[finance]~~ the appropriate county agency for special series number plates, as provided in section 249-9.4."

SECTION 19. Section 291E-61, Hawaii Revised Statutes, is amended to read as follows:

**"§291E-61 Operating a vehicle under the influence of an intoxicant.** (a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

- (1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;
  - (2) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;
  - (3) With .08 or more grams of alcohol per two hundred ten liters of breath; or
  - (4) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.
- (b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced without possibility of probation or suspension of sentence as follows:

- (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) One-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
  - (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;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) ~~[May be charged a]~~ A surcharge, if the court so orders, of up to \$25 to be deposited into the trauma system special fund ~~[if the court so orders];~~

- (2) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a)[, and notwithstanding section 706-623, by probation for not less than eighteen months nor more than two years on the following conditions]:
- (A) Revocation for not less than eighteen months nor more than two years of license and privilege to operate a vehicle during the [probation] revocation period and installation during the [probation] revocation period of an ignition interlock device on any vehicle operated by the person;
  - (B) Either one of the following:
    - (i) Not less than two hundred forty hours of community service work; or
    - (ii) Not ~~more~~ less than five days but not more than thirty 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;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) ~~[May be charged a]~~ A surcharge of up to \$50 if the court so orders, to be deposited into the trauma system special fund ~~[if the court so orders]~~;
- (3) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a)[, and notwithstanding section 706-623, by probation for two years on the following conditions]:
- (A) A fine of not less than \$500 but not more than \$2,500;
  - (B) Revocation for two years of license and privilege to operate a vehicle during the [probation] revocation period and installation during the [probation] revocation period of an ignition interlock device on any vehicle operated by the person;
  - (C) ~~[Up to five]~~ Not less than ten days but not more than thirty days imprisonment, of which at least forty-eight hours shall be served consecutively;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) ~~[May be charged a]~~ A surcharge of up to \$50 if the court so orders, to be deposited into the trauma system special fund ~~[if the court so orders]~~;
- (4) In addition to a sentence imposed under paragraphs (1) through (3), 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 paragraph (1), (2), or (3), as applicable. Notwithstanding [paragraph] paragraphs (1) and (2), the [probation] revocation period for a person sentenced under this paragraph shall be not less than two years; and
- (5) If the person demonstrates to the court that the person:
- (A) Does not own or have the use of a vehicle in which the person can install an ignition interlock device during the [probation] revocation period; or

(B) Is otherwise unable to drive during the [~~probation~~] revocation period,

the person shall be absolutely prohibited from driving during the period of [~~probation~~] applicable revocation provided in paragraphs (1) to (4); provided that the court shall not issue an ignition interlock permit pursuant to subsection (i) and the person shall be subject to the penalties provided by section 291E-62 if the person drives during the [~~probation~~] applicable revocation period.

(c) Notwithstanding any other law to the contrary, the court shall not issue an ignition interlock permit to:

- (1) A defendant whose license is expired, suspended, or revoked as a result of action other than the instant offense; ~~or~~
- (2) A defendant who does not hold a valid license at the time of the instant offense; or
- [~~2~~] (3) A defendant 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 ignition interlock permit is restricted to a category 1, 2, or 3 license under section 286-102(b).

(d) [~~The~~] Except as provided in subsection (c), the court may issue a separate permit authorizing a defendant to operate a vehicle owned by the defendant's employer during the period of revocation without installation of an ignition interlock device if the defendant is gainfully employed in a position that requires driving and the defendant will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device.

(e) A request made pursuant to subsection (d) shall be accompanied by:

- (1) A sworn statement from the defendant containing facts establishing that the defendant currently is employed in a position that requires driving and that the defendant will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device; and
- (2) A sworn statement from the defendant's employer establishing that the employer will, in fact, discharge the defendant if the defendant is prohibited from driving a vehicle not equipped with an ignition interlock device and identifying the specific vehicle and hours of the day, not to exceed twelve hours per day, the defendant will drive for purposes of employment.

(f) A permit issued pursuant to subsection (d) shall include restrictions allowing the defendant to drive:

- (1) Only during specified hours of employment, not to exceed twelve hours per day, and only for activities solely within the scope of the employment;
- (2) Only the vehicle specified; and
- (3) Only if the permit is kept in the defendant's possession while operating the employer's vehicle.

(g) Notwithstanding any other law to the contrary, any:

- (1) Conviction under this section, section 291E-4(a), or section 291E-61.5;
- (2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant; or

- (3) Adjudication of a minor for a law violation that, if committed by an adult, would constitute a violation of this section or an offense under section 291E-4(a), or section 291E-61.5[;],

shall be considered a prior conviction for the purposes of imposing sentence under this section. Any judgment on a verdict or a finding of guilty, a plea of guilty or nolo contendere, or an adjudication, in the case of a minor, that at the time of the offense has not been expunged by pardon, reversed, or set aside shall be deemed a prior conviction under this section. No license and privilege [~~suspension or~~] revocation shall be imposed pursuant to this section if the person's license and privilege to operate a vehicle has previously been administratively revoked pursuant to part III for the same act; provided that, if the administrative [~~suspension or~~] revocation is subsequently reversed, the person's license and privilege to operate a vehicle shall be [~~suspended or~~] revoked as provided in this section. There shall be no requirement for the installation of an ignition interlock device pursuant to this section if the requirement has previously been imposed pursuant to part III for the same act; provided that, if the requirement is subsequently reversed, a requirement for the installation of an ignition interlock device shall be imposed as provided in this section.

(h) Whenever a court sentences a person pursuant to subsection (b), it also shall require that the offender be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All costs for assessment and treatment shall be borne by the offender.

- (i) Upon proof that the defendant has [~~installed~~]:

- (1) Installed an ignition interlock device in [the defendant's] any vehicle the defendant operates pursuant to subsection (b)[;] and
- (2) Obtained motor vehicle insurance or self-insurance that complies with the requirements under either section 431:10C-104 or section 431:10C-105.

the court shall issue an ignition interlock permit that will allow the defendant to drive a vehicle equipped with an ignition interlock device during the revocation period.

(j) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person a new driver's license until the expiration of the period of revocation determined by the court. After the period of revocation is completed, the person may apply for and the examiner of drivers may grant to the person a new driver's license.

(k) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood or urine tests conducted pursuant to section 291E-11. The court shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test. Except as provided in section 291E-5, installation and maintenance of the ignition interlock device required by subsection (b) shall be at the defendant's own expense.

~~[(h) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a sentence imposed under subsection (b)(1).]~~

~~[(m)]~~ (l) As used in this section, the term "examiner of drivers" has the same meaning as provided in section 286-2."

SECTION 20. Section 291E-62, Hawaii Revised Statutes, is amended to read as follows:

**“§291E-62 Operating a vehicle after license and privilege have been suspended or revoked for operating a vehicle under the influence of an intoxicant; penalties.** (a) No person whose license and privilege to operate a vehicle have been revoked, suspended, or otherwise restricted pursuant to this section or to part III or section 291E-61 or 291E-61.5, or to part VII or part XIV of chapter 286 or section 200-81, 291-4, 291-4.4, 291-4.5, or 291-7 as those provisions were in effect on December 31, 2001, shall operate or assume actual physical control of any vehicle:

- (1) In violation of any restrictions placed on the person’s license;
- (2) While the person’s license or privilege to operate a vehicle remains suspended or revoked; or
- (3) Without installing an ignition interlock device required by this chapter; ~~or~~
- (4) ~~After disabling or circumventing an ignition interlock device required by this chapter.~~

(b) Any person convicted of violating this section shall be sentenced as follows[;] without possibility of probation or suspension of sentence:

- (1) For a first offense, or any offense not preceded within a five-year period by conviction for an offense under this section, section 291E-A, or ~~[under]~~ section 291-4.5 as that section was in effect on December 31, 2001:
  - (A) A term of imprisonment of not less than three consecutive days but not more than thirty days;
  - (B) A fine of not less than \$250 but not more than \$1,000; ~~[and]~~
  - (C) Revocation of license and privilege to operate a vehicle for an additional year; and
  - (D) Loss of the privilege to operate a vehicle equipped with an ignition interlock device, if applicable;
- (2) For an offense that occurs within five years of a prior conviction for an offense under this section, section 291E-A, or ~~[under]~~ section 291-4.5 as that section was in effect on December 31, 2001:
  - (A) Thirty days imprisonment;
  - (B) A \$1,000 fine; ~~[and]~~
  - (C) Revocation of license and privilege to operate a vehicle for an additional two years; and
  - (D) Loss of the privilege to operate a vehicle equipped with an ignition interlock device, if applicable; and
- (3) For an offense that occurs within five years of two or more prior convictions for offenses under this section, section 291E-A, or ~~[under]~~ section 291-4.5 as that section was in effect on December 31, 2001[;], or any combination thereof:
  - (A) One year imprisonment;
  - (B) A \$2,000 fine; ~~[and]~~
  - (C) Permanent revocation of the person’s license and privilege to operate a vehicle[;]; and
  - (D) Loss of the privilege to operate a vehicle equipped with an ignition interlock device, if applicable.

~~[The period of revocation shall commence upon the release of the person from the period of imprisonment imposed pursuant to this section.]~~

(c) The applicable period of revocation in subsection (b) shall commence upon the release of the person from the period of imprisonment imposed pursuant to this section.”

SECTION 21. 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) ~~Except as provided in paragraph (e), six~~ Six months upon conviction of a petty misdemeanor; provided that up to one year may be imposed upon a finding of good cause; ~~or~~
- (e) ~~Eighteen months to two years upon conviction under section 291E-61(b)(2), and two years upon a conviction under section 291E-61(b)(3).~~

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 22. 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;
    - (S) A violation of an order issued pursuant to chapter 586;
    - (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; or
    - (W) Electronic enticement of a child in the second degree; [~~or~~
    - ~~(X) An offense under part IV, chapter 291E;~~]
  - (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; or
  - (15) The defendant holds a commercial driver's license and has been charged with violating a traffic control law, other than a parking law, in connection with the operation of any type of motor vehicle. The court may adopt by rule other criteria in this area."

SECTION 23. 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 24. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 25. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

SECTION 26. This Act shall take effect on January 1, 2011 and the provisions of this Act shall be incorporated with the provisions of sections 2 through 11 of Act 88, Session Laws of Hawaii 2009.

(Approved June 14, 2010.)

#### Notes

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

## ACT 167

H.B. NO. 2486

A Bill for an Act Relating to Education.

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

### PART I

SECTION 1. Act 51, Session Laws of Hawaii 2004, stated, "Ultimately all education reform must be driven by the needs of students. Students are the primary clients served by the public education system and they must be served well by providing them with access to the tools they need to succeed, a nurturing environment conducive to learning, and supplementary opportunities for growth that facilitate their development."

Accordingly, especially in light of the instructional hours lost due to furloughs, the purpose of this Act is to require the phase-in of implementation of a certain number of student instructional hours at all public schools, except charter schools, as follows:

- (1) Part II requires the department of education to maximize the amount of student instructional hours provided to students under relevant collective bargaining agreements in effect during the 2010-2011 school year;
- (2) Part III requires the establishment of a certain number of student instructional hours per school year for elementary and secondary school grades, for the 2011-2013 school years, and for the 2013-2015 school years;
- (3) Part IV requires the department of education to, with the board of education and Office of the Governor, and in consultation with representatives of the affected collective bargaining units, submit to the legislature, no later than twenty days prior to the convening of the 2012 regular session, a plan to provide students with a higher number of student instructional hours per school year for elementary and secondary school grades, for future school years; and
- (4) Part V requires the department of education to consider pick-up and drop-off times that optimize its transportation services while minimizing costs to the State, if implementation of such student in-

structional hours results in varying schedules for the transportation of students.

## PART II

SECTION 2. The department of education shall maximize the amount of student instructional hours provided at all public schools, except charter schools, under relevant collective bargaining agreements in effect during the 2010-2011 school year. For purposes of this section, "student instructional hours" shall have the same meaning as in section 302A- , Hawaii Revised Statutes.

## PART III

SECTION 3. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§302A- School year; instructional time.** (a) Notwithstanding any other law to the contrary, for the 2011-2013 school years, all public schools, except charter schools, shall implement a school year of one hundred eighty days, excluding professional development days and other non-instructional days negotiated pursuant to chapter 89, that shall include:

- (1) Nine hundred fifteen student instructional hours for the elementary school grades; and
- (2) Nine hundred ninety student instructional hours for the secondary school grades.

(b) Notwithstanding any other law to the contrary, for the 2013-2015 school years, all public schools, except charter schools, shall implement a school year of one hundred eighty days, excluding professional development days and other non-instructional days negotiated pursuant to chapter 89, that shall include one thousand eighty student instructional hours for both elementary and secondary school grades.

(c) For purposes of this section, "student instructional hours" means student learning time during which students are engaged in learning activities including regularly-scheduled instruction and learning assessments within the curriculum, and does not include lunch, recess, or passing time."

## PART IV

SECTION 4. The department of education shall, with the board of education and office of the governor, and in consultation with representatives of the affected collective bargaining units, submit to the legislature, no later than twenty days prior to the convening of the regular session of 2012, a plan to implement a school year of one hundred ninety days, excluding professional development days and other non-instructional days negotiated pursuant to chapter 89, Hawaii Revised Statutes, that shall include one thousand one hundred forty student instructional hours for both elementary and secondary school grades at all public schools, except charter schools, for school years beginning with the 2015-2016 school year. For purposes of this section, "student instructional hours" shall have the same meaning as in section 302A- , Hawaii Revised Statutes.

## PART V

SECTION 5. Section 302A-406, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department may provide suitable transportation to and from school and for educational field trips for all children in grades kindergarten to twelve and in special education classes. The department shall adopt such policy, procedure, and program as it deems necessary to provide suitable transportation. In formulating the policy, procedure, and program, the department shall consider the school district; the school attendance area in which a school child normally resides; the distance the school child lives from the school; the availability of public carriers or other means of transportation; the frequency, regularity, and availability of public transportation; and the grade level, physical handicap, or special learning disability of a school child, and it may also consider such conditions and circumstances unique or peculiar to a county or area. If the implementation of student instructional hours pursuant to section 302A- results in varying schedules for the transportation of students, the department shall consider pick-up and drop-off times that optimize the department’s transportation services while minimizing costs to the State.”

## PART VI

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. New statutory material is underscored.<sup>1</sup>

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

(Approved June 15, 2010.)

## Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 168

H.B. NO. 2503

A Bill for an Act Relating to the Environment.

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

SECTION 1. Urban sprawl, combined with the proliferation of “fake farms” and “gentlemen estates” in agricultural districts, has caused an increasing number of incidents in which farmers have been accused of using pesticides irresponsibly. While none of these accusations have been substantiated, they have significantly increased the burden on the department of agriculture’s pesticides branch personnel to ensure that safe and permitted pesticide application and storage practices are being followed.

The pesticide use revolving fund was established by the legislature in 1996 and its authorizing statute was amended in 2000 to allow the fund to be used to pay for personnel costs, but limited those costs to employees performing registration and education services only. With the increased compliance-monitoring workload and reduced staffing and funding caused by the state’s

economic downturn, it is reasonable that this revolving fund be used to pay for compliance-monitoring costs incurred because of public demand for protection of the environment and the public's well-being.

The purpose of this Act is to remove the requirement that personnel costs from the pesticide use revolving fund be used only for the registration and education section of the pesticides branch of the department of agriculture.

SECTION 2. Section 149A-13.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Moneys in the pesticide use revolving fund shall be expended by the department to support the pesticide program's registration and licensing, certification and education, and compliance monitoring activities. The department shall also expend revolving fund moneys on the establishment of pesticide training workshops, educational programs, development of integrated pest management strategies, and other services for pesticide users such as the agricultural pest control industry, the structural pest control industry, and consumer users of pesticides, which provide pesticide instruction in areas including ~~[but not limited to]~~ the collection, disposal, and recycling of pesticide containers and all other pesticide services deemed necessary by the department. Moneys from the revolving fund may be used for personnel, services, materials, and equipment for the purposes of this section~~[-; provided that the use of moneys from the revolving fund for personnel costs shall be limited to those employees under the registration and education section of the department's pesticides branch].~~

Moneys expended by the department from the pesticide use revolving fund for training workshops, educational programs, and other services for the agricultural pest control industry, the structural pest control industry, and consumer groups shall be expended in a manner that appropriately addresses the needs of each category of pesticide user.”

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

SECTION 4. This Act shall take effect on July 1, 2010; provided that this Act shall be repealed on June 30, 2015, and section 149A-13.5(b), Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 30, 2010.

(Approved June 22, 2010.)

## ACT 169

H.B. NO. 2288

A Bill for an Act Relating to Private Transfer Fees.

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

SECTION 1. Chapter 501, Hawaii Revised Statutes, is amended by adding a new section to the part entitled “Miscellaneous Provisions” to be appropriately designated and to read as follows:

“§501- Prohibition of transfer fees. (a) A deed restriction or other covenant running with the land applicable to the transfer of real property that requires a transferee of real property or the transferee's heirs, successors, or assigns to pay a fee in connection with a future transfer of the property to a declarant or other person imposing the deed restriction or covenant on the property or a third party designated by a transferor of the property is prohibited. A deed

restriction or other covenant running with the land that violates this section or a lien purporting to encumber the land to secure a right under a deed restriction or other covenant running with the land that violates this section is void and unenforceable.

(b) This section shall not apply to the following fees or charges required by a deed restriction or other covenant running with the land in connection with the transfer of real property:

- (1) Any interest, charge, fee, or other amount payable by a borrower to a lender pursuant to a loan secured by real property, including any fee payable to the lender for consenting to an assumption of the loan or transfer of the real property, for providing an estoppel letter or certificate, or for any shared appreciation interest or profit participation or other consideration payable to the lender in connection with the loan;
- (2) Any fee, charge, assessment, or fine payable to an association of apartment owners as defined in section 514A-3, an association as defined in section 514B-3, a cooperative housing corporation as described in section 421I-1, a limited-equity housing cooperative as defined in section 421H-1, or a planned community association as defined in section 607-14 and described in chapter 421J, pursuant to a declaration, covenant, or law applicable to such association or corporation, including a fee or charge to change the association or corporation's records as to the owner of the real property or to provide an estoppel letter or certificate;
- (3) Any fee or charge payable to a lessor under a lease of real property, including a fee or charge payable to the lessor for consenting to an assignment of the lease, for providing an estoppel letter or certificate, or to change the lessor's records as to the holder of the lessee's interest in the lease;
- (4) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon transfer of the real property to another person;
- (5) Any fee, charge, shared appreciation interest, profit participation, or other consideration, payable by:
  - (A) A person engaged in the business of the development of real property for resale to others and not for the person's own use or the use of the person's parent, affiliates, subsidiaries, or relatives;
  - (B) A person who acquires the real property for the purpose of engaging in the business of the development of real property for resale to others or for the purpose of reselling the real property to a person engaged in the business of the development of real property for resale to others; or
  - (C) A person who purchases real property initially transferred at a price below the then prevailing market value of the real property pursuant to an affordable housing program established by the seller; provided that such fee, charge, shared appreciation interest, profit participation, or other consideration becomes payable, if ever, within ten years of the recording of the deed restriction or other covenant running with the land imposing the fee or charge on the real property;
- (6) Any fee or charge payable to a government entity;

- (7) Any fee, charge, assessment, or other amount payable pursuant to a deed restriction or other covenant running with the land, regardless of when filed or recorded, that was required by a litigation settlement that was approved by a court of competent jurisdiction before the effective date of Act , Session Laws of Hawaii 2010; or
- (8) Any reasonable fee payable to a qualified organization for:
  - (A) The qualified organization’s management, stewardship, or enforcement of a qualified real property interest in the real property, granted exclusively for a conservation purpose; or
  - (B) Educating new owners of the real property on the restrictions imposed by the qualified real property interest granted exclusively for a conservation purpose.

As used in this paragraph, “qualified real property interest,” “qualified organization,” and “conservation purpose” have the same meaning as in Section 170(h)(2), (3), and (4), respectively, of the Internal Revenue Code.

- (c) Any:
  - (1) Deed restriction;
  - (2) Covenant running with the land; or
  - (3) Lien;

to the extent that it purports to secure the payment of a transfer fee prohibited by this section, and that is created or filed on or after the effective date of Act , Session Laws of Hawaii 2010, shall be void and shall not be binding on or enforceable against the subject real property or any subsequent owner, purchaser, or mortgagee of any interest in the real property. This subsection shall not imply that any particular deed restriction, covenant running with the land, or lien that is created or filed prior to the effective date of Act , Session Laws of Hawaii 2010, is valid per se.

(d) No person shall be entitled to recover from the recipient or payee any fee, charge, or assessment required by a deed restriction or other covenant running with the land in connection with the transfer of real property to the extent that the fee, charge, or assessment was paid prior to the effective date of Act , Session Laws of Hawaii 2010.

(e) For purposes of this section:

“Filed” means filed in the office of the assistant registrar of the land court.

“Recorded” means the same as defined in section 502-7.”

SECTION 2. Chapter 502, Hawaii Revised Statutes, is amended by adding a new section to the part entitled “Other Provisions” to be appropriately designated and to read as follows:

**“§502- Prohibition of transfer fees.** (a) A deed restriction or other covenant running with the land applicable to the transfer of real property that requires a transferee of real property or the transferee’s heirs, successors, or assigns, to pay a fee in connection with a future transfer of the property to a declarant or other person imposing the deed restriction or covenant on the property or a third party designated by a transferor of the property is prohibited. A deed restriction or other covenant running with the land that violates this section or a lien purporting to encumber the land to secure a right under a deed restriction or other covenant running with the land that violates this section is void and unenforceable.

(b) This section shall not apply to the following fees or charges required by a deed restriction or other covenant running with the land in connection with the transfer of real property:

- (1) Any interest, charge, fee, or other amount payable by a borrower to a lender pursuant to a loan secured by real property, including any fee payable to the lender for consenting to an assumption of the loan or transfer of the real property, for providing an estoppel letter or certificate, or for any shared appreciation interest or profit participation or other consideration payable to the lender in connection with the loan;
- (2) Any fee, charge, assessment, or fine payable to an association of apartment owners as defined in section 514A-3, an association as defined in section 514B-3, a cooperative housing corporation as described in section 421I-1, a limited-equity housing cooperative as defined in section 421H-1, or a planned community association as defined in section 607-14 and described in chapter 421J, pursuant to a declaration, covenant, or law applicable to such association or corporation, including a fee or charge to change the association or corporation's records as to the owner of the real property or to provide an estoppel letter or certificate;
- (3) Any fee or charge payable to a lessor under a lease of real property, including a fee or charge payable to the lessor for consenting to an assignment of the lease, for providing an estoppel letter or certificate, or to change the lessor's records as to the holder of the lessee's interest in the lease;
- (4) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon transfer of the real property to another person;
- (5) Any fee, charge, shared appreciation interest, profit participation, or other consideration, payable by:
  - (A) A person engaged in the business of the development of real property for resale to others and not for the person's own use or the use of the person's parent, affiliates, subsidiaries, or relatives;
  - (B) A person who acquires the real property for the purpose of engaging in the business of the development of real property for resale to others or for the purpose of reselling the real property to a person engaged in the business of the development of real property for resale to others; or
  - (C) A person who purchases real property initially transferred at a price below the then prevailing market value of the real property pursuant to an affordable housing program established by the seller; provided that such fee, charge, shared appreciation interest, profit participation, or other consideration becomes payable, if ever, within ten years of the recording of the deed restriction or other covenant running with the land imposing the fee or charge on the real property;
- (6) Any fee or charge payable to a government entity;
- (7) Any fee, charge, assessment, or other amount payable pursuant to a deed restriction or other covenant running with the land, regardless of when recorded or filed, that was required by a litigation settlement



that was approved by a court of competent jurisdiction before the effective date of Act , Session Laws of Hawaii 2010; or

- (8) Any reasonable fee payable to a qualified organization for:
  - (A) The qualified organization's management, stewardship, or enforcement of a qualified real property interest in the real property, granted exclusively for a conservation purpose; or
  - (B) Educating new owners of the real property on the restrictions imposed by the qualified real property interest granted exclusively for a conservation purpose.

As used in this paragraph, "qualified real property interest", "qualified organization", and "conservation purpose" have the same meaning as in Section 170(h)(2), (3), and (4), respectively, of the Internal Revenue Code.

- (c) Any:
  - (1) Deed restriction;
  - (2) Covenant running with the land; or
  - (3) Lien;

to the extent that it purports to secure the payment of a transfer fee prohibited by this section, and that is created or recorded on or after the effective date of Act , Session Laws of Hawaii 2010, shall be void and shall not be binding on or enforceable against the subject real property or any subsequent owner, purchaser, or mortgagee of any interest in the real property. This subsection shall not imply that any particular deed restriction, covenant running with the land, or lien that is created or recorded prior to the effective date of Act , Session Laws of Hawaii 2010, is valid per se.

(d) No person shall be entitled to recover from the recipient or payee any fee, charge, or assessment required by a deed restriction or other covenant running with the land in connection with the transfer of real property to the extent that the fee, charge, or assessment was paid prior to the effective date of Act , Session Laws of Hawaii 2010.

(e) For purposes of this section, "filed" means filed in the office of the assistant registrar of the land court pursuant to chapter 501."

SECTION 3. In printing this Act, the revisor of statutes shall substitute in sections 501- and 502- , Hawaii Revised Statutes, in sections 1 and 2 of this Act, respectively, the corresponding act number of this Act.

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval, and shall be repealed on June 30, 2015.

(Approved June 22, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.

**ACT 170**

S.B. NO. 1059

A Bill for an Act Relating to Fireworks.

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

SECTION 1. Chapter 132D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§132D- County ordinances.** (a) Nothing in this chapter shall be construed to supersede or in any manner affect a county fireworks ordinance; provided that the ordinance is at least as stringent in the control or prohibition of fireworks as the law under this chapter.

(b) Nothing in this chapter shall prohibit a county from enacting ordinances that are more stringent in the control or prohibition of fireworks than this chapter.”

SECTION 2. Section 132D-17, Hawaii Revised Statutes, is repealed.

SECTION 3. (a) There shall be established within the legislative reference bureau for administrative purposes an illegal fireworks task force. The task force shall develop a plan and make recommendations to stop the importation of illegal fireworks and explosives into Hawaii and develop a strategy to ensure the safety and security of the airports, harbors, and other facilities and institutions in this State against the discharge of illegal fireworks and explosives.

(b) The illegal fireworks task force shall meet a minimum of five times between June 1, 2010, and December 31, 2010. The task force may continue to meet beyond December 31, 2010, if necessary. The task force shall be dissolved on June 30, 2011.

(c) The legislative reference bureau shall provide administrative support to the illegal fireworks task force.

(d) The co-chairs of the illegal fireworks task force shall be the chair of the senate committee on public safety and military affairs and the chair of the house committee on public safety. The task force may include representatives from the following organizations:

- (1) Federal Bureau of Investigation;
- (2) United States Drug Enforcement Agency;
- (3) United States Coast Guard;
- (4) Department of Homeland Security;
- (5) Department of public safety;
- (6) Department of transportation;
- (7) Department of agriculture;
- (8) Department of transportation - harbors division;
- (9) Department of transportation - airports division;
- (10) Department of defense;
- (11) Department of the attorney general;
- (12) Police departments of the city and county of Honolulu, county of Maui, county of Hawaii, and county of Kauai;
- (13) Office of the prosecuting attorney of the city and county of Honolulu, county of Maui, county of Hawaii, and county of Kauai;
- (14) State fire council;
- (15) Consumer Product Safety Commission;
- (16) Federal Aviation Administration;
- (17) Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives; and
- (18) United States Customs and Border Protection;

provided that the governor, the president of the senate, and the speaker of the house of representatives shall each appoint one member in addition to those specified in paragraphs (1) through (18); provided further that two additional members of the task force shall be representatives of the shipping and trucking industries; and provided further that two additional members of the task force shall be representatives of the fireworks industry.

(e) The illegal fireworks task force shall submit a preliminary plan and strategy report to the legislature no later than January 10, 2011.

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

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

(Approved June 22, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 171

H.B. NO. 1948

A Bill for an Act Relating to Taxation.

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

SECTION 1. Section 231-23, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) This subsection shall apply to a refund for an overpayment of a tax[-];

(1) If the tax return as filed by a taxpayer shows the amount already paid~~[-, whether or not on the basis of installments,]~~ exceeds the amount determined to be the correct amount of the tax due, whether or not the tax was paid by installments, and the taxpayer requests a refund of the overpayment, the amount of the overpayment [together with interest, if any,] shall be refunded in the manner provided in subsection (c)~~[-The]~~ within ninety days of the due date of the tax return or the date the tax return is filed, whichever is later; provided that interest on the overpayment shall be [allowed and paid at] paid:

(A) To the taxpayer if the amount overpaid is not refunded within ninety days; and

(B) At the rate of one-third of one per cent of the refund amount for each month or fraction thereof[-, beginning with the first calendar day after the due date of the return or, if the return is filed after the prescribed due date, the first month following the month the return is received, and continuing until the date that the director approves the refund voucher. If the director approves the refund voucher within ninety days from the due date or the date the return is received, whichever is later, and the comptroller of the State sends the taxpayer a refund warrant within forty five days from the date of the director's approval, no interest on the overpayment shall be allowed or paid. However, if either the director or the comptroller exceeds the time allowed herein, interest will be computed from the first calendar day after the due date of the return or from the first month following the month the return is received by the director if the return is filed after the prescribed due date, until the date that the comptroller sends the refund warrant to

- the taxpayer.] after the ninety-day period, until the refund and any applicable interest is paid to the taxpayer;
- (2) If any overpayment of taxes results or arises from:  
 (A) ~~[the] The taxpayer filing an amended return[, or from]; or~~  
 (B) ~~[a] A determination made by the director; and~~  
 the overpayment is not shown on the original return as filed by the taxpayer, ~~[interest on the overpayment shall be allowed and paid from the first calendar day after] the amount overpaid shall be refunded to the taxpayer within ninety days from the due date of the original return or[, if the original return is filed after the prescribed due date, the first month following the month the return is received, to the date that the director signs the refund voucher. If the comptroller does not send the refund warrant to the taxpayer within forty five days after the director's approval, interest will continue until the date that the comptroller sends the refund warrant to the taxpayer.] the date the overpayment is discovered under subparagraphs (A) or (B), whichever occurred later; provided that interest shall be paid to the taxpayer if the amount overpaid is not refunded within ninety days and at the rate of one-third of one per cent of the refund amount for each month or fraction thereof after the ninety-day period, until the refund and any applicable interest is paid to the taxpayer;~~
- (3) For purposes of a net income tax return, if any overpayment of any taxes results from a carryback of a net operating loss, the overpayment shall be deemed to have been made at the close of the taxable year in which the net operating loss arises. To the extent that the carryback of net operating loss results in reducing the amount of underpayment of taxes for prior taxable year or years, interest that would be chargeable because of the underpayment shall not be applicable with respect to that amount or amounts that are carried back[-]; and
- (4) In the case of credit, interest shall be ~~[allowed and paid from the first calendar day after the due date of the return, the first month following the month the return is received by the director, or the date of payment, whichever is later, to the date the credit is taken; provided that the director may make a refund of any credit to a taxpayer where the taxpayer has no underpayment against which to apply the credit.]~~ paid in the same manner as paragraph (1).”

SECTION 2. All general revenues collected after an increase of any general excise or use tax rate shall be used first to pay tax refunds delayed from fiscal year 2009-2010 to fiscal year 2010-2011.

As used in this section, “general revenues collected after an increase of any general excise or use tax rate” means the difference between the following:

- (1) The revenues actually collected from the entire general excise or use tax after the increase of the rate; and
- (2) The revenues that would have been collected from the entire general excise or use tax at the rate before the increase.

This section shall apply only until all tax refunds delayed from fiscal year 2009-2010 to fiscal year 2010-2011 have been paid.

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

SECTION 4. This Act shall take effect July 1, 2010, and shall apply to taxable years beginning after December 31, 2009.

(Approved June 23, 2010.)

## ACT 172

H.B. NO. 2775

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 safe introduction of plants, non-domestic animals (such as fish, birds, amphibians, and insects), microorganisms, (such as algae, bacteria, fungi, protozoa, and viruses), and soil is managed through permits, letters of authorization, and registrations issued by the department of agriculture.

The framework for permit and other approvals was developed with the concept that plants and domestic animals (e.g., cats, dogs, horses, sheep, and cattle) are generally considered desirable and that non-domestic animals (e.g., snakes, tigers, mosquitoes, and piranha), microorganisms (pathogens), and soil are generally considered undesirable. While mindful of the potential harm that can result from these undesirable introductions, some introductions benefit the State for purposes such as scientific research, commerce, and other important state interests.

To determine whether a plant, animal, microorganism, or soil is safe or harmful, the department of agriculture evaluates applications based upon available information, the intended use, and the availability of adequate safeguards and protocols. The department also evaluates the reliability of the individual responsible and the risks and benefits associated with the particular introduction. The evaluation also requires a science-based risk analysis of scientific data with respect to the plant, animal, microorganism, or soil in a thorough, consistent, and logical manner.

The department of agriculture has one permit specialist in each of the fields of plants, insects, land vertebrates, aquatic biota, and microorganisms. Due to the current general fund budget conditions in the state, the department has incurred drastic reductions in its inspection and permitting sections. The reinstatement of twenty-two of the plant inspection positions has temporarily postponed the termination of a portion of the permit section. However, the department's inspection capacity has dropped to such a low level that the permit specialists must now perform inspection duties in addition to their permitting duties.

The purpose of this Act is to establish fees for the review and processing of permits and other requests for the importation or possession of plants, animals, microorganisms, or soil into or transferred within the state, to provide stable funding for the department's permit specialists and additional resources to allow appropriate review of import requests and more timely processing of permits and related authorizations under chapter 150A, Hawaii Revised Statutes.

SECTION 2. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§150A- Processing fees for importation and possession requests.** (a) There is imposed a fee for the processing of requests for the importation or possession of plants, animals, or soil that require a permit, or for the importation

or possession of microorganisms that require a permit, letter of authorization, or registration under this chapter. The fee shall be paid in full at the time the request is submitted.

(b) The fees collected under this section shall be deposited into the pest inspection, quarantine, and eradication fund established under section 150A-4.5.

(c) The fees to process requests for importation and possession shall be as follows:

- (1) \$20 for a permit for a single shipment of restricted plants;
- (2) \$100 for a permit for unlimited number of shipments of restricted plants, as provided by permit, occurring within one year of the date of issuance;
- (3) \$20 for a permit for a single shipment of conditionally approved animals;
- (4) \$100 for a permit for up to an unlimited number of shipments of conditionally approved animals, as provided by permit, occurring within one year of the date of issuance;
- (5) \$50 for a permit for a single shipment of restricted animals that require permits for both importation and possession;
- (6) \$200 for a permit for up to an unlimited number of shipments of restricted animals that require permits for importation and possession, as provided by permit, occurring within one year of the date of issuance;
- (7) \$100 for a special permit for an unlisted animal in an emergency or disaster situation or for conducting medical or scientific research;
- (8) \$500 for a short-term special permit for an unlisted animal for a film production, performance, or exhibition;
- (9) \$2500 for a permit for plants, animals, or microorganisms that require a rule amendment to change a listing maintained by the board pursuant to section 150A-6.1, 150A-6.2, or 150A-6.3, to allow importation or possession of the organism or to otherwise accommodate the request for import or possession;
- (10) \$150 for a permit for a single shipment of listed or unlisted microorganisms that require permits for importation and possession;
- (11) \$500 for a permit for up to an unlimited number of shipments of listed or unlisted microorganisms that require a permit for importation or possession, as provided by permit, occurring within one year of the date of issuance or within a specified calendar year;
- (12) \$50 for a letter of authorization for import of unlisted microorganisms;
- (13) \$100 for an emergency permit of an unlisted microorganism or a microorganism on the list of restricted microorganisms in an emergency or disaster situation;
- (14) \$150 for registration to import a microbial product; and
- (15) \$150 for registration of a laboratory described in section 150A-6.3(f)(2).

(d) In addition to any fee under subsection (c), a fee of \$250 shall be charged for the expedited processing of a permit, letter of authorization, or registration application. Expedited processing shall take no more than thirty days and shall not be available for a permit for importation or possession of plants, animals, or microorganisms that require:

- (1) An amendment to rules to change the listing of the organism;
- (2) Board approval; or
- (3) Review as to the requirements of chapter 343.”

SECTION 3. There is appropriated out of the pest inspection, quarantine, and eradication fund the sum of \$860,000 or so much thereof as necessary for fiscal year 2010-2011 for the review and processing of permits and other requests for the importation or possession of plants, animals, microorganisms, or soil into or transferred within the state.

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 2010.

(Approved June 23, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 173

S.B. NO. 2523

A Bill for an Act Relating to Agricultural Inspections.

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

SECTION 1. The purpose of this Act is to address the issue of agriculture in Hawaii. More specifically, this Act includes the following major amendments:

- (1) Exempts aggregate bulk freight, cement bulk freight, coal bulk freight, and liquid bulk freight from the pest inspection, quarantine, and eradication service fee;
- (2) Imposes fines for failure to timely pay, bill, or remit the past inspection, quarantine, and eradication service fee;
- (3) Clarifies and expands the purposes for which funds may be expended from the pest inspection, quarantine, and eradication fund;
- (4) Requires the deposit of fees and fines relating to agricultural inspections into the pest inspection, quarantine, and eradication fund;
- (5) Repeals the permit revolving fund and microorganism import certification revolving fund and transfers moneys in those funds into the pest inspection, quarantine, and eradication fund; and
- (6) Directs the department of agriculture to adopt or amend rules to impose or increase fees under chapter 150A, and sets a fee schedule to go into effect if the department fails to do so in a timely manner.

SECTION 2. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and read as follows:

**“§150A- Failure to pay or remit the inspection, quarantine, and eradication service fee; fines.** (a) The following fines shall be imposed for failure to pay, bill, or remit the inspection, quarantine, and eradication service fee as provided for in section 150A-5.3:

- (1) A person responsible for paying the freight charges to the transportation company who fails to pay the fee; or
- (2) A transportation company that fails to:
  - (A) Bill the fee, within fifteen days of the delivery of the freight, to the person responsible for paying the freight charges to the transportation company; or

(B) Remit the fee to the department within forty-five days of collecting the fee from the person responsible for paying the freight charges to the transportation company, shall pay a fine of two times the amount of the inspection, quarantine, and eradication service fee or \$50, whichever is higher.

(b) All fines shall be paid to the department and deposited into the pest inspection, quarantine, and eradication fund under section 150A-4.5.”

SECTION 3. Section 150A-2, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read:

“Aggregate bulk freight” means man-made, unpackaged, pre-processed, inspected and certified, homogenous particulate material, without mark or count, that is usually free-flowing and bought and sold by weight or volume, such as clean sand, gravel, crushed stone, slag, recycled concrete, and geosynthetic aggregates.

“Cement bulk freight” means unpackaged, homogenous cement, without mark or count, that is usually free-flowing and bought and sold by weight or volume.

“Coal bulk freight” means unpackaged, homogenous coal, without mark or count, that is usually free-flowing, bought and sold by weight or volume, and used as a fuel.

“Liquid bulk freight” means unpackaged, homogenous liquid goods, without mark or count, that are usually free-flowing and bought and sold by weight or volume, such as oil, or other complex mixture of petroleum hydrocarbons, bituminous liquids such as asphalt, gasoline, and fuel oils.”

SECTION 4. Section 150A-4.5, Hawaii Revised Statutes, is amended to read as follows:

“**§150A-4.5 Pest inspection, quarantine, and eradication fund.** (a) There is established in the state treasury the pest inspection, quarantine, and eradication fund, into which shall be deposited:

- (1) Legislative appropriations for biosecurity and inspection, quarantine, and eradication services;
- (2) Service fees, charges, and penalties collected under section 150A-5.3[~~];~~];
- (3) Fees imposed for services pursuant to this chapter or rules adopted under this chapter;
- (4) Fines for violations of this chapter;
- [~~(3)~~] (5) Federal funds received for biosecurity, pest inspection, control, management, quarantine, and eradication programs;
- [~~(4)~~] (6) Grants and gifts;
- [~~(5)~~] (7) All interest earned or accrued on moneys deposited in the fund; and
- [~~(6)~~] (8) Any other moneys made available to the fund.

(b) The moneys in the pest inspection, quarantine, and eradication fund shall be expended by the department for the operation of biosecurity and pest inspection, quarantine, eradication, [~~biosecurity,~~] and monitoring programs, related facilities, [~~and~~] the execution of emergency remedial measures when pests are detected in the course of inspection and quarantine activities by the department[~~], training of inspectors, education of the agricultural industry, permit and certificate holders, and the general public as to import requirements, and for any other purposes deemed necessary to carry out the purposes of this chapter.~~]. In addition, the moneys shall be expended to facilitate the processing and



issuance of permits and microorganism import documents and for the operations, activities, and monitoring of permitted and certified plants, animals, and microorganisms.”

SECTION 5. Section 150A-5.3, Hawaii Revised Statutes, is amended to read as follows:

**“§150A-5.3 Inspection, quarantine, and eradication service fee and charge.**

(a) There is imposed a fee for the inspection, quarantine, and eradication of invasive species contained in any freight, including ~~[but not limited to]~~ marine commercial container shipment, air freight, or any other means of transporting freight, foreign or domestic, but not including aggregate bulk freight, cement bulk freight, coal bulk freight, or liquid bulk freight, that is brought into the ~~[State.]~~ state. The transportation company shall bill the fee to the person responsible for paying the freight charges to the transportation company within fifteen days of the delivery of the freight. The fee shall be paid by the person responsible for paying the freight charges to the transportation company~~[-, who]~~ within forty-five days of receipt of the bill. The transportation company shall collect the fee from the person responsible and forward the payment to the department at the port of disembarkation~~[-]~~ within forty-five days of receipt of the fee; provided that the transportation company shall not be liable for any fee that is not paid by the person responsible for paying the freight charges to the transportation company.

The department shall deposit the fee into the pest inspection, quarantine, and eradication fund under section 150A-4.5.

(b) The fee shall be assessed and collected on the net weight of the imported freight computed on the basis of 50 cents for every one thousand pounds of freight brought into the ~~[State.]~~ state, or part thereof.”

SECTION 6. Section 150A-21, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[~~§150A-21~~]]~~ Certification for shipment.** The department may certify as to the pest condition or post treatment of shipments when officially required. Fees may be charged for certificates in certain instances~~[-]~~ and shall be deposited into the pest inspection, quarantine, and eradication fund.”

SECTION 7. Section 150A-23, Hawaii Revised Statutes is amended to read as follows:

**“~~[[~~§150A-23~~]]~~ Nursery stock certificate.** The department may issue and authorize the use of nursery stock certificates by any shipper complying with its regulation for nursery inspection. Shipments accompanied by these certificates may move to other localities within the county or to other counties without inspection at destination. Nursery stock certificates may be issued for interstate shipments. Fees may be charged for nursery certification~~[-]~~ and shall be deposited into the pest inspection, quarantine, and eradication fund. Nursery stock certificates shall not be altered or misused.

The department may revoke or suspend the right to use any nursery stock certificate which is issued to any person who fails to comply with requirements for ~~[their]~~ use of the certificate.”

SECTION 8. Section 150A-31, Hawaii Revised Statutes, is amended to read as follows:

**“[H§150A-31H] Certificate for shipment.** The department may certify as to the pest condition of honey bee shipments when health certificates are officially required. Fees to cover the department’s certification costs may be charged for health certificates as provided by rule[-] and shall be deposited into the pest inspection, quarantine, and eradication fund. Health certificates shall not be altered or misused.”

SECTION 9. Section 150A-42, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Fees may be assessed for the processing and issuance of a certificate and for inspections related to the certificate, as established by rule and shall be deposited into the pest inspection, quarantine, and eradication fund. Fees may vary according to the type of certification issued and the costs incurred for inspections.”

SECTION 10. Section 150A-6.7, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 150A-48, Hawaii Revised Statutes, is repealed.

SECTION 12. On July 1, 2010:

- (1) All moneys in the permit revolving fund and microorganism import certification revolving fund as of June 30, 2010, shall be transferred to the pest inspection, quarantine, and eradication fund;
- (2) All unpaid obligations of the permit revolving fund and microorganism import certification revolving fund as of June 30, 2010, shall become payable from the pest inspection, quarantine, and eradication fund; and
- (3) The permit revolving fund and microorganism import certification revolving fund shall cease to exist.

SECTION 13: (a) Between July 1, 2010, and September 30, 2010, the department of agriculture shall adopt new or amend existing rules to impose or increase the fees authorized to be charged under chapter 150A, Hawaii Revised Statutes, without regard to the public notice and public hearing requirements of section 91-3, Hawaii Revised Statutes, the small business impact review requirements of chapter 201M, Hawaii Revised Statutes, or the limit on fee increases under section 92-28, Hawaii Revised Statutes. The department shall set the fees at amounts intended to generate, together with the inspection, quarantine, and eradication service fee, sufficient revenues to pay the operation and maintenance costs of implementing the agriculture inspection and biosecurity programs of chapter 150A, Hawaii Revised Statutes, and the central services and departmental administrative expense assessments of section 36-27 and section 36-30, Hawaii Revised Statutes.

(b) If, by September 30, 2010, the department of agriculture has not complied with subsection (a), then the fee charged for each inspection or certification conducted under authority of chapter 150A shall be as follows, effective October 1, 2010:

- (1) A fee for inspection, safeguarding, witnessing departure, witnessing treatment, or certification requiring the services of personnel beyond regular work hours, including pre-shift, post-shift, holidays, or days off shall be \$50 plus mileage reimbursement, and an additional fee shall be assessed, which shall include applicable charges for overtime wages, fixed charges for personnel services, and meals;

- (2) A fee for any inspection during regular work hours conducted away from the port or department office that is conducted pursuant to requirements for export, certification, inter-island or intra-island movement, or disposition other than release at a port of arrival, such as witnessing departure, destruction, or treatment, shall be \$50 per hour plus mileage reimbursement;
- (3) An annual fee for nursery certification shall be \$100;
- (4) A fee for follow-up inspections required to correct deficiencies found in a certification inspection or inspections to remedy out-of-state rejections shall be \$50 per hour plus mileage reimbursement;
- (5) A fee for treatment or destruction of infested commodities performed by the department's plant quarantine branch shall be \$50 per parcel;
- (6) A fee for the use of a quarantine house operated by the department's plant quarantine branch shall be \$50 per room per month; and
- (7) A storage fee of \$5 per day shall be charged for commodities stored at any department plant quarantine branch office, forty-eight hours after written notification.

The fee shall be deposited into the pest inspection, quarantine, and eradication fund.

(c) Any subsequent amendments to the rules adopted or amended pursuant to subsection (a) or the fees established under subsection (b) shall be subject to all applicable provisions of chapter 91, chapter 201M, and section 92-28, Hawaii Revised Statutes.

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 15. This Act shall take effect on July 1, 2010; provided that section 3 and the exemption in section 5 relating to aggregate bulk freight, cement bulk freight, coal bulk freight, and liquid bulk freight shall take effect retroactive to July 1, 2007.

(Approved June 23, 2010.)

**Note**

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

**ACT 174**

H.B. NO. 2845

A Bill for an Act Relating to Lands Controlled by the State.

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

SECTION 1. Act 176, Session Laws of Hawaii 2009, which took effect on July 13, 2009, establishes legislative oversight of sales or exchanges of land held by the State. Act 176 requires state agencies to:

- (1) Hold an informational meeting in the community in which the land at issue is located;
- (2) Submit a concurrent resolution to the legislature including specified information about the proposed land sale or exchange; and

- (3) Obtain legislative approval by at least a two-thirds majority vote in each house.

The Act exempts transfers of remnant parcels, the issuance of licenses, permits, easements, and leases, and the sale or exchange of lands between state departments or agencies from its requirements.

Act 176, however, does not exempt the resale of individual dwelling units previously encumbered by buyback or shared appreciation restrictions held by the Hawaii housing finance and development corporation. These resale restrictions are intended to prevent speculation and allow the corporation to finance the development of additional affordable housing units by capturing a portion of the appreciation in the value of the dwelling unit following a sale, foreclosure, or transfer by the original eligible homeowner. Consequently, upon the corporation's repurchase of individual dwelling units, the corporation is not able to resell these homes to eligible residents without complying with the requirements of Act 176 and obtaining legislative approval. The corporation has incurred significant delays and costs for maintaining the properties and complying with public meeting requirements, which reduce the amount of funding available for new affordable housing developments.

The purpose of this Act is to exempt the fee simple resale of individual dwelling units or lots on lands not classified as government or crown lands previous to August 15, 1895, or exchanged subsequent to August 15, 1895, for such lands, acquired by the Hawaii housing finance and development corporation under section 201H-47, Hawaii Revised Statutes, from the requirements of section 171-64.7, Hawaii Revised Statutes.

SECTION 2. Section 171-64.7, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) This section shall not apply to sales or gifts of lands described in subsection (a) between state departments or agencies, ~~and~~ to sales of available lands under the Hawaiian Homes Commission Act[-], or to the fee simple sale of affordable homes on lands not classified as government or crown lands previous to August 15, 1895, or exchanged subsequent to August 15, 1895, for lands classified as government or crown lands previous to August 15, 1895, that are subject to resale restrictions as set forth in section 201H-47 and that were acquired by the Hawaii housing finance and development corporation either at a foreclosure sale or under a buyback as authorized in section 201H-47.”

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 24, 2010.)

## ACT 175

S.B. NO. 2563

A Bill for an Act Relating to Energy Efficiency.

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

SECTION 1. Section 196-6.5, Hawaii Revised Statutes, is amended to read as follows:

**“§196-6.5 Solar water heater system required for new single-family residential construction.** (a) On or after January 1, 2010, no building permit shall be issued for a new single-family dwelling that does not include a solar water heater system that meets the standards established pursuant to section 269-44, unless the [energy resources] coordinator approves a variance. A variance application shall only be accepted if submitted by an architect or mechanical engineer licensed under chapter 464, who attests that:

- (1) Installation is impracticable due to poor solar resource;
- (2) Installation is cost-prohibitive based upon a life cycle cost-benefit analysis that incorporates the average residential utility bill and the cost of the new solar water heater system with a life cycle that does not exceed fifteen years;
- (3) A renewable energy technology system, as defined in section 235-12.5, is substituted for use as the primary energy source for heating water; or
- (4) A demand water heater device approved by Underwriters Laboratories, Inc., is installed; provided that at least one other gas appliance is installed in the dwelling. For the purposes of this paragraph, “demand water heater” means a gas-tankless instantaneous water heater that provides hot water only as it is needed.

(b) A request for a variance shall be submitted to the [energy resources] coordinator on an application prescribed by the [energy resources] coordinator and shall include a description of the location of the property and justification for the approval of a variance using the criteria established in subsection (a). A variance shall be deemed approved if not denied within thirty working days after receipt of the variance application. The [energy resources] coordinator shall publicize:

- (1) All applications for a variance within seven days after receipt of the variance application; and
- (2) The disposition of all applications for a variance within seven days of the determination of the variance application.

(c) The director of business, economic development, and tourism may adopt rules pursuant to chapter 91 to impose and collect fees to cover the costs of administering variances under this section. The fees, if any, shall be deposited into the energy security special fund established under section 201-12.8.

~~(e)~~ (d) Nothing in this section shall preclude any county from establishing procedures and standards required to implement this section.

~~(d)~~ (e) Nothing in this section shall preclude participation in any utility demand-side management program or public benefits ~~[fund]~~ fee program under part VII of chapter 269.”

SECTION 2. Section 196-42, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§196-42]]~~ 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]~~ fuels 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[-], and thirty per cent by 2030. For purposes of the alternate fuels standard, ethanol produced from cellulosic materials shall be considered the equivalent of ~~[2.5]~~ two and one-half 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 gas-

eous fuels produced from renewable feedstocks such as organic wastes, or from water using electricity from renewable energy sources.”

SECTION 3. Section 201-12.8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created within the state treasury an energy security special fund, which shall consist of:

- (1) Moneys appropriated to the fund by the legislature;
- (2) All interest attributable to investment of money deposited in the fund; and
- (3) Moneys allotted to the fund from other sources[-], including under section 196-6.5.”

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, 2010.

(Approved June 25, 2010.)

## ACT 176

H.B. NO. 2688

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 section 37-52.3, Hawaii Revised Statutes, requires all special funds to reflect a clear nexus between the benefits sought and the charges made upon the users or beneficiaries of programs supported by the fund, as opposed to serving primarily as a means of providing the programs or users with an automatic stream of support that is removed from the normal budget and appropriations process.

The legislature further finds that there is a need to clarify the nexus between the benefits sought and charges made upon the users and beneficiaries of the environmental health education fund. The fund is the depository of fees collected by the department of health for permits, licenses, inspections, various certificates, variances, investigations, and reviews respecting:

- (1) Certain occupations, practices, and persons that the department deems necessary to regulate for public health or safety reasons under section 321-13, Hawaii Revised Statutes, including clinical laboratory directors, scientists, specialists, and technicians; cytotechnologists; tattoo artists; and environmental health professionals; and
- (2) Facilities seeking licensure or certification, including hospitals, nursing homes, freestanding outpatient surgical facilities, care centers, laboratories, and special treatment centers, as provided in section 321-11.5, Hawaii Revised Statutes.

Section 321-27, Hawaii Revised Statutes, requires the department of health to use the moneys in the environmental health education fund to enhance the capacity of the environmental health programs.

The legislature further finds that over ninety per cent of the fees deposited into the environmental health education fund are collected by the sanitation branch of the department of health's environmental health services division. The sanitation branch is charged with implementing programs related to:

- (1) Food protection;
- (2) The regulation of barber shops, beauty parlors, massage parlors, tattoo shops, mortuaries, public swimming pools, and public laundries;
- (3) The inspection of tenement houses, lodging houses, and boarding houses;
- (4) The licensing of tattoo artists and embalmers; and
- (5) Enforcing the sanitation requirements for hospitals and medical facilities.

While the legislature recognizes the importance of providing a dedicated source of funding for environmental health education activities, the legislature acknowledges that, in this case, the fees collected should directly benefit the fee payers.

The purpose of this Act is to:

- (1) Change the name of the environmental health education fund to the sanitation and environmental health special fund; and
- (2) Allow the use of fund money for sanitation program activities.

SECTION 2. Section 321-11.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Other than the fees collected under subsection (b), all other fees collected under this section and section 321-15 shall be deposited into the sanitation and environmental health [education] special fund established under section 321-27.”

SECTION 3. Section 321-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every person holding a license to practice any occupation specified in section 321-13(a)(1) shall reregister with the department of health every other year in accordance with the rules of the department, before February 1 except where superseded by federal law, and shall pay a reregistration fee. The failure, neglect, or refusal of any person holding ~~such~~ a license to reregister or pay the reregistration fee, after thirty days of delinquency, shall constitute a forfeiture of the person’s license; provided that the license shall be restored upon written application therefor together with a payment of all delinquent fees and an additional late reregistration fee that may be established by the director of health. All fees collected pursuant to this section shall be deposited into the sanitation and environmental health [education] special fund established under section 321-27.”

SECTION 4. Section 321-27, Hawaii Revised Statutes, is amended to read as follows:

“**§321-27 [Environmental] Sanitation and environmental health [education] special fund.** (a) There is established within the department of health ~~an~~ the sanitation and environmental health [education] special fund into which shall be deposited all moneys collected from fees for permits, licenses, inspections, various certificates, variances, investigations, and reviews, pursuant to sections 321-11.5(c) and 321-15.

(b) Moneys in the fund shall be expended by the department ~~[for the purpose of enhancing]~~ to partially fund the operating costs of program activities and functions authorized pursuant to section 321-11 to enhance the capacity of sanitation and environmental health programs to:

- (1) Improve public outreach efforts and consultations to regulated businesses and industries [~~regulated~~];
- (2) Educate the public, staff, and regulated businesses and industries [~~regulated thereunder~~];
- (3) Plan for future growth and expansion to meet emerging needs; [~~and~~]
- (4) Provide training opportunities to ensure the maintenance of professional competence among sanitation and environmental health staff and administrators[-

Not]; and

- (5) Conduct program activities and functions of the sanitation branch, including permit issuance, inspections, and enforcement and the hiring of additional inspectors;

provided that for environmental health programs, not more than [\$90,000] \$140,000 of the fund may be [utilized] used during any fiscal year for fund administration, including the hiring of not more than two full-time equivalent personnel, and the purchase of office and electronic equipment.

(c) Any amount in the fund in excess of [~~\$300,000~~] \$1,500,000 on June 30 of each year shall be deposited into the general fund.

(d) The department of health shall submit a report to the legislature concerning the status of the sanitation and environmental health [~~education~~] special fund, including[-, but not limited to, the];

- (1) The amount of moneys taken in by and expended from the fund[-]; and [the]

(2) The sources of receipts and uses of expenditures, not less than twenty days prior to the convening of each regular session.”

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, 2010.

(Approved June 25, 2010.)

## ACT 177

H.B. NO. 2061

A Bill for an Act Relating to Children.

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

SECTION 1. Hawaii has approximately fifty thousand active-duty military personnel and sixty-one thousand associated family members. Additionally, Hawaii has approximately twelve thousand Reserve and National Guard members. According to the 2000 United States Census, Hawaii has the highest percentage of people ages sixteen to sixty-four in the armed forces.

The issues surrounding military duty which separate parents from children have a significant effect on the military readiness of the parents and the well-being of the children.

The purpose of this Act, therefore, is to require special consideration in custody matters involving deploying parents.

SECTION 2. Chapter 571, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:



**“PART . MILITARY DEPLOYMENT PROVISIONS****§571-A Definitions.** As used in this part:

“Deployment” or “deployed” means military services performed in compliance with a valid order received by an active duty or reserve member of the armed forces of the United States or National Guard to report for combat operations, contingency operations, peacekeeping operations, temporary duty greater than sixty days, a remote tour of duty, or other active service for which the deploying parent reports unaccompanied by any family member.

“Deploying parent” or “deployed parent” means a legal parent or a legal guardian of a child under the age of eighteen, who is deployed, will likely deploy within the next sixty days, or who has received written orders to deploy.

“Military service” includes the period from which the deployed parent receives and is subject to deployment orders and the period in which the parent is awaiting travel or remains deployed because of sickness, wounds, leave, or other lawful cause.

“Other parent” means the legal parent or legal guardian other than the deploying parent.

**§571-B Application.** This part shall only apply to actions under chapters 580 and 584. Nothing in this part shall supersede any provision of any existing state or federal law. The provisions in this part shall be interpreted consistently with other relevant laws and the standard of “best interest of the child” shall remain paramount.

**§571-C Duty to cooperate and disclose information.** (a) Both the deploying parent and other parent shall cooperate with and provide information to each other in an effort to reach a mutually agreeable resolution regarding custody of and visitation with the child.

(b) A deploying parent shall provide a copy of the deploying parent’s orders to the other parent promptly before deployment. Notification to the other parent shall be made at least sixty days prior to the likely start of the deployment if known, or within ten days of the deploying parent’s receipt of the deploying parent’s deployment orders. If fewer than ten days’ notice is received by the deploying parent, then notice shall be given immediately upon receipt of the deployment orders.

(c) The court may consider the deploying parent’s timeliness in disclosing an impending deployment under this section to the other parent when making any orders under this part, unless a delay or failure to disclose was necessitated by valid military or operational security concerns.

**§571-D Hearings; electronic participation.** Upon reasonable advance notice to the court and the other parent and for good cause shown, the court may expedite custody hearings involving deploying parents and may allow an already-deployed parent to participate in a custody hearing by electronic means, including telephone, video conference, and any other means available to and deemed reliable by the court.

**§571-E Sole factor; effect on existing orders.** (a) Deployment or the potential for future deployment shall not be the sole factor in awarding custody and must be considered in relation to all of the factors in section 571-46.

(b) If deployment or the potential for future deployment results in the modification of the custody or visitation terms established by a prior order, the court order shall include, without limitation, the following conditions:

- (1) A specific transition schedule to facilitate return to the prior order over the shortest reasonable time period after the deployment ends, taking into consideration the best interest of the child;
  - (2) A specific date at which time the prior order will return to full force and effect; and
  - (3) If the deployment is extended or shortened, then:
    - (A) The deployed parent has a duty to inform the other parent of the change as soon as the information is available;
    - (B) The other parent has the responsibility to return to court to change the effective date of the modification of the prior order made pursuant to this subsection; and
    - (C) The transition schedule shall take effect at the end of the modified deployment.
- (c) Upon request of either parent the court may set a review hearing to occur within thirty days of the deployed parent's return from deployment at which time the court may make such orders as are in the best interest of the child.

**§571-F Visitation and contact.** Unless otherwise ordered by the court and consistent with the best interest of the child, including safety considerations in cases involving a finding of domestic violence, any order that anticipates deployment may require that:

- (1) The other parent shall make the child reasonably available to the deploying parent when the deploying parent has leave;
- (2) The deployed parent shall provide timely information regarding the deployed parent's leave schedule;
- (3) Both parents shall facilitate opportunities for telephonic and electronic contact, appropriate for each child, between the deployed parent and the child during deployment; and
- (4) Each parent shall provide immediate notification to the other parent of a change of address or contact information, or both.

**§571-G Delegation of the deployed parent's contact rights to another.** (a) Upon motion of the deploying parent and consistent with the best interest of the child, including safety considerations in cases involving a finding of domestic violence, the court may delegate the deploying parent's parent-child contact rights, or a portion thereof, to a family member, whether biological or by adoption, or to a person to whom the deploying parent is married or with whom the deploying parent cohabitates; provided that the family member or person has an existing close and substantial relationship with the child.

(b) Any delegated parent-child contact under this section shall not create separate rights of or standing to assert any rights to parent-child contact or any other contact for the family member or person. Any parent-child contact delegated under this section shall cease pursuant to court order, upon the return of the deployed parent, or upon the deployed parent's death."

**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.** In codifying the new part added to chapter 571, 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 5.** This Act shall take effect on August 1, 2010.

(Approved June 25, 2010.)

A Bill for an Act Relating to Healthcare.

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

SECTION 1. The legislature finds that the practice of respiratory care in Hawaii affects the public's health, safety, and welfare. Accordingly, the practice of respiratory care should be subject to regulation and control to protect the public from the unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care. According to the American Association for Respiratory Care, Hawaii is one of only two United States jurisdictions that does not regulate the practice of respiratory care.

The legislature further finds that the practice of respiratory care is a dynamic and changing science that continues to evolve with more sophisticated techniques and clinical modalities in patient care.

The purpose of this Act is to establish licensure requirements for the practice of respiratory care.

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

**“CHAPTER  
RESPIRATORY THERAPISTS**

§ -1 **Definitions.** For the purposes of this chapter:

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Licensed respiratory therapist” means a person:

- (1) Who engages in the practice of respiratory care and uses the title of licensed respiratory therapist;
- (2) Who has been issued a license under this chapter; and
- (3) Whose license is in effect and not revoked, suspended, or encumbered.

“Practice of respiratory care” means providing assessment, therapy, management, rehabilitation, support services for diagnostic evaluation, education, and care for patients with deficiencies and abnormalities that affect the pulmonary system, including:

- (1) Respiratory care services, including the administration of pharmacological, diagnostic, and therapeutic care related to respiratory care procedures necessary for treatment, disease prevention, rehabilitative, or diagnostic regimens prescribed by a physician;
- (2) Observation and monitoring of signs, symptoms, reactions, and physical responses to respiratory care treatment and diagnostic testing;
- (3) Diagnostic or therapeutic use of:
  - (A) Medical gases, excluding general anesthesia;
  - (B) Aerosols, humidification, environmental control systems, or invasive and non-invasive modalities;
  - (C) Pharmacological care related to respiratory care procedures;
  - (D) Mechanical or physiological ventilatory support, including maintenance of natural airways and insertion and maintenance of artificial airways;

- (E) Cardiopulmonary resuscitation; and
  - (F) Respiratory protocol and evaluation or diagnostic and testing techniques required for implementation of respiratory care protocols; and
- (4) The transcription and implementation of the written, verbal, and telecommunicated orders of a physician pertaining to the practice of respiratory care.

“Qualified medical direction” means ready access by a respiratory therapist to a licensed physician who has specialty training or experience in the management of acute and chronic respiratory disorders and who is responsible for the quality, safety, and appropriateness of the respiratory services provided by the respiratory therapist.

**§ -2 Respiratory therapist program.** There is established a respiratory therapist program within the department to be administered by the director.

**§ -3 License required.** (a) Except as specifically provided in this chapter, no person shall engage in the practice of respiratory care or use the title “licensed respiratory therapist” or “respiratory therapist” without a valid license issued pursuant to this chapter.

(b) Any person who violates this section shall be subject to a fine of not more than \$1,000 for each separate offense. Each day of each violation shall constitute a separate offense. The director may initiate a civil action to collect the fine imposed under this section in accordance with rules adopted by the director.

**§ -4 Physician supervision required.** No person shall practice respiratory care under this chapter except under the direct order and qualified medical direction of a physician or osteopathic physician licensed pursuant to chapter 453.

**§ -5 Powers and duties of the director.** In addition to any other powers and duties authorized by law, the director shall have the powers and duties to:

- (1) Grant, deny, renew, refuse to renew, restore, terminate, reinstate, condition, restrict, suspend, or revoke a license issued pursuant to this chapter;
- (2) Grant permission to a person to practice respiratory care and to use the title of “licensed respiratory therapist” or a description indicating that the person is a licensed respiratory therapist in this State;
- (3) Adopt, amend, or repeal rules pursuant to chapter 91 as the director finds necessary to carry out this chapter;
- (4) Administer, coordinate, and enforce this chapter;
- (5) Prepare and administer examinations pursuant to the requirements of this chapter;
- (6) Establish the criteria for successful passage of an examination administered pursuant to this chapter;
- (7) Discipline a licensed respiratory therapist on grounds specified by this chapter or chapter 436B or for any violation of rules adopted by the director pursuant to this chapter;
- (8) Refuse to license a person for failure to meet the licensing requirements in this chapter or for any reason specified by this chapter as grounds to discipline a respiratory therapist; and
- (9) Appoint an advisory committee composed of practicing respiratory therapists to assist with the implementation of this chapter.

§ -6 Fees; disposition. (a) Upon issuance of a new license and at each license renewal period, each respiratory therapist shall pay a fee of \$304 that shall be deposited into the compliance resolution fund established pursuant to section 26-9(o).

(b) Application fees paid pursuant to this chapter shall not be refundable. Pursuant to section 26-9(l), the director shall establish examination, reexamination, license, renewal, restoration, penalty, and other fees relating to the administration of this chapter by rule.

(c) Fees assessed pursuant to this chapter shall be used to defray costs incurred by the department in implementing this chapter.

§ -7 Exemptions. This chapter is not intended to restrict the practice of other licensed or credentialed healthcare practitioners practicing within their own recognized scopes of practice and shall not apply to:

- (1) A person working within the scope of practice or duties of another licensed profession that overlaps with the practice of respiratory care; provided that the person does not purport to be a respiratory therapist;
- (2) A person working as, or training to become, a sleep technologist or person who is enrolled in a Commission on Accreditation of Allied Health Education Programs, Accredited Sleep Technologist Education Program, or a program approved by the American Association of Sleep Technologists to become a sleep technologist; provided that, as used in this paragraph, a "sleep technologist" is defined as a person trained in sleep technology and relevant aspects of sleep medicine, evaluation, and follow-up care of patients with sleep disorders;
- (3) A person enrolled as a student in an accredited respiratory therapy program where the performance of duties that are regulated by this chapter is an integral part of the student's program of study;
- (4) A person employed by a durable medical equipment provider who engages in the delivery, assembly, setup, testing, and demonstration of oxygen and aerosol equipment upon the order of a physician; provided that no person providing those services shall be authorized to assess patients, develop care plans, instruct patients in taking treatment, or discuss the hazards, administration, or side effects of medication with patients;
- (5) A person rendering services in the case of an emergency or in the domestic administration of family remedies; or
- (6) A person employed by a federal, state, or county government agency in a respiratory therapist position, but only in the course of carrying out the duties and responsibilities of government employment.

§ -8 Application for license as a respiratory therapist. The department shall issue a license under this chapter to an applicant if the applicant provides satisfactory evidence to the department that the applicant meets the requirements for licensure contained in this chapter and rules adopted by the director and if the applicant:

- (1) Has successfully completed a respiratory therapy training program at an accredited educational institution approved by the Committee on Accreditation for Respiratory Care or its predecessor or successor agencies;

- (2) Has passed the Certified Respiratory Therapist Examination of the National Board for Respiratory Care, or its successor, within ninety days of submitting an application; and
- (3) Has paid all fees for licensure established by the director.

§ -9 **Licensure by endorsement.** The director may issue a license by endorsement to an applicant who holds a current and unencumbered license as a respiratory therapist in another state; provided that the requirements for a license in that state are deemed by the director to be equivalent to or higher than the current requirements for licensure in this State.

§ -10 **Renewal of license.** Licenses issued pursuant to this chapter shall be valid for three years and shall be renewed upon the payment of a renewal fee within sixty days before the expiration of the license. Failure to renew a license shall result in forfeiture of that license. Licenses that have been forfeited may be restored within one year of the forfeiture date upon payment of renewal and restoration fees. Failure to restore a forfeited license within one year shall result in the automatic termination of the license. A person whose license has been terminated pursuant to this section shall be required to reapply for a new license as a new applicant.

§ -11 **Grounds for refusal to renew, reinstate, or restore a license and for revocation, suspension, denial, or condition of a license.** (a) In addition to any other acts or conditions provided by law, the director may refuse to renew, reinstate, or restore and may deny, revoke, suspend, or condition in any manner any license for any one or more of the following acts or conditions on the part of a licensee or license applicant:

- (1) Failure to meet or to maintain the conditions and requirements necessary to qualify for the granting of a license;
- (2) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements in advertising;
- (3) Engaging in the practice of respiratory care while impaired by alcohol, drugs, physical disability, or mental instability;
- (4) Procuring a license to practice respiratory care through fraud, misrepresentation, or deceit;
- (5) Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license to practice respiratory care;
- (6) Engaging in professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of respiratory care;
- (7) Engaging in conduct or a practice contrary to recognized standards of ethics for the practice of respiratory care;
- (8) Violating any condition or limitation imposed on a license to practice respiratory care by the director;
- (9) Engaging in the practice of respiratory care in a manner that causes injury to one or more members of the public;
- (10) Failing to comply with, observe, or adhere to any law in a manner that causes the director to determine that the applicant or holder is unfit to hold a license;
- (11) Having a license revoked or suspended or other disciplinary action by any state or federal agency for any reason that is provided by the applicable licensing laws or by this section;
- (12) Having been convicted or pleaded nolo contendere to a crime directly related to the qualifications, functions, or duties of the practice of respiratory care;

- (13) Failing to report in writing to the director any disciplinary decision issued against the licensee or applicant in another jurisdiction within thirty days of the disciplinary decision;
- (14) Employing, whether gratuitously or for pay, any person not licensed pursuant to this chapter to perform the functions or duties of the practice of respiratory care; or
- (15) Violating this chapter, chapter 436B, or any rule or order of the director.

(b) Any licensee or applicant who violates this section may also be fined not more than \$1,000 per violation, as established by the director by rule.”

SECTION 3. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

**“§26H-4 Repeal dates for newly enacted professional and vocational regulatory programs.** (a) Any professional or vocational regulatory program enacted after January 1, 1994, and listed in this section shall be repealed ~~[on December 31, 2008.]~~ as specified in this section. The auditor shall perform an evaluation of the program, pursuant to section 26H-5, prior to its repeal date.

(b) Chapter (respiratory therapists) shall be repealed on June 30, 2016.”

SECTION 4. The department of commerce and consumer affairs may employ necessary personnel without regard to chapter 76, Hawaii Revised Statutes, to assist with the implementation and continuing functions of this chapter.

SECTION 5. There is appropriated out of the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes, the sum of \$137,000 or so much thereof as may be necessary for fiscal year 2011-2012 to implement the respiratory therapists licensure program.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

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

SECTION 7. This Act shall take effect on July 1, 2011; provided that section -5 of section 2 of this Act shall take effect upon approval; and provided further that section 5 of this Act shall take effect on July 1, 2010.

(Approved June 28, 2010.)

**ACT 179**

H.B. NO. 2533

A Bill for an Act Relating to the Employment of Employees’ Retirement System Retirants.

*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 qualified retirement plan under Section 401(a) (with respect to qualified pension, profit-sharing, and stock bonus plans) of the Internal Revenue Code (Code). Generally, the Code prohibits distribution of retirement

benefits prior to an employee's "retirement." If a retiree is reemployed, without a bona fide separation from service, the retiree may not be considered to be retired for purposes of the Code. The legislature finds that chapter 88, Hawaii Revised Statutes, should be amended to clarify the circumstances under which an employees' retirement system retirant may be reemployed without the suspension of the retirant's benefits and to provide remedies for the employees' retirement system if a retirant is reemployed in violation of chapter 88 and the Code.

SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§88- Employment of retirants.** (a) A retirant may not be employed by the State or by any county unless the retirant is reenrolled in the system pursuant to this chapter, or unless the employment, without reenrollment, is authorized by this section. A retirant whose employment without reenrollment in the system is authorized by this section shall acquire no service credit or retirement rights under this chapter with respect to the employment and shall not be considered to be in service for purposes of this chapter.

(b) Any retirant employed in violation of this section shall:

- (1) Reimburse the system for any retirement allowance or other benefit received from the system during the period or periods of employment in violation of this section, plus interest thereon at the rate of eight per cent per annum;
- (2) Pay the system an amount of money equal to the employee contributions that would otherwise have been paid during the period or periods of employment in violation of this section, plus interest thereon at the rate of eight per cent per annum; and
- (3) Contribute toward reimbursement of the system for administrative expenses incurred in responding to the situation, to the extent that the retirant is determined by the administrator to be at fault.

(c) Any employer that employs a retirant in violation of this section shall:

- (1) Pay to the system an amount of money equal to the employer contributions that would otherwise have been paid for the period or periods of employment in violation of this section, plus interest thereon at the rate of eight per cent per annum; and
- (2) Contribute toward reimbursement of the system for administrative expenses incurred in responding to the situation, to the extent that the employer is determined by the administrator to be at fault.

(d) A retirant may be employed without reenrollment in the system and suffer no loss or interruption of benefits provided by the system or under chapter 87A if the retirant is employed:

- (1) As an elective officer pursuant to section 88-42.6(c) or as a member of the legislature pursuant to section 88-73(d);
- (2) As a juror or precinct official;
- (3) As a part-time or temporary employee excluded from membership in the system pursuant to section 88-43, as a session employee excluded from membership in the system pursuant to section 88-54.2, as the president and chief executive officer of the Hawaii tourism authority excluded from membership in the system pursuant to section 201B-2, or as any other employee expressly excluded by law from membership in the system; provided that:



- (A) The retirant was not employed by the State or a county during the six calendar months prior to the first day of reemployment; and
- (B) No agreement was entered into between the State or a county and the retirant, prior to the retirement of the retirant, for the return to work by the retirant after retirement;
- (4) In a position identified by the appropriate jurisdiction as a labor shortage or difficult-to-fill position; provided that:
  - (A) The retirant was not employed by the State or a county during the twelve calendar months prior to the first day of reemployment;
  - (B) No agreement was entered into between the State or a county and the retirant, prior to the retirement of the retirant, for the return to work by the retirant after retirement; and
  - (C) Each employer shall contribute to the pension accumulation fund the required percentage of the rehired retirant's compensation to amortize the system's unfunded actuarial accrued liability; or
- (5) As a teacher or an administrator in a teacher shortage area identified by the department of education or in a charter school or as a mentor for new classroom teachers; provided that:
  - (A) The retirant was not employed by the State or a county during the twelve calendar months prior to the first day of reemployment;
  - (B) No agreement was entered into between the State or a county and the retirant prior to the retirement of the retirant, for the return to work by the retirant after retirement; and
  - (C) The department of education or charter school shall contribute to the pension accumulation fund the required percentage of the rehired retirant's compensation to amortize the system's unfunded actuarial accrued liability.
- (e) This section does not waive any provision of chapter 76 or 89 that may be applicable to a position for which a retirant is employed pursuant to this section.

(f) No later than twenty days prior to the convening of each regular legislative session, the director of human resources of the appropriate state jurisdiction or the human resources management chief executive of each county shall submit an annual report to the legislature detailing the employment of retirants under paragraphs (4) and (5) of subsection (d), including the number and positions of retirants.”

SECTION 3. Act 286, Session Laws of Hawaii 2006, and Act 156, Session Laws of Hawaii 2008, are repealed.

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on January 1, 2011.

(Approved June 28, 2010.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 180

H.B. NO. 2200

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 2010.

SECTION 2. This Act amends Act 162, Session Laws of Hawaii 2009, and other appropriations and authorizations effective during fiscal biennium 2009-2011.

SECTION 3. Part II, Act 162, Session Laws of Hawaii 2009, 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, 2009 and ending June 30, 2011. 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 2009-2010	FISCAL YEAR 2010-2011
<b>A. ECONOMIC DEVELOPMENT</b>					
1.	BED100 - STRATEGIC MARKETING & SUPPORT			16.00*	10.00*
	OPERATING		BED	1,202,655 A	727,475 A
			BED	250,000 N	148,718 N
			BED	V	250,000 V
			BED	1,821,915 W	1,821,915 W
1A.	BED105 - CREATIVE INDUSTRIES DIVISION			*	4.00*
	OPERATING		BED	A	312,792 A
2.	BED107 - FOREIGN TRADE ZONE			19.00*	17.00*
	OPERATING		BED	2,147,501 B	1,958,644 B
3.	BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT			30.00*	19.00*
	OPERATING		BED	1,874,560 A	1,115,511 A
4.	BED113 - TOURISM			6.00*	2.00*
	OPERATING		BED	454,599 A	115,524 A
			BED	6.00*	6.00*
			BED	138,208,698 B	140,939,553 B

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
5.	AGR101	FINANCIAL ASSISTANCE FOR AGRICULTURE		9.00*	9.00*
	OPERATING		AGR	1,089,967 B	1,050,457 B
			AGR	5,000,000 W	5,000,000 W
6.	AGR122	PLANT, PEST, AND DISEASE CONTROL		97.00*	62.00*
	OPERATING		AGR	5,602,667 A	3,636,630 A
				28.00*	50.00*
			AGR	6,024,474 B	9,843,390 B
			AGR	818,383 N	811,956 N
			AGR	512,962 T	512,962 T
				9.00*	9.00*
			AGR	956,979 U	995,284 U
			AGR	50,360 W	50,360 W
7.	AGR131	RABIES QUARANTINE		35.30*	36.32*
	OPERATING		AGR	3,205,563 B	3,160,284 B
8.	AGR132	ANIMAL DISEASE CONTROL		20.70*	13.68*
	OPERATING		AGR	1,295,454 A	908,108 A
			AGR	377,937 N	372,005 N
			AGR	473,224 U	446,335 U
9.	LNR172	FORESTRY RESOURCE MANAGEMENT AND DEVELOPMENT		16.00*	15.00*
	OPERATING		LNR	614,743 A	492,464 A
				1.50*	1.50*
			LNR	3,630,371 B	3,604,287 B
				1.50*	1.50*
			LNR	394,365 N	385,441 N
10.	AGR151	QUALITY AND PRICE ASSURANCE		20.00*	16.00*
	OPERATING		AGR	1,137,864 A	988,420 A
				1.00*	1.00*
			AGR	204,885 B	199,976 B
			AGR	77,424 N	77,424 N
			AGR	300,000 T	300,000 T
			AGR	501,638 W	481,930 W
11.	AGR171	AGRICULTURAL DEVELOPMENT AND MARKETING		17.00*	12.00*
	OPERATING		AGR	1,334,865 A	964,704 A
			AGR	20,000 B	20,000 B
			AGR	184,500 N	184,500 N
12.	AGR141	AGRICULTURAL RESOURCE MANAGEMENT		1.00*	1.00*
	OPERATING		AGR	445,055 A	445,055 A
				9.00*	9.00*
			AGR	1,011,320 B	1,784,086 B
				13.00*	13.00*
			AGR	1,488,383 W	1,443,830 W
	INVESTMENT CAPITAL		AGR	4,625,000 C	8,800,000 C
			AGR	351,000 N	6,896,000 N
			AGR	62,000 R	550,000 R
			AGR	1,000 S	1,000 S

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
13.	AGR161 - AGRIBUSINESS DEVELOPMENT AND RESEARCH				
	OPERATING		AGR	50,601 A	50,601 A
			AGR	B	500,000 B
			AGR	3,391,635 W	3,344,518 W
	INVESTMENT CAPITAL		AGR	C	13,000,000 C
14.	AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE				
	OPERATING		AGR	29.00 *	20.00 *
	INVESTMENT CAPITAL		AGS	1,790,607 A	1,187,395 A
				500,000 C	500,000 C
15.	LNR153 - COMMERCIAL FISHERIES AND RESOURCE ENHANCEMENT				
	OPERATING		LNR	10.00 *	5.00 *
			LNR	830,538 A	414,055 A
			LNR	320,394 B	298,395 B
			LNR	753,126 N	701,060 N
16.	AGR153 - AQUACULTURE DEVELOPMENT PROGRAM				
	OPERATING		AGR	8.00 *	4.00 *
			AGR	487,129 A	295,610 A
			AGR	60,000 B	60,000 B
			AGR	46,134 N	46,134 N
17.	BED120 - ENERGY, ENVIRONMENT, AND AEROSPACE				
	OPERATING		BED	3.00 *	3.00 *
				307,504 A	334,134 A
				*	5.00 *
			BED	B	6,485,300 B
				5.00 *	5.00 *
			BED	5,571,741 N	5,180,881 N
			BED	29,763,700 V	7,112,050 V
18.	BED143 - HIGH TECHNOLOGY DEVELOPMENT CORPORATION				
	OPERATING		BED	1.50 *	1.50 *
				816,948 A	779,709 A
				1.50 *	1.50 *
			BED	3,827,732 B	3,752,803 B
			BED	3,648,750 N	3,482,643 N
			BED	1,500,000 W	1,500,000 W
19.	BED145 - HAWAII STRATEGIC DEVELOPMENT CORPORATION				
	OPERATING		BED	2,609,375 B	2,608,516 B
			BED	4,272,728 W	4,205,197 W
20.	AGS846 - NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY				
	OPERATING		AGS	6,413,710 B	B
			AGS	9,931,408 N	N
20A.	BED146 - NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY				
	OPERATING		BED	B	7,576,051 B
			BED	N	9,874,464 N
21.	LNR141 - WATER AND LAND DEVELOPMENT				
	OPERATING		LNR	3.00 *	2.00 *
				289,997 A	229,710 A
				2.00 *	2.00 *
			LNR	412,411 B	229,055 B
			LNR	166,765 W	95,221 W
	INVESTMENT CAPITAL		LNR	2,150,000 C	2,000,000 C

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
22.	BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY	OPERATING	BED	800,000 U	U
				2.00 *	2.00 *
		INVESTMENT CAPITAL	BED	1,086,818 W	1,046,500 W
			BED	4,156,000 C	1,855,000 C
23.	BED151 - ALOHA TOWER DEVELOPMENT CORPORATION	OPERATING	BED	1,628,940 B	B
24.	BED160 - HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION	OPERATING	BED	3,000,000 N	9,677,735 N
			BED	51,923,698 T	21,923,698 T
			BED	21,059,965 V	37,527,086 V
				33.00 *	31.00 *
		INVESTMENT CAPITAL	BED	7,925,844 W	6,573,309 W
			BED	26,500,000 C	10,000,000 C

B. EMPLOYMENT

1.	LBR111 - WORKFORCE DEVELOPMENT PROGRAM	OPERATING		2.30 *	0.20 *
			LBR	178,555 A	99,898 A
			LBR	6,834,023 B	5,940,010 B
				118.20 *	116.80 *
			LBR	50,307,130 N	50,295,852 N
			LBR	3,659,105 U	1,468,125 U
2.	LBR135 - WORKFORCE DEVELOPMENT COUNCIL	OPERATING	LBR	3.00 *	1.00 *
			LBR	143,754 A	11,577 A
			LBR	459,236 N	348,934 N
3.	LBR171 - UNEMPLOYMENT INSURANCE PROGRAM	OPERATING	LBR	361,026,650 B	361,191,310 B
				207.50 *	243.50 *
			LBR	15,698,851 N	16,942,378 N
			LBR	150,500,000 V	V
4.	LBR903 - OFFICE OF COMMUNITY SERVICES	OPERATING	LBR	3.00 *	2.00 *
			LBR	2,718,925 A	1,828,182 A
				2.00 *	2.00 *
			LBR	5,894,307 N	5,862,857 N
		INVESTMENT CAPITAL	LBR	1,200,000 U	1,200,000 U
			LBR	9,500,284 V	152,858 V
			LBR	5,572,000 C	2,130,000 C
5.	LBR905 - HI CAREER (KOKUA) INFORMATION DELIVERY SYS	OPERATING	LBR	353,983 A	185,383 A
			LBR	169,552 N	128,418 N
6.	HMS802 - VOCATIONAL REHABILITATION	OPERATING		27.13 *	27.13 *
			HMS	3,835,464 A	3,511,631 A
				95.37 *	95.37 *
			HMS	14,267,982 N	13,207,195 N
		INVESTMENT CAPITAL	HMS	1,455,371 V	V
			HMS	1,330,200 W	1,330,200 W
	HMS	550,000 C	400,000 C		

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
7.	LBR143	HAWAII OCCUPATIONAL SAFETY AND HEALTH PROGRAM			
	OPERATING	LBR		30.00* 1,644,353 A	26.50* 1,402,991 A
		LBR		25.50* 2,337,087 N	15.50* 1,694,438 N
		LBR		50,000 W	50,000 W
8.	LBR152	WAGE STANDARD PROGRAM			
	OPERATING	LBR		22.00* 1,196,823 A	18.00* 948,152 A
9.	LBR153	HAWAII CIVIL RIGHTS COMMISSION			
	OPERATING	LBR		21.50* 1,105,521 A	17.50* 1,012,285 A
		LBR		5.50* 619,781 N	4.50* 572,721 N
10.	LBR183	DISABILITY COMPENSATION PROGRAM			
	OPERATING	LBR		98.00* 4,951,529 A	81.00* 4,335,848 A
		LBR		8.00* 23,675,713 B	8.00* 23,743,765 B
11.	LBR316	OFFICE OF LANGUAGE ACCESS			
	OPERATING	LBR		5.00* 431,302 A	3.00* 305,029 A
12.	LBR161	HAWAII LABOR RELATIONS BOARD			
	OPERATING	LBR		1.00* 489,731 A	1.00* 459,172 A
13.	LBR812	LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD			
	OPERATING	LBR		10.00* 760,248 A	9.00* 659,713 A
14.	LBR871	EMPLOYMENT SECURITY APPEALS REFEREES' OFFICE			
	OPERATING	LBR		10.80* 954,532 N	10.80* 689,551 N
15.	LBR901	DATA GATHERING, RESEARCH, AND ANALYSIS			
	OPERATING	LBR		6.88* 446,852 A	4.38* 250,755 A
		LBR		28.12* 2,553,114 N	27.62* 1,713,319 N
16.	LBR902	GENERAL ADMINISTRATION			
	OPERATING	LBR		25.04* 1,379,475 A	18.52* 961,495 A
		LBR		35.48* 3,228,809 N	27.06* 2,609,604 N

C. TRANSPORTATION FACILITIES

1.	TRN102	HONOLULU INTERNATIONAL AIRPORT			
	OPERATING	TRN		593.50* 106,908,627 B	586.00* 105,265,532 B
	INVESTMENT CAPITAL	TRN		484,305,000 E	95,951,000 E
		TRN		N	2,000,000 N
		TRN		X	36,000,000 X

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
2.	TRN104	GENERAL AVIATION		30.00*	30.00*
		OPERATING	TRN	5,952,140 B	5,750,214 B
		INVESTMENT CAPITAL	TRN	1,750,000 E	2,550,000 E
			TRN	9,500,000 N	9,500,000 N
3.	TRN111	HILO INTERNATIONAL AIRPORT		82.00*	82.00*
		OPERATING	TRN	13,745,928 B	13,829,468 B
			TRN	142,500 N	142,500 N
		INVESTMENT CAPITAL	TRN	2,717,000 E	3,316,000 E
			TRN	2,184,000 N	13,032,000 N
4.	TRN114	KONA INTERNATIONAL AIRPORT AT KEAHOLE		83.00*	83.00*
		OPERATING	TRN	13,920,234 B	13,681,614 B
			TRN	95,000 N	95,000 N
		INVESTMENT CAPITAL	TRN	500,000 B	B
			TRN	68,503,000 E	41,100,000 E
			TRN	10,329,000 N	N
5.	TRN116	WAIMEA-KOHALA AIRPORT		9.00*	8.00*
		OPERATING	TRN	1,095,534 B	1,021,886 B
6.	TRN118	UPOLU AIRPORT			
		OPERATING	TRN	384,500 B	384,500 B
7.	TRN131	KAHULUI AIRPORT		151.00*	151.00*
		OPERATING	TRN	23,160,268 B	22,129,955 B
			TRN	2,175,000 N	975,000 N
		INVESTMENT CAPITAL	TRN	500,000 B	B
			TRN	3,772,000 E	42,565,000 E
			TRN	800,000 X	49,500,000 X
8.	TRN133	HANA AIRPORT		9.00*	9.00*
		OPERATING	TRN	699,912 B	694,598 B
			TRN	220,000 N	N
9.	TRN135	KAPALUA AIRPORT			
		OPERATING	TRN	1,851,634 B	1,818,137 B
10.	TRN141	MOLOKAI AIRPORT		13.50*	13.50*
		OPERATING	TRN	2,408,565 B	2,165,569 B
			TRN	405,000 N	315,000 N
		INVESTMENT CAPITAL	TRN	314,000 E	E
			TRN	1,191,000 N	N
11.	TRN143	KALAUPAPA AIRPORT		9.00*	9.00*
		OPERATING	TRN	717,691 B	662,648 B
			TRN	333,000 N	N
12.	TRN151	LANAI AIRPORT		10.00*	10.00*
		OPERATING	TRN	1,749,863 B	1,729,815 B
		INVESTMENT CAPITAL	TRN	1,733,000 E	E
			TRN	7,304,000 N	N

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
13.	TRN161 - LIHUE AIRPORT				
	OPERATING		TRN	101.00*	101.00*
	INVESTMENT CAPITAL		TRN	14,083,765 B	13,948,914 B
			TRN	100,000 E	138,000 E
			TRN	N	608,000 N
14.	TRN163 - PORT ALLEN AIRPORT				
	OPERATING		TRN	26,841 B	1,841 B
			TRN	268,000 N	N
15.	TRN195 - AIRPORTS ADMINISTRATION				
	OPERATING		TRN	114.00*	111.00*
	INVESTMENT CAPITAL		TRN	125,849,495 B	136,612,128 B
			TRN	10,660,000 B	8,000,000 B
			TRN	1,000,000 E	45,137,000 E
			TRN	4,000,000 N	10,463,000 N
			TRN	187,900,000 X	62,700,000 X
16.	TRN301 - HONOLULU HARBOR				
	OPERATING		TRN	120.00*	116.00*
	INVESTMENT CAPITAL		TRN	24,158,439 B	23,094,127 B
			TRN	30,200,000 B	B
			TRN	24,800,000 E	113,600,000 E
17.	TRN303 - KALAELOA BARBERS POINT HARBOR				
	OPERATING		TRN	3.00*	3.00*
	INVESTMENT CAPITAL		TRN	1,963,775 B	2,091,966 B
			TRN	500,000 B	1,000,000 B
			TRN	E	25,150,000 E
18.	TRN305 - KEWALO BASIN				
	OPERATING		TRN	800,000 B	B
19.	TRN311 - HILO HARBOR				
	OPERATING		TRN	14.00*	14.00*
	INVESTMENT CAPITAL		TRN	2,478,260 B	2,619,624 B
			TRN	1,700,000 B	10,000,000 B
			TRN	E	48,000,000 E
20.	TRN313 - KAWAIHAE HARBOR				
	OPERATING		TRN	2.00*	2.00*
	INVESTMENT CAPITAL		TRN	1,870,072 B	1,725,714 B
			TRN	300,000 B	B
			TRN	52,250,000 E	5,000,000 E
21.	TRN331 - KAHULUI HARBOR				
	OPERATING		TRN	18.00*	18.00*
	INVESTMENT CAPITAL		TRN	3,254,439 B	3,356,905 B
			TRN	E	33,000,000 E
22.	TRN341 - KAUNAKAKAI HARBOR				
	OPERATING		TRN	1.00*	1.00*
			TRN	634,804 B	600,491 B
23.	TRN361 - NAWILIWILI HARBOR				
	OPERATING		TRN	15.00*	15.00*
			TRN	2,534,865 B	2,436,454 B
24.	TRN363 - PORT ALLEN HARBOR				
	OPERATING		TRN	1.00*	1.00*
			TRN	346,547 B	388,973 B



PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		INVESTMENT CAPITAL	TRN	500,000 B	3,000,000 B
25.	TRN351	KAUMALAPAU HARBOR OPERATING	TRN	354,499 B	259,837 B
26.	TRN395	HARBORS ADMINISTRATION		72.00 *	71.00 *
		OPERATING	TRN	48,446,516 B	52,045,862 B
		INVESTMENT CAPITAL	TRN	7,500,000 B	6,000,000 B
			TRN	3,386,000 E	3,640,000 E
			TRN	4,000,000 N	4,500,000 N
27.	TRN333	HANA HARBOR OPERATING	TRN	42,540 B	42,519 B
28.	TRN501	OAHU HIGHWAYS		225.00 *	225.00 *
		OPERATING	TRN	86,095,054 B	79,594,489 B
			TRN	2,200,000 N	2,200,000 N
		INVESTMENT CAPITAL	TRN	1,080,000 B	4,900,000 B
			TRN	C	C
			TRN	44,611,000 E	42,057,000 E
			TRN	137,201,000 N	41,400,000 N
			TRN	460,000 X	X
29.	TRN511	HAWAII HIGHWAYS		124.00 *	124.00 *
		OPERATING	TRN	23,068,777 B	22,218,012 B
		INVESTMENT CAPITAL	TRN	31,135,000 E	12,299,000 E
			TRN	32,920,000 N	38,796,000 N
			TRN	2,110,000 X	X
30.	TRN531	MAUI HIGHWAYS		65.00 *	65.00 *
		OPERATING	TRN	18,931,493 B	18,629,675 B
			TRN	7,000,000 V	V
		INVESTMENT CAPITAL	TRN	6,795,000 E	11,640,000 E
			TRN	18,400,000 N	6,800,000 N
			TRN	715,000 R	R
			TRN	1,430,000 X	X
31.	TRN541	MOLOKAI HIGHWAYS		12.00 *	12.00 *
		OPERATING	TRN	4,002,919 B	3,851,571 B
			TRN	6,000,000 V	V
		INVESTMENT CAPITAL	TRN	2,150,000 E	3,000,000 E
			TRN	8,000,000 N	3,000,000 N
32.	TRN551	LANAI HIGHWAYS		4.00 *	4.00 *
		OPERATING	TRN	830,403 B	964,578 B
33.	TRN561	KAUAI HIGHWAYS		51.00 *	51.00 *
		OPERATING	TRN	13,487,804 B	13,541,296 B
		INVESTMENT CAPITAL	TRN	22,735,000 E	7,700,000 E
			TRN	36,440,000 N	6,000,000 N
			TRN	17,000,000 V	V
			TRN	690,000 X	X
34.	TRN595	HIGHWAYS ADMINISTRATION		83.00 *	83.00 *

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		OPERATING	TRN	68,210,824 B	73,829,194 B
			TRN	4,417,330 N	4,402,951 N
		INVESTMENT CAPITAL	TRN	12,750,000 B	12,500,000 B
			TRN	11,223,000 E	8,358,000 E
			TRN	25,302,000 N	20,482,000 N
35.		TRN597 - HIGHWAY SAFETY			
		OPERATING		31.00 *	31.00 *
			TRN	5,864,339 B	5,694,993 B
				9.00 *	9.00 *
			TRN	5,734,572 N	6,194,364 N
36.		TRN995 - GENERAL ADMINISTRATION			
		OPERATING		104.00 *	104.00 *
			TRN	14,669,319 B	13,972,523 B
			TRN	26,972,992 N	33,322,783 N
			TRN	396,437 R	423,067 R

D. ENVIRONMENTAL PROTECTION

1. HTH840 - ENVIRONMENTAL MANAGEMENT

		OPERATING		57.00 *	46.00 *
			HTH	3,629,536 A	2,439,724 A
				60.00 *	60.00 *
			HTH	80,616,371 B	80,202,730 B
				45.80 *	44.80 *
			HTH	8,808,860 N	8,808,860 N
			HTH	53,552,300 V	19,800,000 V
				55.20 *	55.20 *
		INVESTMENT CAPITAL	HTH	215,393,145 W	164,771,803 W
			HTH	2,675,000 C	5,872,000 C
			HTH	13,370,000 N	29,354,000 N

2. AGR846 - PESTICIDES

		OPERATING		12.00 *	8.00 *
			AGR	688,595 A	463,307 A
				2.00 *	2.00 *
			AGR	465,190 N	475,561 N
				7.00 *	8.00 *
			AGR	971,058 W	1,077,724 W

3. LNR401 - AQUATIC RESOURCES

		OPERATING		26.00 *	26.00 *
			LNR	2,292,091 A	2,212,247 A
				2.00 *	2.00 *
		INVESTMENT CAPITAL	LNR	3,558,919 N	3,404,311 N
			LNR	C	100,000 C

4. LNR402 - NATIVE RESOURCES AND FIRE PROTECTION PROGRAM

		OPERATING		52.00 *	49.50 *
			LNR	3,763,881 A	3,466,100 A
				*	0.50 *
			LNR	3,405,548 B	3,443,578 B
				6.00 *	6.00 *
			LNR	5,136,365 N	5,093,561 N

5. LNR404 - WATER RESOURCES

		OPERATING		21.00 *	19.00 *
			LNR	2,396,240 A	2,182,031 A
				3.00 *	3.00 *
			LNR	425,515 B	399,188 B

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
6.	LNR405	CONSERVATION AND RESOURCES ENFORCEMENT		122.25*	120.25*
	OPERATING	LNR	6,540,717A	18.00*	5,852,737A
		LNR	1,581,554B	2.75*	18.00*
		LNR	671,592N	1.00*	1,529,227B
		LNR	89,374W	1.75*	1.75*
				1.00*	578,859N
				1.00*	1.00*
					83,322W
7.	LNR407	NATURAL AREA RESERVES AND WATERSHED MANAGEMENT		22.00*	19.00*
	OPERATING	LNR	957,225A	1.00*	719,642A
		LNR	5,969,352B		5.00*
		LNR	700,000N		6,165,398B
	INVESTMENT CAPITAL	LNR	C		700,000N
					800,000C
8.	HTH850	OFFICE OF ENVIRONMENTAL QUALITY CONTROL		5.00*	5.00*
	OPERATING	HTH	343,089A		316,037A
9.	LNR906	LNR - NATURAL AND PHYSICAL ENVIRONMENT		30.00*	29.00*
	OPERATING	LNR	1,769,028A	8.00*	1,529,686A
		LNR	779,699B		8.00*
	INVESTMENT CAPITAL	LNR	3,088,000C		742,515B
					2,540,000C
10.	HTH849	ENVIRONMENTAL HEALTH ADMINISTRATION		15.00*	10.00*
	OPERATING	HTH	1,147,336A	0.50*	844,397A
		HTH	49,875B	14.50*	0.50*
		HTH	3,201,314N	14.50*	45,272B
		HTH	305,883V	14.00*	14.50*
		HTH	3,337,998W		3,201,314N
					V
					14.00*
					3,228,384W
<b>E. HEALTH</b>					
1.	HTH100	COMMUNICABLE DISEASE SERVICES		114.00*	107.00*
	OPERATING	HTH	14,362,444A	16.50*	12,978,623A
		HTH	8,323,176N		16.50*
					8,325,151N
2.	HTH131	DISEASE OUTBREAK CONTROL		20.60*	20.60*
	OPERATING	HTH	1,730,404A	34.40*	1,626,719A
		HTH	12,819,280N		34.40*
					12,819,280N
3.	HTH141	DENTAL DISEASES		25.00*	166.87*
	OPERATING	HTH	1,823,996A		11,786,476A
		HTH			B
		HTH			90,720B
					U
					1,145,877U

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
4.	HTH730 - EMERGENCY MEDICAL SERVICES AND INJURY PREVENTION SYSTEM				
	OPERATING		HTH	16.00*	13.00*
			HTH	62,187,129 A	57,607,434 A
				14,478,880 B	20,061,781 B
				3.00*	3.00*
			HTH	1,268,522 N	1,268,522 N
			HTH	10,980,000 V	7,865,000 V
	INVESTMENT CAPITAL		HTH	3,850,000 C	C
5.	HTH501 - DEVELOPMENTAL DISABILITIES				
	OPERATING		HTH	230.75*	216.75*
				54,823,952 A	59,605,346 A
				3.00*	3.00*
			HTH	1,746,817 B	1,024,367 B
			HTH	80,277,192 U	U
6.	HTH560 - FAMILY HEALTH				
	OPERATING		HTH	169.75*	137.00*
				25,394,205 A	21,633,241 A
				9.50*	9.50*
			HTH	18,509,132 B	17,175,368 B
				182.50*	181.50*
			HTH	46,018,585 N	46,018,585 N
				0.50*	0.50*
			HTH	3,139,907 U	3,120,962 U
			HTH	2,139,843 V	V
7.	HTH580 - COMMUNITY HEALTH SERVICES				
	OPERATING		HTH	197.00*	*
				13,953,376 A	A
				20.00*	*
			HTH	1,644,436 B	B
				11.00*	*
			HTH	4,151,936 N	N
			HTH	1,545,037 U	U
8.	HTH590 - TOBACCO SETTLEMENT				
	OPERATING		HTH	17.00*	37.00*
				49,016,207 B	50,154,886 B
				*	9.00*
			HTH	N	4,151,936 N
			HTH	4,700,000 U	4,943,650 U
9.	HTH595 - HEALTH RESOURCES ADMINISTRATION				
	OPERATING		HTH	2.00*	*
				157,952 A	A
			HTH	376,953 B	B
	INVESTMENT CAPITAL		HTH	2,200,000 C	900,000 C
10.	HTH210 - HAWAII HEALTH SYSTEMS CORPORATION - CORPORATE OFFICE				
	OPERATING		HTH	820,894 A	A
				55.50*	54.50*
			HTH	8,751,106 B	12,182,392 B
			HTH	5,000,000 V	50,000,000 V
	INVESTMENT CAPITAL		HTH	47,422,000 C	5,931,000 C
11.	HTH211 - KAHUKU HOSPITAL				
	OPERATING		HTH	1,500,000 A	1,500,000 A

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010: F	FISCAL M YEAR O 2010-2011 F
12.	HTH212	HAWAII HEALTH SYSTEMS CORPORATION - REGIONS OPERATING	HTH	95,940,000 A 2,780.75*	82,140,000 A 2,780.75*
			HTH	477,060,000 B	492,800,000 B
13.	HTH420	ADULT MENTAL HEALTH - OUTPATIENT OPERATING	HTH	182.50* 74,505,416 A	163.50* 71,149,245 A
			HTH	29,026,070 B	15,000,000 B
			HTH	1,632,230 N	1,632,230 N
14.	HTH430	ADULT MENTAL HEALTH - INPATIENT OPERATING	HTH	625.00* 54,054,420 A	615.00* 50,667,161 A
		INVESTMENT CAPITAL	AGS	2,071,000 C	C
15.	HTH440	ALCOHOL AND DRUG ABUSE OPERATING	HTH	22.00* 18,852,758 A	20.00* 18,636,564 A
			HTH	300,000 B	300,000 B
			HTH	6.00* 13,609,867 N	6.00* 13,609,867 N
16.	HTH460	CHILD AND ADOLESCENT MENTAL HEALTH OPERATING	HTH	192.50* 40,554,856 A	176.50* 37,930,949 A
			HTH	17.00* 21,393,039 B	17.00* 17,377,329 B
			HTH	2,568,019 N	2,568,019 N
			HTH	2,277,206 U	2,260,161 U
17.	HTH495	BEHAVIORAL HEALTH ADMINISTRATION OPERATING	HTH	64.50* 7,310,093 A	56.50* 6,477,166 A
			HTH	3,557,363 N	3,557,363 N
18.	HTH610	ENVIRONMENTAL HEALTH SERVICES OPERATING	HTH	136.00* 7,081,296 A	118.00* 5,158,568 A
			HTH	8.00* 1,026,909 B	8.00* 980,667 B
			HTH	6.00* 594,682 N	6.00* 594,682 N
			HTH	2.00* 107,076 U	1.00* 54,185 U
19.	HTH710	STATE LABORATORY SERVICES OPERATING	HTH	82.00* 6,666,528 A	77.00* 5,842,657 A
			HTH	483,333 N	483,333 N
			HTH	577,728 V	V
20.	HTH720	HEALTH CARE ASSURANCE OPERATING	HTH	21.70* 1,677,680 A	20.70* 1,455,432 A
			HTH	406,000 B	406,000 B
			HTH	18.10* 1,662,415 N	18.10* 1,659,515 N
			HTH	897,904 U	882,068 U

PROGRAM APPROPRIATIONS

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				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
21.	HTH906 - STATE HEALTH PLANNING AND DEVELOPMENT AGENCY			8.00*	8.00*
	OPERATING		HTH	556,641 A	508,242 A
			HTH	114,000 B	114,000 B
22.	HTH760 - HEALTH STATUS MONITORING			33.00*	30.50*
	OPERATING		HTH	1,184,254 A	1,178,312 A
			HTH	830,670 B	580,170 B
			HTH	6.00*	6.00*
			HTH	397,214 N	397,214 N
23.	HTH905 - DEVELOPMENTAL DISABILITIES COUNCIL			1.50*	1.50*
	OPERATING		HTH	226,744 A	213,365 A
			HTH	6.50*	6.50*
			HTH	462,315 N	462,315 N
24.	HTH907 - GENERAL ADMINISTRATION			122.50*	114.00*
	OPERATING		HTH	8,609,591 A	7,467,807 A
			HTH	1,304,909 N	1,304,909 N
	INVESTMENT CAPITAL		AGS	6,359,000 C	C
<b>F. SOCIAL SERVICES</b>					
1.	HMS301 - CHILD PROTECTIVE SERVICES			289.51*	289.01*
	OPERATING		HMS	25,698,652 A	22,637,148 A
			HMS	617,587 B	617,587 B
			HMS	247.99*	245.99*
			HMS	39,456,846 N	37,606,754 N
2.	HMS302 - GENERAL SUPPORT FOR CHILD CARE			24.57*	24.57*
	OPERATING		HMS	1,307,377 A	976,046 A
			HMS	17.43*	16.43*
			HMS	6,790,950 N	6,630,334 N
			HMS	1,550,000 V	1,550,000 V
3.	HMS303 - CHILD PROTECTIVE SERVICES PAYMENTS				
	OPERATING		HMS	41,816,013 A	41,816,013 A
			HMS	20,095,666 N	20,095,666 N
			HMS	2,300,000 V	1,300,000 V
4.	HMS305 - CASH SUPPORT FOR CHILD CARE				
	OPERATING		HMS	19,211,811 A	13,411,811 A
			HMS	40,150,754 N	42,750,754 N
			HMS	2,600,000 V	2,600,000 V
5.	HMS501 - IN-COMMUNITY YOUTH PROGRAMS			24.00*	24.00*
	OPERATING		HMS	8,062,149 A	7,175,004 A
			HMS	5,183,697 N	5,158,955 N
	INVESTMENT CAPITAL		HMS	80,000 C	1,500,000 C
6.	HMS503 - HAWAII YOUTH CORRECTIONAL FACILITY (HYCF)			124.00*	124.00*
	OPERATING		HMS	10,404,536 A	9,757,011 A
			HMS	232 U	211 U

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				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		INVESTMENT CAPITAL	HMS	2,087,000 C	C
7.	DEF112 - SERVICES TO VETERANS				
				19.00*	24.00*
	OPERATING		DEF	1,524,292 A	1,645,761 A
	INVESTMENT CAPITAL		AGS	459,000 C	2,934,000 C
			AGS	N	2,000 N
8.	HMS601 - ADULT AND COMMUNITY CARE SERVICES				
				70.08*	70.58*
	OPERATING		HMS	6,570,519 A	5,482,679 A
				2.42*	4.42*
			HMS	4,884,442 N	4,848,875 N
			HMS	10,000 R	10,000 R
			HMS	487,938 U	280,106 U
	INVESTMENT CAPITAL		HMS	400,000 C	C
8A.	HMS202 - AGED, BLIND AND DISABLED PAYMENTS				
	OPERATING		HMS	A	4,029,480 A
8B.	HMS204 - GENERAL ASSISTANCE PAYMENTS				
	OPERATING		HMS	A	25,289,056 A
9.	HMS206 - FEDERAL ASSISTANCE PAYMENTS				
	OPERATING		HMS	5,000,000 N	5,000,000 N
10.	HMS211 - CASH SUPPORT FOR FAMILIES - SELF-SUFFICIENCY				
	OPERATING		HMS	25,528,485 A	17,928,485 A
			HMS	44,000,000 N	45,000,000 N
11.	HMS212 - CASH SUPPORT FOR AGED, BLIND, DISABLED INDIV				
	OPERATING		HMS	25,318,536 A	A
12.	HMS220 - RENTAL HOUSING SERVICES				
	OPERATING		HMS	4,414,556 A	4,414,556 A
				171.00*	171.00*
			HMS	33,718,184 N	32,945,694 N
				13.00*	13.00*
			HMS	3,914,984 W	3,865,232 W
	INVESTMENT CAPITAL		HMS	7,913,000 C	4,500,000 C
13.	HMS229 - HPHA ADMINISTRATION				
				71.00*	71.00*
	OPERATING		HMS	34,826,095 N	34,149,670 N
				17.00*	17.00*
			HMS	2,581,795 W	2,424,809 W
14.	HMS222 - RENTAL ASSISTANCE SERVICES				
				1.25*	1.25*
	OPERATING		HMS	1,098,716 A	1,049,512 A
				16.75*	16.75*
			HMS	25,819,941 N	25,665,662 N
15.	HMS224 - HOMELESS SERVICES				
				4.00*	4.00*
	OPERATING		HMS	14,107,491 A	13,988,573 A
			HMS	1,369,108 N	1,369,108 N
			HMS	4,415,475 V	81,699 V
16.	HMS605 - COMMUNITY-BASED RESIDENTIAL SUPPORT				
	OPERATING		HMS	17,125,395 A	17,125,395 A

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				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
17.	HMS401 - HEALTH CARE PAYMENTS				
	OPERATING		HMS	459,037,132 A	549,219,050 A
			HMS	701,911,653 N	700,824,253 N
			HMS	44,409,563 U	44,409,563 U
			HMS	175,189,095 V	93,162,323 V
18.	HMS236 - CASE MANAGEMENT FOR SELF-SUFFICIENCY				
	OPERATING		HMS	348.23 *	348.23 *
			HMS	15,591,290 A	12,918,914 A
			HMS	281.77 *	282.77 *
			HMS	19,844,009 N	17,549,887 N
19.	HMS238 - DISABILITY DETERMINATION				
	OPERATING		HMS	45.00 *	45.00 *
			HMS	6,041,667 N	7,159,652 N
20.	ATG500 - CHILD SUPPORT ENFORCEMENT SERVICES				
	OPERATING		ATG	85.00 *	81.94 *
			ATG	4,106,961 A	3,635,267 A
			ATG	165.00 *	159.06 *
			ATG	15,554,688 N	14,336,143 N
			ATG	4,322,607 T	2,461,570 T
			ATG	4,113,713 V	501,112 V
21.	HMS237 - EMPLOYMENT AND TRAINING				
	OPERATING		HMS	491,214 A	469,505 A
			HMS	1,197,541 N	1,197,541 N
22.	HHL602 - PLANNING AND DEVELOPMENT FOR HAWAIIAN HOMESTEADS				
	OPERATING		HHL	76.00 *	74.00 *
			HHL	6,194,749 B	5,779,856 B
			HHL	9,601,391 N	9,601,391 N
			HHL	50.00 *	50.00 *
	INVESTMENT CAPITAL		HHL	3,784,089 T	103,540,883 T
			HHL	10,000,000 C	4,026,000 C
			HHL	15,000,000 N	15,000,000 N
23.	HHL625 - MANAGEMENT & GENERAL SUPPORT FOR HAWAIIAN HOME-STEADS				
	OPERATING		HHL	33.00 *	32.00 *
			HHL	6,534,432 B	6,322,564 B
			HHL	26.00 *	26.00 *
			HHL	2,639,655 T	52,490,593 T
24.	HTH904 - EXECUTIVE OFFICE ON AGING				
	OPERATING		HTH	3.74 *	3.74 *
			HTH	6,062,748 A	6,030,787 A
			HTH	8.01 *	7.26 *
	INVESTMENT CAPITAL		HTH	7,443,720 N	7,443,720 N
			HTH	C	C
25.	HTH520 - DISABILITY AND COMMUNICATIONS ACCESS BOARD				
	OPERATING		HTH	5.00 *	5.00 *
			HTH	1,320,624 A	1,196,891 A
			HTH	10,000 B	10,000 B
			HTH	2.00 *	2.00 *
			HTH	204,812 U	192,310 U
26.	HMS902 - GENERAL SUPPORT FOR HEALTH CARE PAYMENTS				
				152.74 *	152.74 *



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				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
	OPERATING		HMS	9,323,508 A	6,878,482 A
				146.26*	146.26*
			HMS	19,497,027 N	17,029,599 N
27.	HMS903	GENERAL SUPPORT FOR SELF SUFFICIENCY SERVICES			
				58.22*	32.36*
	OPERATING		HMS	14,342,042 A	8,264,413 A
				57.78*	36.64*
			HMS	77,990,706 N	60,356,353 N
			HMS	25,550,000 V	6,387,500 V
28.	HMS904	GENERAL ADMINISTRATION (DHS)			
				161.34*	140.50*
	OPERATING		HMS	8,096,944 A	6,243,202 A
				15.66*	13.50*
			HMS	1,489,518 N	1,252,475 N
29.	HMS901	GENERAL SUPPORT FOR SOCIAL SERVICES			
				17.56*	10.22*
	OPERATING		HMS	2,236,377 A	1,647,096 A
				10.44*	5.78*
			HMS	1,871,539 N	1,437,945 N
<b>G. FORMAL EDUCATION</b>					
1.	EDN100	SCHOOL-BASED BUDGETING			
				12,375.60*	12,375.60*
	OPERATING		EDN	753,950,947 A	705,256,507 A
			EDN	6,780,000 B	6,780,000 B
			EDN	171,325,264 N	167,979,043 N
			EDN	13,750,000 T	13,716,215 T
			EDN	4,500,000 U	4,478,539 U
			EDN	97,308,342 V	53,764,299 V
			EDN	3,398,000 W	3,389,438 W
	INVESTMENT CAPITAL		EDN	232,531,000 B	121,912,000 B
			EDN	N	4,360,000 N
			EDN	R	1,499,000 R
2.	EDN150	COMPREHENSIVE STUDENT SUPPORT SERVICES			
				5,639.00*	5,639.00*
	OPERATING		EDN	368,188,673 A	306,472,682 A
			EDN	100,000 B	100,000 B
				2.00*	2.00*
			EDN	46,246,766 N	45,111,380 N
			EDN	20,493,170 V	1 V
				4.00*	4.00*
			EDN	2,209,121 W	2,106,297 W
3.	EDN200	INSTRUCTIONAL SUPPORT			
				197.50*	197.50*
	OPERATING		EDN	29,037,169 A	22,430,453 A
				6.00*	6.00*
			EDN	1,900,000 B	1,841,692 B
			EDN	926,461 N	632,516 N
			EDN	800,000 U	787,335 U
			EDN	1 V	1 V
4.	EDN300	STATE AND COMPLEX AREA ADMINISTRATION			
				509.00*	509.00*
	OPERATING		EDN	51,432,190 A	42,517,962 A
			EDN	35,000 N	35,000 N

## PROGRAM APPROPRIATIONS

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				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
			EDN	1V	1V
5.	EDN400	-SCHOOL SUPPORT			
	OPERATING		EDN	641.00* 184,814,106 A	641.00* 171,837,016 A
			EDN	726.50* 25,601,798 B	726.50* 29,462,541 B
			EDN	3.00* 35,396,556 N	3.00* 34,954,915 N
			EDN	1V	1V
			EDN	4.00* 9,022,625 W	4.00* 9,014,578 W
	INVESTMENT CAPITAL		EDN	4,800,000 B	5,200,000 B
6.	EDN500	-SCHOOL COMMUNITY SERVICES			
	OPERATING		EDN	35.50* 8,674,528 A	35.50* 4,918,832 A
			EDN	3,800,000 B	3,800,000 B
			EDN	3,260,007 N	3,239,228 N
			EDN	9,000,000 U	9,000,000 U
			EDN	1V	1V
			EDN	8,295,000 W	8,295,000 W
7.	EDN600	-CHARTER SCHOOLS			
	OPERATING		EDN	52,732,012 A	53,761,508 A
			EDN	4,088,212 V	2,835,696 V
	INVESTMENT CAPITAL		EDN	C	754,000 C
8.	BUF745	-RETIREMENT BENEFITS PAYMENTS - DOE			
	OPERATING		BUF	267,058,948 A	249,726,061 A
9.	BUF765	-HEALTH PREMIUM PAYMENTS - DOE			
	OPERATING		BUF	182,617,125 A	206,597,259 A
10.	BUF725	-DEBT SERVICE PAYMENTS - DOE			
	OPERATING		BUF	194,793,118 A	194,855,477 A
11.	AGS807	-SCHOOL R&M, NEIGHBOR ISLAND DISTRICTS			
	OPERATING		AGS	80.00* 4,251,325 A	78.00* 4,118,370 A
			AGS	1,500,000 U	1,500,000 U
12.	EDN407	-PUBLIC LIBRARIES			
	OPERATING		EDN	555.55* 28,847,163 A	555.55* 28,847,163 A
			EDN	3,125,000 B	3,125,000 B
			EDN	1,365,244 N	1,365,244 N
			EDN	1V	1V
	INVESTMENT CAPITAL		AGS	4,360,000 C	10,345,000 C
13.	DEF114	-HAWAII NATIONAL GUARD YOUTH CHALLENGE ACADEMY			
	OPERATING		DEF	1,373,245 A	1,762,823 A
			DEF	2,098,686 N	4,398,921 N
14.	UOH100	-UNIVERSITY OF HAWAII, MANOA			
	OPERATING		UOH	3,619.34* 225,795,228 A	3,619.34* 195,608,949 A
			UOH	291.25* 232,524,688 B	291.25* 232,671,138 B
			UOH	78.06* 5,485,593 N	78.06* 5,219,912 N
			UOH	14,740,000 V	14,740,000 V

PROGRAM APPROPRIATIONS

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				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
				134.25*	134.25*
		INVESTMENT CAPITAL	UOH	76,555,831 W	76,332,227 W
			UOH	45,005,000 B	B
			UOH	16,250,000 C	2,000,000 C
			UOH	187,097,000 E	85,800,000 E
			UOH	10,900,000 N	N
			UOH	5,250,000 R	R
15.	UOH210 - UNIVERSITY OF HAWAII, HILO			514.75*	514.75*
	OPERATING		UOH	33,444,636 A	28,999,710 A
				79.00*	95.00*
			UOH	29,507,483 B	33,768,549 B
			UOH	394,543 N	367,094 N
			UOH	300,000 V	300,000 V
				7.50*	8.50*
	INVESTMENT CAPITAL		UOH	6,299,192 W	6,269,972 W
			UOH	6,500,000 C	28,000,000 C
16.	UOH220 - SMALL BUSINESS DEVELOPMENT				
	OPERATING		UOH	993,167 A	978,941 A
17.	UOH700 - UNIVERSITY OF HAWAII, WEST OAHU				
	OPERATING		UOH	93.00*	93.00*
			UOH	6,100,808 A	5,274,565 A
			UOH	5,097,729 B	6,896,581 B
			UOH	7,000 N	6,548 N
			UOH	328,960 W	327,958 W
	INVESTMENT CAPITAL		UOH	C	48,000,000 C
18.	UOH800 - UNIVERSITY OF HAWAII, COMMUNITY COLLEGES				
	OPERATING		UOH	1,831.00*	1,831.00*
			UOH	119,075,434 A	103,934,143 A
				82.00*	82.00*
			UOH	60,787,688 B	65,271,529 B
				15.60*	15.60*
			UOH	4,444,818 N	4,250,804 N
			UOH	6,960,000 V	6,960,000 V
			UOH	5,064,891 W	5,040,143 W
	INVESTMENT CAPITAL		UOH	13,657,000 C	28,978,000 C
19.	UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT				
	OPERATING		UOH	403.00*	403.00*
			UOH	36,520,580 A	25,319,222 A
				8.00*	8.00*
			UOH	21,371,128 B	21,366,925 B
				4.00*	4.00*
			UOH	932,807 N	905,869 N
			UOH	10,000,000 V	V
				15.00*	15.00*
			UOH	15,659,674 W	17,583,154 W
	INVESTMENT CAPITAL		UOH	128,501,000 C	102,911,000 C
			UOH	25,319,000 E	2,813,000 E
20.	BUF748 - RETIREMENT BENEFITS PAYMENTS - UH				
	OPERATING		BUF	118,195,306 A	115,035,818 A
21.	BUF768 - HEALTH PREMIUM PAYMENTS - UH				
	OPERATING		BUF	63,937,201 A	73,122,208 A
22.	BUF728 - DEBT SERVICE PAYMENTS - UH				
	OPERATING		BUF	72,092,672 A	72,115,751 A

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				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
<b>H. CULTURE AND RECREATION</b>					
1.	UOH881 - UNIVERSITY OF HAWAII, AQUARIA				
	OPERATING		UOH	13.00 * 661,352 A 7.00 * 3,131,189 B 1,000,000 W	13.00 * 571,746 A 7.00 * 3,117,141 B 996,499 W
2.	AGS881 - STATE FOUNDATION ON CULTURE AND THE ARTS				
	OPERATING		AGS	13.50 * 1,847,961 A 16.50 * 4,312,061 B 3.00 * 787,743 N 625,000 U 292,900 V 250,000 C	* 936,332 A 15.50 * 4,143,428 B 5.00 * 950,160 N 625,000 U V 700,000 C
	INVESTMENT CAPITAL		AGS		
3.	AGS818 - KING KAMEHAMEHA CELEBRATION COMMISSION				
	OPERATING		AGS	41,532 A T	A 53,599 T
4.	LNR802 - HISTORIC PRESERVATION				
	OPERATING		LNR	12.00 * 1,025,143 A 150,661 B 506,876 N	12.00 * 857,474 A 142,999 B 428,044 N
5.	LNR804 - FOREST AND OUTDOOR RECREATION				
	OPERATING		LNR	34.50 * 1,392,045 A 6.50 * 603,497 B 5.00 * 1,922,441 N 686,726 W C	32.50 * 1,119,106 A 6.50 * 693,035 B 5.00 * 1,916,868 N 541,042 W 25,000 C
	INVESTMENT CAPITAL		LNR		
6.	LNR805 - RECREATIONAL FISHERIES				
	OPERATING		LNR	7.00 * 197,527 A 76,093 B 1,024,314 N	7.00 * 257,551 A 76,093 B 1,024,314 N
7.	LNR806 - PARKS ADMINISTRATION AND OPERATION				
	OPERATING		LNR	90.00 * 4,646,776 A 38.00 * 6,874,349 B 1,218,456 N 2,453,000 C	85.00 * 4,043,870 A 38.00 * 6,372,961 B 1,218,456 N C
	INVESTMENT CAPITAL		LNR		
8.	LNR801 - OCEAN-BASED RECREATION				
	OPERATING		LNR	105.00 * 16,579,175 B 1,001,813 N 3,630,000 C	99.00 * 16,231,150 B 1,001,813 N 300,000 C
	INVESTMENT CAPITAL		LNR		

PROGRAM APPROPRIATIONS

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				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
9.	AGS889	SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM		38.50*	38.50*
	OPERATING		AGS	8,951,552B	8,726,379B
	INVESTMENT CAPITAL		AGS	15,000,000C	17,100,000C
<b>I. PUBLIC SAFETY</b>					
1.	PSD402	HALAWA CORRECTIONAL FACILITY		398.00*	395.00*
	OPERATING		PSD	23,560,612A	21,739,460A
			PSD	28,719W	28,719W
2.	PSD403	KULANI CORRECTIONAL FACILITY		76.00*	*
	OPERATING		PSD	5,181,327A	A
3.	PSD404	WAIAWA CORRECTIONAL FACILITY		112.00*	110.00*
	OPERATING		PSD	6,017,583A	5,559,793A
			PSD	15,000W	15,000W
	INVESTMENT CAPITAL		PSD	185,000C	C
4.	PSD405	HAWAII COMMUNITY CORRECTIONAL CENTER		171.00*	169.00*
	OPERATING		PSD	8,803,502A	8,142,408A
5.	PSD406	MAUI COMMUNITY CORRECTIONAL CENTER		187.00*	185.00*
	OPERATING		PSD	9,783,520A	9,216,242A
			PSD	209,721S	209,721S
6.	PSD407	OAHU COMMUNITY CORRECTIONAL CENTER		499.00*	496.00*
	OPERATING		PSD	28,421,191A	25,946,193A
			PSD	30,000W	30,000W
7.	PSD408	KAUAI COMMUNITY CORRECTIONAL CENTER		68.00*	68.00*
	OPERATING		PSD	3,707,288A	3,443,393A
8.	PSD409	WOMEN'S COMMUNITY CORRECTIONAL CENTER		132.00*	132.00*
	OPERATING		PSD	6,929,716A	6,428,041A
9.	PSD410	INTAKE SERVICE CENTERS		61.00*	59.00*
	OPERATING		PSD	3,300,075A	3,065,505A
10.	PSD420	CORRECTIONS PROGRAM SERVICES		183.00*	164.00*
	OPERATING		PSD	19,377,311A	18,274,594A
11.	PSD421	HEALTH CARE		200.10*	196.10*
	OPERATING		PSD	20,582,516A	20,367,956A
12.	PSD422	HAWAII CORRECTIONAL INDUSTRIES		2.00*	2.00*
	OPERATING		PSD	7,486,089W	7,218,855W

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
13.		PSD808 - NON-STATE FACILITIES			
		OPERATING	PSD	9.00* 58,604,387 A	9.00* 66,237,336 A
14.		PSD502 - NARCOTICS ENFORCEMENT			
		OPERATING	PSD	13.00* 973,478 A	13.00* 914,733 A
			PSD	206,161 N	197,302 N
			PSD	6.00* 634,455 W	6.00* 606,752 W
15.		PSD503 - SHERIFF			
		OPERATING	PSD	291.00* 13,854,316 A	282.00* 11,932,300 A
			PSD	7.00* 577,448 N	7.00* 570,582 N
			PSD	59.00* 5,246,216 U	59.00* 4,736,775 U
16.		PSD611 - ADULT PAROLE DETERMINATIONS			
		OPERATING	PSD	3.00* 238,109 A	3.00* 216,988 A
17.		PSD612 - ADULT PAROLE SUPERVISION AND COUNSELING			
		OPERATING	PSD	55.00* 3,553,934 A	55.00* 3,329,258 A
18.		PSD613 - CRIME VICTIM COMPENSATION COMMISSION			
		OPERATING	PSD	8.00* 1,892,174 B	8.00* 1,840,534 B
			PSD	859,315 N	859,315 N
			PSD	115,642 V	V
19.		PSD900 - GENERAL ADMINISTRATION			
		OPERATING	PSD	149.10* 9,299,063 A	137.10* 8,283,206 A
			PSD	693,832 B	667,984 B
			PSD	75,065 T	75,065 T
			PSD	742,980 X	742,980 X
		INVESTMENT CAPITAL	PSD	250,000 C	C
20.		ATG231 - STATE CRIMINAL JUSTICE INFORMATION AND IDENTIFICATION			
		OPERATING	ATG	28.50* 1,521,154 A	26.50* 1,454,941 A
			ATG	1,757,594 N	1,917,755 N
			ATG	32.50* 2,886,525 W	30.50* 3,083,734 W
21.		LNR810 - PREVENTION OF NATURAL DISASTERS			
		OPERATING	LNR	8.50* 1,817,009 B	8.50* 2,009,006 B
			LNR	0.50* 271,070 N	0.50* 266,037 N
22.		DEF110 - AMELIORATION OF PHYSICAL DISASTERS			
		OPERATING	DEF	125.80* 11,200,254 A	104.30* 9,622,549 A
			DEF	81.70* 74,207,982 N	83.95* 83,353,987 N
			DEF	464,458 S	464,458 S
			DEF	12,019,595 U	11,989,279 U

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
		INVESTMENT CAPITAL	AGS	7,206,000 C	3,861,000 C
			DEF	2,335,000 C	840,000 C
			AGS	1,000,000 N	925,000 N
			DEF	7,225,000 N	2,015,000 N

J. INDIVIDUAL RIGHTS

1.	CCA102 - CABLE TELEVISION			4.00*	4.00*
	OPERATING		CCA	1,286,537 B	5,253,288 B
2.	CCA103 - CONSUMER ADVOCATE FOR COMMUNICATION, UTILITIES, AND TRANSPORTATION SERVICES			15.00*	15.00*
	OPERATING		CCA	2,169,331 B	2,087,882 B
3.	CCA104 - FINANCIAL INSTITUTION SERVICES			30.00*	30.00*
	OPERATING		CCA	2,964,039 B	2,792,430 B
4.	CCA105 - PROFESSIONAL AND VOCATIONAL LICENSING			53.00*	52.00*
	OPERATING		CCA	5,495,195 B	5,180,504 B
			CCA	5.00*	5.00*
			CCA	2,081,311 T	2,009,844 T
5.	BUF901 - PUBLIC UTILITIES COMMISSION			51.00*	51.00*
	OPERATING		BUF	9,963,842 B	9,249,331 B
6.	CCA106 - INSURANCE REGULATORY SERVICES			81.00*	81.00*
	OPERATING		CCA	13,877,058 B	13,400,625 B
			CCA	200,000 T	200,000 T
7.	CCA110 - OFFICE OF CONSUMER PROTECTION			14.00*	14.00*
	OPERATING		CCA	1,573,840 B	1,461,378 B
			CCA	50,681 T	50,681 T
8.	AGR812 - MEASUREMENT STANDARDS			11.00*	7.00*
	OPERATING		AGR	558,911 A	327,288 A
9.	CCA111 - BUSINESS REGISTRATION AND SECURITIES REGULATION			71.00*	70.00*
	OPERATING		CCA	6,709,851 B	6,295,310 B
10.	CCA112 - REGULATED INDUSTRIES COMPLAINTS OFFICE			65.00*	65.00*
	OPERATING		CCA	5,579,836 B	5,231,770 B
11.	CCA191 - GENERAL SUPPORT			46.00*	43.00*
	OPERATING		CCA	5,953,460 B	5,823,384 B
12.	LTG105 - ENFORCEMENT OF INFORMATION PRACTICES			5.00*	5.00*
	OPERATING		LTG	426,977 A	364,447 A

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
13.	BUF151	OFFICE OF THE PUBLIC DEFENDER			
	OPERATING		BUF	82.00* 9,915,967 A	81.00* 8,918,635 A
14.	LNR111	CONVEYANCES AND RECORDINGS			
	OPERATING		LNR	60.00* 4,317,693 B	60.00* 3,851,598 B
15.	HMS888	COMMISSION ON THE STATUS OF WOMEN			
	OPERATING		HMS	1.00* 166,713 A	1.00* 156,478 A
<b>K. GOVERNMENT-WIDE SUPPORT</b>					
1.	GOV100	OFFICE OF THE GOVERNOR			
	OPERATING		GOV	31.00* 3,176,357 A	27.00* 1,683,915 A
	INVESTMENT CAPITAL		GOV	1,000 C	1,000 C
2.	LTG100	OFFICE OF THE LIEUTENANT GOVERNOR			
	OPERATING		LTG	3.00* 645,918 A	3.00* 421,017 A
3.	BED144	STATEWIDE PLANNING AND COORDINATION			
	OPERATING		BED	16.00* 1,557,671 A	12.00* 1,060,383 A
			BED	4.00* 2,546,810 N	5.00* 2,614,553 N
			BED	1,000,000 W	1,000,000 W
4.	BED103	STATEWIDE LAND USE MANAGEMENT			
	OPERATING		BED	6.00* 506,202 A	5.00* 450,263 A
5.	BED130	ECONOMIC PLANNING AND RESEARCH			
	OPERATING		BED	17.00* 1,125,445 A	13.00* 832,159 A
6.	BUF101	DEPARTMENTAL ADMINISTRATION AND BUDGET DIVISION			
	OPERATING		BUF	46.00* 11,742,159 A	37.25* 10,691,573 A
			BUF	* U	0.75* 31,343 U
	INVESTMENT CAPITAL		AGS	1,000,000 C	1,000,000 C
			BUF	267,331,000 C	157,112,000 C
7.	AGS871	CAMPAIGN SPENDING COMMISSION			
	OPERATING		AGS	5.00* 665,331 T	5.00* 4,640,454 T
8.	AGS879	OFFICE OF ELECTIONS			
	OPERATING		AGS	17.50* 3,894,805 A	17.50* 2,650,550 A
			AGS	0.50* 7,473,714 N	0.50* 7,469,487 N
9.	TAX100	TAXATION			
	OPERATING		TAX	187.50* 8,870,813 A	179.00* 7,887,945 A



PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
10.	TAX105	TAX SERVICES AND PROCESSING			
	OPERATING		TAX	138.00 * 6,428,501 A	123.00 * 5,765,161 A
11.	TAX107	SUPPORTING SERVICES - REVENUE COLLECTION			
	OPERATING		TAX TAX	66.00 * 6,876,905 A 452,000 B	62.00 * 6,102,089 A 1,047,000 B
12.	AGS101	STATEWIDE ACCOUNTING SERVICES			
	OPERATING		AGS	8.00 * 638,133 A	6.00 * 525,418 A
13.	AGS102	EXPENDITURE EXAMINATION			
	OPERATING		AGS	16.00 * 1,094,622 A	16.00 * 1,038,179 A
14.	AGS103	RECORDING AND REPORTING			
	OPERATING		AGS	11.00 * 726,933 A	11.00 * 603,507 A
15.	AGS104	INTERNAL POST AUDIT			
	OPERATING		AGS	11.00 * 672,696 A	6.00 * 407,837 A
16.	BUF115	FINANCIAL ADMINISTRATION			
	OPERATING		BUF	14.00 * 1,845,203 A	11.00 * 1,619,237 A
			BUF	4.00 * 7,043,023 T	9.00 * 6,987,155 T
			BUF	* 5,525 U	1.00 * 70,260 U
17.	BUF721	DEBT SERVICE PAYMENTS			
	OPERATING		BUF	223,937,085 A	225,959,399 A
18.	ATG100	LEGAL SERVICES			
	OPERATING		ATG	234.93 * 19,241,832 A	225.46 * 17,017,551 A
			ATG	22.00 * 2,346,782 B	22.52 * 2,258,784 B
			ATG	13.00 * 8,616,059 N	13.00 * 8,477,996 N
			ATG	* 3,918,000 T	0.50 * 3,983,320 T
			ATG	55.35 * 8,675,374 U	54.35 * 7,913,125 U
			ATG	2,996,629 V	2,980,318 V
			ATG	4.00 * 3,070,435 W	4.45 * 3,090,825 W
19.	AGS131	INFORMATION PROCESSING SERVICES			
	OPERATING		AGS	157.00 * 14,612,054 A	101.00 * 11,480,513 A
			AGS	33.00 * 2,812,584 U	33.00 * 2,812,584 U
	INVESTMENT CAPITAL		AGS	8,925,000 C	5,400,000 C
20.	AGS111	ARCHIVES - RECORDS MANAGEMENT			
	OPERATING		AGS	20.00 * 905,438 A	16.00 * 712,416 A

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
21.	AGS891 - WIRELESS ENHANCED 911 BOARD OPERATING	AGS		9,000,000 B	9,000,000 B
22.	HRD102 - WORK FORCE ATTRACTION, SELECTION, CLASSIFICATION, AND EFFICIENCY				
	OPERATING	HRD		99.00* 13,999,823 A	81.00* 18,706,449 A
		HRD		700,000 B	700,000 B
		HRD		4,886,281 U	4,886,281 U
23.	HRD191 - SUPPORTING SERVICES - HUMAN RESOURCES DEV				
	OPERATING	HRD		13.00* 1,551,477 A	11.00* 1,261,211 A
24.	BUF141 - EMPLOYEES' RETIREMENT SYSTEM				
	OPERATING	BUF		99.00* 11,317,896 X	99.00* 10,603,291 X
25.	BUF143 - HAWAII EMPLOYER - UNION TRUST FUND				
	OPERATING	BUF		27.00* 5,388,703 T	27.00* 4,208,426 T
26.	BUF741 - RETIREMENT BENEFITS PAYMENTS				
	OPERATING	BUF		263,986,686 A	246,651,441 A
27.	BUF761 - HEALTH PREMIUM PAYMENTS				
	OPERATING	BUF		174,721,854 A	198,820,766 A
28.	LNR101 - PUBLIC LANDS MANAGEMENT				
	OPERATING	LNR		51.00* 12,864,211 B	50.00* 12,033,343 B
		LNR		75,978 N	75,978 N
	INVESTMENT CAPITAL	LNR		1,500,000 B	B
		LNR		234,000 C	C
		LNR		4,000,000 R	2,500,000 R
		LNR		S	2,500,000 S
		LNR		2,000,000 U	2,500,000 U
29.	AGS203 - STATE RISK MANAGEMENT AND INSURANCE ADMINISTRATION				
	OPERATING	AGS		7,037,995 A	7,037,995 A
		AGS		4.00* 25,285,247 W	4.00* 25,255,622 W
30.	AGS211 - LAND SURVEY				
	OPERATING	AGS		14.00* 823,686 A	10.00* 598,344 A
		AGS		285,000 U	285,000 U
31.	AGS223 - OFFICE LEASING				
	OPERATING	AGS		5.00* 10,655,541 A	4.00* 8,554,856 A
		AGS		5,500,000 U	5,500,000 U
32.	AGS221 - PUBLIC WORKS - PLANNING, DESIGN, AND CONSTRUCTION				
	OPERATING	AGS		16.00* 1,188,989 A	16.00* 1,047,948 A
		AGS		4,000,000 W	4,000,000 W
	INVESTMENT CAPITAL	AGS		21,464,000 C	12,490,000 C
33.	AGS231 - CENTRAL SERVICES - CUSTODIAL SERVICES				
				148.50*	123.00*

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
		OPERATING	AGS	14,675,071 A	13,045,177 A
			AGS	58,744 B	58,744 B
			AGS	894,001 U	894,001 U
34.		AGS232 - CENTRAL SERVICES - GROUNDS MAINTENANCE		36.50 *	27.00 *
		OPERATING	AGS	1,910,005 A	1,566,854 A
35.		AGS233 - CENTRAL SERVICES - BUILDING REPAIRS AND ALTERATIONS		39.00 *	33.00 *
		OPERATING	AGS	2,958,625 A	2,731,537 A
36.		AGS240 - STATE PROCUREMENT		19.00 *	17.00 *
		OPERATING	AGS	1,121,661 A	899,085 A
37.		AGS244 - SURPLUS PROPERTY MANAGEMENT		5.00 *	5.00 *
		OPERATING	AGS	1,763,623 W	1,778,699 W
38.		AGS251 - AUTOMOTIVE MANAGEMENT - MOTOR POOL		12.50 *	12.50 *
		OPERATING	AGS	2,464,804 W	2,492,333 W
39.		AGS252 - AUTOMOTIVE MANAGEMENT - PARKING CONTROL		24.50 *	24.50 *
		OPERATING	AGS	3,367,458 W	3,273,280 W
40.		AGS901 - GENERAL ADMINISTRATIVE SERVICES		38.00 *	35.00 *
		OPERATING	AGS	2,860,043 A	2,508,853 A
			AGS	2.00 *	2.00 *
			AGS	145,290 U	140,463 U
40A.		SUB301 - COUNTY OF HAWAII INVESTMENT CAPITAL	COH	C	23,550,000 C
41.		SUB401 - COUNTY OF MAUI INVESTMENT CAPITAL	COM	3,250,000 C	145,000 C
42.		SUB501 - COUNTY OF KAUAI INVESTMENT CAPITAL	COK	2,500,000 C	625,000 C
			COK	950,000 E	E"

SECTION 4. Part III, Act 162, Session Laws of Hawaii 2009, is amended:

(1) By adding a new section to read as follows:

"SECTION 4.1. Provided that of the federal fund appropriation for strategic marketing and support (BED 100), the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for a financial audit of the overseas offices."

(2) By adding a new section to read as follows:

"SECTION 6.1 Provided that of the special fund appropriation for plant, pest, and disease control (AGR 122), the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for the following purposes:

(1) Varroa mite control and eradication;

- (2) Operation of pest inspection, quarantine, eradication, biosecurity, and monitoring programs, related facilities, and the execution of emergency remedial measures when pests are detected in the course of inspection and quarantine activities by the department;
- (3) Livestock revitalization program under chapter 155D, Hawaii Revised Statutes;
- (4) Improvements to the lower Hamakua ditch in Hawaii county;
- (5) Construction of an agricultural water main distribution pipeline in the upcountry Maui watershed;
- (6) Construction of the Kealahou pipeline in the upcountry Maui watershed; and
- (7) Planning phase of the state agricultural water use and development plan.”

(3) By adding a new section to read as follows:

“SECTION 8.1. Provided that of the special fund appropriation for agricultural resource management (AGR 141), the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for the purchase and installation of back flow preventers for the Waiahole irrigation system’s users.”

(4) By adding a new section to read as follows:

“SECTION 8.2. Provided that of the special fund appropriation for agricultural resource management (AGR 141), the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for the following purposes:

- (1) Operating costs, including plant quarantine, commodities, pesticide, and animal and livestock inspectors;
- (2) Operating costs for inspectors to perform certification and audit services and maintaining an internet food safety promotional and reporting system;
- (3) Repair and maintenance of the Waiahole irrigation system;
- (4) Repair and maintenance of the Molokai irrigation system; and
- (5) Planning of facilities at or near the airports or harbors to provide for the safe and efficient movement of agricultural commodities.”

(5) By amending section 10 to read as follows:

“SECTION 10. Provided that of the special and revolving fund [appropriation] appropriations for agribusiness development and research (AGR 161), the sum of \$500,000 in special funds and the sum of \$500,000 in revolving funds or so much thereof as may be necessary for fiscal year [2009-2010] 2010-2011 shall be expended to pay-off a loan and buy-out a shareholder of [the Hawai'i county] the Oahu slaughterhouse; provided further that these funds shall not be expended for any other purpose; and provided further that any unexpended or unencumbered [general] funds shall lapse to [the revolving fund] their respective funds.”

(6) By adding a new section to read as follows:

“SECTION 11.1. Provided that of the special fund appropriation for strategic industries (BED 120), the sum of \$230,300 or so much thereof as may be necessary for the second half of fiscal year 2010-2011 shall be expended for five permanent positions (5.00 FTE) for the Hawaii clean energy initiative; provided further that the funds shall be expended from the energy security special fund; and provided further that any unexpended funds shall lapse to the special fund.”

(7) By amending section 17 to read as follows:

“SECTION 17. Provided that of the special fund appropriations for the highways division (TRN 501-TRN 561), the following sums specified for special repair and maintenance projects in fiscal biennium 2009-2011 shall be expended for special repair and maintenance purposes only as follows:

<u>Program I.D.</u>	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>	
TRN 501	\$24,758,413	<del>[\$24,821,993]</del>	\$23,858,144
TRN 511	\$10,876,404	<del>[\$10,876,404]</del>	\$10,354,191
TRN 531	\$11,096,508	<del>[\$11,096,508]</del>	\$10,850,843
TRN 541	\$ 2,575,000	<del>[\$ 2,575,000]</del>	\$ 2,534,675
TRN 551	\$ 515,000	<del>[\$ 515,000]</del>	\$ 502,228
TRN 561	\$ 8,021,534	<del>[\$ 8,021,534;]</del>	\$ 7,814,779;

[and] provided further that any unexpended funds shall lapse to the state highway fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of December 1 for each fiscal year; provided further that if there are any transfers of the funds between programs, [that] the approving authority for each violation of this proviso shall be disclosed in the report; provided further that this report shall also include the previous three fiscal years; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.”

(8) By adding a new section to read as follows:

“SECTION 17.1. Provided that of the special fund appropriation for Oahu highways (TRN 501), the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for lights on:

- (1) The H-1 freeway heading both eastbound and westbound between Kapolei and Kunia; and
- (2) The H-2 freeway heading both northbound and southbound between Waipahu and Wahiawa; and

provided further that any unexpended funds shall lapse to the highway special fund.”

(9) By amending section 21 to read as follows:

“SECTION 21. Provided that of the special fund appropriation for developmental disabilities (HTH 501), the sum of \$700,000 or so much thereof as may be necessary for fiscal year 2009-2010 [~~and the sum of \$700,000 or so much thereof as may be necessary for fiscal year 2010-2011]~~ shall be expended for the partnerships in community living program; provided further that the department shall prepare a detailed report on the expenditures for this program; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 [~~and 2011]~~ regular [~~sessions.] session.”~~

(10) By amending section 22 to read as follows:

“SECTION 22. Provided that of the special fund appropriation for family health (HTH 560), the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2009-2010 [~~and the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2010-2011]~~ shall be expended for the healthy start program; provided further that the department shall prepare a detailed report evaluating the current program and making recommendations on how the program will be modified to address the desired public health objectives; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 [~~and 2011]~~ regular [~~sessions.] session.”~~

(11) By amending section 24 to read as follows:

“SECTION 24. Provided that of the special fund appropriation for community health services (HTH 580), the sum of \$1,533,716 or so much thereof as may be necessary for fiscal year 2009-2010 [~~and the sum of \$1,533,716 or so much thereof as may be necessary for fiscal year 2010-2011~~] shall be expended for chronic disease management and control; provided further that the department shall prepare a detailed report on the expenditures for this program; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 [~~and 2011~~] regular [sessions.] session.”

(12) By amending section 25 to read as follows:

“SECTION 25. Provided that of the special fund appropriation for tobacco settlement (HTH 590), the sum of \$8,561,457 for fiscal year 2009-2010 [~~and the sum of \$8,561,457 for fiscal year 2010-2011~~] shall be deposited into the emergency and budget reserve fund.”

(13) By amending section 27 to read as follows:

“SECTION 27. Provided that of the special fund appropriation for tobacco settlement (HTH 590), the sum of \$3,709,965 or so much thereof as may be necessary for fiscal year 2009-2010 [~~and the sum of \$3,709,965 or so much thereof as may be necessary for fiscal year 2010-2011~~] shall be deposited into the Hawai'i tobacco prevention and control trust fund; [~~and~~] provided further that the Hawai'i Community Foundation, as the administrator of the trust fund, shall prepare a detailed report on the financial condition, use of funds, and performance outcomes for the trust fund; and provided further that the Hawai'i Community Foundation shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 [~~and 2011~~] regular [sessions.] session.”

(14) By amending section 28 to read as follows:

“SECTION 28. Provided that of the special fund appropriation for tobacco settlement (HTH 590), the sum of [~~\$15,981,387~~] \$13,581,144 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of [~~\$15,981,387~~] \$13,626,537 or so much thereof as may be necessary for fiscal year 2010-2011 shall be deposited into the university revenue-undertakings fund[-] for the purposes of section 328L-2(b)(4), Hawaii Revised Statutes; provided further that the University of Hawaii shall prepare a detailed report on the use of the funds including but not limited to changes in bond principal and interest payments and itemized lists of all other expenditures and uses; and provided further that the University of Hawaii shall submit the report to the legislature no later than twenty days prior to the convening of the 2011 regular session.”

(15) By adding a new section to read as follows:

“SECTION 28.1. Provided that of the special fund appropriation for tobacco settlement (HTH 590), the sum of \$1,533,716 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for chronic disease management and control; provided further that the department shall prepare a detailed report on the expenditures for this program; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2011 regular session.”

(16) By adding a new section to read as follows:

“SECTION 28.2. Provided that of the special fund appropriation for tobacco settlement (HTH 590), the sum of \$3,709,965 or so much thereof as may be necessary for fiscal year 2010-2011 shall be deposited into the Hawaii tobacco prevention and control trust fund; provided further that the department of health shall prepare a detailed report that shall include but not be limited to:

- (1) The contract between the department of health and the administrator of the trust fund;

- (2) A description of the financial condition of the fund;
- (3) Investment policies;
- (4) Detailed lists of all grant awards and expenditures;
- (5) A detailed explanation on requirements for qualifying for grants; and
- (6) Performance outcomes for the trust fund, including comparable fund and market investments;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2011 regular session.”

(17) By amending section 29 to read as follows:

“SECTION 29. Provided that of the special fund appropriation for tobacco settlement (HTH 590), the sum of \$14,554,477 for fiscal year 2009-2010 [~~and the sum of \$14,554,477 for fiscal year 2010-2011~~] shall be deposited into the general fund.”

(18) By amending section 30 to read as follows:

“SECTION 30. Provided that of the special fund appropriation for health resources administration (HTH 595), the sum of \$376,953 or so much thereof as may be necessary for fiscal year 2009-2010 [~~and the sum of \$376,953 or so much thereof as may be necessary for fiscal year 2010-2011~~] shall be expended for respite care; provided further that the department shall prepare a detailed report on the expenditures for respite care; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 [~~and 2011~~] regular [~~sessions-~~] session.”

(19) By amending section 34 to read as follows:

“SECTION 34. Provided that of the special fund appropriation for health status monitoring (HTH 760), the sum of \$90,490 for fiscal year 2009-2010 and the sum of \$90,490 for fiscal year 2010-2011 shall be expended to automate the marriage registration system; [~~and~~] provided further that the department [~~of health~~] shall prepare a detailed report on the funds appropriated to automate the marriage registration system in fiscal year 2007-2008 and fiscal year 2008-2009; [~~and~~] provided further that the department [~~of health~~] shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 regular session[-]; provided further that the department shall also prepare:

- (1) a detailed report on the funds appropriated to automate the marriage registration system in fiscal year 2009-2010 and fiscal year 2010-2011; and
- (2) an implementation plan including but not limited to milestones, milestone dates, projected completion dates, and progress made;

and provided further that the department shall submit the report and implementation plan to the legislature no later than twenty days prior to the convening of the 2011 regular session.”

(20) By repealing Section 36:

“[SECTION 36. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$5,000,000 for fiscal year 2009-2010 and the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended by the department of education for restructuring schools under No Child Left Behind requirements; provided further that the department shall prepare a report that shall include but not be limited to evaluations from each educational consultant assigned to each school on the progress of restructuring under No Child Left Behind, and the spending per school for restructuring under No Child Left Behind; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.]”

(21) By amending section 39 to read as follows:

“SECTION 39. Provided that of the general fund appropriation for charter schools (EDN 600), the sum of \$52,732,012 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of [~~\$52,746,554~~] \$51,852,459 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended by charter schools to fund their educational programs; provided further that the funds shall not be expended for any other purpose; provided further that for fiscal year 2010-2011, any general fund amount that exceeds the product derived from multiplying:

(1) The actual charter school enrollment count on October 15, 2010, as reviewed and verified by the charter school administrative office by November 15, 2010; and

(2) The sum of \$5,363;

shall lapse to the charter schools account within the state treasury; provided further that [the] charter schools shall prepare a report that shall include but not be limited to a detailed breakout of the all means of financing budget for the current and next fiscal year and actual expenditures for the last completed fiscal year for each charter [school along with] school, a report of all other funds expended on behalf of each [school;] school, and a report detailing by school:

(1) The enrollment projections used to submit the current budget request;

(2) The actual October 15, 2010 enrollment count as reported by each school for the current school year;

(3) The charter school administrative office’s reviewed and verified October 15, 2010 enrollment count; and

(4) The charter school administrative office’s reviewed and verified November 15, 2010 enrollment count;

and provided further that the charter schools administrative office shall submit [this report] these reports to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.”

(22) By adding a new section to read as follows:

“SECTION 39.1. Provided that of the general fund appropriation for charter schools (EDN 600), the sum of \$1,909,049 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for facility costs; provided further that the amount that exceeds \$197 multiplied by the actual October 15 charter school enrollment count for the current school year, as reviewed and verified by the charter school administrative office by November 15, shall lapse to the charter schools account within the state treasury; provided further that the funds shall be distributed to charter schools based on methodology developed by the charter school administrative office; provided further that charter schools shall prepare a report that shall include but not be limited to a detailed breakout of actual facility-related expenditures for the last completed fiscal year for each charter school and the method of funding; and provided further that the charter schools administrative office shall submit the report to the legislature no later than twenty days prior to the convening of the 2011 regular session.”

(23) By amending section 40 to read as follows:

“SECTION 40. Provided that charter schools (EDN 600) shall [compile] prepare a report for each charter school of each use of the authority of each local school to negotiate supplemental collective bargaining agreements with the exclusive representatives of their employees granted by chapter 302B-7, Hawai‘i Revised Statutes; provided further that this report shall cover the last completed fiscal year and the current fiscal year; and provided further that the charter schools administrative office shall submit this report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.”



(24) By amending section 41 to read as follows:

“SECTION 41. Provided that charter schools (EDN 600) shall ~~[compile]~~ prepare a report for each charter school on the internal policies and procedures for the procurement of goods, services, and construction for each school and also the level of conformity with the goals of public accountability and public procurement practices for each school; provided further that this report shall include but not be limited to an evaluation of the benefits for each charter school as a result of being exempt from the requirements of chapter 103D, Hawai‘i Revised Statutes, and discussion on the frequency with which charter schools and their local school boards use the provisions of chapter 103D, Hawai‘i Revised Statutes; provided further that this report shall cover the last completed fiscal year and the current fiscal year; and provided further that the charter schools administrative office shall submit this report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.”

(25) By adding a new section to read as follows:

“SECTION 41.1. Provided that of the general fund and federal fund appropriation for Hawaii national guard youth challenge academy (DEF 114), the sums of \$800,000 and \$2,400,000, respectively, or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for Hawaii national guard youth challenge academy’s mission; provided further that the program shall give preference to students from the department of education who have been assigned to alternative learning centers; provided further that the department shall prepare a report which itemizes, by educational organization immediately previously attended, the number of applicants and the number of those applicants accepted by the program for each of the previous two school cycles; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2011 regular session.”

(26) By adding a new section to read as follows:

“SECTION 41.2. Provided that of the general fund appropriation for Hawaii national guard youth challenge academy (DEF 114), the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended to establish the a second Youth Challenge Academy; provided further that no funds shall be made available under this section unless the federal government provides \$1,200,000 for the purpose for which this sum is appropriated; and provided further that the department shall notify the legislature within five working days following receipt of these federal funds.”

(27) By repealing section 44:

~~[“SECTION 44. Provided that of the general fund appropriation for O‘ahu community correctional center (PSD 407), the sum of \$309,516 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$540,733 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended by the department of public safety to establish and implement the electronic monitoring pilot program for eligible committed persons; 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 the following information:~~

- ~~(1) Status of the electronic monitoring pilot program;~~
- ~~(2) Appropriate measures of effectiveness;~~
- ~~(3) Number of committed persons participating in program;~~
- ~~(4) Number of violations of program rules and regulations;~~
- ~~(5) Any instances of participants re-offending;~~
- ~~(6) Finding and recommendations; and~~
- ~~(7) Determination of success of program and whether to continue pilot program;~~

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.”]

(28) By repealing section 45:

“~~SECTION 45. Provided that of the general fund appropriation for sheriff (PSD 503), six (6.00 FTE) positions and the sum of \$414,240 or so much thereof as may be necessary for fiscal year 2009-2010 and six (6.00 FTE) positions and the sum of \$261,240 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended to establish three additional warrant teams; 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 quarterly reports beginning the first quarter of FY 2009-2010 that shall include but not be limited to the following:~~

- (1) ~~Number of warrants served, broken down by type, for the current fiscal year and previous two fiscal years;~~
- (2) ~~Per cent of warrants served, broken down by type, for the current fiscal year and previous two fiscal years;~~

and provided further that the department shall submit the report to the legislature no later than thirty days after the last day of the quarter.”]

(29) By adding a new section to read as follows:

“SECTION 49.1. Provided that of the special fund appropriation for general support (CCA 191), the sum of \$380,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be used to fully reimburse the department of the attorney general for all services received from that department; and provided further that any unexpended funds shall lapse to the special fund.”

(30) By amending section 51 to read as follows:

“SECTION 51. Provided that of the general fund appropriation for departmental administration and budget division (BUF 101), the sum of \$672,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of ~~[\$672,000]~~ \$612,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended as a subsidy to the Bishop Museum; and provided further that any unexpended funds shall lapse to the general fund.”

(31) By adding a new section to read as follows:

“SECTION 56.1. Provided that of the general fund appropriation for taxation (TAX 100), the sum of \$357,240 or so much thereof as may be necessary for fiscal year 2010-2011 shall be expended for revenue-generating positions; provided further that the department shall prepare a report indicating the amount of revenue generated during the prior fiscal year and the estimated amount to be generated for the current fiscal year for each revenue-generating position in the department; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2011 regular session.”

(32) By amending section 57 to read as follows:

“SECTION 57. Provided that of the general fund appropriations for debt service payments (BUF 721-BUF 728), the following sums specified in fiscal biennium 2009-2011 shall be expended for principal and interest payments on general obligation bonds only as follows:

<u>Program I.D.</u>	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>	
BUF 721	\$ 223,937,085	<del>[\$229,918,270]</del>	\$ 225,959,399
BUF 725	\$ 194,793,118	<del>[\$204,995,708]</del>	\$ 194,855,477
BUF 728	\$ 72,092,672	<del>[\$75,868,637;]</del>	\$ 72,115,751;

provided further that unrequired balances may be transferred only to retirement benefits payments (BUF 741-BUF 748) and health premium payments (BUF 761-BUF 768); 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.”

(33) By amending section 58 to read as follows:

“SECTION 58. Provided that of the general fund appropriations for retirement benefits payments (BUF 741-BUF 748), the following sums specified in fiscal biennium 2009-2011 shall be expended for the state employer’s share of the employees’ retirement system’s pension accumulation only as follows:

<u>Program I.D.</u>	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>	
BUF 741	\$177,304,535	<del>[\$ 179,520,843]</del>	\$165,691,170
BUF 745	\$177,504,717	<del>[\$ 179,723,525]</del>	\$165,946,224
BUF 748	\$ 79,280,371	<del>[\$ 80,271,377;]</del>	\$ 77,043,120;

provided further that unrequired balances may be transferred only to debt service payments (BUF 721-BUF 728) and health premium payments (BUF 761-BUF 768); 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.”

(34) By amending section 59 to read as follows:

“SECTION 59. Provided that of the general fund appropriations for retirement benefits payments (BUF 741-BUF 748), the following sums specified in fiscal biennium 2009-2011 shall be expended for the state employer’s share of the social security/Medicare payment for employees only as follows:

<u>Program I.D.</u>	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>	
BUF 741	\$ 86,682,151	<del>[\$ 87,765,678]</del>	\$ 80,960,271
BUF 745	\$ 89,554,231	<del>[\$ 90,673,659]</del>	\$ 83,779,837
BUF 748	\$ 38,914,935	<del>[\$ 39,401,370;]</del>	\$ 37,992,698;

provided further that unrequired balances may be transferred only to debt service payments (BUF 721-BUF 728) and health premium payments (BUF 761-BUF 768); 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.”

(35) By amending section 60 to read as follows:

“SECTION 60. Provided that of the general fund appropriations for health premium payments (BUF 761-BUF 768), the following sums specified in fiscal biennium 2009-2011 shall be expended for the state employer’s share of health premiums for active employees and retirees only as follows:

<u>Program I.D.</u>	<u>FY 2009-2010</u>	<u>FY 2010-2011</u>	
BUF 761	\$174,721,854	<del>[\$190,204,383]</del>	\$198,820,766
BUF 765	\$182,617,125	<del>[\$197,937,761]</del>	\$206,597,259
BUF 768	\$ 63,937,201	<del>[\$ 69,839,777;]</del>	\$ 73,122,208;

provided further that unrequired balances may be transferred only to debt service payments (BUF 721-BUF 728) and retirement benefits payments [~~BUF 721~~] (BUF 741-BUF 748); provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.”

SECTION 5. Part IV, Act 162, Session Laws of Hawaii 2009, is amended by amending section 62 to read as follows:

“SECTION 62. CAPITAL IMPROVEMENT PROJECTS AUTHORIZED. The sums of money appropriated or authorized in part II of this Act for capital improvements shall be expended for the projects listed below. Accounting of the appropriations by the department of accounting and general services shall be based on the projects as such projects are listed in this section. Several related or similar projects may be combined into a single project if such combination is advantageous or convenient for implementation; 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 2009-2010	FISCAL YEAR 2010-2011
<b>A. ECONOMIC DEVELOPMENT</b>					
<b>AGR141 - AGRICULTURAL RESOURCE MANAGEMENT</b>					
1.	P10001	WAIMEA HYDROPOWER PLANT, HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION FOR THE DEVELOPMENT OF THE WAIMEA HYDROPOWER PLANT.			
		PLANS		175	
		DESIGN		175	
		CONSTRUCTION			1,000
		TOTAL FUNDING	AGR	350C	1,000C
2.	P10003	WAIMEA TRANSFER DITCH IMPROVEMENTS, HAWAII			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE WAIMEA TRANSFER DITCH.			
		DESIGN		200	
		CONSTRUCTION			2,000
		TOTAL FUNDING	AGR	200C	2,000C
3.	P10005	WAI AHOLE DITCH IRRIGATION SYSTEM, RESERVOIRS 155 AND 225 IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO RESERVOIRS 155 AND 225 ON THE WAI AHOLE DITCH SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		200	
		CONSTRUCTION			6,095
		TOTAL FUNDING	AGR	50C	1,500C
			AGR	150N	4,595N
4.	P10008	KAHUKU AGRICULTURAL PARK SUBDIVISION MISCELLANEOUS IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION OF MISCELLANEOUS IMPROVEMENTS TO THE KAHUKU AGRICULTURAL PARK SUBDIVISION.			
		DESIGN		40	
		CONSTRUCTION		160	
		TOTAL FUNDING	AGR	200C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
5.	200401	STATE AGRICULTURAL WATER AND USE DEVELOPMENT PLAN, STATEWIDE			
		PLANS TO CONTINUE THE STATE AGRICULTURAL WATER PLAN AS MANDATED BY ACT 101, SESSION LAWS OF HAWAII 1998. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		400	
		TOTAL FUNDING	AGR	200C	C
			AGR	200N	N
6.	200402	MOLOKAI IRRIGATION SYSTEM IMPROVEMENTS, MOLOKAI			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE MOLOKAI IRRIGATION SYSTEM.			
		DESIGN		50	
		CONSTRUCTION		3,450	
		TOTAL FUNDING	AGR	3,500C	C
8.	P90002	MULTIPURPOSE RESEARCH AND DEVELOPMENT FACILITY FOR THE PRODUCTION OF VALUE ADDED AGRICULTURAL PRODUCTS, MAUI			
		PLANS, DESIGN AND CONSTRUCTION TO REPAIR AND MODIFY FACILITIES AT MAUI COMMUNITY COLLEGE TO FURTHER THE VALUE ADDED AGRICULTURAL INDUSTRY, PROVIDED THAT NO FUNDS SHALL BE MADE AVAILABLE UNLESS MATCHED DOLLAR-FOR-DOLLAR IN CASH OR BY IN-KIND DONATIONS BY THE PRIVATE SECTOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		187	1,650
		TOTAL FUNDING	AGR	125C	1,100C
			AGR	1N	1N
			AGR	62R	550R
			AGR	1S	1S
8.01.		LOWER HAMAKUA DITCH WATERSHED PROJECT, HAWAII			
		PLANS 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			30
		CONSTRUCTION			570
		TOTAL FUNDING	AGR	C	300C
			AGR	N	300N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F	
8.02.		UPCOUNTRY MAUI WATERSHED PROJECT, MAUI				
		PLANS, DESIGN, AND CONSTRUCTION FOR THE INSTALLATION OF PIPELINE FOR THE UPCOUNTRY MAUI WATERSHED, MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		PLANS			200	
		DESIGN			200	
		CONSTRUCTION			3,000	
		TOTAL FUNDING	AGR	C	1,400 C	
			AGR	N	2,000 N	
8.03.		KA'U IRRIGATION SYSTEM IMPROVEMENTS, HAWAII				
		PLANS, DESIGN, AND CONSTRUCTION TO THE KA'U IRRIGATION SYSTEM, INCLUDING RENOVATION OF THE EXISTING WATER TUNNEL SYSTEM IN THE KA'U AREA.				
		PLANS			200	
		DESIGN			300	
		CONSTRUCTION			1,000	
		TOTAL FUNDING	AGR	C	1,500 C	
<b>AGR161 - AGRIBUSINESS DEVELOPMENT AND RESEARCH</b>						
8.04.		GALBRAITH ESTATE, OAHU				
		LAND ACQUISITION TO ACQUIRE LANDS CURRENTLY OWNED BY THE GEORGE GALBRAITH ESTATE IN CENTRAL OAHU.				
		LAND			13,000	
		TOTAL FUNDING	AGR	C	13,000 C	
<b>AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE</b>						
9.	981921	MISCELLANEOUS HEALTH, SAFETY, CODE, AND OTHER REQUIREMENTS, STATEWIDE				
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO ADDRESS HEALTH, SAFETY, CODE, AND OTHER REQUIREMENTS, STATEWIDE.				
		DESIGN			100	
		CONSTRUCTION			400	
		TOTAL FUNDING	AGS	500 C	500 C	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F

LNR141 - WATER AND LAND DEVELOPMENT

10. J45 ROCKFALL AND FLOOD MITIGATION, STATEWIDE

PLANS, DESIGN, AND CONSTRUCTION FOR ROCKFALL AND FLOOD MITIGATION AT VARIOUS LOCATIONS, STATEWIDE. THE LEGISLATURE FINDS AND DECLARES THAT THIS APPROPRIATION IS IN THE PUBLIC INTEREST AND FOR THE PUBLIC'S HEALTH, SAFETY AND GENERAL WELFARE OF THE STATE.

PLANS	1	1
DESIGN	1	1
CONSTRUCTION	1,998	1,998
TOTAL FUNDING LNR	2,000 C	2,000 C

11. P90003 UPCOUNTRY MAUI GROUND WATER WELL, MAUI

PLANS AND DESIGN FOR A TEST WELL IN UPCOUNTRY MAUI TO SERVE AS THE FIRST PHASE IN THE CONSTRUCTION OF A GROUND WATER WELL TO SUPPLEMENT THE UPCOUNTRY SURFACE WATER SYSTEM.

PLANS	50	
DESIGN	100	
TOTAL FUNDING LNR	150 C	

BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY

12. HCD001 HAWAII COMMUNITY DEVELOPMENT AUTHORITY'S COMMUNITY DEVELOPMENT DISTRICTS, OAHU

PLANS FOR COSTS RELATED TO WAGES AND FRINGE BENEFITS FOR PERMANENT AND NON-PERMANENT PROJECT-FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY'S COMMUNITY DEVELOPMENT DISTRICTS. FUNDS MAY BE USED TO MATCH FEDERAL AND NON-STATE FUNDS AS MAY BE AVAILABLE.

PLANS	1,855	1,855
TOTAL FUNDING BED	1,855 C	1,855 C

13. A-013 CULTURAL PUBLIC MARKET, OAHU

PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE KEWALO KEIKI FISHING CONSERVANCY.

PLANS	1	
LAND	1	
DESIGN	299	
CONSTRUCTION	2,000	
TOTAL FUNDING BED	2,301 C	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011

## BED160 - HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION

15. HFDC04 RENTAL HOUSING TRUST FUND INFUSION, STATEWIDE  
 CONSTRUCTION TO PROVIDE AN INFUSION OF FUNDS TO FINANCE ADDITIONAL AFFORDABLE RENTAL HOUSING STATEWIDE.  
 CONSTRUCTION TOTAL FUNDING BED 10,000 10,000 C
16. HFDC05 DWELLING UNIT REVOLVING FUND, STATEWIDE  
 CONSTRUCTION TO PROVIDE AN INFUSION OF FUNDS TO FINANCE ADDITIONAL WORKFORCE AND AFFORDABLE HOUSING STATEWIDE.  
 CONSTRUCTION TOTAL FUNDING BED 10,000 10,000 C 10,000 10,000 C
17. P90006 RENTAL APARTMENT COMPLEX, KAKAAKO, OAHU  
 LAND ACQUISITION FOR A 235 UNIT RENTAL COMPLEX FACILITY IN KAKAAKO, OAHU.  
 LAND TOTAL FUNDING BED 6,500 6,500 C

## B. EMPLOYMENT

## LBR903 - OFFICE OF COMMUNITY SERVICES

1. P90007 EASTER SEALS HAWAII, OAHU  
 CONSTRUCTION FOR A MULTI-PROGRAM SERVICE CENTER IN WEST OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.  
 CONSTRUCTION TOTAL FUNDING LBR 275 275 C
2. P90008 FILIPINO COMMUNITY CENTER, OAHU  
 PLANS AND CONSTRUCTION FOR THE INSTALLATION OF A RETRACTABLE ROOF OVER THE COURTYARD AT THE FILIPINO COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.  
 PLANS CONSTRUCTION TOTAL FUNDING LBR 1 850 851 C
3. P90009 HAWAII COUNTY ECONOMIC OPPORTUNITY COUNCIL, HAWAII  
 EQUIPMENT TO PURCHASE NEW BUSES WITH WHEELCHAIR ACCOMMODATIONS TO REPLACE OLD BUSES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.  
 EQUIPMENT TOTAL FUNDING LBR 120 120 C



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
4.	P90010	KA LIMA O MAUI, LTD., MAUI PLANS FOR FACILITIES AND AFFORDABLE HOUSING FOR THE CONSUMERS SERVED BY KA LIMA O MAUI, LTD. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		250	
		TOTAL FUNDING LBR		250C	C
5.	P90011	MAUI ECONOMIC OPPORTUNITY, INC., MAUI CONSTRUCTION FOR A BUS BUILDING TO HOUSE AND PROVIDE MAINTENANCE FACILITIES FOR THE MAUI ECONOMIC OPPORTUNITY BUS SYSTEM ON MAUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		3,000	1,000
		TOTAL FUNDING LBR		3,000C	1,000C
6.	P90012	MAUI FAMILY YMCA, MAUI CONSTRUCTION TO RENOVATE THE YMCA FACILITY IN KAHULUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		250	
		TOTAL FUNDING LBR		250C	C
7.	P90013	WAIKIKI COMMUNITY CENTER, OAHU CONSTRUCTION FOR ELECTRICAL IMPROVEMENTS AT THE WAIKIKI COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION		226	
		TOTAL FUNDING LBR		226C	C
8.	P90014	CFS REAL PROPERTY, INC., KAUAI LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR ACQUISITION, RENOVATION AND OTHER IMPROVEMENTS FOR HALE HO'OMALU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		LAND		1	
		DESIGN		100	
		CONSTRUCTION		299	
		TOTAL FUNDING LBR		400C	C
9.	P90015	KAUAI ECONOMIC OPPORTUNITY, INC., KAUAI LAND ACQUISITION FOR THE KAUAI ECONOMIC OPPORTUNITY FOOD SERVICE PROGRAM/COMMUNITY ENTERPRISE KITCHEN. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		LAND		200	
		TOTAL FUNDING LBR		200C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
9.01.		WAIKIKI COMMUNITY CENTER, OAHU			
		CONSTRUCTION FOR THE ROOF REPAIR, GUTTER REPLACEMENT AND INSTALLATION, AND PAINTING OF THREE COMPLEX BUILDINGS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION			230
		TOTAL FUNDING LBR		C	230C
9.02.		HALE KIPA, INC., OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR THE HALE KIPA SERVICES CENTER AND RESIDENTIAL SHELTER COMPLEX. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS			10
		DESIGN			10
		CONSTRUCTION			480
		TOTAL FUNDING LBR		C	500C
9.03.		ORI ANUENUE HALE, INC., OAHU			
		DESIGN AND CONSTRUCTION TO RENOVATE THE FOOD PREPARATION AND TRAINING FACILITY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN			100
		CONSTRUCTION			100
		TOTAL FUNDING LBR		C	200C
9.04.		YMCA OF KAUAI, KAUAI			
		DESIGN AND CONSTRUCTION FOR A SOLAR ELECTRIC ENERGY SYSTEM FOR THE YMCA OF KAUAI'S OLYMPICS SWIMMING POOL COMPLEX. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN			100
		CONSTRUCTION			100
		TOTAL FUNDING LBR		C	200C
<b>HMS802 - VOCATIONAL REHABILITATION</b>					
10.	P90016	ARC OF HILO, HAWAII			
		CONSTRUCTION FOR THE CLIENT SUPPORT SERVICES COMMUNITY AND TRAINING CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION			550
		TOTAL FUNDING HMS		550C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F	
10.01.	M201295	HO'OPONO MAINTENANCE PROJECTS, OAHU				
		DESIGN AND CONSTRUCTION FOR MAINTENANCE PROJECTS RECOMMENDED BY THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES IN CONSONANCE WITH ACT 96, GOVERNOR'S ADMINISTRATIVE DIRECTIVE NO. 06-01 ON ENERGY AND HEALTH AND SAFETY COMPLIANCE. ELECTRICAL FIRE ALARM UPGRADE.				
		DESIGN				90
		CONSTRUCTION				310
		TOTAL FUNDING	HMS			400 C
<b>C. TRANSPORTATION FACILITIES</b>						
<b>TRN102 - HONOLULU INTERNATIONAL AIRPORT</b>						
1.	A11E	HONOLULU INTERNATIONAL AIRPORT, ELLIOTT STREET SUPPORT FACILITIES, OAHU				
		DESIGN AND CONSTRUCTION FOR SUPPORT FACILITIES NEAR ELLIOTT STREET INCLUDING MAINTENANCE FACILITIES, CARGO FACILITIES, TAXIWAY G AND L WIDENING AND REALIGNMENT, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).				
		DESIGN			275	7,960
		CONSTRUCTION			71,090	71,640
		TOTAL FUNDING	TRN		71,365 E	43,600 E
			TRN		X	36,000 X
2.	A23L	HONOLULU INTERNATIONAL AIRPORT, RECONSTRUCT TAXIWAYS AND RUNWAYS, OAHU				
		DESIGN AND CONSTRUCTION FOR STRUCTURAL IMPROVEMENTS TO RUNWAYS, TAXIWAYS, AND APRONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		DESIGN			922	
		CONSTRUCTION			6,286	7,951
		TOTAL FUNDING	TRN		7,208 E	5,951 E
			TRN		N	2,000 N
3.	A23M	HONOLULU INTERNATIONAL AIRPORT, AIRFIELD WATERLINE REPLACEMENT, OAHU				
		CONSTRUCTION FOR THE REPLACEMENT OF 12" AIRFIELD WATERLINE, 6" LAGOON DRIVE WATERLINE AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.				
		CONSTRUCTION			9,035	
		TOTAL FUNDING	TRN		9,035 E	E

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
4.	A41P	HONOLULU INTERNATIONAL AIRPORT, INTERNATIONAL ARRIVALS BUILDING CEILING REPLACEMENT, OAHU  CONSTRUCTION FOR CEILING REPLACEMENT INCLUDING ASBESTOS REMOVAL AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.		16,000	
		CONSTRUCTION		16,000E	E
		TOTAL FUNDING TRN		16,000E	
5.	A41Q	HONOLULU INTERNATIONAL AIRPORT, NEW MAUKA CONCOURSE IMPROVEMENTS, OAHU  DESIGN AND CONSTRUCTION FOR A NEW COMMUTER TERMINAL AND NEW MAUKA CONCOURSE NEAR THE INTERISLAND TERMINAL, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.		6,574	
		DESIGN		332,406	
		CONSTRUCTION		338,980E	E
		TOTAL FUNDING TRN		338,980E	
6.	A41S	HONOLULU INTERNATIONAL AIRPORT, PROGRAM MANAGEMENT, OAHU  DESIGN FOR PROGRAM MANAGEMENT OF THE AIRPORT MODERNIZATION PROGRAM.		33,567	24,000
		DESIGN		33,567E	24,000E
		TOTAL FUNDING TRN		33,567E	24,000E
7.	A41T	HONOLULU INTERNATIONAL AIRPORT, ISOLATION UNITS AT GATES 33 AND 34, OAHU  CONSTRUCTION OF TWO PASSENGER QUARANTINE FACILITIES AT THE EXISTING GROUND FLOOR LEVEL OF GATES 33 AND 34, AND RELATED IMPROVEMENTS.			22,000
		CONSTRUCTION		E	22,000E
		TOTAL FUNDING TRN			22,000E
8.	A23F	HONOLULU INTERNATIONAL AIRPORT, ENGINE RUN-UP PAD, OAHU  DESIGN FOR AN AIRCRAFT ENGINE RUN-UP PAD AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			400
		DESIGN		E	400E
		TOTAL FUNDING TRN			400E
9.	A43J	HONOLULU INTERNATIONAL AIRPORT, INTERISLAND MAINTENANCE FACILITY, OAHU  CONSTRUCTION FOR AN INTERISLAND MAINTENANCE FACILITY AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.		8,150	
		CONSTRUCTION		8,150E	E
		TOTAL FUNDING TRN		8,150E	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
<b>TRN104 - GENERAL AVIATION</b>					
10.	A71C	KALAELOA AIRPORT, FACILITY IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR KALAELOA AIRPORT FACILITY IMPROVEMENTS INCLUDING LEASE LOTS, APRONS, RUNWAYS, TAXIWAYS AND AVIATION FACILITIES SUCH AS THE CONTROL TOWER, AIRPORT RESCUE FIRE FIGHTING (ARFF) BUILDING, T-HANGAR, AVIATION FUEL SYSTEM AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		800	800
		CONSTRUCTION		10,450	10,450
		TOTAL FUNDING	TRN	1,750 E	1,750 E
			TRN	9,500 N	9,500 N
11.	A72B	DILLINGHAM AIRFIELD, WATER SYSTEM REPLACEMENT, OAHU			
		DESIGN FOR REMOVAL OF EXISTING AND INSTALLATION OF A NEW POTABLE WATER SYSTEM AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		DESIGN			800
		TOTAL FUNDING	TRN	E	800 E
<b>TRN111 - HILO INTERNATIONAL AIRPORT</b>					
12.	B10M	HILO INTERNATIONAL AIRPORT, ARFF FACILITY IMPROVEMENTS, HAWAII			
		DESIGN FOR THE RENOVATION OF THE AIRCRAFT RESCUE AND FIRE FIGHTING STATION, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		605	
		TOTAL FUNDING	TRN	605 E	E
13.	B10N	HILO INTERNATIONAL AIRPORT, NOISE ATTENUATION FOR KEAUKAHA SUBDIVISION, HAWAII			
		CONSTRUCTION FOR NOISE ATTENUATION OF RESIDENTIAL DWELLINGS ADJACENT TO HILO INTERNATIONAL AIRPORT WITHIN THE 65-75 DNL CONTOUR RANGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			11,000
		TOTAL FUNDING	TRN	E	2,288 E
			TRN	N	8,712 N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
14.	B10Q	HILO INTERNATIONAL AIRPORT, PERIMETER ROAD AND SECURITY FENCE, HAWAII			
		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.			
		CONSTRUCTION			2,798
		TOTAL FUNDING	TRN	E	548 E
			TRN	N	2,250 N
15.	B10T	HILO INTERNATIONAL AIRPORT, RECONSTRUCT T-HANGARS, HAWAII			
		CONSTRUCTION FOR THE DEMOLITION OF EXISTING T-HANGARS AND RECONSTRUCTION OF NEW T-HANGARS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		CONSTRUCTION		1,531	
		TOTAL FUNDING	TRN	1,531 E	E
16.	B10V	HILO INTERNATIONAL AIRPORT, TAXIWAY F IMPROVEMENTS, HAWAII			
		CONSTRUCTION FOR TAXIWAY F AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			2,550
		TOTAL FUNDING	TRN	E	480 E
			TRN	N	2,070 N
17.	B11B	HILO INTERNATIONAL AIRPORT, SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM, HAWAII			
		CONSTRUCTION FOR A SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		2,765	
		TOTAL FUNDING	TRN	581 E	E
			TRN	2,184 N	N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
<b>TRN114 - KONA INTERNATIONAL AIRPORT AT KEAHOLE</b>					
18.	C03T	KONA INTERNATIONAL AIRPORT AT KEAHOLE, TERMINAL EXPANSION, HAWAII			
		PLANS, DESIGN AND CONSTRUCTION FOR THE TERMINAL EXPANSION PROGRAM. INCLUDES RELOCATION OF TENANT FACILITIES, BAGGAGE CLAIM, ADDITIONAL HOLD ROOMS, NEW TENANT SPACES, RESTROOM FACILITIES, INFRASTRUCTURE, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		PLANS		500	
		DESIGN		24,000	
		CONSTRUCTION		35,500	40,000
		TOTAL FUNDING	TRN	60,000 E	40,000 E
19.	C03X	KONA INTERNATIONAL AIRPORT AT KEAHOLE, PROGRAM MANAGEMENT SUPPORT, HAWAII			
		DESIGN FOR PROGRAM MANAGEMENT OF THE EXPANSION PROGRAM FOR THE AIRPORT MODERNIZATION PROGRAM.			
		DESIGN		500	
		TOTAL FUNDING	TRN	500 B	B
20.	C05A	KONA INTERNATIONAL AIRPORT, SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM, HAWAII			
		CONSTRUCTION FOR A SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		2,947	
		TOTAL FUNDING	TRN	618 E	E
			TRN	2,329 N	N
21.	C10B	KONA INTERNATIONAL AIRPORT AT KEAHOLE, NOISE MONITORING SYSTEM, HAWAII			
		DESIGN FOR THE INSTALLATION OF A NOISE MONITORING SYSTEM AND OTHER RELATED IMPROVEMENTS.			
		DESIGN			100
		TOTAL FUNDING	TRN	E	100 E

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
22.	C10C	KONA INTERNATIONAL AIRPORT AT KEAHOLE, ARFF FACILITY IMPROVEMENTS, HAWAII			
		DESIGN AND CONSTRUCTION OF IMPROVEMENTS NECESSARY TO CONSTRUCT AN AIRCRAFT RESCUE AND FIRE FIGHTING STATION, TRAINING PIT, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		1,000	
		CONSTRUCTION		14,885	1,000
		TOTAL FUNDING	TRN	7,885E	1,000E
			TRN	8,000N	N
<b>TRN131 - KAHULUI AIRPORT</b>					
23.	D04M	KAHULUI AIRPORT, ACCESS ROAD, MAUI			
		CONSTRUCTION FOR A NEW ACCESS ROAD TO THE AIRPORT FROM HANA HIGHWAY. IMPROVEMENTS INCLUDE SITE WORK, PAVING, ELECTRICAL, DRAINAGE, UTILITIES, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		CONSTRUCTION			33,585
		TOTAL FUNDING	TRN	E	33,585E
24.	D04O	KAHULUI AIRPORT, PROGRAM MANAGEMENT SUPPORT, MAUI			
		DESIGN FOR PROGRAM MANAGEMENT OF THE AIRPORT MODERNIZATION PROGRAM.			
		DESIGN		500	
		TOTAL FUNDING	TRN	500B	B
25.	D04P	KAHULUI AIRPORT, ELEVATOR AND ESCALATOR IMPROVEMENTS, MAUI			
		CONSTRUCTION FOR ELEVATOR AND ESCALATOR REPLACEMENT AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		CONSTRUCTION			6,460
		TOTAL FUNDING	TRN	E	6,460E
26.	D04R	KAHULUI AIRPORT, FIRE SPRINKLER SYSTEM REPLACEMENT, MAUI			
		DESIGN FOR THE REPLACEMENT OF THE FIRE SPRINKLER AND FIRE SUPPRESSION SYSTEMS, AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		DESIGN			400
		TOTAL FUNDING	TRN	E	400E



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
27.	D08A	KAHULUI AIRPORT, RENTAL CAR FACILITY IMPROVEMENTS, MAUI			
		DESIGN AND CONSTRUCTION TO PROVIDE PAVED OVERFLOW PARKING FOR THE RENTAL CAR AGENCIES AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM. (OTHER FUNDS FROM CUSTOMER FACILITY CHARGES).			
		DESIGN		800	
		CONSTRUCTION			5,500
		TOTAL FUNDING	TRN	800X	5,500X
28.	D08P	KAHULUI AIRPORT, WATER SYSTEM IMPROVEMENTS, MAUI			
		DESIGN AND CONSTRUCTION FOR AN IMPROVED EFFICIENT WATER SYSTEM, NEW POTABLE WATER SOURCES AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		DESIGN		250	
		CONSTRUCTION			2,000
		TOTAL FUNDING	TRN	250E	2,000E
29.	D10B	KAHULUI AIRPORT, RECONSTRUCT TAXIWAYS, RUNWAYS, AND APRON, MAUI			
		DESIGN AND CONSTRUCTION FOR STRUCTURAL IMPROVEMENTS TO RUNWAYS, TAXIWAYS, AND APRONS. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).			
		DESIGN		22	
		CONSTRUCTION		3,500	44,120
		TOTAL FUNDING	TRN	3,522E	120E
			TRN	X	44,000X
<b>TRN141 - MOLOKAI AIRPORT</b>					
30.	D55E	MOLOKAI AIRPORT, SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM, MOLOKAI			
		CONSTRUCTION FOR A SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		1,505	
		TOTAL FUNDING	TRN	314E	E
			TRN	1,191N	N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011

TRN151 - LANAI AIRPORT

31. D70D LANAI AIRPORT, ARFF STATION IMPROVEMENTS, LANAI

CONSTRUCTION FOR THE LANAI 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 FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION			7,655	
TOTAL FUNDING	TRN		1,445E	E
	TRN		6,210N	N

32. D70G LANAI AIRPORT, SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM, LANAI

CONSTRUCTION FOR A SECURITY ACCESS CONTROL AND CLOSED CIRCUIT TELEVISION SYSTEM FOR THE AIRPORT MODERNIZATION PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION			1,382	
TOTAL FUNDING	TRN		288E	E
	TRN		1,094N	N

TRN161 - LIHUE AIRPORT

33. E10A LIHUE AIRPORT, NOISE MONITORING SYSTEM, KAUAI

DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A NOISE MONITORING SYSTEM AT LIHUE AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN			100	
CONSTRUCTION				746
TOTAL FUNDING	TRN		100E	138E
	TRN		N	608N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011	
<b>TRN195 - AIRPORTS ADMINISTRATION</b>						
34.	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		750		750
		TOTAL FUNDING	TRN	750B		750B
35.	F04L	AIRPORT PAVEMENT MANAGEMENT SYSTEM, STATEWIDE				
		PLANS FOR A PAVEMENT MANAGEMENT SYSTEM NEEDED TO COMPLY WITH FAA REQUIREMENTS FOR LARGE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		PLANS		3,060		
		TOTAL FUNDING	TRN	560B		B
			TRN	2,500N		N
36.	F04P	AIRPORT LAYOUT PLAN UPDATE, STATEWIDE				
		PLANS TO UPDATE THE AIRPORT LAYOUT PLANS FOR ALL AIRPORTS, STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		PLANS		2,000		
		TOTAL FUNDING	TRN	500B		B
			TRN	1,500N		N
37.	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		500		
		TOTAL FUNDING	TRN	500B		B
38.	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		1,000		1,000
		CONSTRUCTION				6,350
		TOTAL FUNDING	TRN	1,000E		1,887E
			TRN	N		5,463N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
39.	F05D	LOADING BRIDGE MODERNIZATION, STATEWIDE			
		CONSTRUCTION FOR THE INSTALLATION OF NEW PASSENGER LOADING BRIDGES, REMOVAL OF EXISTING LOADING BRIDGES AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		CONSTRUCTION			13,250
		TOTAL FUNDING	TRN	E	13,250E
40.	F05G	LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) BUILDING COMMISSIONING, STATEWIDE			
		CONSTRUCTION FOR A LEED BUILDING COMMISSIONING CONSULTANT TO ASSURE THAT AIRPORT BUILDINGS AND FACILITIES PERFORM IN ACCORDANCE WITH DESIGN INTENT AND OWNER'S OPERATIONAL NEEDS FOR THE AIRPORT MODERNIZATION PROGRAM.			
		CONSTRUCTION		250	
		TOTAL FUNDING	TRN	250B	B
41.	F05H	PERIMETER ROAD AND SECURITY FENCE, STATEWIDE			
		DESIGN OF A PERIMETER ROAD AND AIRFIELD FENCE TO MEET SAFETY AND SECURITY REQUIREMENTS.			
		DESIGN		500	
		TOTAL FUNDING	TRN	500B	B
42.	F08F	AIRPORTS DIVISION CAPITAL IMPROVEMENT PROGRAM PROJECT STAFF COSTS, STATEWIDE			
		PLANS, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S AIRPORTS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM PROJECT RELATED POSITIONS. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES)			
		PLANS		300	300
		DESIGN		950	950
		CONSTRUCTION		1,300	1,300
		TOTAL FUNDING	TRN	2,450B	2,450B
			TRN	100X	100X

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
43.	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		1,000	1,000
		CONSTRUCTION		2,500	2,500
		TOTAL FUNDING TRN		3,500B	3,500B
44.	F08O	CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE			
		CONSTRUCTION FOR CONSTRUCTION MANAGEMENT SUPPORT AT AIRPORT FACILITIES, STATEWIDE.			
		CONSTRUCTION		300	300
		TOTAL FUNDING TRN		300B	300B
45.	F08Q	ARCHITECTURAL AND ENGINEERING SUPPORT, STATEWIDE			
		DESIGN OF VARIOUS PROJECTS REQUIRING ARCHITECTURAL OR ENGINEERING CONSULTANT SUPPORT AT AIRPORTS, STATEWIDE.			
		DESIGN		1,250	
		TOTAL FUNDING TRN		1,250B	B
46.	F05I	AIRFIELD IMPROVEMENTS, STATEWIDE			
		CONSTRUCTION FOR AIRFIELD IMPROVEMENTS AT STATEWIDE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).			
		CONSTRUCTION		85,100	
		TOTAL FUNDING TRN		100B	B
		TRN		85,000X	X
47.	F05J	AIRPORT IMPROVEMENTS, STATEWIDE			
		CONSTRUCTION FOR IMPROVEMENTS AT STATEWIDE AIRPORTS PREVIOUSLY FUNDED AND FEDERAL AVIATION ADMINISTRATION APPROVED FOR PASSENGER FACILITY CHARGE REIMBURSEMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).			
		CONSTRUCTION		96,600	
		TOTAL FUNDING TRN		96,600X	X

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
47.01.	F05K	RUNWAY SAFETY AREA IMPROVEMENTS, STATEWIDE			
		CONSTRUCTION FOR RUNWAY SAFETY AREA IMPROVEMENTS AND OTHER RELATED IMPROVEMENTS AT STATEWIDE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			6,000
		TOTAL FUNDING	TRN	B	1,000 B
			TRN	N	5,000 N
47.02.	F05L	RENTAL CAR FACILITY IMPROVEMENTS, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION TO PROVIDE CONSOLIDATED CAR RENTAL FACILITIES FOR THE RENTAL CAR AGENCIES AND OTHER RELATED IMPROVEMENTS FOR THE AIRPORT MODERNIZATION PROGRAM (OTHER FUNDS FROM CUSTOMER FACILITY CHARGES).			
		PLANS			1,000
		LAND			17,000
		DESIGN		6,200	12,900
		CONSTRUCTION			31,700
		TOTAL FUNDING	TRN	6,200 X	62,600 X
47.03.	F05M	ENERGY SAVINGS PERFORMANCE CONTRACTING, STATEWIDE			
		CONSTRUCTION FOR INFRASTRUCTURE FOR FUTURE ENERGY SAVINGS AT STATEWIDE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			30,000
		TOTAL FUNDING	TRN	E	30,000 E
<b>TRN301 - HONOLULU HARBOR</b>					
48.	J41	IMPROVEMENTS TO PIERS 19-35, HONOLULU HARBOR, OAHU			
		CONSTRUCTION FOR IMPROVEMENTS TO PIERS 19-35 AREAS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		30,200	
		TOTAL FUNDING	TRN	30,200 B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
49.	J42	HMP-KAPALAMA MILITARY RESERVATION IMPROVEMENTS, HONOLULU HARBOR, OAHU			
		DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF A NEW CONTAINER TERMINAL FACILITY AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. THIS IS A HARBOR MODERNIZATION PROJECT.			
		DESIGN		23,600	
		CONSTRUCTION		1,200	105,400
		TOTAL FUNDING TRN		24,800E	105,400E
49.01.	J33	KAPALAMA CONTAINER TERMINAL FACILITY, HONOLULU HARBOR, OAHU			
		LAND ACQUISITION FOR THE DEVELOPMENT OF A NEW CONTAINER TERMINAL FACILITY AND OTHER RELATED IMPROVEMENTS.			
		LAND			8,200
		TOTAL FUNDING TRN		E	8,200E
<b>TRN303 - KALAELOA BARBERS POINT HARBOR</b>					
50.	J10	KALAELOA-BARBERS POINT HARBOR MODIFICATIONS, OAHU			
		PLANS AND DESIGN FOR DEEPENING OF THE TURNING BASIN AND CHANNEL MODIFICATIONS AT KALAELOA-BARBERS POINT HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		500	
		DESIGN			1,000
		TOTAL FUNDING TRN		500B	1,000B
50.01.	J11	KALAELOA BARBERS POINT HARBOR IMPROVEMENTS, OAHU			
		PLANS AND LAND ACQUISITION FOR KALAELOA BARBERS POINT HARBOR IMPROVEMENTS.			
		PLANS			150
		LAND			25,000
		TOTAL FUNDING TRN		E	25,150E
<b>TRN311 - HILO HARBOR</b>					
51.	L10	HILO HARBOR IMPROVEMENTS, HAWAII			
		DESIGN AND CONSTRUCTION FOR PIER IMPROVEMENTS AT HILO HARBOR AND OTHER RELATED IMPROVEMENTS.			
		DESIGN		1,700	
		CONSTRUCTION			10,000
		TOTAL FUNDING TRN		1,700B	10,000B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F	
52.	L12	HMP-PIER 4 INTERISLAND CARGO TERMINAL, HILO HARBOR, HAWAII				
		CONSTRUCTION FOR AN ADDITIONAL INTERISLAND CARGO TERMINAL AREA INCLUDING A PIER, YARD, ROADWAYS AND UTILITIES.				
		CONSTRUCTION				48,000
		TOTAL FUNDING TRN		E		48,000E
<b>TRN313 - KAWAIHAE HARBOR</b>						
53.	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			300	
		TOTAL FUNDING TRN		300B		B
54.	L14	HMP-PIER 2 TERMINAL IMPROVEMENTS, KAWAIHAE HARBOR, HAWAII				
		DESIGN AND CONSTRUCTION OF TERMINAL IMPROVEMENTS INCLUDING, BUT NOT LIMITED TO, PAVING, UTILITIES, RELOCATION OF THE HARBOR AGENT'S OFFICE, AND INTERIM FERRY IMPROVEMENTS.				
		DESIGN			1,000	
		CONSTRUCTION			15,250	5,000
		TOTAL FUNDING TRN		16,250E		5,000E
55.	L15	HMP-PIER 4, KAWAIHAE HARBOR, HAWAII				
		CONSTRUCTION OF TERMINAL IMPROVEMENTS ADJACENT TO THE FUTURE PROPOSED PIER 3/4 INTER-ISLAND TERMINAL BARGE FACILITY.				
		CONSTRUCTION			36,000	
		TOTAL FUNDING TRN		36,000E		E
<b>TRN331 - KAHULUI HARBOR</b>						
56.	M15	HMP-KAHULUI HARBOR LAND ACQUISITION AND IMPROVEMENTS, MAUI				
		CONSTRUCTION FOR IMPROVEMENTS OF THE ACQUIRED LAND INCLUDING DEMOLITION OF EXISTING STRUCTURES, PAVING, UTILITIES, LANDSCAPING, FENCING, AND OTHER RELATED SITEWORK IMPROVEMENTS.				
		CONSTRUCTION				33,000
		TOTAL FUNDING TRN		E		33,000E



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
<b>TRN363 - PORT ALLEN HARBOR</b>					
57.	K03	COMFORT STATION IMPROVEMENTS, PORT ALLEN HARBOR, KAUAI			
		DESIGN AND CONSTRUCTION FOR COMFORT STATION IMPROVEMENTS TO THE PORT ALLEN SHED INCLUDING UTILITIES, AND OTHER RELATED IMPROVEMENTS.			
		DESIGN		500	
		CONSTRUCTION			3,000
		TOTAL FUNDING	TRN	500B	3,000B
<b>TRN395 - HARBORS ADMINISTRATION</b>					
58.	I01	HARBOR PLANNING, STATEWIDE			
		PLANS FOR CONTINUING HARBOR STUDIES, RESEARCH, AND ADVANCE PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS.			
		PLANS		1,500	1,500
		TOTAL FUNDING	TRN	1,500B	1,500B
59.	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. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		150	100
		CONSTRUCTION		650	400
		TOTAL FUNDING	TRN	800B	500B
60.	I05	MISCELLANEOUS IMPROVEMENTS TO PORT FACILITIES, OAHU			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, MARITIME-INDUSTRIAL FACILITIES, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		50	50
		CONSTRUCTION		350	350
		TOTAL FUNDING	TRN	400B	400B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F	
61.	I07	ENVIRONMENTAL REMEDIATION OF COMMERCIAL HARBOR FACILITIES, STATEWIDE				
		DESIGN AND CONSTRUCTION FOR STUDIES AND ENVIRONMENTAL REMEDIATION MEASURES AT COMMERCIAL HARBOR FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		DESIGN		300		
		CONSTRUCTION		700		
		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.				
		DESIGN		500		
		CONSTRUCTION			2,600	
		TOTAL FUNDING TRN		500B	2,600B	
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.	I15	SECURITY IMPROVEMENTS AT COMMERCIAL HARBORS, STATEWIDE				
		CONSTRUCTION FOR SECURITY SYSTEM IMPROVEMENTS AT COMMERCIAL HARBOR FACILITIES, STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION		6,000	4,500	
		TOTAL FUNDING TRN		2,000B		B
				4,000N	4,500N	
65.	I19	BOLLARD IMPROVEMENTS, STATEWIDE				
		DESIGN AND CONSTRUCTION FOR BOLLARD IMPROVEMENTS, STATEWIDE.				
		DESIGN		300		
		CONSTRUCTION			1,000	
		TOTAL FUNDING TRN		300B	1,000B	
66.	I20	HMP CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE				
		CONSTRUCTION FOR CONSULTANT SERVICES DURING CONSTRUCTION OF HARBOR MODERNIZATION PLAN PROJECTS AT HARBOR FACILITIES STATEWIDE.				
		CONSTRUCTION		2,600	2,800	
		TOTAL FUNDING TRN		2,600E	2,800E	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
67.	I21	HMP HARBORS DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE			
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT HARBOR MODERNIZATION PLAN PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF HARBOR MODERNIZATION PLAN CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HARBORS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.			
		PLANS		786	840
		TOTAL FUNDING	TRN	786E	840E
<b>TRN501 - OAHU HIGHWAYS</b>					
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			2,250
		TOTAL FUNDING	TRN	E	450E
			TRN	N	1,800N
69.	S230	WAIHAOLE BRIDGE REPLACEMENT, KAMEHAMEHA HIGHWAY, OAHU			
		CONSTRUCTION FOR THE REPLACEMENT OF THE EXISTING CONCRETE STRUCTURE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		4,000	
		TOTAL FUNDING	TRN	800E	E
			TRN	3,200N	N
70.	S231	KALANIANAOLE HIGHWAY IMPROVEMENTS, OLOMANA GOLF COURSE TO WAIMANALO BEACH PARK, OAHU			
		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.			
		CONSTRUCTION			14,000
		TOTAL FUNDING	TRN	E	2,800E
			TRN	N	11,200N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F	
71.	S246	INTERSTATE ROUTE H-1, WESTBOUND AFTERNOON (PM) CONTRAFLOW, OAHU				
		CONSTRUCTION FOR A PM CONTRAFLOW LANE ON INTERSTATE ROUTE H-1 FROM THE VICINITY OF RADFORD DRIVE TO THE VICINITY OF WAIKELE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION		55,000		
		TOTAL FUNDING	TRN	7,000E		E
			TRN	48,000N		N
72.	S257	CASTLE HILLS ACCESS ROAD, DRAINAGE IMPROVEMENTS, OAHU				
		LAND ACQUISITION FOR STORM RETENTION STRUCTURES AND EROSION CONTROLS TO REPAIR STORM DAMAGE AND EROSION, AND CONSTRUCTING CONCRETE SIDEWALKS, WHEELCHAIR RAMPS, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		LAND		200		
		TOTAL FUNDING	TRN	199E		E
			TRN	1N		N
73.	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				500
		CONSTRUCTION		3,000		
		TOTAL FUNDING	TRN	600E		100E
			TRN	2,400N		400N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F	
74.	S270	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAYS FACILITIES, OAHU				
		PLANS, 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 FOR MORE EFFICIENT TRAFFIC FLOW.				
		PLANS				200
		DESIGN				200
		CONSTRUCTION		900		900
		TOTAL FUNDING	TRN	900E		1,300E
75.	S271	INTERSTATE ROUTE H-1 AND MOANALUA FREEWAYS IMPROVEMENTS, PUULOA INTERCHANGE TO KAPIOLANI INTERCHANGE, OAHU				
		CONSTRUCTION FOR AN ADDITIONAL LANE ON THE H-1 FREEWAY EASTBOUND LANES FROM THE VICINITY OF MIDDLE STREET TO THE VICINITY OF VINEYARD BOULEVARD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION		100,000		
		TOTAL FUNDING	TRN	20,000E		E
			TRN	80,000N		N
76.	S296	KAMEHAMEHA HIGHWAY, KAIPAPAU STREAM BRIDGE REPLACEMENT AND/OR REHABILITATION, OAHU				
		DESIGN AND CONSTRUCTION FOR REPLACEMENT AND/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		460		
		CONSTRUCTION		3,000		3,000
		TOTAL FUNDING	TRN	600E		600E
			TRN	2,400N		2,400N
			TRN	460X		X

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011	
77.	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. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION		1,000		
		TOTAL FUNDING	TRN	200 E		E
			TRN	800 N		N
78.	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				3,500
		TOTAL FUNDING	TRN	E		700 E
			TRN	N		2,800 N
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				1,000
		TOTAL FUNDING	TRN	E		200 E
			TRN	N		800 N
80.	S329	KAMEHAMEHA HIGHWAY, REHABILITATION AND/OR REPLACEMENT OF WAIKANE STREAM BRIDGE, OAHU				
		LAND ACQUISITION 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		500		
		TOTAL FUNDING	TRN	100 E		E
			TRN	400 N		N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
81.	S332	EROSION CONTROL PROGRAM FOR STATE HIGHWAYS AND FACILITIES, OAHU			
		DESIGN AND CONSTRUCTION FOR PERMANENT EROSION CONTROL MITIGATION MEASURES ON STATE HIGHWAYS AND FACILITIES ON OAHU.			
		DESIGN		200	
		CONSTRUCTION			3,000
		TOTAL FUNDING TRN		200B	3,000B
82.	S333	ENVIRONMENTAL REMEDIATION OF HIGHWAY FACILITIES, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR ENVIRONMENTAL REMEDIATION MEASURES ON STATE HIGHWAYS AND FACILITIES.			
		PLANS		248	248
		DESIGN		1	1
		CONSTRUCTION		1	1
		TOTAL FUNDING TRN		250B	250B
83.	S344	MISCELLANEOUS PERMANENT BEST MANAGEMENT PRACTICES, OAHU			
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR PERMANENT BEST MANAGEMENT PRACTICE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES INCLUDING INSTALLATION OF STRUCTURAL AND NATURAL BEST MANAGEMENT PRACTICES AT VARIOUS LOCATIONS ON OAHU.			
		LAND		110	
		DESIGN		520	
		CONSTRUCTION			1,650
		TOTAL FUNDING TRN		630B	1,650B
84.	SP0603	FARRINGTON HIGHWAY IMPROVEMENTS BETWEEN HONOKAI HALE AND HAKIMO ROAD, OAHU			
		CONSTRUCTION FOR IMPROVEMENTS ALONG FARRINGTON HIGHWAY FOR ALTERNATIVE CONGESTION RELIEF AND/OR SAFETY IMPROVEMENT PROJECTS ALONG FARRINGTON HIGHWAY BETWEEN HONOKAI HALE AND HAKIMO ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			12,500
		TOTAL FUNDING TRN		E	2,500E
				N	10,000N
85.	P90017	KAMEHAMEHA HIGHWAY SIDEWALKS, OAHU			
		DESIGN AND CONSTRUCTION OF SIDEWALKS ALONG BOTH SIDES OF KAMEHAMEHA HIGHWAY FROM MEHEULA PARKWAY TO LANIKUHANA AVENUE.			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		DESIGN		500	
		CONSTRUCTION		2,000	
		TOTAL FUNDING	TRN	2,500E	E
86.	P90018	STREETLIGHT INSTALLATION AT RENTON ROAD AND ROOSEVELT AVENUE, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION TO ADD A STREETLIGHT AT THE INTERSECTION OF RENTON ROAD AND ROOSEVELT AVENUE.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		10	
		TOTAL FUNDING	TRN	12E	E
87.	P90019	FARRINGTON HIGHWAY, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CROSSWALKS WITH BLINKING SIGNAGE OR SIMILAR DEVICES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		147	
		EQUIPMENT		1	
		TOTAL FUNDING	TRN	150E	E
88.	P90020	NORTH SHORE, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR STREETLIGHTS FROM CRAWFORD HOME TO THE ENTRANCE OF THE TURTLE BAY RESORT.			
		PLANS		10	
		DESIGN		10	
		CONSTRUCTION		720	100
		EQUIPMENT		10	
		TOTAL FUNDING	TRN	750E	100E
89.	P90021	NORTH SOUTH ROAD EXTENSION, OAHU			
		DESIGN AND CONSTRUCTION FOR AN APPROXIMATE 1 MILE EXTENSION TO NORTH SOUTH ROAD TO COMPLETE THE NORTH SOUTH ROAD FROM THE HI FREEWAY THROUGH TO KALAELOA, LOCATED BETWEEN KAPOLEI PARKWAY AND ROOSEVELT ROAD.			
		DESIGN		1,500	
		CONSTRUCTION		6,000	7,500
		TOTAL FUNDING	TRN	7,500E	7,500E



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
90.	P90022	KAHEKILI AND KAMEHAMEHA HIGHWAYS, OAHU DESIGN AND CONSTRUCTION FOR MULTI-USE PATHS ALONG KAHEKILI HIGHWAY FROM THE INTERSECTION WITH KAMEHAMEHA HIGHWAY TO THE INTERSECTION WITH HAIKU ROAD AND ALONG KAMEHAMEHA HIGHWAY FROM THE INTERSECTION WITH WAIHE'E ROAD TO THE INTERSECTION OF KAHEKILI HIGHWAY.			
		DESIGN			350
		CONSTRUCTION			1,000
		TOTAL FUNDING	TRN		1,350 E
91.	P90023	WAIKUPANAHA STREET, OAHU PLANS AND DESIGN FOR THE EXPANSION OF WAIKUPANAHA STREET.			
		PLANS			275
		DESIGN			275
		TOTAL FUNDING	TRN		550 E
92.	S341	INTERSTATE ROUTE H-1, CULVERT REPAIR, WAIMALU OFF-RAMP, OAHU DESIGN AND CONSTRUCTION FOR CULVERT REPAIRS AND DRAINAGE IMPROVEMENTS AT THE WAIMALU OFF-RAMP ON OAHU.			
		DESIGN			100
		CONSTRUCTION			6,900
		TOTAL FUNDING	TRN	100 E	6,900 E
93.	S342	INTERSTATE ROUTE H-1, KUNIA INTERCHANGE IMPROVEMENTS, OAHU PLANS FOR IMPROVEMENTS TO THE KUNIA INTERCHANGE AND APPROACHES.			
		PLANS			780
		TOTAL FUNDING	TRN		780 E
94.	S343	INTERSTATE ROUTE H-1 CORRIDOR IMPROVEMENTS, OAHU PLANS TO DETERMINE PROJECTS THAT WILL MEET CURRENT AND FUTURE CAPACITY REQUIREMENTS OF THE H-1 CORRIDOR.			
		PLANS			520
		TOTAL FUNDING	TRN		520 E
94.01.	S319	PEARL CITY, WAIANAE, AND KANEOHE BASE YARDS WASHDOWN RACKS, OAHU DESIGN FOR INSTALLING WASHDOWN RACKS TO INCLUDE A WATER RECYCLING UNIT, STEAM PRESSURE WASHERS, AND A CONCRETE PAD FOR COMPLIANCE WITH THE DEPARTMENT OF HEALTH REGULATIONS AND THE CLEAN WATER ACT.			
		DESIGN			150
		TOTAL FUNDING	TRN		150 E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
94.02.	S239	FREEWAY MANAGEMENT SYSTEM, OAHU			
		DESIGN AND CONSTRUCTION FOR A FREEWAY MANAGEMENT SYSTEM, INCLUDING INTELLIGENT TRANSPORTATION SYSTEMS TECHNOLOGIES AND INTERAGENCY COORDINATION TO MONITOR AND MANAGE TRAFFIC OPERATIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			4,000
		CONSTRUCTION			11,000
		TOTAL FUNDING	TRN	E	3,000 E
			TRN	N	12,000 N
94.03.		FARRINGTON HIGHWAY DRAINAGE IMPROVEMENTS, VICINITY OF ORANGE STREET, OAHU			
		LAND ACQUISITION AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS ALONG FARRINGTON HIGHWAY IN THE VICINITY OF THE ORANGE STREET INTERSECTION, MAKAHA, OAHU.			
		LAND			150
		CONSTRUCTION			3,500
		TOTAL FUNDING	TRN	E	3,650 E
94.04.		H-1 FREEWAY NEAR ULUNE STREET, OAHU			
		DESIGN AND CONSTRUCTION OF A NOISE BARRIER WALL ALONG THE H-1 FREEWAY NEAR ULUNE STREET TO PROVIDE TRAFFIC NOISE REDUCTION.			
		DESIGN			1
		CONSTRUCTION			824
		TOTAL FUNDING	TRN	E	825 E
94.05.		H-2 FREEWAY, OAHU			
		PLANS AND DESIGN FOR ELEVATED PEDESTRIAN WALKWAY MAKAI TO MAUKA OVER H-2 FREEWAY AT MILILANI INTERCHANGE.			
		PLANS			1
		DESIGN			1
		TOTAL FUNDING	TRN	E	2 E
94.06.		INTERSTATE ROUTE H-1, VICINITY OF AIEA HONGWANJI, OAHU			
		DESIGN AND CONSTRUCTION FOR NOISE-ATTENUATING WALL ALONG INTERSTATE ROUTE H-1 IN THE VICINITY OF AIEA HONGWANJI.			
		DESIGN			703
		CONSTRUCTION			6,000
		TOTAL FUNDING	TRN	E	6,703 E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
94.07.		KALANIANAOLE HIGHWAY IMPROVEMENTS, OAHU			
		CONSTRUCTION OF A LEFT TURN LANE ON KALANIANAOLE HIGHWAY NEAR KOKO MARINA SHOPPING CENTER.			
		CONSTRUCTION			100
		TOTAL FUNDING TRN		E	100E
94.08.		KALANIANAOLE HIGHWAY, OAHU			
		CONSTRUCTION FOR SAFETY GUARDRAIL ON KALANIANAOLE HIGHWAY AND NAKINI STREET.			
		CONSTRUCTION			40
		TOTAL FUNDING TRN		E	40E
94.09.		KAMEHAMEHA HIGHWAY GUARDRAIL, OAHU			
		DESIGN AND CONSTRUCTION OF GUARDRAIL ALONG KAMEHAMEHA HIGHWAY IN WAIKANE VALLEY FOR SAFETY AND WATER QUALITY PROTECTION.			
		DESIGN			20
		CONSTRUCTION			100
		TOTAL FUNDING TRN		E	120E
94.10.		LILIPUNA ROAD, WAIKALUA ROAD, AND WILLIAM HENRY ROAD, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION OF SIDEWALK AND PEDESTRIAN IMPROVEMENTS FOR LILIPUNA ROAD, WAIKALUA ROAD, AND WILLIAM HENRY ROAD.			
		PLANS			50
		DESIGN			75
		CONSTRUCTION			1,000
		TOTAL FUNDING TRN		E	1,125E
94.11.		MEHEULA PARKWAY, OAHU			
		PLANS AND DESIGN FOR A SECOND LANE ENTERING THE H-2 FREEWAY FOR VEHICLES TRAVELING FROM MILILANI MAUKA.			
		PLANS			1
		DESIGN			1
		TOTAL FUNDING TRN		E	2E
94.12.		OLOMANA AND POHAKUPU SUBDIVISIONS, OAHU			
		PLANS FOR TRAFFIC STUDIES FOR OLOMANA AND POHAKUPU SUBDIVISIONS, INGRESS/EGRESS.			
		PLANS			25
		TOTAL FUNDING TRN		E	25E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
94.13.		WAIKELE BRIDGE, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION TO WIDEN PEDESTRIAN WALKWAY TO MAKAI SIDE OF WAIKELE BRIDGE.			
		PLANS			5
		DESIGN			10
		CONSTRUCTION			50
		TOTAL FUNDING TRN		E	65E
94.14.		KAMEHAMEHA HIGHWAY, MODERNIZATION BETWEEN HALEIWA AND WAIMEA BAY, OAHU			
		DESIGN FOR THE MODERNIZATION OF KAMEHAMEHA HIGHWAY ON THE NORTH SHORE BETWEEN HALEIWA AND WAIMEA BAY, TO INCLUDE REALIGNMENT OF THE AREA NEAR LANIATKEA BEACH.			
		DESIGN			2,100
		TOTAL FUNDING TRN		E	2,100E
94.15.		KAMEHAMEHA HIGHWAY, HALEIWA TOWN SIDEWALK, OAHU			
		DESIGN AND CONSTRUCTION OF A SIDEWALK IN HALEIWA TOWN ALONG KAMEHAMEHA HIGHWAY.			
		DESIGN			150
		CONSTRUCTION			850
		TOTAL FUNDING TRN		E	1,000E
<b>TRN511 - HAWAII HIGHWAYS</b>					
95.	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 DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			4,750
		TOTAL FUNDING TRN		E	950E
				N	3,800N
96.	T116	KAWAIHAE ROAD BYPASS, WAIMEA TO KAWAIHAE, HAWAII			
		PLANS AND DESIGN FOR A NEW ROAD FROM WAIMEA TO KAWAIHAE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1,250	
		DESIGN			15,000
		TOTAL FUNDING TRN		E	3,000E
				N	12,000N
				1,250 X	X

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F	
97.	T118	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES, HAWAII				
		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.				
		CONSTRUCTION		900		
		TOTAL FUNDING TRN		900E		E
98.	T125	AKONI PULE HIGHWAY, REALIGNMENT AND WIDENING AT AAMAKAO GULCH, HAWAII				
		LAND ACQUISITION FOR REALIGNMENT AND WIDENING OF AKONI PULE HIGHWAY ON THE POLOLU VALLEY SIDE OF AAMAKAO GULCH, INCLUDING INSTALLING GUARDRAILS AND SIGNS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		LAND		520		
		TOTAL FUNDING TRN		520E		E
99.	T126	KUAKINI HIGHWAY ROADWAY AND DRAINAGE IMPROVEMENTS, VICINITY OF KAMEHAMEHA III ROAD, HAWAII				
		DESIGN AND CONSTRUCTION FOR BUILDING UP PAVEMENT CROSS SLOPE TO IMPROVE DRAINAGE AND OTHER INCIDENTAL IMPROVEMENTS.				
		DESIGN		50		
		CONSTRUCTION		2,200		1,100
		TOTAL FUNDING TRN		2,250E		1,100E
100.	T127	KEAAU-PAHOA ROAD SHOULDER LANE CONVERSION, KEAAU BYPASS ROAD TO VICINITY OF SHOWER DRIVE, HAWAII				
		DESIGN AND CONSTRUCTION FOR RECONSTRUCTING AND WIDENING THE EXISTING SHOULDER AND CONSTRUCTING NEW SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		DESIGN		860		
		CONSTRUCTION		13,000		6,000
		TOTAL FUNDING TRN		2,600E		1,200E
		TRN		10,400N		4,800N
		TRN		860X		X

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
101.	T128	KEAAU PAHOA ROAD IMPROVEMENTS, KEAAU TO PAHOA, HAWAII			
		DESIGN FOR WIDENING THE TWO LANE HIGHWAY TO FOUR LANES OR ALTERNATIVE ALIGNMENTS IN THIS CORRIDOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			3,300
		TOTAL FUNDING	TRN	E	660E
			TRN	N	2,640N
102.	T135	MAMALAHOA HIGHWAY DRAINAGE IMPROVEMENTS AT KAWA, HAWAII			
		CONSTRUCTION FOR DRAINAGE IMPROVEMENTS, INCLUDING THE INSTALLATION OF DRAINAGE BOX CULVERTS AND RAISING OF THE ROADWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION			1,500
		TOTAL FUNDING	TRN	E	300E
			TRN	N	1,200N
103.	T142	STREET LIGHT INSTALLATIONS AT VARIOUS LOCATIONS, HAWAII			
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF STREET LIGHTS AT VARIOUS LOCATIONS ON HAWAII.			
		DESIGN		30	
		CONSTRUCTION		75	
		TOTAL FUNDING	TRN	105E	E
104.	T144	HAWAII BELT ROAD, REPLACEMENT OF PAHOEHOE STREAM BRIDGE, HAWAII			
		DESIGN FOR THE REPLACEMENT OF A CONCRETE ARCH-DECK BRIDGE ON HAWAII BELT ROAD (ROUTE 19) ON THE BIG ISLAND IN THE VICINITY OF PAPAIKOU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			745
		TOTAL FUNDING	TRN	E	149E
			TRN	N	596N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
105.	T145	ROCKFALL PROTECTION / SLOPE STABILIZATION AT VARIOUS LOCATIONS, HAWAII			
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR ROCKFALL/ SLOPE PROTECTION, AND SLOPE AND/OR ROADWAY STABILIZATION MITIGATION MEASURES AT VARIOUS LOCATIONS ON HAWAII. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		150	
		DESIGN		2,000	
		CONSTRUCTION		26,000	
		TOTAL FUNDING	TRN	5,630E	E
			TRN	22,520N	N
106.	P90024	KUPULAU ROAD EXTENSION, HAWAII			
		CONSTRUCTION FOR AN EXTENSION OF KUPULAU ROAD TO REDUCE TRAFFIC CONGESTION ON KOMOHANA STREET.			
		CONSTRUCTION		2,750	
		TOTAL FUNDING	TRN	2,750E	E
107.	T141	QUEEN KAAHUMANU HIGHWAY IMPROVEMENTS, KEAHOLE AIRPORT TO KAWAIHAE HARBOR, HAWAII			
		PLANS FOR IMPROVEMENTS TO QUEEN KAAHUMANU HIGHWAY.			
		PLANS		780	
		TOTAL FUNDING	TRN	780E	E
108.	T143	MAMALAHOA HIGHWAY, DRAINAGE IMPROVEMENTS, VICINITY OF PUUWAAWAA RANCH ROAD, HAWAII			
		LAND ACQUISITION AND DESIGN FOR THE CONSTRUCTION OF DRAINAGE IMPROVEMENTS FOR MAMALAHOA HIGHWAY IN THE VICINITY OF PUUWAAWAA RANCH ROAD THAT INCLUDES: RETAINING WALLS, ROAD REALIGNMENT AND/OR WIDENING, DRAINAGE STRUCTURES, RELOCATING UTILITIES, LAND ACQUISITION, AND OTHER IMPROVEMENTS.			
		LAND		200	
		DESIGN		400	
		TOTAL FUNDING	TRN	600E	E
109.	TP0601	ANE KEOHOKALOHE HIGHWAY, VICINITY OF KEALAKEHE PARKWAY TO VICINITY OF PALANI ROAD, HAWAII			
		CONSTRUCTION FOR ANE KEOHOKALOHE HIGHWAY THAT INCLUDES NEW ROADWAYS, RELOCATION AND/OR CONSTRUCTION OF UTILITIES, AND OTHER IMPROVEMENTS.			
		CONSTRUCTION		15,000	
		TOTAL FUNDING	TRN	15,000E	E

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
109.01.		PUNA MAKAI ALTERNATE ROUTE, HAWAII			
		PLANS TO CONDUCT AN ENVIRONMENTAL IMPACT STATEMENT AND PRELIMINARY ENGINEERING REPORT TO IDENTIFY ALIGNMENT AND DESIGN CRITERIA FOR THE PUNA MAKAI ALTERNATIVE ROUTE BETWEEN NANAWELE ESTATES AND HILO WITH PARTICULAR EMPHASIS ON IDENTIFICATION OF A CORRIDOR ALIGNMENT THROUGH HAWAIIAN PARADISE PARK THAT PRESENTS THE LEAST ADVERSE IMPACT ON EXISTING DEVELOPED LOTS.			
		PLANS			1,500
		TOTAL FUNDING	TRN	E	1,500E
109.02.		HAWAII BELT ROAD, REHABILITATION OF UMAUMA STREAM BRIDGE, HAWAII			
		LAND ACQUISITION AND CONSTRUCTION FOR REHABILITATION OF UMAUMA STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			200
		CONSTRUCTION			17,000
		TOTAL FUNDING	TRN	E	3,440E
			TRN	N	13,760N
<b>TRN531 - MAUI HIGHWAYS</b>					
110.	V051	HONOAPILANI HIGHWAY WIDENING AND/OR REALIGNMENT, HONOKOWAI TO LAUNIUPOKO, MAUI.			
		DESIGN AND CONSTRUCTION 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		115	
		CONSTRUCTION		13,100	
		TOTAL FUNDING	TRN	2,500E	E
			TRN	10,000N	N
			TRN	715R	R
111.	V053	HONOAPILANI HIGHWAY, HIGHWAY SHORELINE PROTECTION AT LAUNIUPOKO, MAUI			
		DESIGN AND CONSTRUCTION FOR THE REVETMENT AT LAUNIUPOKO TO PROTECT THE HONOAPILANI HIGHWAY FROM SHORELINE EROSION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		1,000	
		CONSTRUCTION		4,500	2,800
		TOTAL FUNDING	TRN	1,100E	2,800E
			TRN	4,400N	N



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011	
112.	V063	KAHULUI AIRPORT ACCESS ROAD, MAUI				
		CONSTRUCTION FOR A PORTION OF THE NEW ACCESS ROAD TO KAHULUI AIRPORT FROM THE VICINITY OF PUUNENE AVENUE TO HANA HIGHWAY. INCLUDES AN AT-GRADE INTERSECTION AT HANA HIGHWAY, STRIPING, LANDSCAPING, DRAINAGE, HIGHWAY LIGHTING, UTILITIES, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION		5,000		
		TOTAL FUNDING	TRN	1,000E	E	
			TRN	4,000N	N	
113.	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 CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.				
		DESIGN			100	
		CONSTRUCTION		900	900	
		TOTAL FUNDING	TRN	900E	1,000E	
114.	V084	HANA HIGHWAY IMPROVEMENTS, HUELO TO HANA, MAUI				
		CONSTRUCTION FOR IMPROVING, UPGRADING, AND/OR REPAIRING ROADWAYS, BRIDGES, WALLS, DRAINAGE STRUCTURES, GUARDRAILS, AND OTHER FACILITIES ON ROUTE 360 HANA HIGHWAY.				
		CONSTRUCTION		1,430	1,500	
		TOTAL FUNDING	TRN	E	1,500E	
			TRN	1,430X	X	
115.	V089	HANA HIGHWAY IMPROVEMENTS, UAKEA ROAD TO KEAWA PLACE, MAUI				
		DESIGN AND CONSTRUCTION FOR WIDENING THE EXISTING ROADWAY AND CONSTRUCT SAFETY IMPROVEMENTS.				
		DESIGN		10		
		CONSTRUCTION			2,000	
		TOTAL FUNDING	TRN	10E	2,000E	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F	
116.	V092	HONOAPIILANI HIGHWAY SHORELINE IMPROVEMENTS, VICINITY OF OLOWALU, MAUI				
		DESIGN AND CONSTRUCTION FOR SHORELINE IMPROVEMENTS TO INCLUDE SHORELINE EROSION MITIGATION AND ROADWAY WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		DESIGN		150		
		CONSTRUCTION				2,000
		TOTAL FUNDING	TRN	150E		400E
			TRN	N		1,600N
117.	V095	HALEAKALA HIGHWAY WIDENING AT MILEPOST 0.8, MAUI				
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR WIDENING THE HIGHWAY FROM ONE LANE TO TWO LANES, EXTENDING A BOX CULVERT, AND CONSTRUCTING HEADWALLS AND WING WALLS.				
		LAND		55		
		DESIGN		10		
		CONSTRUCTION				2,040
		TOTAL FUNDING	TRN	65E		2,040E
118.	V097	PUUNENE AVENUE WIDENING, WAKEA AVENUE TO KUIHELANI HIGHWAY, MAUI				
		CONSTRUCTION FOR THE WIDENING OF PUUNENE AVENUE FROM WAKEA AVENUE TO KUIHELANI HIGHWAY FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION				4,000
		TOTAL FUNDING	TRN	E		800E
			TRN	N		3,200N
119.	VP0301	HONOAPIILANI HIGHWAY WIDENING, LAHAINA TO MAALAEA, MAUI				
		PLANS FOR THE REALIGNMENT/ WIDENING OF HONOAPIILANI HIGHWAY FROM MAALAEA TO LAUNIUPOKO.				
		PLANS		1,000		
		TOTAL FUNDING	TRN	1,000E		E
120.	V098	KAHEKILI HIGHWAY DRAINAGE IMPROVEMENTS AT WAIHEE TOWN, MAUI				
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION OF A DRAINAGE FACILITY ON KAHEKILI HIGHWAY NEAR WAIHEE TOWN.				
		LAND		20		
		DESIGN		50		
		CONSTRUCTION				600
		TOTAL FUNDING	TRN	70E		600E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
120.01.		MAKAWAO AVENUE, MAUI			
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION TO EXTEND LEFT TURN LANE AT MAKAWAO AVENUE TO HALEAKALA HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			1
		DESIGN			1
		CONSTRUCTION			2,498
		TOTAL FUNDING	TRN	E	500E
			TRN	N	2,000N
<b>TRN541 - MOLOKAI HIGHWAYS</b>					
121.	W011	KAMEHAMEHA V HIGHWAY, KAWELA STREAM BRIDGE REPLACEMENT, MOLOKAI			
		CONSTRUCTION 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.			
		CONSTRUCTION		10,000	
		TOTAL FUNDING	TRN	2,000E	E
			TRN	8,000N	N
122.	W013	KAMEHAMEHA V HIGHWAY, MAKAKUPAIA STREAM BRIDGE REPLACEMENT, MOLOKAI			
		CONSTRUCTION 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.			
		CONSTRUCTION			3,750
		TOTAL FUNDING	TRN	E	750E
			TRN	N	3,000N
123.	W017	KAMEHAMEHA V HIGHWAY, DRAINAGE IMPROVEMENTS, VICINITY OF MOHALA STREET TO VICINITY OF OKI PLACE, MOLOKAI			
		DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS, INCLUDING THE INSTALLATION OF GRATED DROP INLETS, AND STORM WATER DRAIN LINES.			
		DESIGN		150	
		CONSTRUCTION			2,250
		TOTAL FUNDING	TRN	150E	2,250E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
<b>TRN561 - KAUAI HIGHWAYS</b>					
124.	X006	KAUMUALII HIGHWAY IMPROVEMENTS, LIHUE TO WEST OF MALUHIA ROAD, KAUAI			
		CONSTRUCTION FOR WIDENING OF KAUMUALII HIGHWAY, LIHUE TO WEST OF MALUHIA ROAD, FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		36,500	
		TOTAL FUNDING	TRN	7,300E	E
			TRN	29,200N	N
125.	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 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	
		CONSTRUCTION		900	
		TOTAL FUNDING	TRN	200E	E
			TRN	800N	N
126.	X100	KUHIO HIGHWAY, RETAINING WALLS AND/OR ROADWAY REMEDIATION AT LUMAHAI AND WAINIHA, KAUAI			
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR RETAINING WALLS AND/OR ROADWAY REMEDIATION FOR THE PRESERVATION OF KUHIO HIGHWAY IN THE VICINITY OF LUMAHAI AND WAINIHA.			
		LAND		225	
		DESIGN		1,190	
		CONSTRUCTION			5,000
		TOTAL FUNDING	TRN	725E	5,000E
			TRN	690X	X

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F	
127.	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		200		200
		CONSTRUCTION		1,000		1,000
		TOTAL FUNDING TRN		1,200E		1,200E
128.	X122	KUHIO HIGHWAY, ROUTE 560, SLOPE PROTECTION, HANAIEI HILL, KAUAI				
		CONSTRUCTION FOR SLOPE STABILIZATION IMPROVEMENTS AND PROTECTION MEASURES.				
		CONSTRUCTION		7,000		
		TOTAL FUNDING TRN		7,000E		E
129.	X123	WAIMEA CANYON DRIVE/KOKEE ROAD IMPROVEMENTS, MILE POST 0 TO MILE POST 14, KAUAI				
		DESIGN FOR PAVED SHOULDERS, INSTALLING GUARDRAILS, PAVEMENT MARKINGS AND SIGNS, AND OTHER IMPROVEMENTS IN THE VICINITY OF MILE POST 0 TO MILE POST 14.				
		DESIGN		600		
		TOTAL FUNDING TRN		600E		E
130.	X125	KAUMUALII HIGHWAY, OMAO BRIDGE REHABILITATION, KAUAI				
		DESIGN AND CONSTRUCTION FOR REHABILITATION OF A CONCRETE TEE GIRDER BRIDGE ON KAUMUALII HIGHWAY IN THE VICINITY OF OMAO ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		DESIGN		550		
		CONSTRUCTION				7,500
		TOTAL FUNDING TRN		110E		1,500E
				440N		6,000N
131.	X133	KUHIO HIGHWAY, INTERSECTION IMPROVEMENTS AT KCCC & WAILUA GOLF COURSE ENTRANCE, KAUAI				
		PLANS, DESIGN, AND CONSTRUCTION FOR INTERSECTION IMPROVEMENTS AT THE ENTRANCES TO KAUAI COMMUNITY CORRECTIONAL CENTER (KCCC) AND WAILUA GOLF COURSE.				
		PLANS		250		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		DESIGN		250	
		CONSTRUCTION		3,000	
		TOTAL FUNDING	TRN	3,500E	E
132.	X007	KUHIO HIGHWAY IMPROVEMENTS, HANAMAULU TO KAPAA, KAUAI			
		PLANS 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.			
		PLANS		600	
		CONSTRUCTION		24,500	
		TOTAL FUNDING	TRN	2,100E	E
			TRN	6,000N	N
			TRN	17,000V	V

TRN595 - HIGHWAYS ADMINISTRATION

133.	X091	ADA AND PEDESTRIAN IMPROVEMENTS AT VARIOUS LOCATIONS, STATEWIDE			
		DESIGN AND CONSTRUCTION TO PROVIDE FOR AND IMPROVE EXISTING ADA AND PEDESTRIAN FACILITIES ON STATE HIGHWAYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN			500
		CONSTRUCTION		1,300	800
		TOTAL FUNDING	TRN	1,300E	900E
			TRN	N	400N
134.	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	300
		TOTAL FUNDING	TRN	300E	300E
135.	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		200	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		CONSTRUCTION		1,000	
		TOTAL FUNDING	TRN	1,200E	E
136.	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		250	250
		CONSTRUCTION		2,000	2,000
		TOTAL FUNDING	TRN	450E	450E
			TRN	1,800N	1,800N
137.	X099	HIGHWAY PLANNING, STATEWIDE			
		PLANS FOR FEDERAL AID AND NON-FEDERAL AID PROGRAMS AND PROJECTS THAT INCLUDE ROADWAY CLASSIFICATION, DATA COLLECTION, LONG- AND MID-RANGE PLANNING, TRANSPORTATION NEEDS STUDIES, RESEARCH, HRS 343/NEPA STUDIES, CORRIDOR STUDIES, AND SCOPING. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		6,500	6,500
		TOTAL FUNDING	TRN	1,300E	1,300E
			TRN	5,200N	5,200N
138.	X200	TRAFFIC COUNTING STATIONS AT VARIOUS LOCATIONS, STATEWIDE			
		PLANS, DESIGN, AND CONSTRUCTION FOR INSTALLING TRAFFIC DETECTOR LOOPS, ASSOCIATED WIRING, JUNCTION BOXES, CABINETS AND TELEMETRY STATIONS AT VARIOUS LOCATIONS ON STATE ROADWAYS, INCLUDING AUTOMATIC TRAFFIC RECORDERS AND OTHER DATA PROCESSING IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		75	
		DESIGN		300	
		CONSTRUCTION			3,500
		TOTAL FUNDING	TRN	75E	700E
			TRN	300N	2,800N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
139.	X222	SEISMIC RETROFIT OF VARIOUS BRIDGES, STATEWIDE			
		CONSTRUCTION FOR SEISMIC RETROFIT IMPROVEMENTS FOR VARIOUS BRIDGES STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		3,000	3,000
		TOTAL FUNDING	TRN	600 E	600 E
			TRN	2,400 N	2,400 N
140.	X225	HIGHWAYS DIVISION CAPITAL IMPROVEMENTS PROGRAM PROJECTS STAFF COSTS, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES & FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CIP PROJECTS FOR DEPARTMENT OF TRANSPORTATION'S HIGHWAYS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CIP PROJECTS RELATED POSITIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		1	1
		CONSTRUCTION		18,497	18,497
		TOTAL FUNDING	TRN	12,500 B	12,500 B
			TRN	6,000 N	6,000 N
141.	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	200
		TOTAL FUNDING	TRN	199 E	199 E
			TRN	1 N	1 N
142.	X227	ROCKFALL PROTECTION/SLOPE STABILIZATION AT VARIOUS LOCATIONS, STATEWIDE			
		PLANS, DESIGN, AND CONSTRUCTION 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.			
		PLANS		500	
		DESIGN		3,250	



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		CONSTRUCTION		6,250	2,000
		TOTAL FUNDING	TRN	2,000E	400E
			TRN	8,000N	1,600N
143.	X230	BIKEWAY IMPROVEMENTS AT VARIOUS LOCATIONS, STATEWIDE			
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION TO PROVIDE FOR AND IMPROVE EXISTING BICYCLE FACILITIES ON STATE HIGHWAYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND			50
		DESIGN			300
		CONSTRUCTION		2,000	1,140
		TOTAL FUNDING	TRN	400E	1,210E
			TRN	1,600N	280N
144.	X238	HEIGHT MODERNIZATION FACILITIES, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HEIGHT MODERNIZATION FACILITIES ON VARIOUS ISLANDS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		1	1
		CONSTRUCTION		3,397	
		EQUIPMENT			2,297
		TOTAL FUNDING	TRN	3,399E	2,299E
			TRN	1N	1N
145.	X239	SIGN AND TRAFFIC SIGNAL MANAGEMENT, STATEWIDE			
		PLANS FOR THE DEVELOPMENT OF A STATEWIDE SIGN AND TRAFFIC SIGNAL MANAGEMENT PROGRAM.			
		PLANS		250	
		TOTAL FUNDING	TRN	250B	B

D. ENVIRONMENTAL PROTECTION

HTH840 - ENVIRONMENTAL MANAGEMENT

1.	840101	WASTEWATER TREATMENT REVOLVING FUND FOR POLLUTION CONTROL, STATEWIDE			
		CONSTRUCTION FUNDS TO PROVIDE STATE MATCH (20%) FOR FEDERAL CAPITALIZATION GRANTS FOR WASTEWATER PROJECTS. FUNDS TO BE TRANSFERRED TO THE WATER POLLUTION CONTROL REVOLVING FUND PURSUANT TO CHAPTER 342D, HRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		6,269	18,938
		TOTAL FUNDING	HTH	1,045C	3,157C
			HTH	5,224N	15,781N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F	
2.	840102	SAFE DRINKING WATER REVOLVING FUND, STATEWIDE				
		CONSTRUCTION FUNDS TO PROVIDE STATE MATCH (20%) FOR FEDERAL CAPITALIZATION GRANTS FOR DRINKING WATER PROJECTS. FUNDS TO BE TRANSFERRED TO THE DRINKING WATER TREATMENT REVOLVING LOAN FUND PURSUANT TO CHAPTER 340E, HRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		CONSTRUCTION		9,776		16,288
		TOTAL FUNDING	HTH	1,630C		2,715C
			HTH	8,146N		13,573N
<b>LNR401 - AQUATIC RESOURCES</b>						
3.01.		KAELEPULU POND MITIGATION, OAHU				
		PLANS, DESIGN, AND CONSTRUCTION OF POND MITIGATION AT KAELEPULU POND.				
		PLANS				10
		DESIGN				10
		CONSTRUCTION				80
		TOTAL FUNDING	LNR		C	100C
<b>LNR407 - NATURAL AREA RESERVES AND WATERSHED MANAGEMENT</b>						
3.02.		KAWAINUI MARSH PLAN IMPLEMENTATION, OAHU				
		PLANS, DESIGN, AND CONSTRUCTION TO UPDATE THE EXISTING KAWAINUI MARSH MASTER PLAN.				
		PLANS				400
		DESIGN				150
		CONSTRUCTION				250
		TOTAL FUNDING	LNR		C	800C
<b>LNR906 - LNR - NATURAL AND PHYSICAL ENVIRONMENT</b>						
4.	G01	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		2,688		2,540
		TOTAL FUNDING	LNR	2,688C		2,540C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F

5.	P90027	HAKIOAWA SHELTER AND KITCHEN, KAHOO LAWE				
		DESIGN AND CONSTRUCTION OF A NEW HALE AND ALTERNATIVE/SUSTAINABLE ENERGY INFRASTRUCTURE TO PROVIDE SHELTER FOR THE KAHO'OLAWA OHANA AND VOLUNTEERS.				
		DESIGN			15	
		CONSTRUCTION			385	
		TOTAL FUNDING LNR			400C	C

E. HEALTH

HTH730 - EMERGENCY MEDICAL SERVICES AND INJURY PREVENTION SYSTEM

1.	P90028	CENTRAL OAHU AMBULANCE FACILITY, OAHU				
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN AMBULANCE FACILITY FOR CENTRAL OAHU.				
		PLANS			70	
		DESIGN			560	
		CONSTRUCTION			3,025	
		EQUIPMENT			195	
		TOTAL FUNDING HTH			3,850C	C

HTH595 - HEALTH RESOURCES ADMINISTRATION

2.	P90029	HANA HEALTH, MAUI				
		PLANS AND CONSTRUCTION FOR MEDICAL CENTER EXPANSION, SCHEMATIC DESIGN, AND CONSTRUCTION DOCUMENTS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		PLANS			450	
		CONSTRUCTION				900
		TOTAL FUNDING HTH			450C	900C
3.	P90030	HOSPICE OF HILO, HAWAII				
		CONSTRUCTION FOR PHASE I OF A MEDICARE CERTIFIED IN-PATIENT HOSPICE FACILITY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		CONSTRUCTION			750	
		TOTAL FUNDING HTH			750C	C
4.	P90031	MOLOKA'I OHANA HEALTH CARE, MOLOKA'I				
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO RENOVATE, RETROFIT AND PROVIDE OTHER IMPROVEMENTS FOR AN EXPANDED FACILITY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		PLANS			1	
		DESIGN			1	
		CONSTRUCTION			997	
		EQUIPMENT			1	
		TOTAL FUNDING HTH			1,000C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
<b>HTH210 - HAWAII HEALTH SYSTEMS CORPORATION - CORPORATE OFFICE</b>					
5.	295110	HAWAII HEALTH SYSTEMS CORPORATION, REPAIR AND MAINTENANCE, STATEWIDE			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO IMPLEMENT REPAIR AND MAINTENANCE PROJECTS FOR THE HAWAII HEALTH SYSTEMS CORPORATION.			
		DESIGN		998	498
		CONSTRUCTION		19,222	4,500
		EQUIPMENT		2	2
		TOTAL FUNDING HTH		20,222C	5,000C
6.	P90032	MAUI MEMORIAL MEDICAL CENTER, NEW DIALYSIS UNIT, MAUI			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW DIALYSIS UNIT.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		6,630	
		EQUIPMENT		568	
		TOTAL FUNDING HTH		7,200C	C
7.	P90033	MAUI MEMORIAL MEDICAL CENTER, MOLOKAI NORTH/OB/ OR/SNF/MOLOKINI/PHASE II IMPROVEMENTS AND EXPANSION, MAUI			
		DESIGN AND CONSTRUCTION TO RENOVATE, RELOCATE AND EXPAND MAUI MEMORIAL MEDICAL CENTER FACILITIES FOR VARIOUS DEPARTMENTS.			
		DESIGN		15,000	
		CONSTRUCTION			1
		TOTAL FUNDING HTH		15,000C	1C
8.	P90034	NEW LONG TERM CARE (LTC GREEN HOUSE) FACILITY, MAUI			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT OF A NEW LONG TERM CARE FACILITY FOR THE MAUI REGION. FACILITY TO CONSIST OF 30 BEDS AND BE LOCATED AT KULA HOSPITAL.			
		PLANS		100	
		DESIGN		500	
		CONSTRUCTION		4,399	
		EQUIPMENT		1	
		TOTAL FUNDING HTH		5,000C	C
8.01.		KONA COMMUNITY HOSPITAL, HAWAII			
		CONSTRUCTION FOR MATCHING FUNDS FOR FEDERAL PRE-DISASTER MITIGATION GRANT (SEISMIC MITIGATION FOR CEILING).			
		CONSTRUCTION			750
		TOTAL FUNDING HTH		C	750C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
8.02.		WEST HAWAII COMMUNITY HEALTH CENTER, WAIKOLOA BRANCH, HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION FOR WEST HAWAII COMMUNITY HEALTH CENTER, WAIKOLOA BRANCH, HAWAII.			
		PLANS			10
		DESIGN			10
		CONSTRUCTION			160
		TOTAL FUNDING	HTH	C	180C
<b>HTH430 - ADULT MENTAL HEALTH - INPATIENT</b>					
9.	430103	HAWAII STATE HOSPITAL, REPAIRS AND IMPROVEMENTS TO VARIOUS BUILDINGS AND SITES, OAHU			
		DESIGN AND CONSTRUCTION FOR REPAIRS AND IMPROVEMENTS, WHICH MAY INCLUDE RE-ROOFING, STRUCTURAL WORK, AND VARIOUS OTHER IMPROVEMENTS.			
		DESIGN			258
		CONSTRUCTION			1,813
		TOTAL FUNDING	AGS		2,071C
<b>HTH907 - GENERAL ADMINISTRATION</b>					
10.	907101	VARIOUS IMPROVEMENTS TO DEPARTMENT OF HEALTH FACILITIES, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR VARIOUS IMPROVEMENTS TO DEPARTMENT OF HEALTH FACILITIES STATEWIDE. IMPROVEMENTS MAY INCLUDE RE-ROOFING, RENOVATIONS, AIR CONDITIONING UPGRADES, AND VARIOUS OTHER IMPROVEMENTS.			
		DESIGN			71
		CONSTRUCTION			3,200
		TOTAL FUNDING	AGS		3,271C
11.	907106	ENERGY EFFICIENCY IMPROVEMENTS TO DEPARTMENT OF HEALTH FACILITIES, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO MECHANICAL SYSTEMS AT DEPARTMENT OF HEALTH FACILITIES TO PROVIDE FOR ENERGY SAVINGS.			
		DESIGN			331
		CONSTRUCTION			2,757
		TOTAL FUNDING	AGS		3,088C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F

F. SOCIAL SERVICES

HMS501 - IN-COMMUNITY YOUTH PROGRAMS

1.	P90035	HALE 'OPIO KAUAI, INC., KAUAI				
		DESIGN AND CONSTRUCTION TO REPAIR THE THERAPEUTIC BEHAVIORAL HEALTH GROUP HOME FOR FOSTER GIRLS, LAWAI, KAUAI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		DESIGN			1	
		CONSTRUCTION			79	
		TOTAL FUNDING	HMS		80C	C

1.01.		BOYS AND GIRLS CLUB, OAHU				
		CONSTRUCTION FOR THE RENOVATION OF THE EXISTING ATHLETIC DEPARTMENT WING AT KAILUA INTERMEDIATE SCHOOL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		CONSTRUCTION				1,500
		TOTAL FUNDING	HMS		C	1,500C

HMS503 - HAWAII YOUTH CORRECTIONAL FACILITY (HYCF)

2.	YA 01	HAWAII YOUTH CORRECTIONAL FACILITY'S (HYCF) SECURE CUSTODY FACILITY (SCF) AIR CONDITIONING REPLACEMENT, OAHU				
		PLANS, DESIGN, AND CONSTRUCTION TO REPLACE AIR CONDITIONING UNIT AND SMOKE EVACUATION UNITS, AND PERFORM ROOF REPAIRS FOR THE HEALTH AND SAFETY OF THE YOUTHS.				
		PLANS			170	
		DESIGN			217	
		CONSTRUCTION			1,700	
		TOTAL FUNDING	HMS		2,087C	C

DEF112 - SERVICES TO VETERANS

3.	P70036	COLUMBARIA NICHEs, STATEWIDE				
		DESIGN AND CONSTRUCTION FOR ADDITIONAL COLUMBARIA NICHEs STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.				
		DESIGN			194	
		CONSTRUCTION				962
		TOTAL FUNDING	AGS		194C	961C
			AGS		N	1N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
4.	P90037	LUMP SUM CIP— VETERANS CEMETERY IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS UPGRADE AND IMPROVEMENTS TO VETERANS CEMETERIES STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		265	1
		CONSTRUCTION			1,913
		TOTAL FUNDING	AGS	265C	1,913C
			AGS	N	1N
4.01.		U.S.S. MISSOURI MEMORIAL ASSOCIATION, INC., OAHU			
		EQUIPMENT TO REPLACE THE AIR CONDITIONING SYSTEM ON THE BATTLESHIP MISSOURI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		EQUIPMENT			60
		TOTAL FUNDING	AGS	C	60C
<b>HMS601 - ADULT AND COMMUNITY CARE SERVICES</b>					
5.	P90038	LA'A KEA FOUNDATION, MAUI			
		PLANS, DESIGN, AND CONSTRUCTION FOR THE SUNRISE FARM COMMUNITY OF MAUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		1	
		DESIGN		398	
		CONSTRUCTION		1	
		TOTAL FUNDING	HMS	400C	C
<b>HMS220 - RENTAL HOUSING SERVICES</b>					
6.	RH 06	LUMP SUM CIP - NON ROUTINE REPAIR AND MAINTENANCE, IMPROVEMENTS, RENOVATIONS, AND ADA COMPLIANCE, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR NON ROUTINE REPAIR AND MAINTENANCE, IMPROVEMENTS, AND RENOVATIONS, STATEWIDE. PROJECTS TO ALSO INCLUDE THOSE NEEDED FOR ADA COMPLIANCE.			
		DESIGN		500	500
		CONSTRUCTION		7,413	4,000
		TOTAL FUNDING	HMS	7,913C	4,500C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
<b>HHL602 - PLANNING AND DEVELOPMENT FOR HAWAIIAN HOMESTEADS</b>					
7.	TBA001	NAHASDA DEVELOPMENT PROJECTS, STATEWIDE			
		PLANS, DESIGN, AND CONSTRUCTION FOR VARIOUS HAWAIIAN HOMESTEAD PROJECTS AND IMPROVEMENTS STATEWIDE, PURSUANT TO THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-DETERMINATION ACT, PUBLIC LAW 107-73, 107TH CONGRESS. FUNDS NOT NEEDED IN A COST ELEMENT MAY BE USED IN ANOTHER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		14,998	14,998
		TOTAL FUNDING HHL		15,000N	15,000N
8.	TBA002	WATER SOURCE DEVELOPMENT FOR STATE HOUSING PROJECTS IN THE VILLAGES OF LEIALII, MAUI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN EXPLORATORY WELL AND A PRODUCTION WELL TO SERVE AS A POTABLE WATER SOURCE FOR STATE HOUSING PROJECTS IN THE VILLAGES OF LEIALII.			
		DESIGN		300	
		CONSTRUCTION		2,000	
		EQUIPMENT		200	
		TOTAL FUNDING HHL		2,500C	C
9.	TBA003	WATER SYSTEM IMPROVEMENTS, LALAMILO, WAIMEA, HAWAII			
		CONSTRUCTION FOR A WATER RESERVOIR AND TRANSMISSION LINE TO PROVIDE RELIABLE POTABLE WATER TO THE EXISTING COMMUNITY AS WELL AS PLANNED STATE PROJECTS IN WAIMEA.			
		CONSTRUCTION		6,000	
		TOTAL FUNDING HHL		6,000C	C
10.	P90040	KIPUKA INPEACE PROJECT, OAHU			
		DESIGN AND CONSTRUCTION OF THE INSTITUTE FOR NATIVE PACIFIC EDUCATION AND CULTURE EARLY CHILDHOOD AND WORKFORCE DEVELOPMENT FACILITIES CO-LOCATED ON THE LARGER KIPUKA COMMUNITY COLLABORATION PROJECT GROUNDS. THE PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		1	
		CONSTRUCTION		1,499	
		TOTAL FUNDING HHL		1,500C	C



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011	
10.01.		LAI'OPUA COMMUNITY CENTER, HAWAII				
		PLANS AND DESIGN FOR THE COMMUNITY CENTER COMPLEX, WHICH SHALL INCLUDE A COMMUNITY CENTER BUILDING AND THE WEST HAWAII COMMUNITY CENTER TO PROVIDE NECESSARY HEALTH CARE AND SOCIAL SERVICE INFRASTRUCTURE FOR THE VILLAGES OF LAI'OPUA IN THE AHUPUAA OF KEALAKEHE. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		PLANS			26	
		DESIGN			1,500	
		TOTAL FUNDING	HHL	C	1,526C	
10.02.		DAM ASSESSMENTS, MAINTENANCE, AND REMEDIATION, KAUAI				
		DESIGN FOR THE REPAIR, IMPROVEMENT, OR ABANDONMENT OF FIVE DAMS CONSTRUCTED OVER 80 YEARS AGO. ENGINEERING SERVICES WILL INCLUDE THE ASSESSMENT OF THE DAMS' CONDITIONS AND RECOMMEND APPROPRIATE ACTIONS NECESSARY TO MAINTAIN THE SAFETY OF PEOPLE OR PROPERTY AFFECTED BY THE DAMS.				
		DESIGN			2,500	
		TOTAL FUNDING	HHL	C	2,500C	
<b>HTH904 - EXECUTIVE OFFICE ON AGING</b>						
<b>G. FORMAL EDUCATION</b>						
<b>EDN100 - SCHOOL-BASED BUDGETING</b>						
1.	20	LUMP SUM CIP - SCHOOL BUILDING IMPROVEMENTS, STATEWIDE				
		DESIGN AND CONSTRUCTION FOR THE IMPROVEMENTS OF PUBLIC SCHOOL FACILITIES, STATEWIDE. MAY INCLUDE PROJECT MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES, ROOFING AND ROOF MAINTENANCE AGREEMENTS, AIR CONDITIONING, PAINTING, PLUMBING, FURNITURE AND REPLACEMENT FURNITURE, AND OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC SCHOOL FACILITIES.				
		DESIGN			3,000	
		CONSTRUCTION			27,000	
		TOTAL FUNDING	EDN		30,000B	
					14,000	
					126,500	
					140,500 B	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
2.	023	LUMP SUM CIP - CLASSROOM RENOVATIONS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR CLASSROOM RENOVATIONS, ADDITIONS, AND IMPROVEMENTS TO BUILDINGS AND SCHOOLS SITES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		29,999	
		TOTAL FUNDING	EDN	30,000	B
3.	10	LUMP SUM CIP - PROJECT ADJUSTMENT FUND, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT. OTHER DEPARTMENT OF EDUCATION PROJECTS WITHIN THIS ACT WITH UNREQUIRED BALANCES MAY BE TRANSFERRED INTO THIS PROJECT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		600	600
		CONSTRUCTION		1,397	1,397
		EQUIPMENT		1	1
		TOTAL FUNDING	EDN	2,000	B
4.	001001	LUMP SUM CIP - RELOCATE/CONSTRUCT TEMPORARY FACILITIES, STATEWIDE			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES (INCLUDING RESTROOMS) 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; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		970	595
		CONSTRUCTION		8,730	5,649
		EQUIPMENT		300	255
		TOTAL FUNDING	EDN	10,000	5,000
			EDN	R	1,499
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; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
		DESIGN		150	150
		CONSTRUCTION		1,850	1,850
		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		220	220
		CONSTRUCTION		1,780	1,780
		TOTAL FUNDING	EDN	2,000B	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; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	20
		CONSTRUCTION		900	180
		TOTAL FUNDING	EDN	1,000B	200B
8.	000007	LUMP SUM CIP - SPECIAL EDUCATION RENOVATIONS, STATEWIDE			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO RENOVATE CLASSROOMS TO ADDRESS SPECIAL EDUCATION NEEDS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		150	35
		CONSTRUCTION		825	450
		EQUIPMENT		25	15
		TOTAL FUNDING	EDN	1,000B	500B
9.	19	LUMP SUM CIP - GENDER EQUITY, STATEWIDE			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR GENDER EQUITY PROJECTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		400	800
		CONSTRUCTION		1,500	3,350
		EQUIPMENT		100	200
		TOTAL FUNDING	EDN	2,000B	4,350B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
10.	005005	LUMP SUM CIP - FIRE PROTECTION, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR FIRE PROTECTION SYSTEMS AND/OR CORRECTIVE MEASURES TO ADDRESS FIRE SAFETY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	100
		CONSTRUCTION		400	400
		TOTAL FUNDING EDN		500 B	500 B
11.	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; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	100
		CONSTRUCTION		400	400
		TOTAL FUNDING EDN		500 B	500 B
11.01.		LUMP SUM CIP - ELECTRICAL UPGRADES, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL SYSTEM UPGRADES AT VARIOUS SCHOOLS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1,000
		DESIGN			1,000
		CONSTRUCTION			12,000
		EQUIPMENT			1,000
		TOTAL FUNDING EDN		B	15,000 B
12.	P90046	AHUIMANU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		74	
		TOTAL FUNDING EDN		75 B	B
13.	P90047	AIEA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A COVERED WALKWAY CONNECTING BUILDING C WITH THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		20	
		CONSTRUCTION		80	
		TOTAL FUNDING EDN		100 B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
13.01.		AIEA INTERMEDIATE SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO EXPAND AND RENOVATE THE CAFETERIA STAGE, AND ADD DRESSING ROOMS ON EITHER SIDE OF THE STAGE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			160
		CONSTRUCTION			1,560
		EQUIPMENT			20
		TOTAL FUNDING	EDN	B	1,740 B
14.	P90048	AINA HAINA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A PUBLIC ADDRESS SYSTEM IN THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			49
		TOTAL FUNDING	EDN	B	50 B
15.	P90049	ALIAMANU MIDDLE SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF THREE SPLIT AIR CONDITIONING UNITS IN ROOMS S-1; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			3
		CONSTRUCTION			25
		EQUIPMENT			7
		TOTAL FUNDING	EDN	B	35 B
16.	P90050	AUGUST AHRENS ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR SITE DEVELOPMENT OF A PARKING AND ACCESS ROAD ENTERING FROM MAHOE STREET TO CIRCLE AROUND THE SCHOOL GROUNDS AND EXIT ONTO WAIPAHU AVENUE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			10
		DESIGN			55
		CONSTRUCTION			900
		TOTAL FUNDING	EDN	B	965 B
17.	P90051	AUGUST AHRENS ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION OF A DRAINAGE SYSTEM FOR THE CAFETERIA TO PREVENT FLOODING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			378
		TOTAL FUNDING	EDN	B	380 B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
18.	P90052	BARBERS POINT ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION TO REPLACE THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			100
		DESIGN			100
		CONSTRUCTION			800
		TOTAL FUNDING	EDN	B	1,000 B
19.	P90053	BARBERS POINT ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR TRAFFIC RESISTING POSTS ALONG THE PLAYGROUND FENCE ON THE MAIN ROAD; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			24
		TOTAL FUNDING	EDN	B	26 B
20.	P90054	BENJAMIN PARKER SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF A RETAINING WALL BEHIND THE CAFETERIA AND BUILDINGS C AND D; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		25	
		CONSTRUCTION		100	
		TOTAL FUNDING	EDN	125 B	B
21.	P90055	CAMPBELL HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO UPGRADE THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		45	
		CONSTRUCTION		455	
		TOTAL FUNDING	EDN	500 B	B
22.	P90056	CASTLE HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF AN ALL WEATHER TRACK, SYNTHETIC ATHLETIC FIELD, AND PRESS BOX/ ANNOUNCER'S BOOTH; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		150	
		CONSTRUCTION		4,850	
		TOTAL FUNDING	EDN	5,000 B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
22.01.		CASTLE HIGH SCHOOL, OAHU			
		PLANS AND DESIGN TO EXPAND THE CAFETERIA DINING ROOM FOR ADDITIONAL STUDENT DINING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS DESIGN			10
		TOTAL FUNDING	EDN	B	290
					300B
23.	P90057	CENTRAL MIDDLE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO ENCLOSE THE PEDESTRIAN OVERPASS THAT CONNECTS THE MAUKA AND MAKAI CAMPUSES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			45
		CONSTRUCTION			150
		TOTAL FUNDING	EDN		195B
					B
23.01.		CENTRAL MIDDLE SCHOOL, OAHU			
		PLANS AND DESIGN FOR STRUCTURAL REPAIRS AND RESTORATION OF BUILDINGS A, B, AND C, DUE TO TERMITE DAMAGE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS DESIGN			100
		TOTAL FUNDING	EDN	B	100
					200B
24.	P90058	DOLE MIDDLE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR RESTROOM RENOVATIONS. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			25
		CONSTRUCTION			225
		TOTAL FUNDING	EDN		250B
					B
25.	P90059	ENCHANTED LAKE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A WINDBREAKER SYSTEM FOR THE COVERED WALKWAY BETWEEN BUILDINGS E AND G; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			3
		CONSTRUCTION			27
		TOTAL FUNDING	EDN		30B
					B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
26.	P90060	EWA BEACH ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION TO UPGRADE THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. DESIGN CONSTRUCTION TOTAL FUNDING EDN		B	60 575 635B
27.	P90061	EWA ELEMENTARY SCHOOL, OAHU DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AIR CONDITIONING FOR BUILDINGS C AND D; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. DESIGN CONSTRUCTION EQUIPMENT TOTAL FUNDING EDN			80 600 1 681B B
28.	P90062	EWA ELEMENTARY SCHOOL, OAHU DESIGN, CONSTRUCTION, AND EQUIPMENT TO CONSTRUCT AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. DESIGN CONSTRUCTION EQUIPMENT TOTAL FUNDING EDN			1 748 1 750B B
28.01.		FARRINGTON HIGH SCHOOL, OAHU PLANS, AND DESIGN FOR A MASTER PLAN TO GUIDE THE CAMPUS MODERNIZATION PROJECT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. PLANS DESIGN TOTAL FUNDING EDN		B	1,000 2,000 3,000B
29.	P90063	FERN ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR ROOF IMPROVEMENTS AND CARPET REPLACEMENT. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. DESIGN CONSTRUCTION TOTAL FUNDING EDN			75 500 575B B



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
30.	P90064	HIGHLANDS INTERMEDIATE SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR THE RENOVATION OF THE CHORUS CLASSROOM, INCLUDING ASBESTOS REMOVAL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		80	
		CONSTRUCTION		400	
		TOTAL FUNDING EDN		480B	B
31.	P90065	HILO HIGH SCHOOL, HAWAII PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW GYMNASIUM/ EMERGENCY SHELTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	1
		DESIGN		1	1
		CONSTRUCTION		997	7,997
		EQUIPMENT		1	1
		TOTAL FUNDING EDN		1,000B	8,000B
32.	P90066	HOKULANI ELEMENTARY SCHOOL, OAHU PLANS, DESIGN, AND CONSTRUCTION FOR CAMPUS-WIDE AMERICANS WITH DISABILITIES ACT TRANSITION ACCESSIBILITY IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		20	
		DESIGN		55	
		CONSTRUCTION		300	
		TOTAL FUNDING EDN		375B	B
33.	P90067	HOLUALOA ELEMENTARY SCHOOL, HAWAII DESIGN OF A PEDESTRIAN BUFFER ALONG A COUNTY EASEMENT ACCESS ROAD THROUGH CAMPUS TO ENSURE THE SAFETY OF STUDENTS AND STAFF WHILE CROSSING FROM ONE SIDE OF CAMPUS TO THE OTHER ACROSS TRAFFIC; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			280
		TOTAL FUNDING EDN		B	280B
34.	P90068	HONOWAI ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION OF WALLS FOR CLASSROOMS, TO ALSO INCLUDE INSTALLATION OF SOLAR EXHAUST VENTILATORS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		10	
		CONSTRUCTION		250	
		TOTAL FUNDING EDN		260B	B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
34.01.		HONOWAI ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION FOR INSTALLATION OF SECURITY SCREENS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			31
		TOTAL FUNDING EDN		B	31 B
35.	P90069	ILIMA INTERMEDIATE SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TWO PORTABLE CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			50
		CONSTRUCTION			-700
		EQUIPMENT			25
		TOTAL FUNDING EDN		B	775 B
36.	P90070	JEFFERSON ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION TO RE-ROOF THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			250
		TOTAL FUNDING EDN		B	250 B
36.01.		JEFFERSON ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION TO RE-ROOF H BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			100
		TOTAL FUNDING EDN		B	100 B
36.02.		KAAAWA ELEMENTARY SCHOOL, OAHU			
		PLANS AND DESIGN OF PAVED PARKING LOT, EIGHT-CLASSROOM BUILDING, WASTEWATER SEPTIC SYSTEM, AND ADMINISTRATIVE LIBRARY, AND CAFETERIA COMPLEX; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			75
		DESIGN			300
		TOTAL FUNDING EDN		B	375 B
37.	P90071	KAELEPULU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF A REPLACEMENT WALKWAY FROM THE PARKING LOT TO BUILDING C; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		25	
		CONSTRUCTION		150	
		TOTAL FUNDING EDN		175 B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
38.	P90072	KAHALU'U ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS INCLUDING A PARKING LOT, BUILDING RETROFITS FOR SOLAR PANELING, AND UPGRADES TO ELECTRICAL SYSTEMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		50	
		CONSTRUCTION		480	
		TOTAL FUNDING	EDN	530B	B
39.	P90073	KAHUKU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		40	
		CONSTRUCTION		425	
		TOTAL FUNDING	EDN	465B	B
39.01.		KAHUKU INTERMEDIATE AND HIGH SCHOOL, DRAINAGE IMPROVEMENTS, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS			1
		DESIGN			669
		CONSTRUCTION			6,030
		TOTAL FUNDING	EDN	B	2,340B
			EDN	N	4,360N
40.	P90074	KAILUA HIGH SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NATURAL SCIENCE CLASSROOM AND RESEARCH LAB; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	1
		CONSTRUCTION		699	7,198
		EQUIPMENT		1	1
		TOTAL FUNDING	EDN	800B	7,200B
41.	P90075	KAIULANI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ELECTRICAL UPGRADE OF THE ENTIRE SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		46	
		CONSTRUCTION		419	
		TOTAL FUNDING	EDN	465B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
42.	P90076	KALANI HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF SECURITY SCREENS AND STAIRWELL GATES FOR SECOND FLOOR PROJECT FOR BUILDINGS A-E, PROJECT INCLUDES TOTAL OF TEN STAIRWELLS TO DETER VANDALISM, THEFT, AND TRESPASSING ON THE SECOND LEVEL OF SCHOOL CAMPUS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		50	
		CONSTRUCTION			450
		TOTAL FUNDING EDN		50B	450B
43.	P90077	KALEIOPUU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF A COVERED WALKWAY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			10
		CONSTRUCTION			90
		TOTAL FUNDING EDN		B	100B
45.	P90079	KALIHI-WAENA ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL UPGRADE. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		150	
		CONSTRUCTION		800	
		EQUIPMENT		70	
		TOTAL FUNDING EDN		1,020B	B
45.01.		KANEOHE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF THE LIBRARY, GRADING OF AN ACCESS ROAD, AND CREATION OF A PARKING AREA NEAR THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			100
		CONSTRUCTION			1,100
		TOTAL FUNDING EDN		B	1,200B
46.	P90080	KAPOLEI II ELEMENTARY SCHOOL, OAHU			
		DESIGN FOR A NEW ELEMENTARY SCHOOL IN KAPOLEI. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		3,520	
		TOTAL FUNDING EDN		3,520B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
48.	P90082	KAWANANAKOA MIDDLE SCHOOL, OAHU DESIGN FOR THE RENOVATION OF THE AUDITORIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. DESIGN			900
		TOTAL FUNDING	EDN	B	900B
49.	P90083	KEAUKAHA ELEMENTARY SCHOOL, HAWAII PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. PLANS			80
		DESIGN			520
		CONSTRUCTION			7,200
		EQUIPMENT			200
		TOTAL FUNDING	EDN	8,000B	B
51.	P90085	KING INTERMEDIATE SCHOOL, OAHU PLANS AND DESIGN FOR EXPANSION OF THE CAFETERIA TO SERVE AS AN AUDITORIUM. PROJECTS TO INCLUDE ADDITION OF A STAGE WITHIN THE EXISTING FACILITY, NEW RESTROOMS, AND A PARKING LOT ACROSS THE STREET; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. PLANS			25
		DESIGN			25
		TOTAL FUNDING	EDN	B	50B
52.	P90086	KING KAMEHAMEHA III ELEMENTARY SCHOOL, MAUI PLANS, DESIGN, AND CONSTRUCTION FOR ADA TRANSITION ACCESSIBILITY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. PLANS			10
		DESIGN			10
		CONSTRUCTION			355
		TOTAL FUNDING	EDN	375B	B
53.	P90087	KING KEKAULIKE HIGH SCHOOL, MAUI DESIGN AND CONSTRUCTION FOR A NEW AUDITORIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. DESIGN			600
		CONSTRUCTION			3,000
		TOTAL FUNDING	EDN	600B	3,000B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
54.	P90088	KIPAPA ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR A PARKING LOT WITH A DROP OFF AREA FOR STUDENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		10	
		DESIGN		10	
		CONSTRUCTION		480	
		TOTAL FUNDING EDN		500B	B
55.	P90089	LAIE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR AMERICANS WITH DISABILITIES ACT TRANSITION ACCESSIBILITY IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		50	
		CONSTRUCTION		325	
		TOTAL FUNDING EDN		375B	B
55.01.		LANAI HIGH AND ELEMENTARY SCHOOL, LANAI			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO UNDERTAKE A PHASE II SOIL TEST FOR THE CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			72
		EQUIPMENT			1
		TOTAL FUNDING EDN		B	75B
56.	P90090	LANAKILA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF LANAKILA ELEMENTARY BUILDING I AND C SECURITY SCREENS, REPLACEMENT OF CAMPUS PROGRAM BELL, AND PARKING LOT RESURFACING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			11
		CONSTRUCTION			259
		TOTAL FUNDING EDN		B	270B
57.	P90091	LEHUA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF AIR CONDITIONING IN THE SCHOOL LIBRARY AND OTHER IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		40	
		CONSTRUCTION		320	
		TOTAL FUNDING EDN		360B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
58.	P90092	MA'EMA'E ELEMENTARY SCHOOL, OAHU CONSTRUCTION FOR THE INSTALLATION OF A SAFETY FENCE NEAR GRADE 5 ROOMS NEAR THE STREET; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. CONSTRUCTION	EDN	B	35 35B
59.	P90093	MAKAWAO ELEMENTARY SCHOOL, MAUI PLANS AND DESIGN FOR EXPANSION OF THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. PLANS DESIGN	EDN		200 200 400 B
60.	P90094	MANANA ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION OF RETAINING WALLS AND FOR SCHOOL WIDE DRAINAGE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. DESIGN CONSTRUCTION	EDN		50 400 450 B
61.	P90095	MANOA ELEMENTARY SCHOOL, OAHU PLANS, DESIGN, AND CONSTRUCTION TO INSTALL A PLAY COURT COVER FOR THE BLACKTOP AREA ADJACENT TO BUILDING E (CAFETORIUM); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. PLANS DESIGN CONSTRUCTION	EDN		1 99 400 500 B
62.	P90096	MAUKA LANI ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR AN ADDITIONAL EVACUATION ROUTE RAMP, INCLUDING GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. DESIGN CONSTRUCTION	EDN		45 405 450 B
63.	P90097	MCKINLEY HIGH SCHOOL, OAHU DESIGN FOR THE RENOVATION OF BUILDING W; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. DESIGN	EDN		700 700 B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
64.	P90098	MILILANI HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO RESURFACE THE SCHOOL PARKING LOT AND DRIVEWAYS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			12
		CONSTRUCTION			300
		TOTAL FUNDING	EDN	B	312 B
64.01.		MILILANI HIGH SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR INSTALLATION OF SYNTHETIC TURF, FIELD REPAIR, AND IMPROVEMENTS IN THE SPORTS STADIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		DESIGN			1
		CONSTRUCTION			2,498
		TOTAL FUNDING	EDN	B	2,500 B
64.02.		MILILANI MIDDLE SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF COVERED PLAY COURTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			2,499
		TOTAL FUNDING	EDN	B	2,500 B
65.	P90099	MILILANI UKA ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION FOR RESURFACING OF SAND WITH A PLAYGROUND COVER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			75
		TOTAL FUNDING	EDN	B	75 B
66.	P90100	MILILANI UKA ELEMENTARY SCHOOL, OAHU			
		CONSTRUCTION TO STABILIZE AN UNDEVELOPED ERODING SLOPE NEAR A SCHOOL BUILDING AND PLAYGROUND; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION		600	
		TOTAL FUNDING	EDN	600 B	B
66.01.		MILILANI UKA ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO RECONFIGURE STAGE IN SCHOOL CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			35
		TOTAL FUNDING	EDN	B	36 B



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
67.	P90101	MILILANI WAENA ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR VENTILATION OF POD CLASSROOMS WITH THE INSTALLATION OF SOLAR FANS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			50
		CONSTRUCTION			100
		TOTAL FUNDING	EDN	B	150B
68.	P90102	MILILANI WAENA ELEMENTARY SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR PARKING LOT EXPANSION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		1	
		CONSTRUCTION		99	
		TOTAL FUNDING	EDN	100B	B
69.	P90103	MOANALUA ELEMENTARY SCHOOL, OAHU CONSTRUCTION AND EQUIPMENT TO RESURFACE, REPAINT, AND REPAIR THE EXISTING DUAL-PURPOSE BASKETBALL/ VOLLEYBALL COURT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			130
		EQUIPMENT			2
		TOTAL FUNDING	EDN	B	132B
70.	P90104	MOANALUA MIDDLE SCHOOL, OAHU PLANS, DESIGN, AND CONSTRUCTION TO UPGRADE THE ELECTRICAL SYSTEM ACROSS THE ENTIRE CAMPUS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		10	
		DESIGN		10	
		CONSTRUCTION		430	
		TOTAL FUNDING	EDN	450B	B
71.	P90105	NANAKULI HIGH AND INTERMEDIATE SCHOOL, OAHU PLANS AND DESIGN FOR A MULTI-MEDIA BUILDING, WHICH INCLUDES A THEATER FOR THE DRAMA CLUB; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			550
		DESIGN			550
		TOTAL FUNDING	EDN	B	1,100B
71.01.		NANAKULI ELEMENTARY SCHOOL, OAHU PLANS AND CONSTRUCTION FOR UNDERGROUND PIPE REPAIRS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			1
		CONSTRUCTION			499
		TOTAL FUNDING	EDN	B	500B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
71.02.		NOELANI ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR LIBRARY IMPROVEMENTS TO ENLARGE LIBRARY COLLECTION AND WORK SPACE AND PROVIDE A TECHNOLOGY/MEDIA CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			50
		CONSTRUCTION			450
		TOTAL FUNDING EDN		B	500B
71.03.		NUUANU ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PARTITION IN CAFETERIA FOR USE AS A CLASSROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			2
		DESIGN			2
		CONSTRUCTION			10
		EQUIPMENT			25
		TOTAL FUNDING EDN		B	39B
72.	P90106	PALISADES ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR A CAMPUS WIDE ELECTRICAL UPGRADE, INCLUDING GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		600	
		CONSTRUCTION		3,000	
		TOTAL FUNDING EDN		3,600B	B
73.	P90107	PEARL CITY HIGH SCHOOL, OAHU			
		CONSTRUCTION AND EQUIPMENT FOR CAMPUS-WIDE NETWORKING AND COMMUNICATION SYSTEM UPGRADES, INCLUDING PHONES, INTERNET WIRING, MOBILE CARTS FOR MOVING NETWORKING EQUIPMENT, AND PAGING SYSTEMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION		25	
		EQUIPMENT		125	
		TOTAL FUNDING EDN		150B	B
74.	P90108	POPE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE PERIMETER FENCE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			50
		CONSTRUCTION			100
		TOTAL FUNDING EDN		B	150B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
75.	P90109	PUOHALA ELEMENTARY SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR ELECTRICAL UPGRADES TO THE WHOLE CAMPUS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		98	
		TOTAL FUNDING EDN		100B	B
76.	P90110	RADFORD HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION OF AN ALL-WEATHER TRACK; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			50
		CONSTRUCTION			1,300
		TOTAL FUNDING EDN		B	1,350B
77.	P90111	RADFORD HIGH SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION TO REPLACE THE GYMNASIUM FLOOR; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			5
		CONSTRUCTION			150
		TOTAL FUNDING EDN		B	155B
78.	P90112	RED HILL ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR ELECTRICAL UPGRADES. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		30	
		CONSTRUCTION		435	
		TOTAL FUNDING EDN		465B	B
79.	P90113	ROYAL ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A DRAINAGE SYSTEM ON THE FRONT LAWN; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			3
		CONSTRUCTION			90
		EQUIPMENT			3
		TOTAL FUNDING EDN		B	96B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
79.01.		ROYAL ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INSTALLATION OF GRILLS AND LOCKED GATES TO IMPROVE SECURITY FOR BUILDING B; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			10
		CONSTRUCTION			85
		EQUIPMENT			75
		TOTAL FUNDING	EDN	B	170B
80.	P90114	SALT LAKE ELEMENTARY SCHOOL, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO RENOVATE INTERIOR CLASSROOMS OF BUILDING F-10; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		200	
		CONSTRUCTION		500	
		EQUIPMENT		300	
		TOTAL FUNDING	EDN	1,000B	B
81.	P90115	STEVENSON MIDDLE SCHOOL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR A MULTIPURPOSE RECREATIONAL FACILITY INCLUDING CLASSROOMS, GYMNASIUM, LOCKER ROOMS, BAND ROOM AND MEETING SPACE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			10
		DESIGN			1,490
		CONSTRUCTION		4,000	
		TOTAL FUNDING	EDN	4,000B	1,500B
81.01.		STEVENSON MIDDLE SCHOOL, OAHU			
		PLANS, LAND ACQUISITION, CONSTRUCTION, AND EQUIPMENT FOR MULTI-PURPOSE EDUCATIONAL FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			275
		LAND			1,074
		CONSTRUCTION			6,351
		EQUIPMENT			50
		TOTAL FUNDING	EDN	B	7,750B
82.	P90116	WAIAKEA HIGH SCHOOL, HAWAII			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE SCHOOL'S NEW ALL-WEATHER TRACK AND FIELD FACILITY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		PLANS		1	1
		LAND			1
		DESIGN		100	500
		CONSTRUCTION		199	2,197
		EQUIPMENT			1
		TOTAL FUNDING	EDN	300B	2,700B
83.	P90117	WAIAKEAWAENA ELEMENTARY SCHOOL, HAWAII			
		CONSTRUCTION FOR ADDITIONAL PARKING ON KINO'OLE STREET; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			450
		TOTAL FUNDING	EDN	B	450B
84.	P90118	WAIALUA HIGH AND INTERMEDIATE SCHOOL, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS AND UPGRADES TO THE SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS LEARNING CENTER AS SUPPORT FOR THE ROBOTICS PROGRAM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			48
		DESIGN			100
		CONSTRUCTION			600
		EQUIPMENT			2
		TOTAL FUNDING	EDN	B	750B
85.	P90119	WAIHEE ELEMENTARY SCHOOL, MAUI			
		DESIGN AND CONSTRUCTION FOR RENOVATIONS AND STRUCTURAL IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			100
		CONSTRUCTION			500
		TOTAL FUNDING	EDN	B	600B
85.01.		WAIHEE ELEMENTARY SCHOOL, NEW ELEMENTARY SCHOOL, MAUI			
		PLANS AND DESIGN FOR A NEW ELEMENTARY SCHOOL IN WAIHEE, MAUI; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS			50
		DESIGN			700
		TOTAL FUNDING	EDN	B	750B
85.02.		WAIKOLOA ELEMENTARY SCHOOL, HAWAII			
		CONSTRUCTION TO CONNECT EXISTING PORTABLE CLASSROOM TO SCHOOL INFRASTRUCTURE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			70
		TOTAL FUNDING	EDN	B	70B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
86.	P90120	WAIKELE ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF THE FACULTY PARKING LOT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			1
		CONSTRUCTION			99
		TOTAL FUNDING	EDN	B	100B
87.01.		WAIMEA HIGH SCHOOL, KAUAI			
		DESIGN FOR EXPANSION OF JUNIOR VARSITY AND VARSITY LOCKER ROOMS AND ATHLETIC STORAGE FACILITY.			
		DESIGN			500
		TOTAL FUNDING	EDN	B	500B
88.	P90122	WAIPAHU ELEMENTARY SCHOOL, OAHU			
		DESIGN AND CONSTRUCTION FOR AN EIGHT-CLASSROOM BUILDING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN		100	
		CONSTRUCTION			1,200
		TOTAL FUNDING	EDN	100B	1,200B

EDN400 - SCHOOL SUPPORT

89.	000014	LUMP SUM CIP - PROJECT POSITIONS, STATEWIDE			
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT, PROJECT-FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF EDUCATION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.			
		PLANS		4,800	5,200
		TOTAL FUNDING	EDN	4,800B	5,200B

EDN600 - CHARTER SCHOOLS

89.01.		KAWAIKINI SEWER SYSTEM AND DETENTION BASIN, KAUAI			
		CONSTRUCTION TO INSTALL A NEW SEWAGE SYSTEM AND PUMP STATION TO ACCOMMODATE AN EXPANSION OF THE CHARTER SCHOOL'S CAMPUS. THESE IMPROVEMENTS ARE NECESSARY TO ENSURE THAT STANDARDS OF SAFETY AND ACCESSIBILITY ARE MET; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			254
		TOTAL FUNDING	EDN	C	254C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
89.02.		LANIKAI ELEMENTARY PUBLIC CHARTER SCHOOL, OAHU			
		CONSTRUCTION AND EQUIPMENT TO INSTALL PHOTOVOLTAIC PANELS AND EQUIPMENT ON EXISTING CAFETORIUM ROOF AND TO INSTALL CONVERTOR TO PROVIDE 100% OF THEIR POWER FOR THE SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION			250
		EQUIPMENT			250
		TOTAL FUNDING	EDN	C	500C
<b>EDN407 - PUBLIC LIBRARIES</b>					
90.	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 BUILDINGS AND GROUNDS, AND OTHERS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		200	1
		DESIGN		700	1
		CONSTRUCTION		2,000	997
		EQUIPMENT		100	1
		TOTAL FUNDING	AGS	3,000C	1,000C
91.	P90124	AIEA PUBLIC LIBRARY, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO RELOCATE AIEA PUBLIC LIBRARY FROM ITS CURRENT LOCATION TO A PARCEL OF LAND ALREADY OWNED BY THE STATE NEAR THE OLD SUGAR MILL PROPERTY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		PLANS		1	1
		DESIGN		1	900
		CONSTRUCTION		997	8,098
		EQUIPMENT		1	1
		TOTAL FUNDING	AGS	1,000C	9,000C
92.	P90125	MANOA PUBLIC LIBRARY, EXPANSION, OAHU			
		EQUIPMENT FOR THE NEW MANOA PUBLIC LIBRARY FACILITY, INCLUDING FURNITURE, SHELVING, RACKS, DISPLAYS, WHITE BOARDS, AND CARTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		EQUIPMENT		250	
		TOTAL FUNDING	AGS	250C	C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F	
93.	P90126	MCCULLY-MOILILI PUBLIC LIBRARY, SECURITY GATES AND FENCE, OAHU				
		PLANS, DESIGN, AND CONSTRUCTION OF SECURITY GATES AND FENCE AROUND THE FULL PERIMETER OF THE LIBRARY FACILITY AND PARKING AREA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.				
		PLANS		1		
		DESIGN		9		
		CONSTRUCTION		100		
		TOTAL FUNDING	AGS	110C		C
93.01.		MCCULLY-MOILILI PUBLIC LIBRARY, EXPANSION, OAHU				
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE COLLECTION AND WORK SPACE AREAS THROUGH ENCLOSURE OF THE NORTH AND SOUTH ENTRANCE FOYERS AND REDESIGN OF THE PRIMARY ACTIVITY AREAS TO IMPROVE STAFF AND PATRON ACTIVITIES AND FLOW; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.				
		PLANS				20
		DESIGN				50
		CONSTRUCTION				250
		EQUIPMENT				25
		TOTAL FUNDING	AGS		C	345C
<b>UOH100 - UNIVERSITY OF HAWAII, MANOA</b>						
94.	M96	UHM, FACULTY HOUSING, OAHU				
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FACULTY HOUSING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL PROJECT RELATED COSTS.				
		PLANS		999		
		LAND		1		
		DESIGN		4,000		1,000
		CONSTRUCTION				63,000
		EQUIPMENT				1,000
		TOTAL FUNDING	UOH	5,000E		65,000E



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
95.	R12	UHM, CENTER FOR MICROBIAL OCEANOGRAPHY RESEARCH AND EDUCATION BUILDING, OAHU DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE BIOMEDICAL SCIENCES BUILDING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, DEVELOPMENT OF NEW FACILITY, EQUIPMENT AND APPURTENANCES, COMMISSIONING, REFURBISHMENT OF EXISTING COURTYARDS, AND ALL PROJECT RELATED COSTS.		DESIGN 1,700 CONSTRUCTION EQUIPMENT TOTAL FUNDING UOH 1,700 E	20,799 1 20,800 E
96.	R13	UHM, CANCER RESEARCH CENTER OF HAWAII, OAHU PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE DEVELOPMENT OF THE CANCER RESEARCH CENTER OF HAWAII. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, DEVELOPMENT AND/OR ACQUISITION OF BUILDING, RENOVATIONS, AND ALL PROJECT RELATED COSTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.		PLANS 1 LAND 1 DESIGN 45,000 CONSTRUCTION 174,000 EQUIPMENT 17,300 TOTAL FUNDING UOH 45,005 B UOH 180,397 E UOH 10,900 N	B E N
97.	P90127	UHM, CLARENCE TC CHING COMPLEX, OAHU PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE CLARENCE TC CHING COMPLEX; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.		PLANS 1,000 DESIGN 1,000 CONSTRUCTION 8,000 TOTAL FUNDING UOH 5,000 C UOH 5,000 R	C R
98.	P90128	UHM, WOMEN'S LOCKER ROOM AND NAGATANI ACADEMIC CENTER EXPANSION AND REFURBISHMENT, OAHU DESIGN AND CONSTRUCTION FOR THE EXPANSION AND RENOVATION OF THE MAIN WOMEN'S LOCKER ROOM AND NAGATANI ACADEMIC CENTER.		DESIGN 500 CONSTRUCTION 4,000 TOTAL FUNDING UOH 4,250 C UOH 250 R	C R

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
99.	P90129	UHM, CAMPUS CENTER RENOVATION AND ADDITION, OAHU PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATION AND ADDITION TO THE CAMPUS CENTER COMPLEX.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		5,498	
		EQUIPMENT		1,500	
		TOTAL FUNDING UOH		7,000C	C
99.01.		UHM, KOMOHANA AGRICULTURAL COMPLEX, HAWAII CONSTRUCTION FOR PHASE II RENOVATION OF KOMOHANA AGRICULTURAL COMPLEX IN HILO, INCLUDING RENOVATIONS AND REPAIRS TO THE ADMINISTRATION BUILDING AND THE WET LABORATORY BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES; AND ALL RELATED PROJECT COSTS.			
		CONSTRUCTION			2,000
		TOTAL FUNDING UOH		C	2,000C
<b>UOH210 - UNIVERSITY OF HAWAII, HILO</b>					
100.	347	UHH, COLLEGE OF HAWAIIAN LANGUAGE BUILDING, HAWAII. PLANS, DESIGN, AND CONSTRUCTION FOR THE COLLEGE OF HAWAIIAN LANGUAGE BUILDING; GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.			
		PLANS		999	
		DESIGN		1	
		CONSTRUCTION			28,000
		TOTAL FUNDING UOH		1,000C	28,000C
101.	P90131	UHH, COLLEGE OF PHARMACY, HAWAII PLANS AND DESIGN FOR THE COLLEGE OF PHARMACY BUILDING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, DEVELOPMENT OF NEW FACILITY, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.			
		PLANS		1,000	
		DESIGN		4,500	
		TOTAL FUNDING UOH		5,500C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
<b>UOH700 - UNIVERSITY OF HAWAII, WEST OAHU</b>					
101.01.		UHWO, CAMPUS DEVELOPMENT, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE DEVELOPMENT OF THE UNIVERSITY OF HAWAII-WEST OAHU. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; CONSTRUCTION OF INFRASTRUCTURE AND NEW FACILITIES; AND ALL PROJECT RELATED COSTS.			
		DESIGN			1
		CONSTRUCTION			47,998
		EQUIPMENT			1
		TOTAL FUNDING UOH		C	48,000 C
<b>UOH800 - UNIVERSITY OF HAWAII, COMMUNITY COLLEGES</b>					
102.	M15	MAU, SCIENCE BUILDING, MAUI			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A SCIENCE BUILDING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, DEVELOPMENT OF NEW FACILITY, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.			
		DESIGN			1
		CONSTRUCTION		1	23,823
		EQUIPMENT		3,156	1
		TOTAL FUNDING UOH		3,157 C	23,825 C
103.	W50	WIN, LIBRARY AND LEARNING RESOURCES CENTER, OAHU			
		CONSTRUCTION AND EQUIPMENT FOR A LIBRARY AND LEARNING RESOURCES CENTER. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, DEVELOPMENT OF NEW FACILITY, PARKING, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.			
		CONSTRUCTION			1
		EQUIPMENT			1,577
		TOTAL FUNDING UOH		C	1,578 C
104.	P90132	MAU, MOLOKA'I CAMPUS, MOLOKA'I			
		PLANS AND LAND ACQUISITION FOR THE EXPANSION OF THE MOLOKA'I EDUCATION CENTER.			
		PLANS		1	
		LAND		499	
		TOTAL FUNDING UOH		500 C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
105.	P90133	LEE, WAIANAE EDUCATION CENTER, OAHU PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE WAIANAE EDUCATION CENTER.			
		PLANS			1
		LAND			500
		DESIGN			500
		CONSTRUCTION			1,998
		EQUIPMENT			1
		TOTAL FUNDING	UOH	C	3,000C
106.	P90134	HAW, EAST HAWAII MANONO CAMPUS BUILDING DEVELOPMENT AND NEW WEST HAWAII EDUCATION CENTER, HAWAII  PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE DEVELOPMENT OF THE HAWAII COMMUNITY COLLEGE MANONO CAMPUS AND FOR THE DEVELOPMENT OF THE NEW WEST HAWAII EDUCATION CENTER. PROJECT TO INCLUDE NEW CONSTRUCTION, RENOVATION OF EXISTING FACILITIES, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.			
		PLANS		100	
		DESIGN		1,000	
		CONSTRUCTION		8,800	
		EQUIPMENT		100	
		TOTAL FUNDING	UOH	10,000C	C
106.01.		KAPIOLANI COMMUNITY COLLEGE, OAHU  PLANS, DESIGN, AND CONSTRUCTION FOR CHAPEL REPAIRS AND MAINTENANCE, REFURBISHMENT WORK, NEW PAINT, AND ROOF AND INTERIOR REPAIRS.			
		PLANS			25
		DESIGN			50
		CONSTRUCTION			500
		TOTAL FUNDING	UOH	C	575C
<b>UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT</b>					
107.	536	SYS, HEALTH, SAFETY, AND CODE REQUIREMENTS, STATEWIDE  DESIGN AND CONSTRUCTION FOR MODIFICATIONS TO EXISTING FACILITIES AND/OR CONSTRUCTION OF NEW FACILITIES FOR HEALTH, SAFETY AND CODE REQUIREMENTS.			
		DESIGN		885	1,863
		CONSTRUCTION		7,955	16,762
		TOTAL FUNDING	UOH	8,840C	18,625C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
108.	541	SYS, CAPITAL RENEWAL AND DEFERRED MAINTENANCE, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CAPITAL RENEWAL AND DEFERRED MAINTENANCE PROJECTS AT THE UNIVERSITY OF HAWAII. PROJECT TO INCLUDE RE-ROOFING, MECHANICAL AND ELECTRICAL SYSTEMS, RENOVATIONS, RESURFACING, REPAINTING, AND OTHER REPAIRS AND PROJECT COSTS TO UPGRADE FACILITIES AT ALL UNIVERSITY CAMPUSES.			
		PLANS		1	1
		DESIGN		9,213	6,228
		CONSTRUCTION		97,785	56,055
		EQUIPMENT		1	1
		TOTAL FUNDING UOH		107,000C	62,285C
109.	P90135	SYS, INFORMATION TECHNOLOGY CENTER, STATEWIDE			
		CONSTRUCTION AND EQUIPMENT FOR AN INFORMATION TECHNOLOGY AND EMERGENCY OPERATIONS CENTER BUILDING TO SERVICE THE UNIVERSITY OF HAWAII SYSTEM AND THE MANOA CAMPUS. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, DEVELOPMENT OF A NEW FACILITY, AND ALL PROJECT RELATED COSTS.			
		CONSTRUCTION		37,979	
		EQUIPMENT			2,813
		TOTAL FUNDING UOH		12,660C	C
				25,319E	2,813E
110.	P90136	SYS, UNIVERSITY OF HAWAII PROJECT ADJUSTMENT FUND, STATEWIDE			
		PLANS FOR A PROJECT ADJUSTMENT FUND FOR THE UNIVERSITY OF HAWAII.			
		PLANS		1	1
		TOTAL FUNDING UOH		1C	1C
110.01.		SYS, UNIVERSITY OF HAWAII PROJECT RENOVATE TO INNOVATE, STATEWIDE			
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR UNIVERSITY OF HAWAII CAPITAL IMPROVEMENTS, REPAIRS, RENOVATIONS, AND RELATED IMPROVEMENTS. PROJECTS TO INCLUDE RENOVATION OF EXISTING FACILITIES, REPAIRS AND MAINTENANCE, AND OTHER CAPITAL PROJECTS AND PROJECT COSTS FOR UNIVERSITY OF HAWAII. PROJECTS TO INCLUDE PRIMARILY RESEARCH FACILITIES.			
		PLANS			20
		LAND			20
		DESIGN			20
		CONSTRUCTION			19,920

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
		EQUIPMENT			20
		TOTAL FUNDING	UOH	C	20,000 C
110.02.		SYS, MINOR CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR CAMPUSES OF THE COMMUNITY COLLEGE SYSTEM, STATEWIDE			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MINOR CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR CAMPUS FACILITIES WITHIN THE UNIVERSITY OF HAWAII, COMMUNITY COLLEGE SYSTEM.			
		PLANS			1
		DESIGN			198
		CONSTRUCTION			1,800
		EQUIPMENT			1
		TOTAL FUNDING	UOH	C	2,000 C
<b>H. CULTURE AND RECREATION</b>					
<b>AGS881 - STATE FOUNDATION ON CULTURE AND THE ARTS</b>					
1.	P90137	MAUI ARTS & CULTURAL CENTER, MAUI			
		CONSTRUCTION OF FINAL PHASE OF STAGE 3 OF "COMPLETING PUNDY'S DREAM" CAMPAIGN. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION			250
		TOTAL FUNDING	AGS		250 C
1.01.		CATHEDRAL OF ST. ANDREW, OAHU			
		CONSTRUCTION FOR PHASE I OF THE RENOVATION AND RESTORATION OF DAVIES HALL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION			500
		TOTAL FUNDING	AGS	C	500 C
1.02.		HAWAII THEATER CENTER, OAHU			
		DESIGN AND CONSTRUCTION FOR ENERGY EFFICIENCY RETROFITTING TO "DECREASE EXPENSES WHILE INCREASING CAPACITY USING ADVANCED GREEN TECHNOLOGIES IN THE LIMELIGHT." THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN			100
		CONSTRUCTION			100
		TOTAL FUNDING	AGS	C	200 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
<b>LNR804 - FOREST AND OUTDOOR RECREATION</b>					
1.03.		MAUNAWILI TRAIL, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR A TEMPORARY PARKING LOT AT MAUNAWILI TRAIL.			
		PLANS			5
		DESIGN			5
		CONSTRUCTION			15
		TOTAL FUNDING LNR		C	25C
<b>LNR806 - PARKS ADMINISTRATION AND OPERATION</b>					
2.	H54	STATE PARKS ENERGY EFFICIENCY AND CONSERVATION IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION OF ENERGY EFFICIENCY IMPROVEMENTS AND CONSERVATION IMPROVEMENTS.			
		DESIGN		1	
		CONSTRUCTION		999	
		TOTAL FUNDING LNR		1,000C	C
3.	P90138	KAUAI PLANNING AND ACTION ALLIANCE, INC., KAUAI			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RECONSTRUCTION OF NA PALI COAST STATE WILDERNESS PARK TRAIL, MILES 3 THROUGH 8. PROJECT TO INCLUDE THE INSTALLATION OF SAFETY FEATURES INCLUDING WARNING SIGNS. THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		200	
		DESIGN		150	
		CONSTRUCTION		700	
		EQUIPMENT		3	
		TOTAL FUNDING LNR		1,053C	C
4.	P90139	FRIENDS OF IOLANI PALACE, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT OF HURRICANE PROTECTION SYSTEMS FOR IOLANI PALACE AND TO RESTORE, REPAIR, AND REFINISH FACILITIES WITHIN THE PALACE COMPLEX, INCLUDING THE BARRACKS (HALE KOA) AND THE KANAINA BUILDING (OLD ARCHIVES). THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS.			
		DESIGN		10	
		CONSTRUCTION		305	
		EQUIPMENT		85	
		TOTAL FUNDING LNR		400C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL YEAR 2009-2010	FISCAL YEAR 2010-2011
<b>LNR801 - OCEAN-BASED RECREATION</b>					
5.	P90140	KAWAIHAE HARBOR, SOUTH BASIN, HAWAII DESIGN FOR A PAVED ACCESS ROADWAY AND WATER SYSTEM IMPROVEMENTS.		280	
		DESIGN		280	
		TOTAL FUNDING LNR		280C	C
6.	P90141	PORT ALLEN SMALL BOAT HARBOR, KAUAI PLANS AND DESIGN OF NEW CONCRETE PIERS, UTILITIES AND RELATED IMPROVEMENTS.		150	
		PLANS		150	
		DESIGN		150	
		TOTAL FUNDING LNR		300C	C
7.	P90142	PORT ALLEN SMALL BOAT HARBOR, KAUAI PLANS AND DESIGN OF NEW PIERS, UTILITIES, ROAD AND PARKING IMPROVEMENTS.		275	
		PLANS		275	
		DESIGN		275	
		TOTAL FUNDING LNR		550C	C
8.	P90143	MAALAEA SMALL BOAT HARBOR, MAUI DESIGN AND CONSTRUCTION FOR SEWER, ELECTRICAL, AND OTHER HARBOR IMPROVEMENTS, INCLUDING THE INSTALLATION OF PUMP-OUT FACILITIES.		1	
		DESIGN		1	
		CONSTRUCTION		2,499	
		TOTAL FUNDING LNR		2,500C	C
8.01.		NAWILIWILI SMALL BOAT HARBOR, KAUAI CONSTRUCTION FOR A NEW DISTRICT OFFICE TO REPLACE CURRENT OFFICE TRAILER.			
		CONSTRUCTION			300
		TOTAL FUNDING LNR		C	300C
<b>AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM</b>					
9.	Q104	LUMP SUM HEALTH AND SAFETY, ALOHA STADIUM, OAHU PLANS, DESIGN, AND CONSTRUCTION FOR THE MITIGATION/ELIMINATION OF CONDITIONS THAT MAY BECOME HAZARDOUS TO HEALTH AND SAFETY, INCLUDING REPAIRS, ALTERATIONS, AND IMPROVEMENTS TO THE ALOHA STADIUM TO MEET CODE, SAFETY, AND/OR OPERATIONAL REQUIREMENTS.		100	100
		PLANS		100	100
		DESIGN		3,900	1,000
		CONSTRUCTION		11,000	14,000
		TOTAL FUNDING AGS		15,000C	15,100C



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F	
9.01.	S101	ALOHA STADIUM FIELD, UPGRADE AND REPLACEMENT, OAHU CONSTRUCTION TO REPLACE THE PLAYING FIELD SYSTEM TO INCLUDE REPAVING THE UNDERLYING ASPHALT AND ADDING NEW DRAINAGE CHANNELS. CONSTRUCTION				2,000
		TOTAL FUNDING	AGS		C	2,000C
<b>I. PUBLIC SAFETY</b>						
<b>PSD404 - WAIAWA CORRECTIONAL FACILITY</b>						
1.	P90144	WAIAWA CORRECTIONAL FACILITY, WASTEWATER IMPROVEMENTS, OAHU DESIGN OF IMPROVEMENTS TO THE WASTEWATER SYSTEM TO REMEDY DEFICIENCIES. DESIGN				185
		TOTAL FUNDING	PSD			185C
<b>PSD900 - GENERAL ADMINISTRATION</b>						
2.	P90145	MAUI ECONOMIC OPPORTUNITY, INC., MAUI DESIGN AND CONSTRUCTION OF THE BEING EMPOWERED AND SAFE TOGETHER (BEST) REINTEGRATION PROGRAM HOUSE KE KAHUA AGRICULTURAL PROJECT. THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS. DESIGN				50
		CONSTRUCTION				200
		TOTAL FUNDING	PSD			250C
<b>DEF110 - AMELIORATION OF PHYSICAL DISASTERS</b>						
3.	A40	ENERGY SAVINGS IMPROVEMENTS AND RENEWABLE ENERGY PROJECTS, STATEWIDE DESIGN AND CONSTRUCTION FOR REPLACEMENT ENERGY EFFICIENT STATE OF THE ART BUILDING AIR CONDITIONING SYSTEMS TO REPLACE FAILING AND INEFFICIENT EQUIPMENT. PROJECT MAY ALSO IMPLEMENT EXTERNAL CONTROLS TO PROVIDE SET BACKS AND REDUCE ENERGY CONSUMPTION STATEWIDE BY USING RENEWABLE ENERGY TECHNOLOGIES TO REDUCE THE USE OF FOSSIL FUELS AND PROVIDE CLEAN AND RELIABLE ENERGY FOR HIGH CONSUMPTION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. DESIGN				250
		CONSTRUCTION				2,860
		TOTAL FUNDING	DEF			710C
			DEF			2,350N
						715C
						1,565N

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
4.	A45	BUILDING 19 RESTORATION, KALAELOA, OAHU DESIGN, CONSTRUCTION, AND EQUIPMENT TO RESTORE, REPAIR OR RENOVATE BUILDING 19 KALAELOA, FORMER MESS HALL AT THE FORMER BARBERS POINT NAVAL AIR STATION (BPNAS). PROJECT WILL DEVELOP READINESS CENTER SPACE TO INCLUDE VAULT, ADMINISTRATIVE, STORAGE, LOCKER ROOM, CLASSROOM, ASSEMBLY HALL, PHYSICAL TRAINING, RESTROOMS, AND KITCHEN SPACE FOR HEADQUARTERS DETACHMENT OF THE HAWAII ARMY NATIONAL GUARD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		400	
		CONSTRUCTION		5,000	
		EQUIPMENT			500
		TOTAL FUNDING	DEF	1,350C	125C
			DEF	4,050N	375N
5.	A46	MAIL DISTRIBUTION CENTER, BUILDING 175 REMODEL, KALAELOA, OAHU CONSTRUCTION AND EQUIPMENT TO REMODEL BUILDING 175 KALAELOA INTO A MAIL DISTRIBUTION CENTER FOR THE HAWAII ARMY NATIONAL GUARD (HIARNG). PROJECT WILL PROVIDE SPACE TO SORT AND INSPECT INCOMING AND OUTGOING OFFICIAL MAIL AND PACKAGES FOR DISTRIBUTION TO/FROM UNITS OF HIARNG. WORK TO INCLUDE CARPENTRY, MECHANICAL REMODELING, DEMOLITION, MASONRY, AND PAVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		1,100	
		EQUIPMENT			75
		TOTAL FUNDING	DEF	275C	C
			DEF	825N	75N
6.	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. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	1
		LAND		1	1
		DESIGN		165	165
		CONSTRUCTION		1,806	1,148
		EQUIPMENT		433	246
		TOTAL FUNDING	AGS	2,306C	1,461C
			AGS	100N	100N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
7.	C35	AMERICANS WITH DISABILITIES ACT (ADA) AND INFRASTRUCTURE IMPROVEMENTS, STATEWIDE			
		DESIGN AND CONSTRUCTION FOR MODIFICATIONS FOR PERSONS WITH DISABILITIES AND TO IDENTIFY AND CORRECT EXISTING DEFICIENCIES FOR THE DEPARTMENT OF DEFENSE (DOD) FACILITIES. THIS PROJECT IS NECESSARY TO MEET REQUIREMENTS IN ACCORDANCE WITH STATE AND FEDERAL LAWS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		250	
		CONSTRUCTION		1,550	1,650
		TOTAL FUNDING	AGS	900C	825C
			AGS	900N	825N
8.	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 AMERICANS WITH DISABILITIES ACT (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	1
		LAND		1	1
		DESIGN		23	25
		CONSTRUCTION		400	425
		EQUIPMENT		75	123
		TOTAL FUNDING	AGS	500C	575C
9.	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 TO INCREASE THE NUMBER OF PUBLIC SHELTERS STATEWIDE.			
		PLANS		1	1
		LAND		1	1
		DESIGN		298	23
		CONSTRUCTION		1,700	600
		EQUIPMENT		1,500	375
		TOTAL FUNDING	AGS	3,500C	1,000C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F

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 AND 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 FUND, STATEWIDE				
		CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND.				
		CONSTRUCTION			237,331	127,112
		TOTAL FUNDING BUF			237,331C	127,112C

4.	P90146	BISHOP MUSEUM, RENOVATION OF POLYNESIAN HALL, OAHU				
		CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION AND IMPROVEMENT OF THE POLYNESIAN HALL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		CONSTRUCTION			750	
		EQUIPMENT			250	
		TOTAL FUNDING AGS			1,000C	C

4.01.		BISHOP MUSEUM, ENERGY EFFICIENCY CAMPUS PROJECT, OAHU				
		CONSTRUCTION AND EQUIPMENT FOR BISHOP MUSEUM EFFICIENCY CAMPUS PROJECT. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.				
		DESIGN				143
		CONSTRUCTION				857
		TOTAL FUNDING AGS			C	1,000C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F

AGS131 - INFORMATION PROCESSING SERVICES

5. Q102 LUMP SUM HEALTH AND SAFETY, INFORMATION AND COMMUNICATION SERVICES DIVISION, STATEWIDE

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REPAIRS, UPGRADES AND EXPANSION OF CRITICAL COMMUNICATIONS BACKBONE SYSTEMS, INCLUDING THE STATEWIDE ANUENUE AND HAWAIIAN MICROWAVE SYSTEMS AND THE WINDWARD, NORTH SHORE, AND CENTRAL OAHU RADIO SITES.

PLANS	275	50
LAND	125	100
DESIGN	475	400
CONSTRUCTION	5,550	4,350
EQUIPMENT	2,500	500
TOTAL FUNDING AGS	8,925C	5,400C

LNR101 - PUBLIC LANDS MANAGEMENT

6. E00B BEACH IMPROVEMENTS, STATEWIDE

PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO WAIKIKI BEACH OR OTHER VISITOR AREA RESORT BEACHES.

PLANS	250	
DESIGN	250	
CONSTRUCTION	7,000	
TOTAL FUNDING LNR	1,500B	B
LNR	4,000R	R
LNR	2,000U	U

7. P90147 KAUAI PUBLIC LAND TRUST, KAUAI

PLANS FOR THE ACQUISITION AND LONG-TERM MANAGEMENT OF THE SITE FORMERLY KNOWN AS COCO PALMS RESORT. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

PLANS	234	
TOTAL FUNDING LNR	234C	C

- 7.01. DAM ASSESSMENTS, MAINTENANCE AND REMEDIATION, STATEWIDE

CONSTRUCTION FOR ASSESSMENT, MAINTENANCE AND REMEDIATION OF DAMS UNDER THE JURISDICTION OF THE DEPARTMENT OF LAND AND NATURAL RESOURCES.

CONSTRUCTION		7,500
TOTAL FUNDING LNR	R	2,500R
LNR	S	2,500S
LNR	U	2,500U

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F	
<b>AGS221 - PUBLIC WORKS - PLANNING, DESIGN, AND CONSTRUCTION</b>						
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. PROJECTS MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT AND EXEMPT FROM CHAPTER 76 CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.				
		PLANS		7,361	7,361	
		LAND		1	1	
		DESIGN		1	1	
		CONSTRUCTION		1	1	
		EQUIPMENT		1	1	
		TOTAL FUNDING	AGS	7,365 C	7,365 C	
9.	P60131	ENERGY CONSERVATION AND SUSTAINABLE DESIGN 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. EFFORTS WILL INCLUDE CONSIDERATION FOR SUSTAINABLE DESIGN TO THE FULLEST EXTENT POSSIBLE.				
		PLANS		250		
		DESIGN		500		
		CONSTRUCTION		8,289		
		EQUIPMENT		10		
		TOTAL FUNDING	AGS	9,049 C	C	
10.	Q101	LUMP SUM MAINTENANCE OF EXISTING FACILITIES, PUBLIC WORKS DIVISION, STATEWIDE				
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS AND MAINTENANCE OF PUBLIC FACILITIES AND SITES, STATEWIDE. PROJECTS MAY INCLUDE ROOFING, OTHER REPAIRS, AND IMPROVEMENTS.				
		PLANS		50	50	
		LAND		1	1	
		DESIGN		200	200	
		CONSTRUCTION		4,740	4,740	
		EQUIPMENT		9	9	
		TOTAL FUNDING	AGS	5,000 C	5,000 C	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
11.	P90148	DIAMOND HEAD THEATER, OAHU			
		PLANS, DESIGN AND PERMITTING FOR A NEW BUILDING. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		PLANS		25	
		DESIGN		25	
		TOTAL FUNDING	AGS	50C	C
11.01.		KAPAHULU SENIOR CENTER, OAHU			
		CONSTRUCTION TO MAIN BUILDING ROOF REPAIR. PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.			
		CONSTRUCTION			125
		TOTAL FUNDING	AGS	C	125C
<b>SUB301 - COUNTY OF HAWAII</b>					
11.02.	P90081	KA'U HIGH AND PAHALA ELEMENTARY SCHOOL, HAWAII			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A GYMNASIUM/CIVIL DEFENSE SHELTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.			
		DESIGN			50
		CONSTRUCTION			18,000
		EQUIPMENT			50
		TOTAL FUNDING	COH	C	18,100C
11.03.		NORTH KONA WELL, HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION OF NEW WELL TO IMPROVE THE QUALITY AND RELIABILITY OF THE NORTH KONA WATER SYSTEM.			
		PLANS			100
		DESIGN			200
		CONSTRUCTION			1,000
		TOTAL FUNDING	COH	C	1,300C
11.04.		PA'AUILO RENDERING PLANT AND SLAUGHTERHOUSE, HAWAII			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR BUILDING RENOVATIONS, INFRASTRUCTURE IMPROVEMENTS, AND EQUIPMENT REPLACEMENT FOR PA'AUILO RENDERING PLANT AND SLAUGHTERHOUSE.			
		PLANS			50
		DESIGN			100
		CONSTRUCTION			3,650
		EQUIPMENT			350
		TOTAL FUNDING	COH	C	4,150C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F

SUB401 - COUNTY OF MAUI

12. P90149 IMI KALA STREET EXTENSION, IAO STREAM BRIDGE IMPROVEMENTS, MAUI

DESIGN AND CONSTRUCTION FOR IAO STREAM BRIDGE AT IMI KALA STREET EXTENSION CONNECTING WAILUKU AND WAIEHU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN		500	
CONSTRUCTION		2,500	
TOTAL FUNDING	COM	3,000	C

13. P90150 NAHIKU COMMUNITY CENTER, MAUI

PLANS AND DESIGN FOR IMPROVEMENTS TO THE NAHIKU COMMUNITY CENTER. MATCHING FUNDS TO BE PROVIDED BY THE COUNTY OF MAUI.

PLANS		50	
DESIGN		200	
TOTAL FUNDING	COM	250	C

- 13.01. WAR MEMORIAL STADIUM, MAUI

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INSTALLATION OF NEW PA SYSTEM AND STANDARD EXTRA-LARGE SCOREBOARD LINE-UP TO REPLACE THE CENTER SECTION OF THE EXISTING SCOREBOARD.

PLANS			1
DESIGN			1
CONSTRUCTION			43
EQUIPMENT			100
TOTAL FUNDING	COM	C	145

SUB501 - COUNTY OF KAUAI

14. P90151 WAILUA EMERGENCY BYPASS ROAD, KAUAI

PLANS, DESIGN, AND CONSTRUCTION FOR REPAIRS AND RESURFACING TO THE WAILUA EMERGENCY BYPASS ROAD.

PLANS		25	
DESIGN		25	
CONSTRUCTION		900	
TOTAL FUNDING	COK	950	E



CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 2009-2010 F	FISCAL M YEAR O 2010-2011 F
15.	P90152	WAIMEA CANYON SCHOOL WATERLINE IMPROVEMENTS, KAUAI			
		CONSTRUCTION FOR THE INSTALLATION OF APPROXIMATELY 2,000 LINEAR FEET OF 12-INCH WATERLINE ALONG KAUMUALI'I HIGHWAY BETWEEN HUAKAI AND MOANA ROADS AND APPROXIMATELY 1,900 LINEAR FEET OF 12-INCH WATERLINE ALONG WAIMEA CANYON DRIVE BETWEEN KAUMUALI'I HIGHWAY AND HAINA ROAD.			
		CONSTRUCTION		2,500	
		TOTAL FUNDING COK		2,500 C	C
15.01.		KAPAA NEW PARK (STADIUM) IMPROVEMENTS, KAUAI			
		PLANS, DESIGN, AND CONSTRUCTION OF NEW PARK (STADIUM) IMPROVEMENTS NEAR KAPAA HIGH SCHOOL.			
		PLANS			5
		DESIGN			5
		CONSTRUCTION			490
		TOTAL FUNDING COK		C	500 C
15.02.		HANAIEI WATER SYSTEM, KAUAI			
		PLANS AND CONSTRUCTION FOR AN EIGHT-INCH DUCTILE IRON WATERLINE TO PROVIDE FIRE PROTECTION FOR HANAIEI SCHOOL.			
		PLANS			25
		CONSTRUCTION			100
		TOTAL FUNDING COK		C	125 C"

SECTION 6. Part V, Act 162, Session Laws of Hawaii 2009, is amended:

(1) By adding two new sections as follows:

"SECTION 63.1 Provided that of the revenue bond fund appropriation for the Honolulu international airport, Elliot street support facilities, Oahu, (TRN 102), the department of transportation in conjunction with the department of agriculture shall study the biosecurity needs of the State, including the need for the establishment of a biosecurity inspection facility at the Honolulu international airport, and submit a report of the findings and recommendations to the legislature at least twenty days prior to the convening of the regular session of 2011.

SECTION 63.2. Provided that of the revenue bond fund appropriation for Kona international airport at Keahole, terminal expansion (TRN114), the sum of \$5,500,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be used for the design and construction of improvements to the astronaut Ellison S. Onizuka space center."

(2) By amending Section 67 to read as follows:

"SECTION 67. Provided that of the general obligation bond fund appropriation for land and natural resources – natural physical environment (LNR 906), the sum of \$2,688,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the [same] sum of \$2,540,000 or so much thereof as may

be necessary for fiscal year 2010-2011 shall be used for department of land and natural resources capital improvements program staff costs, statewide; provided further that the department of land and natural resources shall prepare a project funded staff services budget report detailing each permanent position by number, position title, and compensation (including fringe benefits), in accordance with section 92F-12(a)(14), Hawaii Revised Statutes; provided further that the report shall include the details for non-permanent capital improvements program related positions; provided further that the report shall not be required to be posted on the department of land and natural resources' website; and provided further that the department of land and natural resources shall submit the budget report to the legislature no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.”

(3) By adding a new section to read as follows:

“SECTION 70.1. Provided that of the general obligation bond fund appropriation for Hawaii health systems corporation – corporate office (HTH 210), the sum of \$5,000,000, or so much thereof as may be necessary for fiscal year 2010-2011, shall be expended by the Hawaii health systems corporation for repair and maintenance projects as follows:

- (1) \$2,500,000 shall be used for infrastructure improvements and upgrade of patient monitoring system at Maui memorial medical center; and
- (2) \$1,870,000 for replacement of the existing steam line and for plumbing upgrades at Kula hospital.”

(4) By adding a new section to read as follows:

“SECTION 70.2. Provided that of the general obligation bond fund appropriation for the department of education – school-based budgeting (EDN100), the sum of \$140,500,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of \$30,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be used for school building improvements, statewide; provided further that the department of education shall prepare a report detailing each consultant contract executed during each fiscal year, including but not limited to each service provider's name and contact information, general contract terms, scope of contract, contract cost, contract duration, and status and accounting of work performed; and provided further that the department shall submit the consultant contract report to the legislature no later than twenty days prior to the convening of the 2011 regular session.”

(5) By adding a new section to read as follows:

“SECTION 70.3. Provided that of the general obligation bond fund appropriation for the department of education - school-based budgeting (EDN 100), the sum of \$4,350,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be used for gender equity projects of the department; provided that \$350,000 shall be used for the installation of lighting at the softball stadium at Lahainaluna high school.”

(6) By adding a new section to read as follows:

“SECTION 70.4. Provided that of the general obligation bond fund appropriation for the University of Hawaii, systemwide support (UOH 900), the sum of \$62,285,000, or so much thereof as may be necessary for fiscal year 2010-2011, shall be used for capital renewal and deferred maintenance projects; provided that:

- (1) \$520,000 for a new gymnasium to replace Klum gym at the University of Hawaii at Manoa;
- (2) \$1,700,000 for improvements to the softball stadium, including installation of new field lighting system, roofs over the first and third base bleacher stands, and locker rooms; and

(3) \$2,000,000 for a four-sided scoreboard and video display system, all auxiliary, shot clock, and locker room clock at Stan Sheriff Center."

(7) By adding a new section to read as follows:

"SECTION 73.1. Act 213, Session Laws of Hawaii 2007, section 125, as amended by Act 158, Session Laws of Hawaii 2008, section 5, is amended by adding a new section to read:

"SECTION 125.1. Provided that the appropriation made for the capital improvement project authorized by item C-89 of section 125 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, 2012, shall lapse as of that date."

(8) By adding a new section to read as follows:

"SECTION 73.2. 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, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>F-3A</u>	<u>\$5,000 C</u>
<u>G-142</u>	<u>7,074 C"</u>

(9) By adding a new section to read as follows:

"SECTION 73.3. 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, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>C-39</u>	<u>\$12,413 E</u>
<u>C-39</u>	<u>685,550 J</u>
<u>C-50</u>	<u>11,988 E</u>
<u>C-50</u>	<u>2,564 N</u>
<u>F-2</u>	<u>3,462 C</u>
<u>G-120</u>	<u>17,922 C</u>
<u>I-9</u>	<u>11,247 C</u>
<u>K-20</u>	<u>16,212 C</u>
<u>K-21</u>	<u>58,620 C"</u>

(10) By amending section 74 to read as follows:

"SECTION 74. 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, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>C-34</u>	<u>\$182,307 E</u>
<u>C-34</u>	<u>33,542 N</u>
<u>C-49Q</u>	<u>91,989 E</u>
<u>C-49Q</u>	<u>2,085,463 N</u>
<u>C-56</u>	<u>22,433 E</u>
<u>C-56</u>	<u>129,153 N</u>
<u>C-67A</u>	<u>1,143,939 B</u>
<u>C-67A</u>	<u>3,376,756 N</u>
<u>C-85A</u>	<u>[\$]17,446 C</u>
<u>G-97</u>	<u>10,369 C</u>

I-14 1,161 C  
K-31A 6,065 C”

(11) By amending section 75 to read as follows:

“SECTION 75. Any law to the contrary notwithstanding, the appropriations under Act [248] 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, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>C-111</u>	<u>284,901 E</u>
<u>C-111</u>	<u>1,115,664 N</u>
<u>C-117</u>	<u>179,406 E</u>
<u>C-117</u>	<u>3,365,667 N</u>
<u>C-123</u>	<u>79,476 E</u>
<u>C-123</u>	<u>141,205 N</u>
<u>C-159F</u>	<u>245,737 E</u>
<u>C-159F</u>	<u>176,687 N</u>
<u>C-164</u>	<u>274,920 B</u>
<u>C-164</u>	<u>1,306,129 N</u>
<u>C-172</u>	<u>272,234 E</u>
<u>C-172</u>	<u>4,939,596 N</u>
<u>C-178</u>	<u>43,055 B</u>
<u>C-178</u>	<u>59 E</u>
<u>C-178</u>	<u>164,707 N</u>
<u>C-184</u>	<u>203,799 E</u>
<u>C-184</u>	<u>486,356 N</u>
<u>C-201</u>	<u>52,400 E</u>
<u>C-206A</u>	<u>264,000 B</u>
<u>C-206A</u>	<u>72,809 E</u>
<u>C-206A</u>	<u>720,570 N</u>
<u>C-206C</u>	<u>94,379 E</u>
<u>G-118</u>	<u>1,280 C</u>
<u>G-129</u>	<u>5 C</u>
<u>I-10</u>	<u>[\$]92,527 C”</u>

(12) By amending section 76 to read as follows:

“SECTION 76. 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, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>A-16A</u>	<u>\$2,106 C</u>
<u>C-69</u>	<u>525,000 E</u>
<u>C-69</u>	<u>1,200,000 N</u>
<u>C-90</u>	<u>55,015 E</u>
<u>C-94</u>	<u>21,703 B</u>
<u>C-94</u>	<u>73,785 N</u>
<u>G-80B</u>	<u>71,420 C</u>
<u>G-95</u>	<u>7,843 C</u>
<u>I-5</u>	<u>16,971 C</u>
<u>I-9</u>	<u>48,086 C”</u>

(13) By amending section 77 to read as follows:

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“SECTION 77. Any law to the contrary notwithstanding, the appropriations under Act 259, Session Laws of Hawaii 2001, section 91, as amended and renumbered by Act 177, Session Laws of Hawaii 2002, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>A-4C</u>	<u>\$1,676,189 C</u>
<u>A-8B</u>	<u>[\$]23,523 C</u>
<u>C-64</u>	<u>1,397 B</u>
<u>C-64</u>	<u>92,214 E</u>
<u>C-64</u>	<u>123,376 N</u>
<u>C-97</u>	<u>168,921 E</u>
<u>C-97</u>	<u>947,711 N</u>
<u>G-54A</u>	<u>19,182 C</u>
<u>G-54E</u>	<u>104,155 C</u>
<u>G-54G</u>	<u>5,476,808 C”</u>

(14) By amending section 78 to read as follows:

“SECTION 78. 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, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>A-6</u>	<u>\$19 C</u>
<u>G-67</u>	<u>5,000,000 C</u>
<u>K-7</u>	<u>[\$]1,580,863 C</u>
<u>K-8</u>	<u>1,808,318 C</u>
<u>K-11.01</u>	<u>319,640 C”</u>

(15) By amending section 79 to read as follows:

“SECTION 79. Any law to the contrary notwithstanding, the appropriations under Act 178, Session Laws of Hawaii 2005, section 85, as amended and renumbered by Act 160, Session Laws of Hawaii 2006, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>F-4</u>	<u>\$3,054 C</u>
<u>G-37</u>	<u>2,000,000 B</u>
<u>G-38</u>	<u>500,000 B</u>
<u>G-47.01</u>	<u>1,500,000 B</u>
<u>G-53.01</u>	<u>176,000 B</u>
<u>G-57.02</u>	<u>50,000 B</u>
<u>G-62.02</u>	<u>1,000,000 B</u>
<u>G-65.01</u>	<u>38,000 B</u>
<u>G-73.01</u>	<u>80,000 B</u>
<u>G-74</u>	<u>100,000 B</u>
<u>G-79</u>	<u>2,000 B</u>
<u>G-95.01</u>	<u>1,000,000 B</u>
<u>G-97</u>	<u>25,000 B</u>
<u>G-97.01</u>	<u>1,350,000 B</u>
<u>H-14.01</u>	<u>[\$]2,500,000 C</u>
<u>I-6.01</u>	<u>280,099 C</u>
<u>K-3</u>	<u>7,812,000 C”</u>

(16) By amending section 80 to read as follows:

“SECTION 80. Any law to the contrary notwithstanding, the appropriations under Act 213, Session Laws of Hawaii 2007, section 125, as amended and renumbered by Act 158, Session Laws of Hawaii 2008, section 5, in the amounts indicated or balances thereof, unallotted, allotted, unencumbered, or encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>A-2.01</u>	<u>5,000,000 C</u>
A-7	\$400,000 C
<u>A-7.01</u>	<u>13,000,000 C</u>
A-9	125,000 C
A-9.01	200,000 C
A-10	260,000 C
A-11.02	\$50,000 C
A-14	179 C
A-18	125,000 C
B-1	100,000 C
B-7	75,000 C
B-9	250,000 C
B-8	250,000 C
<u>B-10</u>	<u>1,000,000 C</u>
B-10.04	500,000 C
<u>B-10.05</u>	<u>300,000 C</u>
<u>B-10.07</u>	<u>200,000 C</u>
<u>B-11</u>	<u>250,000 C</u>
C-74	1,200,000 C
<u>E-2.02</u>	<u>250,000 C</u>
D-3.03	100,000 C
<u>E-3</u>	<u>1,000,000 C</u>
<u>E-4</u>	<u>2,200,000 C</u>
<u>E-5</u>	<u>500,000 C</u>
<u>E-8</u>	<u>250,000 C</u>
E-9	250,000 C
E-13	80,000 C
<u>E-14.07</u>	<u>500,000 C</u>
E-16	125,000 C
E-16.01	200,000 C
<u>E-17</u>	<u>675,000 C</u>
E-19	1,800,000 C
<u>E-21</u>	<u>700,000 C</u>
F-1	75,000 C
<u>F-2</u>	<u>500,000 C</u>
<u>F-3</u>	<u>39,000 C</u>
<u>F-8</u>	<u>500,000 C</u>
<u>F-11</u>	<u>2,000,000 C</u>
<u>F-14</u>	<u>300,000 C</u>
F-16.01	1,454,000 C
F-18	550,000 C
<u>F-19</u>	<u>250,000 C</u>
<u>F-19.01</u>	<u>800,000 C</u>
G-16	125,000 B
G-17	1,500,000 B
<u>G-19</u>	<u>1,740,000 B</u>
G-20	100,000 B
<u>G-20.01</u>	<u>21,000 B</u>

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<u>G-21</u>	85,000 B
G-22.01	1,200,000 B
G-23.01	100,000 B
G-24	3,100,000 B
<u>G-24.01</u>	<u>285,000 B</u>
G-26	168,000 B
G-28.01	646,000 B
G-31	1,500,000 B
G-34	250,000 B
G-37	65,000 B
<u>G-37.01</u>	<u>250,000 B</u>
<u>G-37.02</u>	<u>850,000 B</u>
G-38	1,250,000 B
G-39	1,000,000 B
G-41	300,000 B
G-42	500,000 B
G-43	85,000 B
<u>G-44.01</u>	<u>500,000 B</u>
<u>G-46.01</u>	<u>35,000 B</u>
<u>G-47.01</u>	<u>153,000 B</u>
G-52	1,000,000 B
<u>G-53</u>	<u>100,000 B</u>
G-53.01	750,000 B
G-56	500,000 B
<u>G-56.01</u>	<u>600,000 B</u>
<u>G-56.02</u>	<u>375,000 B</u>
<u>G-57</u>	<u>8,000,000 B</u>
<u>G-59</u>	<u>1,000,000 B</u>
G-60	410,000 B
<u>G-62</u>	<u>700,000 B</u>
G-63	6,000,000 B
<u>G-64.01</u>	<u>800,000 B</u>
<u>G-64.03</u>	<u>512,000 B</u>
G-66	<u>940,000 B</u>
<u>G-66.01</u>	<u>80,000 B</u>
<u>G-66.02</u>	<u>10,000 B</u>
<u>G-66.03</u>	<u>10,000 B</u>
G-67	8,082,000 B
<u>G-68.01</u>	<u>450,000 B</u>
<u>G-70.01</u>	<u>930,000 B</u>
<u>G-71</u>	<u>2,500,000 B</u>
<u>G-72.01</u>	<u>484,000 B</u>
<u>G-73</u>	<u>2,160,000 B</u>
<u>G-74</u>	<u>12,300,000 B</u>
<u>G-74.01</u>	<u>950,000 B</u>
<u>G-75</u>	<u>1,545,000 B</u>
<u>G-75.01</u>	<u>700,000 B</u>
<u>G-76</u>	<u>1,337,000 B</u>
G-77	1,560,000 B
<u>G-77.01</u>	<u>10,000 B</u>
G-80	500,000 B
G-80.01	200,000 B
<u>G-81.01</u>	<u>200,000 B</u>
<u>G-85</u>	<u>65,000 B</u>

<u>G-86</u>	<u>400,000 B</u>
G-86.01	400,000 B
<u>G-87</u>	<u>280,000 B</u>
<u>G-89</u>	<u>7,750,000 B</u>
<u>G-89.01</u>	<u>1,500,000 B</u>
<u>G-91</u>	<u>400,000 B</u>
G-92	500,000 B
G-93	40,000 B
<u>G-93.01</u>	<u>825,000 B</u>
G-95	900,000 B
<u>G-95.01</u>	<u>10,000 B</u>
<u>G-95.02</u>	<u>10,000 B</u>
<u>G-95.03</u>	<u>1,500,000 B</u>
G-96	2,600,000 B
G-97	100,000 B
G-99	670,000 B
G-102	75,000 B
G-103	650,000 B
G-106	250,000 C
<u>G-106.01</u>	<u>1,800,000 C</u>
<u>G-106.02</u>	<u>200,000 C</u>
<u>G-111</u>	<u>3,000,000 C</u>
<u>G-113.01</u>	<u>100,000 C</u>
<u>G-117.06</u>	<u>12,500,000 A</u>
<u>G-124</u>	<u>15,000,000 C</u>
<u>G-127.01</u>	<u>3,500,000 C</u>
<u>G-127.02</u>	<u>23,825,000 C</u>
<u>G-127.03</u>	<u>200,000 C</u>
H-2	250,000 C
H-3	100,000 C
<u>H-13</u>	<u>500,000 C</u>
H-14	300,000 C
I-1	1,150,000 C
I-2	850,000 C
I-5	5,000,000 C
K-3	[37,676,000] 96,178,000 C
K-8	250,000 C
<u>K-14</u>	<u>434,868 C</u>
K-15	50,000 C
K-16	250,000 C
<u>K-18</u>	<u>250,000 C</u>
<u>K-19</u>	<u>300,000 C</u>
<u>K-23</u>	<u>2,500,000 C</u>
<u>K-23.01</u>	<u>200,000 C</u>
K-25	100,000 C”

SECTION 7. Part VI, Act 162, Session Laws of Hawaii 2009, is amended by:

(1) By adding a new section to read as follows:

“SECTION 81.1. Act 178, Session Laws of Hawaii 2005, section 105, as amended by Act 160, Session Laws of Hawaii 2006, section 7, is amended 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 162, Session Laws of Hawaii 2009, is amended by:

(1) By adding a new section to read as follows:

"SECTION 95.1. Provided that in the event that authorized appropriations specified for University of Hawaii capital improvements program projects listed in this Act or in any other act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the general obligation bond fund, the governor may make supplemental allotments from the University of Hawaii project adjustment fund appropriated in part II and described in part IV of this Act to supplement any currently authorized capital improvements program cost element; and provided further that the governor shall notify the legislature within five days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2011 regular session."

(2) By amending section 127 to read as follows:

"SECTION 127. Except as otherwise provided, the appropriation for the office of the governor (GOV 100) shall be expended at the discretion of the governor; provided further that for fiscal year 2010-2011, the outgoing administration shall not expend or encumber more than [\$1,655,338] \$1,236,780 and the incoming administration shall not expend or encumber more than [\$713,014] \$447,135 of the general fund appropriation[-]; provided further that the incoming administration shall not expend more than \$50,000 for the purposes of gubernatorial transition; and provided further that the office of the governor shall submit a report detailing the uses of gubernatorial transition funds to the leg-

islature no later than twenty days prior to the convening of the 2011 regular session.”

(3) By amending section 128 to read as follows:

“SECTION 128. Except as otherwise provided, the appropriation for the office of the lieutenant governor (LTG 100) shall be expended at the discretion of the lieutenant governor; provided further that for fiscal year 2010-2011, the outgoing administration shall not expend or encumber more than [~~\$360,823~~] \$300,508 and the incoming administration shall not expend or encumber more than [~~\$180,824~~] \$120,509 of the general fund appropriation.”

(4) By amending section 134 to read as follows:

“SECTION 134. Provided that 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) Positions entirely federally funded;
- (3) Positions established pursuant to section 76-16(b) subsections (3), (13), (21), and (23), Hawaii Revised Statutes;
- (4) Where an agency has explicit statutory authorization to establish new positions to accomplish necessary functions; or
- (5) Temporary positions funded wholly or partially with federal funds from the American Recovery and Reinvestment Act of 2009;

provided further that with regard to any of the positions identified in paragraphs (1), (2), (3), (4), or (5), the respective agency or department shall submit a report to the legislature within ten 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 2009-2010 and in fiscal year 2010-2011;
- (5) Source of funds used to pay for the position; and
- (6) Functions to be performed by the position;

and provided further that the department of budget and finance shall submit to the legislature a summary report of all uses of this proviso for the previous twelve month period from December 1 to November 30 no later than twenty days prior to the convening of the 2010 and 2011 regular sessions.”

(5) By adding a new section to read as follows:

“SECTION 137.1. Provided that of the general fund appropriation for Hawaii national guard youth challenge academy (DEF 114), the sum of \$60,000 or so much thereof as may be necessary for fiscal year 2010-2011 shall be transferred to the state auditor; and provided further that the state auditor shall conduct an audit of contracts related to the housing of inmates on the mainland; and provided further that the state auditor shall submit the report of its finding and recommendations no later than twenty days prior to the convening of the 2011 regular session.”

(6) By adding a new section to read as follows:

“SECTION 139.1. Provided that the department of transportation shall prepare a report on all travel-related expenses compensated by non-state organizations by program I.D. that shall include a detailed list of each instance of travel identifying:

- (1) Position traveling and the purpose;
- (2) Destination and departure and arrival dates;
- (3) Itemization of all compensated costs and the value; and

(4) Organization compensating the travel and the reason: provided further that the report shall encompass travel from December through November preceding the date the report is submitted; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2011 regular session.

(7) By amending section 140 to read as follows:

“SECTION 140. 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 \$154,626,065 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of [~~\$128,990,000~~] \$131,590,000 or so much thereof as may be necessary for fiscal year 2010-2011; provided further that these sums shall be expended for the implementation of the TANF program, its associated programs, and transfers to other programs; and provided further that any provision to expend funds from the current year or carry-over federal TANF funds shall be construed to be a portion of, and not in addition to, the sums indicated in this section.”

(8) By amending section 150 to read as follows:

“SECTION 150. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$19,800,000 or so much thereof as may be necessary for fiscal year 2009-2010 and the sum of [~~\$17,200,000~~] \$19,800,000 or so much thereof as may be necessary for fiscal year 2010-2011 that shall be transferred to the child care development fund.”

(9) By adding a new section to read as follows:

“SECTION 159.1. Provided that the department of Hawaiian home lands shall prepare a financial plan for the ensuing six years that shall include projected amounts and sources of revenue, details of projected expenditures, projected fund balances, and descriptions of major projects and methods of financing; and provided further that the department shall submit the plan to the legislature no later than twenty days prior to the convening of the 2011 regular session.”

(10) By adding a new section to read as follows:

“SECTION 159.2. Provided that the department of education shall prepare a report that shall include:

- (1) Adequate audited accounts, separated for both special and regular education ridership, for the 2009-2010 school year bus service;
- (2) A plan of action to secure dedicated funding for bus transportation services for all students, with emphasis on obtaining federal funds to pay for those student transportation services that are federally mandated; and
- (3) A review of all bus contracts then in effect, and the requirements imposed on successful bidders, the timing of those contracts, amortization schedules of affected buses, and bus schedules and written recommendations to enhance competitive bidding of school bus contracts; and

provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2011 regular session.”

(11) By adding a new section to read as follows:

“SECTION 160.1. Provided that the University of Hawaii shall prepare a detailed report on the sources of revenue for the research training and revolving fund, including the following information:

- (1) Purposes of the federal indirect overhead reimbursements;

- (2) A discussion on why reimbursements for overhead costs borne by the University and the general fund are directed to specific programs;
  - (3) The basis for distribution formulas and discretionary distribution and parties involved in determining said distributions;
  - (4) An analysis on how other universities in the Western Region utilize their indirect overhead funds;
  - (5) Alternative methods of determining equitable and more transparent distributions of federal indirect overhead funds;
  - (6) An analysis on how increased capital improvement expenditures can increase the federal indirect rate and estimates of the fiscal impacts to the University; and
  - (7) Discussion on what level of reimbursements to the general fund would be appropriate for additional investments in capital improvements;
- and provided further that the university shall submit the report to the legislature no later than twenty days prior to the convening of the 2011 regular session.”

(12) By amending Section 161 to read as follows:

“SECTION 161. Provided that the department of public safety shall prepare a report on overtime costs that shall include the following:

- (1) Amount budgeted for overtime by program I.D.;
- (2) Amount expended on overtime by program I.D.;
- (3) Explanation of the department’s plans to better reflect the true cost of overtime by submitting requests to the legislature to transfer funds currently being used for overtime from where the funds are budgeted to the overtime cost category; and
- (4) Strategies the department will use to reduce such expenditures in the future;

provided further that the report shall include actual expenditures on overtime from fiscal year 2003-2004 to fiscal year ~~2008-2009~~ 2009-2010; provided further that the report shall include to-date and projected expenditures on overtime for fiscal year ~~2009-2010~~ 2010-2011 to fiscal year 2014-2015; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the ~~2010~~ 2011 regular session.”

(13) By adding a new section to read as follows:

“SECTION 163.1. Provided that notwithstanding any laws to the contrary, no funds authorized by this or any prior appropriations act shall be expended or encumbered by or for the aloha tower development corporation; and provided further that the governor is authorized to transfer funds held or encumbered by the aloha tower development corporation to appropriate state agencies for the disbursement of its obligations.”

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.<sup>1</sup>

SECTION 12. Nothing in this Act shall affect the validity or continuing effectiveness of any provisions of Act 162, Session Laws of Hawaii 2009, not repealed or modified by this Act.

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

(Approved June 28, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 181

S.B. NO. 2173

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 Hawaii 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 Hawaii Constitution, which states in part:

“General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance.”

Article VII, section 13 also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including “reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year” and bonds constituting instruments of indebtedness under which the State “incurs a contingent liability as a guarantor, but only to the extent the

principal amount of such bonds does not exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded” under article VII, section 13.

- (2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 2009-2010 and estimated for each fiscal year from 2010-2011 to 2012-2013, is as follows:

<u>Fiscal Year</u>	<u>Net General Fund Revenues</u>	<u>Debt Limit</u>
2006-2007	\$5,122,620,268	
2007-2008	5,222,739,619	
2008-2009	5,034,984,956	
2009-2010	4,598,138,000	948,454,599
2010-2011	4,861,843,000	916,111,525
2011-2012	5,122,804,000	893,856,234
2012-2013	(not applicable)	899,271,742

For fiscal years 2009-2010, 2010-2011, 2011-2012, and 2012-2013, 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 2006-2007, 2007-2008, and 2008-2009 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, 2009, dated November 18, 2009. The net general fund revenues for fiscal years 2009-2010 to 2011-2012 are estimates, based on general fund revenue estimates made as of March 11, 2010, by the council on revenues, the body assigned by article VII, section 7 of the Hawaii Constitution to make such estimates, and based on estimates made by the department of budget and finance of those receipts that 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 Hawaii Constitution, for determining the power of the State to issue general obligation bonds within the debt limit as of April 1, 2010, is as follows for fiscal year 2010-2011 to fiscal year 2016-2017:

<u>Fiscal Year</u>	<u>Principal and Interest</u>
2010-2011	\$404,880,572
2011-2012	515,522,195
2012-2013	587,669,004
2013-2014	586,474,660
2014-2015	618,710,580
2015-2016	571,831,350
2016-2017	584,263,195

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds appli-

cable to the debt limit generally continues to decline each year from fiscal year 2017-2018 to fiscal year 2029-2030 when the final installment of \$46,565,113 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 \$193,500,000, 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 Hawaii 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, 2010, adjusted for:
    - (i) Appropriations to be funded by general obligation bonds or reimbursable general obligation bonds as provided in Act 162, Session Laws of Hawaii 2009 (the General Appropriations Act of 2009), to be expended in fiscal year 2010-2011, adjusted for additional appropriations provided in House Bill No. 2200, H.D. 1, S.D. 2, C.D. 1<sup>1</sup> (the Supplemental Appropriations Act of 2010);
    - (ii) Lapses as provided in House Bill No. 2200, H.D. 1, S.D. 2, C.D. 1<sup>1</sup> (the Supplemental Appropriations Act of 2010);
    - (iii) Appropriations to be funded by general obligation bonds or reimbursable general obligation bonds as provided in Act 139, Session Laws of Hawaii 2009 (the Judiciary Appropriations Act of 2009) to be expended in fiscal year 2010-2011, adjusted for additional appropriations provided in House Bill No. 2000, H.D. 2, S.D. 2, C.D. 1<sup>2</sup> (the Judiciary Supplemental Appropriations Act of 2010); and
    - (iv) Lapses as provided in House Bill No. 2000, H.D. 2, S.D. 2, C.D. 1<sup>2</sup> (the Judiciary Supplemental Appropriations Act of 2010);

the total amount of authorized but unissued general obligation bonds is \$1,522,109,695. The total amount of general obligation bonds authorized in this Act is \$326,115,000. The total amount of general obligation bonds previously authorized and unissued, as adjusted, and the general obligation bonds authorized in this Act is \$1,848,224,695.
  - (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 \$193,500,000, 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 Hawaii Constitution.
- (5) Proposed general obligation bond issuance. As reported therein for the fiscal years 2010-2011, 2011-2012, and 2012-2013, the State proposed to issue \$275,000,000 in general obligation bonds during the first half of fiscal year 2010-2011, \$275,000,000 in general obligation bonds during the second half of fiscal year 2010-2011, \$300,000,000 in general obligation bonds during the first half of fiscal year 2011-2012, \$375,000,000 in general obligation bonds dur-

- ing the second half of fiscal year 2011-2012, \$300,000,000 in general obligation bonds during the first half of fiscal year 2012-2013, and \$325,000,000 in general obligation bonds during the second half of fiscal year 2012-2013. 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 2010-2011 to 2011-2012 is \$1,225,000,000. An additional \$625,000,000 is proposed to be issued in fiscal year 2012-2013. The total amount of \$1,225,000,000 which is proposed to be issued through fiscal year 2011-2012 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, the total amount of which is \$1,848,224,695 reported in paragraph (4), except for \$623,224,695. It is assumed that the appropriations to which an additional \$623,224,695 in bond issuance needs to be applied will have been encumbered as of June 30, 2012. The \$625,000,000 that is proposed to be issued in fiscal year 2012-2013 will be sufficient to meet the requirements of the June 30, 2012, encumbrances in the amount of \$623,224,695. The amount of assumed encumbrances as of June 30, 2012, 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, 2012, and the amount of June 30, 2012, encumbrances versus the amount of bonds proposed to be issued in fiscal year 2012-2013, 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, accord-



ing to the department of budget and finance, the average proportion of principal and interest that is excludable each year from the calculation against the debt limit is 1.52 per cent for the ten years from fiscal year 2009-2010 to fiscal year 2018-2019. 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 that the legislature finds to be reasonable and conservative.

- (B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor can be excluded but only to the extent the principal amount of such guaranties does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of this paragraph (7); 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 Hawaii Constitution for the fiscal years 2009-2010, 2010-2011, 2011-2012, and 2012-2013 are as follows:

<u>Fiscal year</u>	<u>Total amount of General Obligation Bonds not otherwise excluded by Article VII, Section 13 of the Hawaii Constitution</u>
2009-2010	\$5,354,760,000
2010-2011	5,899,260,000
2011-2012	6,567,510,000
2012-2013	7,186,260,000

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 Hawaii 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 a net average interest rate, after giving effect to federal subsidy payments, if any, received by the State under and pursuant to the American Recovery and Reinvestment Act of 2009, as may be amended from time to time, not to exceed 5.25 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 <sup>st</sup> half FY 2010-2011 \$272,250,000	916,111,525	650,692,999 (2014-2015)
2 <sup>nd</sup> half FY 2010-2011 \$272,250,000	916,111,525	675,296,124 (2014-2015)
1 <sup>st</sup> half FY 2011-2012 \$297,000,000	893,856,234	690,888,624 (2014-2015)
2 <sup>nd</sup> half FY 2011-2012 \$371,250,000	893,856,234	710,379,249 (2014-2015)
1 <sup>st</sup> half FY 2012-2013 \$297,000,000	899,271,742	727,495,990 (2016-2017)
2 <sup>nd</sup> half FY 2012-2013 \$321,750,000	899,271,742	756,567,865 (2016-2017)

- (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 that will be issued, the amount of principal and interest on reimbursable general obligation bonds that are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 3. Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized in House Bill No. 2200, H.D. 1, S.D. 2, C.D. 1<sup>1</sup> (the Supplemental Appropriations Act of 2010) and House Bill No. 2000, H.D. 2, S.D. 2, C.D. 1<sup>2</sup> (the Judiciary Supplemental Appropriations Act of 2010), passed by the legislature during the regular session of 2010, and designated to be financed from the general obligation bond fund and from

**ACT 182**

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 \$326,115,000.

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, 2010.)

**Notes**

- 1. Act 180.
- 2. Act 132.

**ACT 182**

S.B. NO. 2842

A Bill for an Act Relating to the Permitted Transfers in Trust Act.

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

SECTION 1. Hawaii relies heavily on the travel industry as an economic engine. Because of instabilities in that industry, the State must seek out other sources of revenue to help stabilize the current budget crisis and fuel future economic growth. Hawaii can build on proven domestic and international estate and financial planning methodologies to amend its laws for the purpose of attracting foreign-source capital.

The intent of this Act is to offer incentives to high net-worth individuals throughout the United States and throughout the world to transfer a portion of their liquid net worth into this State for asset and trust management. This Act is designed to increase the assets under management by Hawaii's private financial sector, increase state tax revenues, and position the State as a world-class financial management jurisdiction.

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

**"CHAPTER  
PERMITTED TRANSFERS IN TRUST**

§ -1 **Short title.** This chapter shall be known and may be cited as the Permitted Transfers in Trust Act.

**§ -2 Definitions.** As used in this chapter:

“Cash” means United States currency.

“Claim” means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

“Creditor” means, with respect to a transferor, a person who has a claim.

“Debt” means liability on a claim.

“Former spouse” means a person to whom the transferor was married where the marriage was dissolved before the time of the permitted transfer.

“Grantor trust” means a trust described in sections 671 through 679 of the Internal Revenue Code of 1986, as amended.

“Marketable securities” means securities that are:

- (1) Exchanged on a governmentally regulated exchange within the United States including, common stocks, bonds, mutual funds, or exchange traded funds; and
- (2) Permitted to be held by a fiduciary under Hawaii state law; provided that “marketable securities” does not include real estate or any interests in corporations, partnerships, and limited liability companies that are not publicly traded.

“Non-grantor trust” shall refer to any trust that is not a “grantor trust” as defined in this chapter.

“Permitted property” means cash, marketable securities, life insurance contracts, and non-private annuities.

“Permitted transfer” means a transfer of permitted property by or from a transferor to a permitted trustee by means of a trust instrument, regardless of whether consideration is exchanged.

“Permitted trustee” means a person, other than the transferor, who is a resident of this State, or a bank or trust company authorized to do business in this State that possesses and exercises trust powers and has its principal place of business in this State.

“Person” means a natural person.

“Spouse” means a person to whom the transferor is married at the time of the permitted transfer.

“Transfer” means the disposition, conveyance, or assignment of permitted property to a permitted trustee or the exercise of a power that causes the disposition, conveyance, or assignment of permitted property to a permitted trustee.

“Transfer tax” means the tax described in section -12.

“Transferor” means an owner of permitted property; a holder of a power of appointment that authorizes the holder to appoint in favor of the holder, the holder’s creditors, the holder’s estate, or the creditors of the holder’s estate; or a trustee who directly or indirectly makes a disposition of permitted property.

“Trust instrument” means an irrevocable instrument appointing a permitted trustee for the permitted property that is the subject of a disposition.

**§ -3 Completed transfers.** The transfer of permitted property under this chapter shall be deemed completed following the completion of all of the following:

- (1) The delivery of permitted property by the transferor to the permitted trustee and the written acceptance of the permitted property by the permitted trustee;
- (2) The delivery by the transferor to the permitted trustee of a signed and notarized certificate of solvency that states that the amount

of the transfer is equal to or less than twenty-five per cent of the transferor's net worth and that the transfer will not result in delay, defrauding, or hindrance of a creditor who is known or knowable to the transferor at the time of the permitted transfer with a claim against the property that is subject to the transfer; and

- (3) The filing of the appropriate form by the transferor with the department of taxation and payment of the attendant transfer tax.

**§ -4 Permitted trustees.** (a) A permitted trustee means a person, other than the transferor, who is a resident of this State, or a bank or trust company authorized to do business in this State that possesses and exercises trust powers and has its principal place of business in this State.

(b) If a permitted trustee of a trust ceases to meet the requirements of subsection (a) and there remains no trustee that meets the requirements, the permitted trustee shall be deemed to have resigned as of the time that the trustee no longer meets the requirements of subsection (a). At that time, the successor permitted trustee provided for in the trust instrument shall become the permitted trustee of the trust. In the absence of any successor permitted trustee provided for in the trust instrument, a trust advisor or protector provided for in the trust instrument shall appoint a successor permitted trustee. In the absence of an appointed trust advisor or protector, a Hawaii court of competent jurisdiction shall, upon application of any interested party, appoint a successor permitted trustee.

(c) A permitted trustee may appoint an investment advisor to manage the assets of the trust fund; provided that administrative and non-administrative fiduciary responsibility shall remain vested, as against beneficiaries of the trust, with the permitted trustee.

**§ -5 Trust instrument.** (a) A trust instrument shall be irrevocable and shall expressly incorporate the laws of this State governing the validity, construction, and administration of the trust.

(b) The trustee, in its discretion, may terminate any trust if and when its fair market value has declined to the extent that would make it uneconomical, imprudent, or unwise to continue to retain the trust, and shall pay and distribute the trust to the persons entitled to mandatory or discretionary income distributions as the trustee in the trustee's absolute discretion shall decide.

(c) A trust instrument shall not be deemed revocable on account of the inclusion of:

- (1) A transferor's power to veto a distribution from the trust;
- (2) A power of appointment other than a power to appoint to the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate that may be exercised by will or other written instrument of the transferor effective only upon the transferor's death;
- (3) The transferor's potential or actual receipt of income, including rights to income retained in the trust instrument;
- (4) The transferor's annual receipt of a percentage not to exceed five per cent of the initial value of the trust assets or its value determined from time to time pursuant to the trust instrument or of a fixed amount that on an annual basis does not exceed five per cent of the initial value of the trust assets;
- (5) The transferor's potential or actual receipt or use of the trust's principal due to the discretionary action of a permitted trustee or to a provision in the trust instrument that governs the distribution of

principal; provided that any included provision shall not confer upon the transferor a substantially unfettered right to the receipt or use of the principal;

- (6) The transferor's right to remove a permitted trustee or advisor and to appoint a new permitted trustee or advisor;
- (7) The transferor's potential or actual receipt of income or principal to pay income taxes due on income of the trust if the trust instrument includes a provision allowing or directing the use of trust funds to pay income taxes due, or if the permitted trustee acts in the trustee's discretion to allow payment of income taxes due on the trust income; or
- (8) A permitted trustee's authority pursuant to discretion, direction, or the transferor's exercise of a testamentary power of appointment to pay all or any part of the transferor's debts outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate or inheritance tax imposed on or with respect to the transferor's estate.

(d) A trust instrument may provide that the interest of a beneficiary of the trust, including a beneficiary who is the transferor of the trust, may not be transferred, assigned, pledged, or mortgaged, whether voluntarily or involuntarily, before the permitted trustee actually distributes the property or income to the beneficiary. Any provision of this type contained in the trust instrument shall be deemed to be a restriction on the transfer of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of 11 United States Code Section 541(c)(2) of the Bankruptcy Code or any successor provision.

(e) A transferor may appoint, through the trust instrument, one or more advisors or protectors, including the following:

- (1) Advisors who have authority under the terms of the trust to remove and appoint permitted trustees, advisors, or protectors;
- (2) Advisors who have authority under the terms of the trust to direct, consent to, or disapprove of distributions from the trust; and
- (3) Advisors, including the transferor beneficiary of the trust, who serve as investment advisors to the trust.

(f) Whenever there shall be a dispute, deadlock, or difference of opinion between a permitted trustee and an advisor, the transferor may direct that the determination of the advisor shall be binding upon the permitted trustee, but that the permitted trustee shall bear no liability or accountability for any act or transaction entered into as a result of the enforcement of the advisor's privilege if the permitted trustee dissents in writing.

(g) If a trustee of a trust existing prior to the enactment of this chapter proposes to make a permitted transfer, but the trust instrument does not contain a power of appointment that conforms to section -5(c)(2), the trustee may deliver an irrevocable written election to have section -5(c)(2) apply to the trust, and the nonconforming powers of appointment shall be deemed modified to the extent necessary to conform with section -5(c)(2). The irrevocable written election shall include a description of the original transferor's powers of appointment as modified, and the original transferor's written consent to the modification. Consent of the original transferor to a modification of powers of appointment shall not be considered to be a permitted transfer.

(h) If, in any action brought against a trustee of a trust that results from a permitted transfer, a court declines to apply the law of this State in determining the validity, construction, or administration of the trust, or the effect of a spendthrift provision of the trust, the trustee, immediately upon the court's action

and without the further order of any court, shall cease to be trustee of the trust and a successor trustee shall thereupon succeed as trustee in accordance with the terms of the trust instrument. If the trust instrument does not provide for a successor trustee or does not provide for an advisor or protector with powers to appoint successor trustees, a Hawaii court of competent jurisdiction shall appoint a successor permitted trustee upon the application of any beneficiary of the trust under any terms and conditions that the court determines to be consistent with the purposes of the trust and with this chapter. Upon the removal of a trustee pursuant to this section, the trustee who has been removed shall have no power or authority other than to convey the trust property to the successor trustee.

§ -6 **Investments.** Nothing in this chapter shall prohibit a permitted trustee from diversifying trust assets; provided that a permitted trustee shall be authorized to invest only in permitted property, as defined in this chapter.

§ -7 **Retained interests of transferor.** (a) A permitted transfer shall be subject to this chapter notwithstanding a transferor's retention of any or all of the powers and rights described in section -5(c) and notwithstanding the transferor's service as investment advisor pursuant to section -5(e)(3).

(b) The transferor shall have only the powers and rights specifically conferred by the trust instrument. Except as permitted by sections -5(c) and -5(e), a transferor shall have no rights or authority with respect to the property that is the subject of a permitted transfer or to the income from property that is the subject of a permitted transfer. Any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void.

§ -8 **Avoidance of permitted transfers in trust.** (a) No claim, including an action to enforce a judgment entered by a court or other body having adjudicative authority, by a creditor against property that is subject to a permitted transfer that arises after a permitted transfer and no claim by a creditor to avoid a permitted transfer shall be brought at law or in equity for attachment or other provisional remedy unless the permitted transfer was made with actual intent to defraud, hinder, or delay the creditor.

(b) An allowable claim under subsection (a) of this section shall be extinguished unless:

- (1) The creditor's claim arose before the permitted transfer was made and the action is brought on the latter of the date of the permitted transfer or the date of the enactment of this section; or
- (2) The creditor's claim arose concurrent with or subsequent to the permitted transfer, and the action is brought within two years after the permitted transfer is made.

(c) In any action described in subsection (a), the burden to prove intent to defraud, hinder, or delay by clear and convincing evidence shall be upon the creditor.

(d) For purposes of this section, a permitted transfer that is made by a transferor who is a trustee shall be deemed to have been made as of the date that the property that is the subject of the permitted transfer was originally transferred via a trust instrument that meets the requirements of this chapter to the transferor or the transferor's predecessor in interest.

(e) Notwithstanding any law to the contrary, a creditor or other person who purports to have a claim against property that is the subject of a permitted transfer shall have only the rights, with respect to a permitted transfer, as are provided in this section and sections -9 and -10.

(f) No creditor or any other person shall have any claim or cause of action, including an action to enforce a judgment entered by a court or other body having adjudicative authority, against a trustee or advisor described in section -4(c) or against any person involved in drafting, preparing, executing, or funding a trust or in counseling the parties to a trust that is the subject of a permitted transfer if, as of the date of the action, the action would be barred under this section.

**§ -9 Limitations on permitted transfers.** The limitations contained in section -8 on actions by creditors to avoid permitted transfers shall not apply to:

- (1) Any person to whom the transferor is indebted on account of a family court-supervised agreement or family court order for the payment of support or alimony to the transferor's spouse, former spouse, or children, or for a division or distribution of property to the transferor's spouse or former spouse, but only to the extent of the debt and not to any claim for forced heirship, legitime, or elective share;
- (2) Any person who suffers death, personal injury, or property damage on or before the date of a permitted transfer; provided that the death, personal injury, or property damage is determined to have been caused in whole or in part by the tortious act or omission of either the transferor or another person for whom the transferor is or was vicariously liable to the extent of the transferor's liability or vicarious liability;
- (3) Any lender who extends a secured or collateralized loan to the transferor based on the transferor's or the transferor's agent's express or implied representation that the assets of a trust established under this chapter would be available as security against the loan in the event of the transferor's default thereon; or
- (4) The State of Hawaii to the extent that a transfer results in the transferor being unable to meet the transferor's tax liabilities, but only to the extent necessary to extinguish the outstanding tax liabilities.

**§ -10 Effect of avoidance of permitted transfers.** (a) A creditor may avoid a permitted transfer pursuant to section -8 only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the transfer has been avoided, together with costs, including attorney's fees, as allowed by a court.

(b) In an action pursuant to subsection (a) to avoid a permitted transfer:

- (1) If a court finds that a trustee has not acted with intent to defraud, hinder, or delay the creditor in accepting or administering the property that is the subject of the permitted transfer:
  - (A) The trustee shall have a first and paramount lien against the property that is the subject of the permitted transfer in an amount equal to the entire cost, including attorney's fees, properly incurred by the trustee in the defense of the action or proceedings to avoid the permitted transfer; and
  - (B) The permitted transfer shall be avoided, subject to payment of proper fees, costs, preexisting rights, claims, and interests of the trustee and of any predecessor trustee who has not acted with intent to defraud, hinder, or delay the creditor; and



- (2) If the court is satisfied that a beneficiary of the trust has not acted with intent to defraud, hinder, or delay the creditor, the permitted transfer shall be avoided subject to the beneficiary's right to retain any distribution made prior to the creditor's commencement of an action to avoid the permitted transfer. For purposes of this paragraph, it shall be presumed that a beneficiary did not act with intent to defraud, hinder, or delay the creditor merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.

(c) A creditor who brings an action pursuant to section -8 to avoid a permitted trust shall have the burden of proving by clear and convincing evidence that a trustee or beneficiary acted with intent to defraud, hinder, or delay the creditor; provided that in the case of a beneficiary who is also the transferor, the burden on the creditor shall be to prove by a preponderance of the evidence that the transferor-beneficiary acted with intent to defraud, hinder, or delay the creditor. Mere acceptance of permitted property by a trustee shall not constitute evidence of intent to defraud, hinder, or delay a creditor.

(d) Notwithstanding any other provision of this chapter, a creditor shall have no right against the interest of a beneficiary to a trust based solely on the beneficiary's right to authorize or direct the trustee to use all or part of the trust property to pay:

- (1) Estate or inheritance taxes imposed upon or due to the beneficiary's estate;
- (2) Debts of the beneficiary's estate; or
- (3) Expenses of administering the beneficiary's estate

unless the beneficiary actually directs the payment of taxes, debts, or expenses and then only to the extent of that direction.

**§ -11 Multiple transfers.** If more than one permitted transfer is made by means of the same trust instrument:

- (1) The making of a subsequent permitted transfer shall be disregarded in determining whether a creditor's claim with respect to a prior permitted transfer is extinguished as provided in section -8; and
- (2) Any distribution to a beneficiary shall be deemed to have been made from the latest permitted transfer.

**§ -12 Taxation.** (a) The State shall levy a one-time one per cent excise tax on the fair market value of all permitted transfers. This one-time excise tax shall be administered by the department of taxation with all of its authorities under title 14, including all rights relating to the assessment, collection, and enforcement of the tax laws. The department of taxation shall be authorized to implement the tax under this section, including the timing, collection, and appeal rights of persons affected, by rule, including temporary rule.

(b) A non-grantor trust established under this chapter shall be subject to income tax in Hawaii; provided that to the extent that the beneficial interest in the non-grantor trust shall be held by a beneficiary or beneficiaries residing outside this State, any income or capital gains accumulated for the benefit of the non-resident beneficiary or beneficiaries shall be excluded from Hawaii income tax for that year.

(c) A trustee of a non-grantor trust established under this chapter shall not be required to track accumulated income or gains attributable to a non-resident beneficiary.

(d) Notwithstanding any discretionary distribution provisions to the contrary, where the percentage interests of the beneficiaries are indeterminable

based on the provisions of the trust, the trustee shall allocate accumulated income and gains equally among all beneficiaries then entitled to distributions of income.

(e) Hawaii resident taxpayers who receive actual or constructive distributions of income or principal from trusts shall be subject to all applicable taxes on that income.”

SECTION 3. Section 525-4, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§525-4]]~~ **Exclusions from statutory rule against perpetuities.** Section 525-1 shall not apply to:

- (1) A fiduciary’s power to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;
- (2) A discretionary power of a trustee to distribute principal before termination of a trust;
- (3) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;
- (4) A property interest in or a power of appointment with respect to a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses; ~~[or]~~
- (5) A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by any other applicable law~~[-]; or~~
- (6) A trust described in chapter \_\_\_\_\_.”

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, 2010; provided that section 2 shall apply to permitted transfers made after the effective date of this Act.

(Approved June 28, 2010.)

## ACT 183

S.B. NO. 2068

A Bill for an Act Relating to Early Education.

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

SECTION 1. Act 219, Session Laws of Hawaii 2004, launched junior kindergarten beginning with the 2006-2007 school year, with the intent to enable all children in Hawaii to succeed in kindergarten and subsequent school experiences by addressing their varying developmental and learning needs. The legislature finds that thus far, only about one-third of the schools in the state have adopted some variation of the junior kindergarten program.

The intent of Act 14, Special Session Laws of Hawaii 2008, which established the State’s early learning system known as Keiki First Steps, was to integrate the cohort of children who would otherwise attend junior kindergarten

into the system over time, because as the legislature continues to find, these children may be placed more appropriately in a preschool setting. However, the legislature finds that more rapid progress must be made in finding cost-effective methods of providing early education.

The purpose of this Act is to:

- (1) Amend the age requirement for entrance into the public kindergarten program; and
- (2) Require the department of education and early learning council to work together on a plan to assess the success of public junior kindergarten programs at individual schools.

SECTION 2. Section 302A-411, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Beginning with the 2004-2005 school year, a child who will be at least five years of age on or before December 31 of the school year may attend a public school kindergarten. Beginning with the 2006-2007 school year, a child who will be at least five years of age on or before August 1 of the school year may attend a public school kindergarten. Beginning with the 2006-2007 school year, a child who will be at least five years of age after August 1 and before January 1 of the school year may attend a public school junior kindergarten. Beginning with the 2013-2014 school year, a child who will be at least five years of age on the first day of instruction may attend a public school kindergarten.”

SECTION 3. The department of education and early learning council shall work together to develop a plan to assess the success of public junior kindergarten programs at individual schools. The plan shall:

- (1) Provide for early childhood educational opportunities for the children who would have otherwise been eligible for junior kindergarten or kindergarten; and
- (2) Recommend a funding plan with the following features:
  - (A) Supports the education of four year olds, including children who would have been eligible to attend public school prior to the age change provided for under section 302A-411(c), Hawaii Revised Statutes, pursuant to this Act;
  - (B) Be tiered and based on family income; and
  - (C) Incorporates public and private funding sources.

The department of education and early learning council shall submit the plan and any proposed legislation to the legislature no later than twenty days prior to the convening of the 2011 regular session.

SECTION 4. New statutory material is underscored.

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

(Approved June 29, 2010.)

A Bill for an Act Relating to the Hawaii Teacher Standards Board.

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

SECTION 1. The legislature finds that part II, Act 2, Special Session Laws of Hawaii 2009, required the legislative reference bureau, the University

of Hawaii at Manoa college of education, and the Hawaii teacher standards board to make recommendations to the 2010 legislature regarding the roles and responsibilities of the Hawaii teacher standards board. *The Hawaii Teacher Standards Board – is Oversight Needed?*, Report No. 1, 2010, by the legislative reference bureau; *Report on Hawai'i Teacher Standards Board*, November 2009, by the University of Hawaii system; and *Report to the 2010 Legislature in Response to HB183 CD1*, by the Hawaii teacher standards board, contain numerous recommendations, both long- and short-term.

The purpose of this Act is to implement recommendations for the Hawaii teacher standards board from these three reports by:

- (1) Requiring the board to include expenditure information in its annual report;
- (2) Authorizing the board to delegate to its executive director, or other designee, any of its powers and duties as it deems reasonable and proper;
- (3) Adding additional licensure renewal requirements and verification of meeting licensure renewal requirements;
- (4) Requiring the board to review implementation of revised license fee collections and determine if fees shall be raised;
- (5) Requiring the board to develop a comprehensive plan for transferring nonessential functions and duties to other agencies;
- (6) Requiring the board to review its teacher license renewal process; and
- (7) Requiring the board and the department of education to clarify their respective powers, duties, responsibilities, and the relationship between the two agencies.

SECTION 2. Section 302A-803, Hawaii Revised Statutes, is amended to read as follows:

**“§302A-803 Powers and duties of the board.** (a) In addition to establishing standards for the issuance and renewal of licenses and any other powers and duties authorized by law, the board’s powers shall also include:

- (1) Setting and administering its own budget;
- (2) Adopting, amending, or repealing the rules of the board in accordance with chapter 91;
- (3) Receiving grants or donations from private foundations, and state and federal funds;
- (4) Submitting an annual report to the governor, the legislature, and the board of education on the board’s operations and expenditures, and from the 2007-2008 school year, submitting a summary report every five years of the board’s accomplishment of objectives, efforts to improve or maintain teacher quality, and efforts to keep its operations responsive and efficient;
- (5) Conducting a cyclical review of standards and suggesting revisions for their improvement;
- (6) Establishing licensing fees in accordance with chapter 91 and determining the manner by which fees are collected and subsequently deposited into the state treasury and credited to the Hawaii teacher standards board special fund;
- (7) Establishing penalties in accordance with chapter 91;
- (8) Issuing, renewing, revoking, suspending, and reinstating licenses;
- (9) Reviewing reports from the department on individuals hired on an emergency basis;

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

(b) If, in accordance with chapter 92, the board determines, on a case-by-case basis, that extenuating circumstances exist to justify the suspension, the board may temporarily suspend its rules, or any portion thereof. The board shall establish, in accordance with chapter 91, procedures for the suspension of its rules. When determining whether to suspend its rules, the board shall also establish the length of time for which the suspension shall be in effect.

(c) The board, in accordance with chapter 92, may also amend licensing-related fees and set or amend other charges related to the performance of its duties.

(d) The board may delegate to its executive director, or other designee, any of its powers and duties as it deems reasonable and proper; provided that the delegation of powers and duties by the board shall be made in accordance with procedures set forth in this subsection. The board shall not delegate its discretionary functions resulting in a final decision in:

- (1) Adopting, amending, or repealing rules;
- (2) Ordering disciplinary action against a licensee, including license revocation or suspension, or the imposition of conditions or fines; provided that summary suspensions may be delegated; or
- (3) Granting or denying permits or licenses, including license renewals and reinstatements, or otherwise conditioning permits or licenses, unless the granting, denying, or otherwise conditioning of a permit or license does not require the exercise of the board's expertise and discretion.

To delegate authority, the concurrence of a majority of the members to which the board is entitled shall be necessary for any action taken by the board to be valid. The board shall conduct its meetings to delegate powers and duties to its executive director, or other designee, in accordance with chapters 91 and 92."

SECTION 3. Section 302A-805, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Beginning July 1, 2002, all licenses shall be issued by the board. No person shall serve as a half-time or full-time teacher in a public school without first having obtained a license from the board under this subpart. All licenses issued by the board shall be valid only for the fields and levels specified on the licenses and shall be renewable every five years if the individual continues to:

- (1) Satisfy the board's licensing standards[;] and submits verification, in a form specified by the board, that the individual has completed

activities specified by the board in fulfillment of each of the teacher performance standards established by the board;

- (2) Show evidence of successful teaching in the previous five years[; and] through verification by a supervisor, in a form specified by the board;
- (3) Meet the professional fitness requirements established by the board; and

~~(3)~~ (4) Satisfy the board's requirements for renewal of licenses.

The board shall randomly audit a licensee's compliance with paragraph (1) and may establish rules, pursuant to chapter 91, for the random audits."

SECTION 4. (a) The Hawaii teacher standards board recently reviewed its license fee schedule and determined that it would not, at this time, increase fees in view of the current economy. The board is working with eHawaii.gov to use credit card and eCheck payments of license fees instead of the current payroll deduction method, which will enable the board to have a better accounting of fees being collected and ensure that all licensees are paying their fees. The current payroll deduction method was created in 1997, and is administered by the department of education, making license fee payment heavily reliant on a teacher's employment status. In all other states license fees are paid in advance of receiving a license, not on a pay-as-you-go basis as exists in Hawaii. The board's new payment method is expected to address this matter, and the board is providing for a transition period for licensees and allowing licensees to choose from among several payment options as long as payment for a five-year license is made over a period of no more than twelve months.

(b) The board shall review implementation of the revised fee collections and determine if the changes result in sufficient increased income to fund fully the expenses of the board, including all operations and personnel costs, and reimbursement to board members for travel expenses, pursuant to section 302A-806, Hawaii Revised Statutes.

(c) If, by December 1, 2010, the board determines that the increased revenue is not sufficient to fund fully the expenses of the board, the board shall submit to the legislature no later than twenty days prior to the regular session of 2011 a plan and timetable for increasing the license fees.

SECTION 5. (a) The Hawaii teacher standards board is responsible for establishing licensing standards that govern teacher licensing; issuing, renewing, revoking, suspending, and reinstating teacher licenses; approving teacher education programs in the State; and developing, implementing, and administering the national board certification support program. The board has been unable to carry out all its responsibilities successfully and may need to transfer some of the duties to other agencies.

(b) The board shall develop a comprehensive plan for transferring non-essential functions and duties to other agencies, including the department of education.

(c) The board shall submit the plan to the legislature no later than twenty days prior to the regular session of 2011.

SECTION 6. (a) While the Hawaii teacher standards board has developed teacher licensing standards, it has failed to require teachers seeking license renewal to verify that they meet all ten teacher performance standards as is required by section 302A-805(a), Hawaii Revised Statutes. Moreover, teachers who currently hold licenses that are due for an initial renewal do not have to demonstrate that they meet any of the standards, because the mere payment of

the license renewal fee and the completion of an application will entitle these teachers to a renewed license. Not until the teachers' subsequent renewal, five years later, will licensing standards be applied, and then the applicant must only provide evidence of meeting two of the ten teacher performance standards.

(b) The board shall review its teacher license renewal process and determine whether the board should:

- (1) Modify the licensing standards;
- (2) Modify its approach in determining whether a renewal applicant is in compliance by having satisfied all the standards; or
- (3) Recommend amendments to section 302A-805(a), Hawaii Revised Statutes, to conform to the board's present requirements for license renewal and thus eliminate the conflict with the statute.

(c) The board shall submit findings and recommendations to the legislature no later than twenty days prior to convening of the regular session of 2011.

SECTION 7. (a) The Hawaii teacher standards board has been administratively attached to the department of education since 1995, yet the board and its executive director have failed to understand the nature of the relationship of an attached agency and principal department, and their appropriate roles. This has impeded development of a smooth working relationship between the two entities and contributed to the lack of oversight of the board's operations, including the board's failure to provide oversight of its executive director, the board's finances, or the development of the online licensing system.

(b) The Hawaii teacher standards board and the department of education shall clarify their respective powers, duties, responsibilities, and the relationship between the two agencies, including the interim policies and procedures for the mutual sharing of data necessary for licensing and verifying the status of teachers, pursuant to section 6 of Act 2, Special Session Laws of Hawaii 2009.

(c) The board shall submit findings and recommendations to the legislature no later than twenty days prior to the regular session of 2011.

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 30, 2010; provided that the amendments to section 302A-805, Hawaii Revised Statutes, made by section 3 of this Act shall not be repealed when section 302A-805, Hawaii Revised Statutes, is repealed and reenacted on July 1, 2010, by section 12 of Act 2, Special Session Laws of Hawaii 2009.

(Approved June 29, 2010.)

**ACT 185**

H.B. NO. 2897

A Bill for an Act Relating to Contractors.

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

SECTION 1. Section 444-17, Hawaii Revised Statutes, is amended to read as follows:

**“§444-17 Revocation, suspension, and renewal of licenses.** In addition to any other actions authorized by law, the board may revoke any license issued pursuant to this section, or suspend the right of a licensee to use a license, or refuse to renew a license for any cause authorized by law, including:

- (1) Any dishonest, fraudulent, or deceitful act as a contractor that causes substantial damage to another;
- (2) Engaging in any unfair or deceptive act or practice as prohibited by section 480-2;
- (3) Abandonment of any construction project or operation without reasonable or legal excuse;
- (4) Wilful diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and the use thereof for any other purpose;
- (5) Wilful departure from, or wilful disregard of plans or specifications in any material respect without consent of the owner or the owner's duly authorized representative, that is prejudicial to a person entitled to have the construction project or operation completed in accordance with those plans and specifications;
- (6) Wilful violation of any law of the State, or any county, relating to building, including any violation of any applicable rule of the department of health, or of any applicable safety or labor law;
- (7) Failure to make and keep records showing all contracts, documents, records, receipts, and disbursements by a licensee of all the licensee's transactions as a contractor for a period of not less than three years after completion of any construction project or operation to which the records refer or to permit inspection of those records by the board;
- (8) When the licensee being a partnership or a joint venture permits any partner, member, or employee of the partnership or joint venture who does not hold a license to have the direct management of the contracting business thereof;
- (9) When the licensee being a corporation permits any officer or employee of the corporation who does not hold a license to have the direct management of the contracting business thereof;
- (10) Misrepresentation of a material fact by an applicant in obtaining a license;
- (11) Failure of a licensee to complete in a material respect any construction project or operation for the agreed price if the failure is without legal excuse;
- (12) Wilful failure in any material respect to comply with this chapter or the rules adopted pursuant thereto;
- (13) Wilful failure or refusal to prosecute a project or operation to completion with reasonable diligence;
- (14) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with the licensee's operations as a contractor when the licensee has the ability to pay or when the licensee has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- (15) The false denial of any debt due or the validity of the claim therefor with intent to secure for a licensee, the licensee's employer, or other



- person, any discount of the debt or with intent to hinder, delay, or defraud the person to whom the debt is due;
- (16) Failure to secure or maintain workers' compensation insurance, unless the licensee is authorized to act as a self-insurer under chapter 386 or is excluded from the requirements of chapter 386;
  - (17) Entering into a contract with an unlicensed contractor involving work or activity for the performance of which licensing is required under this chapter;
  - (18) Performing service on a residential or commercial air conditioner using CFCs without using refrigerant recovery and recycling equipment;
  - (19) Performing service on any air conditioner after January 1, 1994, without successful completion of an appropriate training course in the recovery and recycling of CFC and HCFC refrigerants, which included instruction in the proper use of refrigerant recovery and recycling equipment that is certified by Underwriters Laboratories, Incorporated;
  - (20) Violating chapter 342C;
  - (21) Failure to pay delinquent taxes, interest, and penalties assessed under chapter 237 that relate to the business of contracting, or to comply with the terms of a conditional payment plan with the department of taxation for the payment of such delinquent taxes, interest, and penalties; and
  - (22) Knowingly or intentionally employing a person [~~to perform work under a contract subject to chapter 104~~] who is not eligible to work in the United States under federal law[-] to perform work on any project or operation.

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; provided that this Act shall be repealed on June 30, 2013, and section 444-17, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.

(Approved June 30, 2010.)

**ACT 186**

S.B. NO. 2231

A Bill for an Act Relating to Electric Vehicles.

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

SECTION 1. Chapter 196, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§196- Placement of electric vehicle charging system.** (a) Notwithstanding any law to the contrary, no person shall be prevented by any covenant, declaration, bylaw, restriction, deed, lease, term, provision, condition, codicil, contract, or similar agreement, however worded, from installing an electric vehicle charging system on or near the parking stall of any multi-family residential dwelling or townhouse that the person owns. Any provision in any lease,

instrument, or contract contrary to the intent of this section shall be void and unenforceable.

(b) Every private entity may adopt rules that reasonably restrict the placement and use of electric vehicle charging systems for the purpose of charging electrical vehicles in the parking stalls of any multi-family residential dwelling or townhouse; provided that those restrictions shall not prohibit the placement or use of electric vehicle charging systems altogether. No private entity shall assess or charge any homeowner any fees for the placement of any electric vehicle charging system; provided that the private entity may require reimbursement for the cost of electricity used by such electric vehicle charging system.

(c) Any person may place an electric vehicle charging system on or near the parking stall of any multi-family residential dwelling or townhouse unit owned by that person; provided that:

- (1) The system is in compliance with any rules and specifications adopted pursuant to subsection (b);
- (2) The system is registered with the private entity of record within thirty days of installation;
- (3) If the system is placed on a common element or limited common element as defined by a project's declaration, the homeowner shall first obtain the consent of the private entity; provided further that such consent shall be given if the homeowner agrees in writing to:
  - (A) Comply with the private entity's design specification for the installation of the system;
  - (B) Engage a duly licensed contractor to install the system; and
  - (C) Within fourteen days of approval of the system by the private entity, provide a certificate of insurance naming the private entity as an additional insured on the homeowner's insurance policy.

(d) If an electric vehicle charging system is placed on a common element or limited common element:

- (1) The owner and each successive owner of the parking stall on which or near where the system is placed shall be responsible for any costs for damages to the system, common elements, limited common elements, and any adjacent units, arising or resulting from the installation, maintenance, repair, removal, or replacement of the system. The repair, maintenance, removal, and replacement responsibilities shall be assumed by each successive owner until the electric vehicle charging system has been removed from the common elements or limited common elements. The owner and each successive owner shall at all times have and maintain a policy of insurance covering the obligations of the owner under this paragraph and shall name the private entity as an additional insured under the policy; and
- (2) The owner and any successive owner of the parking stall on which or near where the system is placed shall be responsible for removing the electric vehicle charging system if reasonably necessary or convenient for the repair, maintenance, or replacement of the common elements or limited common elements.

(e) For the purpose of this section:

"Electric vehicle charging system" means a system that is designed in compliance with Article 625 of the National Electrical Code and delivers electricity from a source outside an electric vehicle into one or more electric vehicles. An electric vehicle charging system may include several charge points simultaneously connecting several electric vehicles to the system.

“Private entity” means any association of homeowners, community association, condominium association, cooperative, or any other nongovernmental entity with covenants, bylaws, and administrative provisions with which a homeowner’s compliance is required.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect on July 1, 2010.

(Approved June 30, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 187

H.B. NO. 1015

A Bill for an Act Relating to Obligations of the Department of Hawaiian Home Lands Trust Fund.

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

PART I

SECTION 1. The purpose of this part is to establish a two-year pilot project to enable the department of Hawaiian home lands to begin housing and other projects without having the full amount of the cost of the projects on hand at the start of the project.

SECTION 2. Section 37-40, Hawaii Revised Statutes, is amended to read as follows:

**“§37-40 Exceptions; trust funds.** Except as to administrative expenditures, and except as otherwise provided by law, expenditures from trust funds may be made by any department or establishment without appropriation or allotment; provided that no expenditure shall be made from and no obligation shall be incurred against any trust 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[-], except that obligations in excess of the amount standing to the credit of any trust fund established under the Hawaiian Homes Commission Act, 1920, as amended, may be incurred, subject to conditions that the director of finance believes to be reasonably necessary, when the director of finance determines that:

- (1) Moneys to pay the obligation made in excess of the amount standing to the credit of the trust fund are expected to be received by the trust fund within a reasonable time period; and
- (2) With the approval of the governor, such action is in the best interests of the State and will not impede or hamper the financial obligations of the State.

No suit for damages, including an action for breach of trust under chapter 673 or any other law, may be brought against the State, the department of Hawaiian home lands, the Hawaiian homes commission, the governor, the director of finance, or any other state agency or official for relying or refusing to rely on this section to permit expenditures in excess of the amount standing to the

credit of the trust fund established under the Hawaiian Homes Commission Act, 1920, as amended.

Nothing in sections 37-31 to 37-41 shall require any trust fund established pursuant to law be reappropriated annually.”

SECTION 3. Section 103D-309, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Contracts awarded pursuant to section 103D-302, 103D-303, or 103D-306, shall neither be binding nor have any force and effect of law unless the comptroller, the director of finance of a county, or the respective chief financial officers of the department of education, the judiciary, or the legislative branches of the State or county, as the case may be, endorses thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; provided that if the contract is a multi-term contract, the comptroller, director of finance, or chief financial officer shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal year of each term of the multi-year contract; provided further that the administrator of the state procurement office shall attest in writing to any recommendation or solicitations. This section shall not apply to any contract under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded, or to any contract for which consideration is in kind or forbearance, or to any contract awarded pursuant to section 103D-306 that is a one-time payment through a purchase order[-], or to any contractual obligation approved by the governor under section 37-40.”

SECTION 4. The department of Hawaiian home lands shall submit an interim report to the legislature no later than twenty days prior to the convening of the regular session of 2011 and a final report to the legislature no later than twenty days prior to the convening of the regular session of 2012, including in the interim and final reports:

- (1) The number of instances and extent of obligations it has incurred in excess of the amount standing to the credit of each trust fund established under the Hawaiian Homes Commission Act, 1920, as amended, pursuant to the provisions of this part;
- (2) The name, location, and description of any housing projects, including the number and types of housing units, and the projected delivery date of the units in each project, that have benefitted from the obligations incurred in paragraph 1; and
- (3) Any other information that it may deem to be relevant;

during the period from the effective date of this Act to, and including, the date of the filing of the interim and final reports required by this section.

## PART II

SECTION 5. Pursuant to section 101, Hawaiian Homes Commission Act, 1920, as amended, the Hawaiian home lands are intended to establish “a permanent land base for the benefit and use of native Hawaiians, upon which they may live, farm, ranch, and otherwise engage in commercial or industrial or any other activities as authorized in this Act.” The legislature finds that commercial and multipurpose projects authorized under this part to raise funds to enable the department of Hawaiian home lands to operate and build the infra-

structure necessary for the native Hawaiian beneficiaries to make the homestead lands their home, are well-intentioned. However, while these revenue-raising commercial and multipurpose projects benefit the native Hawaiian beneficiaries indirectly, there are times when commercial and multipurpose projects result in short- and long-term negative consequences for the beneficiaries that are not adequately addressed.

The legislature finds that setting aside a portion of those commercial and multipurpose project revenues to be used for the benefit of native Hawaiian beneficiaries, beneficiary-controlled organizations, and homestead community associations is consistent with the purpose and intent of the Hawaiian Homes Commission Act, 1920, as amended, and will aid in ensuring that native Hawaiian beneficiaries, either directly or through native Hawaiian community organizations, such as beneficiary-controlled organizations, and homestead community associations, benefit from these commercial and multipurpose projects.

The purpose of this part is to:

- (1) Direct the department of Hawaiian home lands to establish a process for consulting with beneficiaries prior to awarding leases for commercial and multipurpose projects;
- (2) Authorize the extension of commercial and multipurpose project leases to make improvements to the property;
- (3) Set aside fifteen per cent of all lease revenues from extensions of commercial and multipurpose project leases to be deposited into the native Hawaiian rehabilitation fund to be used for the benefit of native Hawaiian beneficiaries, beneficiary-controlled organizations, and homestead community associations;
- (4) Establish reporting requirements regarding leases of Hawaiian home lands for commercial and multipurpose projects; and
- (5) Establish reporting requirements regarding the expenditures of the native Hawaiian rehabilitation fund.

SECTION 6. The Hawaiian Homes Commission Act, 1920, as amended, is amended by adding a new section to be appropriately designated and to read as follows:

**“§ Commercial and multipurpose project leases; extension of term.** (a) Notwithstanding any law to the contrary, the procedures under this section shall apply to commercial and multipurpose projects under section 204 or 220.5, and shall be in addition to any other procedures required by law.

(b) Prior to the disposition of available land through a request for proposals for an initial lease for a commercial or multipurpose project, the department shall consult with beneficiaries of the trust in the master planning of the available lands. The process of beneficiary consultation shall be as established by the department and shall:

- (1) Engage beneficiaries and beneficiary-serving organizations;
- (2) Provide for the timely dissemination of information about the proposed project and the gathering of input; and
- (3) Allow for a reasonable time and reasonable access to relevant information for evaluation and consideration.

(c) Notwithstanding section 220.5(d)(1), the department may extend the term of a lease of Hawaiian home lands for commercial or multipurpose projects and with the approval by the department of a written agreement proposed by the lessee, or the lessee and developer, to:

- (1) Make improvements to the leased property; or
- (2) Obtain financing for the improvement of the leased lands.

The extension of the lease pursuant to this section shall be based upon the improvements made or to be made, shall be no longer than twenty years, and shall be granted only once.

(d) Before the written agreement is approved, the lessee, or the lessee and developer, shall submit to the department the plans and specifications for the proposed development. The department shall review the plans, specifications, and the written agreement and determine:

- (1) Whether the development is of sufficient value and meets the priorities of the commission to justify an extension of the lease;
- (2) The estimated time needed to complete the improvements and expected date of completion of the improvements; and
- (3) The minimum revised annual rent based on the fair market value of the lands to be developed, as determined by an appraiser for the department, and percentage rent where gross receipts exceed a specified amount.

The commission shall adopt and publish a policy pursuant to chapter 91, Hawaii Revised Statutes, which shall be used to evaluate any request for a lease extension, including the terms of the lease, prospective payments, and renegotiation, and shall be used by the commission for any final determination on a lease extension request.

(e) Upon the extension of a lease term pursuant to subsection (c), the department shall deposit fifteen per cent of all revenues generated from the lease from the time the lease extension is granted, into the native Hawaiian rehabilitation fund under section 213(i).

(f) The department shall submit an annual report to the legislature and the United States Department of the Interior, no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2011, of all leases of available lands for commercial and multipurpose projects, including the following:

- (1) The total number of leases;
- (2) Acreage of each lease;
- (3) Terms of each lease;
- (4) Whether the lessee is a beneficiary or beneficiary controlled organization; and
- (5) Whether the lease was for retained available lands not required for leasing under section 207(a), and was negotiated with a native Hawaiian, or organization or association owned or controlled by native Hawaiians, under section 204(a)(2).

(g) As used in this section, "improvements" means any renovation, rehabilitation, reconstruction, or construction of the property, including minimum requirements for off-site and on-site improvements."

SECTION 7. Section 213, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (i) to read as follows:

"(i) Native Hawaiian rehabilitation fund. Pursuant to Article XII, Section 1, of the [State] Hawaii Constitution, thirty [~~percent~~] per cent of the state receipts, derived from lands previously cultivated as sugarcane lands under any other provision of law and from water licenses, and fifteen per cent of all revenues from lease agreements granted lease extensions pursuant to section \_\_\_\_\_, shall be deposited into this fund. The department shall use this money for the rehabilitation of native Hawaiians, native Hawaiian families, and Hawaiian homestead communities, which shall include the educational, economic, political, social, and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved and perpetuated.

The native Hawaiian rehabilitation fund shall be subject to the following conditions:

- (1) All moneys received by the fund shall be deposited into the state treasury and kept separate and apart from all other moneys in the state treasury;
- (2) The director of finance shall serve as a custodian of the fund. All payments from the fund shall be made by the director of finance only upon vouchers approved by the commission;
- (3) The commission shall develop guidelines for the investment of moneys in the fund;
- (4) The commission may invest and reinvest in investments authorized by chapter 88, Hawaii Revised Statutes. The commission may hold, purchase, sell, assign, transfer, or dispose of any securities and investments in which any of the moneys shall have been invested, as well as the proceeds of such investments; and
- (5) The commission may pay out of any of the moneys held for investment, a reasonable amount to any person for supplying investment advisory or consultive services; and to meet such other costs incident to the prudent investment of moneys as the commission may approve.

Any payment of principal, interest, or other earnings arising out of the loan or investment of money from this fund shall be credited to and deposited into this fund.

Sections 214, 215, 216, and 217 shall not apply to administration of this fund. The department is authorized to adopt rules under chapter 91, Hawaii Revised Statutes, necessary to administer and carry out the purposes of this fund.

The department shall submit an annual report to the legislature and the United States Department of the Interior, no later than twenty days prior to the convening of each regular session of the legislature, beginning with the regular session of 2011, on expenditures from this fund that are derived from the amounts deposited from commercial and multipurpose project lease extensions pursuant to section (e), including the amount expended, the recipient of the moneys expended, and the purpose of the expenditure.

SECTION 8. The Hawaiian homes commission shall adopt and publish the policy described in section 6 of this Act pursuant to chapter 91, Hawaii Revised Statutes, to evaluate any request for a lease extension, including the terms of the lease, prospective payments, and renegotiation, and for any final determination on a lease extension request no later than October 31, 2010.

SECTION 9. All lease revenues from commercial and multipurpose project leases collected by the department of Hawaiian home lands to which section , Hawaiian Homes Commission Act, 1920, as amended, applies shall be deposited into the Hawaiian home lands trust fund established under section 213.6, Hawaiian Homes Commission Act, 1920, as amended; provided that the department of Hawaiian home lands shall deposit fifteen per cent of those revenues that are derived from the amounts deposited from commercial and multipurpose project lease extensions pursuant to section (e), Hawaiian Homes Commission Act, 1920, as amended, into the native Hawaiian rehabilitation fund established under section 213(i), Hawaiian Homes Commission Act, 1920, as amended.

SECTION 10. The provisions of the amendments made by this part 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.

### PART III

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 12. This Act shall take effect on July 1, 2010; provided that on June 30, 2012, part I of this Act shall be repealed and sections 37-40 and 103D-309(a), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act.

(Approved July 2, 2010.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 188

S.B. NO. 2828

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 to implement a program of school impact fees, established by Act 245, Session Laws of Hawaii 2007, certain amendments need to be made to the sections of law creating school impact districts and to the formulas and practices for providing land and collecting fees for new or expanded school facilities in areas expecting a large amount of residential growth.

The purpose of this Act is to clarify the sections of law pertaining to school impact fees to facilitate the provision of land and collection of fees for public schools.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to subpart B of part VI to be appropriately designated and to read as follows:

**“§302A- Use of data reflecting recent conditions in impact fee calculations.** (a) Every three years beginning in 2010, the department shall concurrently update the following:

- (1) School site area averages, using the total school land requirement for each individual in a school impact district as calculated pursuant to section 302A-1606(b);
- (2) Elementary, middle or intermediate, and high school permanent facility construction costs per student, as provided under section 302A-1607; and
- (3) Revenue credit per unit figures provided pursuant to section 302A-1607(e).



(b) Every three years following the initial determinations made pursuant to section 302A-1604, the department shall update the following:

- (1) Student generation rates for each established school impact district; and
- (2) The statewide level of service.

(c) Every three years beginning in 2010, the department shall, where appropriate, update the list of cost factors for the twenty-six geographically limited cost districts, as provided in section 302A-1607(d), by incorporating any changes to the cost factors that have been made by the department of accounting and general services.

(d) If any data update required by this section is not completed within the specified time, the most current data shall be used until the update is completed."

SECTION 3. Chapter 302A, part VI, subpart B, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**"~~[[B.]] SCHOOL IMPACT FEES~~"**

SECTION 4. Section 302A-1601, Hawaii Revised Statutes is amended to read as follows:

**"~~[[§302A-1601]] Findings.~~** New residential developments within identified school impact districts create additional demand for public school facilities. As such, once school impact districts are identified, new residential developments ~~[will]~~ shall be required to contribute toward the construction of new or expansion of existing public school facilities through:

- (1) The land requirement, either through an in lieu fee or actual acreage (unless land is not required in the school impact district)~~];~~, based on each new residential development's proportionate share of the need to provide additional public school sites; and
- (2) The construction requirement either through an in lieu fee or actual construction based on ~~[the]~~ each new residential development's proportionate share of the need to construct additional school facilities.

A study commissioned by the State has identified the land dedication requirement that is consistent with proportionate fair-share principles and the net capital cost of school facilities, excluding land costs, that is consistent with proportionate fair-share principles.

The State determines that new residential developments within designated school impact districts shall provide land for schools or pay a fee in lieu of land proportionate to the impacts of the new residential development on existing school facilities. The State also determines that new residential developments within designated school impact districts shall also pay school construction cost component impact fees proportionate to their impacts.

In determining the amounts of land component impact fees and construction cost component impact fees, the intent of the school impact fee calculations is that new residential developments should not be charged for a higher level of service than is being charged to existing developments.

This ~~[[subpart]]~~ establishes the methodology for developers to provide their proportionate share of the land and the construction cost of new or expanded school facilities needed to serve new residential developments, as determined in ~~[section 302A-1607.]~~ sections 302A-1606 and 302A-1607, respectively."

SECTION 5. Section 302A-1602, Hawaii Revised Statutes is amended to read as follows:

**“~~[[§302A-1602]]~~ Definitions.** As used in this ~~[[subpart]]~~, the following terms shall have the following meanings unless the context indicates otherwise:

~~“Acres/student”~~ “Land area per student” means the ~~[number of]~~ area of land in acres required per student for a school site based on design standards for schools[-], which may include the actual school site size and the design enrollment of schools constructed within approximately the last ten years.

~~“Construction cost”~~ means the net cost to construct a school, including without limitation, planning, design, engineering, grading, permits, construction, and construction and project management, but not including the cost to acquire land. ~~[The intent of the school impact fee calculation is that new developments should not be charged for a higher level of service than is being provided to existing developments. A reasonable measure of the level of service is the percentage of classrooms that are in permanent structures, as opposed to portable buildings.]~~

“Construction cost component impact fee” means ten per cent of the share of the construction cost for the required new school, the expansion of existing school facilities that is attributable to a specific new residential development, or both.

~~“Cost per student”~~ means the ~~[construction cost for a school per student (actual school construction cost divided by enrollment capacity).]~~ average of actual school construction costs, expressed in current dollars, divided by the respective design enrollments, for schools constructed within approximately the last ten years.

~~“Cost/unit”~~ means the impact fee for school construction ~~(land and construction)-]~~

~~“County”~~ means the city and county of Honolulu, the county of Hawaii, the county of Kauai, and the county of Maui.

“Design enrollment” means the maximum number of students, or student capacity, a permanent school facility is designed to accommodate.

~~“Developer”~~ means a person, corporation, organization, partnership, association, or other legal entity constructing, erecting, enlarging, altering, or engaging in any new residential development activity.

~~“Dwelling unit”~~ or ~~“unit”~~ means a multi-family or single-family residential unit.

“Fee in lieu” means a fee determined pursuant to section 302A-1606[-] that is paid in lieu of the dedication of land.

“Land component” means a fee simple property that is vacant, suitable for a school site, and improved [(with infrastructure)-] that is the total school area dedication requirement for a new residential development in a school impact district.

“Land component impact fee” means the land component, the fair market value of the land component, or any combination thereof that is attributed to a specific new residential development.

“Level of service” means the percentage of classrooms that are located in permanent structures, but not including classrooms located in portable buildings.

~~“Multi family”~~ “Multi-family unit” means any dwelling unit other than a single family dwelling unit.

~~“Multi family unit count”~~ means the total multi-family dwelling units planned for a proposed development.]

“New residential development” means new residential projects involving rezoned properties or parcels, current zoned parcels with or without buildings, and redevelopment projects. These projects include subdivisions and other forms of “lot only” developments (when the dwelling unit units will not be built by the developer), and include developments that include single-family and multi-family units, condominiums, and additional or accessory dwelling units as defined by each county[, and subdivisions].

“Owner” means the owner of record of real property or the owner’s authorized agent.

“Proportionate share” means the pro rata share of the school impact fee attributed to the specific new residential development based on the [student generation rate from] number of units in the [project-] development.

“Recent school [construction] site area averages” means the department’s historical average acres [required and enrollment capacity] for new elementary (K-5), middle (6-8), and high (9-12) schools. Based on [existing school construction data,] historic schools constructed in the 1997 to 2007 period, the [historical average design standards] initial recent school site area averages are as follows:

	<u>[Acres/school Land Area/school</u>	<u>Enrollment/school Enrollment/school</u>	<u>Acres/student Land Area/student</u>
<u>[Elem-] Elementary</u>	12.5 acres	800 students	.0156 acres
Middle	16.5 acres	1,500 students	.0110 acres
High	49 acres	1,600 students	.0306 acres

“Revenue credit” means the state general excise tax revenues under chapter 237 that will be generated by [the] a new [residential] dwelling unit and used to fund school capital facilities and pay for outstanding debt on existing facilities.

“School facilities” means the facilities owned or operated by the department, or the facilities included in the department of education capital budget or capital facilities plan.

“School impact district” means a geographic area designated by the board where an anticipated [growth] new residential development will create the need for one or more new schools or the expansion of one or more existing schools that are or will be located within the area and will primarily serve new [housing] dwelling units within the area.

[-“School impact fee: construction cost component” means ten per cent of the construction cost associated with the construction of a new school or expansion of an existing school facility.

[-“School impact fee: land component” means the pro rata share of the fair market value of the fee simple land or acreage attributed to the specific development based on the student generation rate from the project.

[-“Single family”] “Single-family unit” means a detached dwelling unit not connected to any other dwelling unit, or a detached building containing two dwelling units.

“Single-family unit count” means the total single-family units planned for a proposed new residential development.

“Student generation rate” means the number of public school students generated by each multi-family and single-family unit when a residential development has matured and enrollment per unit no longer fluctuates~~;~~ significantly, or [achieves] has substantially achieved a steady state. The student generation rate for a school impact district shall be based on analysis of the existing number of residential units and public school students in an area, and the student generation rates of comparable projects and areas.”

SECTION 6. Section 302A-1603, Hawaii Revised Statutes is amended to read as follows:

**“[§302A-1603] Applicability and exemptions.** (a) Except as provided in subsection (b), any person who seeks to develop a new residential development within a designated school impact district requiring:

- (1) A county subdivision approval;
- (2) A county building permit; or
- (3) A condominium property regime approval for the project,

shall be required to fulfill the land component impact fee or fee in lieu requirement and ~~vertical~~ construction cost component impact fee requirement of the department~~[-]~~, including all government housing projects.

(b) The following shall be exempt from this section:

- (1) Any form of housing permanently excluding school-aged children, with the necessary covenants or declarations of restrictions recorded on the property;
- (2) Any form of housing ~~which~~ that is or will be paying the transient accommodations tax under chapter 237D;
- (3) All nonresidential development; and
- (4) Any development with an executed education contribution agreement or other like document with the department for the contribution of school sites or payment of fees for school land or school construction.”

SECTION 7. Section 302A-1604, Hawaii Revised Statutes is amended by amending subsection (b) to read as follows:

“(b) Prior to the designation of a school impact district, the department shall prepare a written analysis that contains the following:

- (1) A map and legend describing the boundaries of the proposed school impact district area, which may range from one school to one or more high school complexes[;], as well as maps and legends describing surrounding districts and school enrollments at existing school facilities in and around the school impact district; [and]
- (2) ~~[Analysis to support the]~~ The need to construct new or expand existing school facilities in the proposed school impact district area within the next twenty-five years to accommodate projected growth in the area based on various state and county land use, demographics, growth, density, and other applicable historical data projections and plans[-];
- (3) An analysis to determine appropriate student generation rates by dwelling unit type for all new residential developments in the school impact district area to provide the basis for determining the steady state enrollment generated by new residential developments that will need to be accommodated. The analysis shall also consider enrollment at existing school facilities, in and around the school impact district;
- (4) Student generation rates, based on full build-out of the developments when student generation rates are anticipated to be in a steady state mode;
- (5) An analysis to estimate the number of students generated by all new residential developments in the school impact district at the point in time when the total enrollment from these developments is anticipated to peak. This information is required for or related to the determination of the impact fee, and will provide the basis for deter-

mining the maximum enrollment generated by new residential developments that will need to be accommodated in both permanent facilities and portable buildings;

- (6) Calculation of the current statewide level of service;
- (7) An analysis of appropriate school land area, or other appropriate state lands, and enrollment capacity, which may include nontraditional (i.e., mid-rise or high-rise structures) facilities to accommodate the need for public school facilities in high-growth areas within existing urban developments;
- (8) A statewide classroom use report, which shall include the following:
  - (A) Current design enrollment per school (i.e., maximum number of students per classroom per school);
  - (B) Current total student enrollment per school; and
  - (C) Current number of classrooms not being used for active teaching; and
- (9) An analysis including the advantages and disadvantages of making more efficient use of existing or underused assets in the school impact district through school redistricting.

The analyses specified in paragraphs (3) and (6) shall be periodically updated pursuant to section 302A- (b)."

SECTION 8. Section 302A-1605, Hawaii Revised Statutes is amended to read as follows:

~~"[§302A-1605]~~ **Impact fee analysis.** Upon designation of a school impact district, the department shall prepare an impact fee analysis that shall include, at a minimum, ~~[the following:~~

- ~~(1) An analysis to determine appropriate student generation rates by housing type (multi-family unit count and single-family unit count) for new developments in the area. The analysis shall also consider enrollment at existing school facilities, in and around the school impact district;~~
- ~~(2) Student generation rates, based on full build-out of the development when student generation rates are anticipated to be in a steady state mode (permanent facility);~~
- ~~(3) Analysis of the initial development period, when student enrollments are anticipated to peak (to determine capacity of facilities);~~
- ~~(4) An analysis to identify the percentages of existing statewide student enrollment at the elementary school, middle or intermediate school, and high school levels that are located in permanent structures, as opposed to portable buildings, in surrounding high school complexes;~~
- ~~(5) Calculation of the current statewide level of service, which shall be the ratio of current student capacity at all school levels to the current enrollment at all school levels;~~
- ~~(6) An analysis of proposed redistricting, listing the advantages and disadvantages by making more efficient use of existing underutilized assets;~~
- ~~(7) An analysis of appropriate school land area and enrollment capacity, which may include nontraditional (i.e., mid rise or high rise structures) facilities to accommodate the need for public school~~

- facilities in high growth areas within existing urban developments; and
- (8) An analysis to identify the percentages of existing student enrollment at the elementary school, middle or intermediate school, and high school levels that are located in permanent structures, and the percentages that are located in portable buildings in surrounding high school complexes.] an analysis including the advantages and disadvantages of potential changes to statewide school site areas and design enrollment standards that may be appropriate for application in the particular school impact district. This analysis may include, for example, non-traditional facilities such as mid-rise or high-rise structures in existing urban areas where new residential developments are expected to generate the need for new school construction.”

SECTION 9. Section 302A-1606, Hawaii Revised Statutes is amended to read as follows:

~~“[§302A-1606]] [Impact fee: land] Land component[-] impact fee; determining the amount of land or fee in lieu. (a) The school land area requirements for new [school facilities shall be determined based on the recent school construction averages.] residential developments in a school impact district shall be based on recent school site area averages, student generation rates, and the number of dwelling units in the new residential development.~~

(b) The following formula shall be used to determine the total school land area requirement for each individual new residential development in a school impact district:

Elementary school student generation rate per single-family unit (x) number of single-family units (x) recent school site area average for the land area per elementary school student;

plus (+)

Elementary school student generation rate per multi-family unit (x) number of multi-family units (x) recent school site area average for the land area per elementary school student;

plus (+)

Middle school student generation rate per single-family unit (x) number of single-family units (x) recent school site area average for the land area per middle school student;

plus (+)

Middle school student generation rate per multi-family unit (x) number of multi-family units (x) recent school site area average for the land area per middle school student;

plus (+)

High school student generation rate per single-family unit (x) number of single-family units (x) recent school site area average for the land area per high school student;

plus (+)

High school student generation rate per multi-family unit (x) number of multi-family units (x) recent school site area average for the land area per high school student;

equals (=)

Total school land requirement.

~~[(b)]~~ (c) The procedure for determining whether the dedication of land is required or a payment of a fee in lieu is required for a new school facility or to satisfy the land component impact fee shall be as follows:

- (1) A new residential development ~~[of greater than or equal to fifty units, shall include a written agreement, prior to the issuance of a building permit, between the owner or developer of the property and the department,]~~ with fifty or more units shall include a written agreement between the owner or developer of the property and the department, executed prior to issuance of a building permit, under which the owner or developer has:
  - (A) Agreed to designate an area to be dedicated for one or more schools for the development, subject to approval by the department; or
  - (B) Agreed to pay to the department, at a time specified in the agreement, a fee in lieu of land dedication;
- (2) ~~[New]~~ A new residential [developments of] development with less than fifty units shall include a written agreement[;] between the owner or the developer of the property and the department, executed prior to the issuance of the building permit, under which the owner or developer has agreed to a time specified for payment for the fee in lieu [prior to the issuance of the building permit];
- (3) Prior to approval of any ~~[subdivision,]~~ change of zoning, subdivision, or any other approval for a:
  - (A) Residential development ~~[equal to or greater than fifty]~~ with fifty or more units; or
  - (B) Condominium property regime development of fifty or more units [or more],

the department shall notify the approving agency of its determination on whether ~~[to require the dedication of land, the payment of] it will require the development to dedicate land, pay a fee in lieu thereof, or a combination of both[;] for the provision of new school facilities;~~

- ~~[(4)]~~ When land dedication is required, the land shall be conveyed to the State upon completion of the subdivision improvements and any offsite infrastructure necessary to serve the land;
- ~~(5)~~ When the payment of a fee in lieu is required, the fee in lieu shall be paid based on the terms contained in the written agreement;
- ~~(6)~~ Whether the department determines to require land dedication or the payment of a fee in lieu, shall be guided by the following criteria:]
- (4) The department's determination to require land dedication or the payment of a fee in lieu, or a combination of both, shall be guided by the following criteria:
  - (A) The topography, geology, access, value, and location of the land available for dedication;
  - (B) The size and shape of the land available for dedication;
  - (C) The location of existing or proposed schooling facilities; and
  - (D) The availability of infrastructure; ~~and~~
- ~~(7)]~~ (5) The determination of the department as to whether lands shall be dedicated or whether a fee in lieu shall be paid, or a combination of both, shall be final[;];
- (6) When land dedication is required, the land shall be conveyed to the State upon completion of the subdivision improvements and any offsite infrastructure necessary to serve the land; and

(7) When the payment of a fee in lieu is required, the fee in lieu shall be paid based on the terms contained in the written agreement.

~~[(e)]~~ (d) In determining the value per acre for any new residential development, the fee simple value of the land identified for the new or expanded school facility shall be based on the appraised fair market value of improved, vacant land, zoned for residential use, and serviced by roads, utilities, and drainage. An appraiser, licensed pursuant to chapter 466K, who is selected and paid for by the developer, shall determine the value of the land. If the department does not agree with the developer's appraisal, the department may engage another licensed appraiser at its own expense, and resolve, through negotiation between the two appraisers, a fair market value. If neither party agrees, the first two appraisers shall select the third appraiser, with the cost of the third appraisal being shared equally by the department and the developer, and the third appraisal shall be binding on both parties.

~~[(d)]~~ (e) The developer or owner of new residential developments of ~~[greater than]~~ fifty or more units shall either pay the ~~[in-lieu]~~ fee in lieu based on the land value as determined in subsection ~~[(e)]~~ (d) or convey appropriate acreage as determined in subsection (b). When conveying the fee simple interest for the new or expanded school facility, the developers shall be credited the difference between the fair market fee simple value of the property and the developers' proportionate share of the value of the land as determined in subsection ~~[(e)]~~ (d) against any ~~[impact fees for construction.]~~ construction cost component impact fee. Any excess may be transferred and used as credit against any future land or construction cost requirements on any other development of the State.

~~[(e)]~~ (f) The dollar amount of the fee in lieu shall be determined using the following formula:

Acres of land ~~[calculated according to]~~ subject to the fee in lieu, as determined under subsection ~~[(b)]~~ (c) multiplied by the value per acre of land determined pursuant to subsection ~~[(e)]~~ (d)."

SECTION 10. Section 302A-1607, Hawaii Revised Statutes is amended to read as follows:

~~“[§302A-1607] [Impact fee: construction] Construction cost component[-] impact fee; determining the [cost per unit.] amount of the fee.~~ (a) The construction cost component ~~[of the school]~~ impact fees shall be calculated using the following factors:

- (1) For new school construction, the cost per student for each school type (elementary, middle or intermediate, and high school) ~~[is]~~ shall be based on the ten-year average construction of a new school facility using the Honolulu assessment district in 2006 as the base. Costs for construction completed earlier than 2006 shall be escalated to 2006 using the engineering news-record construction cost index;
- (2) For expansion of existing school facilities, the cost per student for each school type (elementary, middle or intermediate, and high school) is based on the ten-year average construction of whatever components are required to expand the school using the Honolulu assessment district in 2006 as the base;
- (3) The cost per student in other assessment districts shall be the cost per student in the Honolulu assessment district multiplied by the appropriate cost factor in subsection ~~[(e)]~~ (d). At least every three years, the department shall update the cost per student based on the construction of a new permanent school facility, and present the written analysis to the board for review; and



(4) Student generation rates, as defined in section 302A-1602.

(b) The student generation rate for each school type (elementary, middle or intermediate, and high school) shall be multiplied by the cost per student for each school type (elementary, middle or intermediate, and high school) to determine the ~~[cost/unit]~~ cost per dwelling unit in the development.

(c) The construction cost component impact fee shall be based on recent public school construction costs. The 1997 to 2007 period school construction costs per student, adjusted for both the year 2007 and for the Honolulu assessment district, are as follows:

- (1) Elementary schools: \$35,357 per student;
- (2) Middle and intermediate schools: \$36,097 per student; and
- (3) High schools: \$64,780 per student.

The costs per student for other assessment districts shall be determined by multiplying the Honolulu assessment district costs per student by the applicable cost factor in subsection (d). These costs per student shall be updated at least every three years, pursuant to the provisions in section 302A-

~~[(e)] (d)~~ The State shall be divided into the following twenty-six geographically limited cost districts[-], and the cost factors listed for each cost district shall be applied to the calculation of school construction costs per unit pursuant to subsection (c):

Cost District	School District	Cost Factor
Honolulu	Honolulu	1.00
Ewa	Leeward/Central	1.00
Wahiawa	Central	1.05
Waialua	Central	1.10
Koolaupoko	Windward	1.00
Koolauloa	Windward	1.00
Waianae	Leeward	1.10
Hilo	Hawaii	1.15
Puna	Hawaii	1.20
Kona	Hawaii	1.20
Hamakua	Hawaii	1.20
South Kohala	Hawaii	1.20
North Kohala	Hawaii	1.25
Pohakuloa	Hawaii	1.25
Kau	Hawaii	1.30
Wailuku	Maui	1.15
Makawao	Maui	1.25
Lahaina	Maui	1.30
Hana	Maui	1.35
Molokai	Molokai	1.30
Lanai	Lanai	1.35
Lihue	Kauai	1.15
Koloa	Kauai	1.20
Kawaihau	Kauai	1.20
Waimea	Kauai	1.25
Hanalei	Kauai	1.25

~~[(e)] (e)~~ At least every three years, and concurrent with any update of the costs per student, the department shall update the revenue credits and present the written analysis to the board for review. The calculation of revenue credits shall be reviewed and calculated recognizing that the impact fee shall be set at one hundred per cent of the fair market value of the land and ten per cent of the total school construction cost.

~~[(e)]~~ (f) The construction cost component of the impact fees per dwelling unit shall be ten per cent of the amounts calculated according to the following formula:

Cost per dwelling unit from ~~[(b)]~~ subsection (b) minus any amount by which the revenue credit per dwelling unit from subsection ~~[(d)]~~ (e) exceeds ninety per cent of the per unit construction cost.

~~[(f)]~~ (g) The amount of the fee shall be ~~[increased]~~ adjusted from the date it was determined to the date it is paid using the engineering news-record construction cost index, or an equivalent index if that index is discontinued.

~~[(g)]~~ (h) Any new residential development shall be required to obtain a written agreement executed between the owner or developer of the property and the department, prior to the issuance of a building permit, under which the owner or developer has agreed to a time specified for payment~~[, for]~~ of its ~~[school impact fee]~~ construction cost component ~~[prior to the issuance of the building permit.]~~ impact fee."

SECTION 11. Section 302A-1608, Hawaii Revised Statutes is amended to read as follows:

~~["§302A-1608"]~~ **Accounting and expenditure requirements.** (a) Each designated school impact district shall be a separate benefit district. Fees collected within each school impact district shall be spent only within the same school impact district for the purposes collected.

(b) Land dedicated by the developer shall be used only as a site for the construction of one or more new schools or for the expansion of existing school facilities. If the land is never used for the school facility, it shall be returned to the developer, or the developer's successor in interest. Once used, the land may be sold, with the proceeds used to acquire land for school facilities in the same school impact district.

(c) If the land is not used for a school facility within twenty years of its dedication, it shall be returned to the developer, or the developer's successor in interest.

(d) Once used for school facilities, all or part of the land may be later sold. Proceeds from the sale shall be used to acquire land for school facilities in the same school impact district.

~~[(e)]~~ (e) Fee in lieu funds may be used for ~~[expenses related to acquiring a piece of land,]~~ school site land acquisition and related expenses, including ~~[but not limited to]~~ surveying, appraisals, and legal fees. Fee in lieu funds shall not be used for the maintenance or operation of existing schools in the district, construction costs, including architectural, permitting, or financing costs, or for administrative expenses.

~~[(d)]~~ (f) ~~[Impact fees for the construction]~~ Construction cost component impact fees shall be used only for the costs of new school facilities that expands the student capacity of existing schools or adds student capacity in new schools. ~~[School]~~ Construction cost component impact fees may not be used to replace an existing school located within the same school impact district, either on the same site or on a different site. ~~[In the event of closure, demolition, or conversion of an existing permanent department facility within a school impact district that has the effect of reducing student capacity, an amount of new student capacity in permanent buildings equivalent to the lost capacity shall be funded with non-school impact fee revenue. Eligible construction costs include but are not limited to planning, engineering, architectural, permitting, financing, and administrative expenses, and any other capital equipment expenses pertaining~~

to educational facilities. Impact fees for the construction cost component shall not be expended for:

- (1) Any costs related to the acquisition of land;
- (2) The maintenance or operation of existing schools in the district; or
- (3) Portable or temporary facilities.
- (e) Impact fees and fees in lieu]
- (g) Eligible construction costs include planning, engineering, architectural, permitting, financing, and administrative expenses, and any other capital equipment expenses pertaining to educational facilities.

(h) Construction cost component impact fees shall not be expended for:

- (1) The maintenance or operation of existing schools in the district; or
- (2) Portable or temporary facilities.

(i) If a closure, demolition, or conversion of an existing permanent department facility within a school impact district that has the effect of reducing student capacity occurs, an amount of new student capacity in permanent buildings equivalent to the lost capacity shall not be funded with school impact fees.

(j) Fees in lieu, proceeds from the sale of all or part of an existing school site that has been dedicated by a developer pursuant to the requirements of this subpart, and construction cost component impact fees shall be expended or encumbered within twenty years of the date of collection. Fees shall be considered spent or encumbered on a first-in, first-out basis. An expenditure plan for [the] all collected impact fees shall be incorporated into the annual budget process of the department and subject to legislative approval of the budget."

SECTION 12. Section 302A-1609, Hawaii Revised Statutes is amended to read as follows:

"[§302A-1609] Refunds[-] of fees. If [the] a fee in lieu or a construction cost component impact fee is not expended within twenty years of the date of collection, the department shall either:

- (1) Refund to the developer, or the developer's successor in interest, the amount of the fee in lieu paid and any interest accrued thereon; or
- (2) Recommit part or all of the fees for another twenty-year period for construction of new schools in the school impact district, as authorized by the developer or the developer's successor."

SECTION 13. Section 302A-1610, Hawaii Revised Statutes is amended to read as follows:

"[§302A-1610] Credits for land dedication. (a) Any [person] owner of a development subject to the land [dedication] component impact fee requirements pursuant to this [subpart] may apply for credit against any similar dedication or payment accepted and received by the department for the project[-]; provided that any such owner who dedicates more land for school facilities than is required for the development shall receive credit for the excess dedicated land area.

(b) Any credit provided for under this section shall be based on the value[-] determined in the manner provided under section 302A-1606.

(c) Excess credits for land contributions prior to [July 3, 2007] July 1, 2010, that are in excess of a developer's requirement under this subpart shall be based on the determined value[-] of the excess dedication; provided that the credit amount shall not exceed the value of the dedication or fee in lieu required under this [subpart].

(d) In addition to or instead of applying credits to future developments, the department may execute with an owner of credits an agreement to provide for partial or full reimbursement from the school impact fee payments collected from other developers within the same school impact district. The reimbursements shall not exceed the amount of the fee revenues available in the account for that school impact district."

SECTION 14. Section 302A-1611, Hawaii Revised Statutes is amended to read as follows:

**[[§302A-1611]] Credits for excess contributions or advance payment of required construction cost component impact fees.** (a) Any [applicant] owner of a development subject to the [school] construction cost component impact fee requirements pursuant to this [[subpart]] may apply for shall receive credit for any similar contribution, payment, or construction of public school facilities accepted and received by the department~~[-]~~ for the portion of the development that is in excess of the impact fee required under this subpart for that development. No credit shall be authorized against the impact fees in lieu [of land dedication].

(b) A credit may be applied only against school impact fees that would otherwise be due for new residential developments for which the payment or contribution was agreed to in a written educational contribution agreement. [The department shall maintain an accounting of the amount of the credit applicable to the new residential development and shall reduce the amount of the credit by the amount of the school impact fees that would otherwise be due for each building permit issued for the new residential development. After the credit balance is exhausted, no additional credits shall be applied to subsequent building permits issued within the new residential development.]

(c) Excess contribution credit may be applied to the construction cost component impact fee requirement for any future development by the same owner in the same school impact district, or with the written approval of the owner of the credit, to any future development by a different owner in the same school impact district.

(d) In addition to or instead of applying the credits to future developments, the department may execute with an owner of the credits an agreement to provide for partial or full reimbursement from the impact fee payments collected from other developers within the same school impact district. The reimbursements shall not exceed the amount of the impact fee revenues available in the account for that school impact district.

(e) Any owner of a development shall receive credit for any part of its required construction cost component impact fee that, with the approval of the department, is paid in advance of the time specified in the written agreement executed in accordance with section 302A-1607(h). The department shall maintain an accounting of the amount of the credit applicable to the new residential development and shall reduce the amount of the credit by the amount of the impact fees that would otherwise be due for each building permit issued for the new residential development. After the credit balance is exhausted, no additional credits shall be applied to subsequent building permits issued within the new residential development.

[(e)] (f) If private construction of school facilities is proposed by a developer after [July 3, 2007,] July 1, 2010, if the proposed construction is acceptable to the department, and if the value of the proposed construction exceeds the total impact fees that would be due from the development, the department shall execute with the developer an agreement to provide reimbursement for the excess

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credit from the impact fees collected from other developers within the same benefit district. For the purposes of this section, the private construction of school facilities is a "public work" pursuant to chapter 104."

SECTION 15. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 17. This Act shall take effect on July 1, 2010.

(Approved July 5, 2010.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 189

S.B. NO. 2454

A Bill for an Act Relating to Public Agency Meetings and Records.

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

SECTION 1. Section 92-25, Hawaii Revised Statutes, is amended to read as follows:

"§92-25 [No fees] Fees for copies of pleadings, etc. [No fees shall] Fees as established by court rules may be charged for the certification of copies of any pleadings, order, or other paper or document filed in any court, or process thereon, or any transcript of testimony, [upon the original filing or issuance thereof, nor] and for the certification of records on appeal in any proceeding in any court[-]; provided that state agencies shall be exempt from the fees; and provided further that limitations on the extent of the exemption may be established by court rules."

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 6, 2010, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 190

S.B. NO. 2256

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 authorizing the department of education to assess fees for parking in areas and facilities under its jurisdiction would provide the department with another source of revenue to address the budget reductions and restrictions affecting public education.

The purpose of this Act is to authorize the department of education to assess fees for parking on roadways and parking areas under its jurisdiction.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

- “§302A- Parking; control by department.** (a) The department may adopt rules in accordance with chapter 91 to govern the traffic and parking conditions on roadways and other areas under the jurisdiction of the department.
- (b) The department, in accordance with chapter 91, may:
- (1) Assess fees for parking on roadways and in parking areas under the jurisdiction of the department; and
  - (2) Adopt rules relating to the assessment and collection of fees for parking specified in this section.
- (c) Fees collected under this section shall be deposited into the same fund into which fees and charges assessed and collected by the department for the use of school facilities under section 302A-1148 are deposited; provided that any parking fees assessed and collected by a school shall be deposited to the credit of the school’s nonappropriated local school fund account.
- (d) The department may contract with the department of accounting and general services or a private entity to implement this section.”

SECTION 3. Section 302A-1148, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[§302A-1148]]~~ Use of school facilities ~~[for recreational and community purposes.]~~ and grounds.** All public school buildings, facilities, and grounds shall be available for general recreational purposes, and for public and community use, whenever these activities do not interfere with the normal and usual activities of the school and its pupils. Any other law to the contrary notwithstanding, the department shall adopt rules under chapter 91 as are deemed necessary to carry out the purposes of this section and may issue licenses, revocable permits, concessions, or rights of entry to school buildings and grounds for such periods of use as deemed appropriate by the department. All such dispositions, including those in excess of fourteen days, need not be approved by the board of land and natural resources; provided that approval by the board of land and natural resources shall be required when the dispositions are for periods in excess of a year. The department may assess and collect fees and charges from the users of school buildings, facilities, grounds, and equipment~~[-]~~, which include fees and charges assessed and collected by the department for parking on roadways and in parking areas under the jurisdiction of the department, pursuant to section 302A- . The fees and charges shall be deposited into a separate fund and expended by the department under rules as may be adopted by the board~~[-]~~; provided that any parking fees assessed and collected by a school shall be deposited to the credit of that school’s nonappropriated local school fund account.”

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

SECTION 5. This Act shall take effect on July 1, 2010.

(Became law on July 6, 2010, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Emergency and Budget Reserve Fund.

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

SECTION 1. The legislature finds that the national and global economic crisis that began in the second half of 2008 has caused significant economic problems in numerous industries in the state, including the airline, cruise ship, tourist, and construction industries. Mass layoffs have been reported by an increasing number of Hawaii businesses statewide, from the agricultural sector to the medical-services sector. Hawaii's automobile dealers have cut fifteen per cent of their workforce, and that percentage could double in the future. Financial uncertainty has led to fewer visitor arrivals and lower hotel occupancy rates, resulting in layoffs and reductions in employee hours. Furthermore, recent forecasts show that the situation will worsen with a continued decline in employment, personal income, and visitor arrivals, as well as rising inflation.

Difficult economic times and declining tax revenues have resulted in budget cuts for all state services. State departments have been asked to lower their budget proposals by up to twenty per cent. The department of education faces a possible \$100,000,000 shortfall for the next academic year and funding has been discontinued for science textbooks and materials, literacy training programs for learning-disabled children, as well as for speech pathologists, occupational and physical therapists, and more than two hundred other positions.

The department of health has projected a \$25,000,000 shortfall for mental health services in the current fiscal year. Funding has been eliminated for the healthy start program, totaling approximately \$22,000,000 for the biennium. Additionally, the governor has discontinued funding for the Hawaii children's health care program, which may leave an estimated one thousand five hundred gap group children without access to affordable health care.

The current and impending situation jeopardizes the safety net of basic human services, health, and education needs for Hawaii's residents and families. While all of Hawaii's residents will be affected by the situation, gap group families and families closest to the poverty line will suffer the most.

Senate informational briefings were held in August and September 2009 to gather information on the potential statewide impacts of the anticipated reduction in health and human services. The following information regarding the impacts of the budget cuts was presented at the briefings:

- (1) Hawaii's receipt of a \$323,000 federal grant from the Environmental Protection Agency through the Clean Water Act would be in jeopardy;
- (2) Against the backdrop of a doubling of the number of homeless people in the years 1997 to 2009, the Hawaii Housing Authority's homeless program's branch indicated that the cuts would eliminate five of nine staff positions and would put Hawaii's receipt of \$16,650,000 in federal Department of Housing and Urban Development moneys in jeopardy;
- (3) The deaf and hearing impaired fear the loss of assistance and specialized vocational training; and
- (4) Cuts in youth services would increase gang violence, increase the number of youth in detention facilities, and take away services for abused and homeless children.

It has also been reported in the media that the budget cuts will reduce services for individuals with mental illness and disabilities and children. For example,

the Healthy Start child abuse prevention program was allotted \$10,000,000 in the 2008-2009 state budget and was dropped completely from the 2009-2010 budget.

Pursuant to Act 304, Session Laws of Hawaii 1999, the legislature established the emergency and budget reserve fund as a temporary supplemental source of funding for the State of Hawaii in times of emergency, economic downturn, or unforeseen reduction in revenues. As set forth in section 328L-3, Hawaii Revised Statutes, specific purposes for the fund include maintaining levels of programs determined to be essential to public health, safety, welfare, and education. Act 304 also included certain prohibitions on appropriations from the emergency and budget reserve fund. Appropriations for the following purposes are specifically prohibited:

- (1) To meet expenses of the legislature;
- (2) To provide for salary adjustments for officials appointed pursuant to article V, section 6 or article VI, section 3 of the Hawaii Constitution and for others whose salaries are directly related to salaries of these officials; and
- (3) To fund cost items in any collective bargaining contract.

The legislature finds that expenditures from the emergency and budget reserve fund are needed to meet the conditions of emergency, economic downturn, and unforeseen reduction in revenues that the State currently faces. Further, the legislature finds that the appropriations in this Act are consistent with the purposes of the emergency and budget reserve fund.

Therefore, given the current economic crisis and concomitant budget deficit, the purpose of this Act is to appropriate moneys from the emergency and budget reserve fund of the State of Hawaii to maintain the levels of programs determined to be essential to education, public health, and public welfare.

**SECTION 2.** There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2010-2011 for respite services.

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

**SECTION 3.** There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2010-2011 to supplement the healthy start program.

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

**SECTION 4.** There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$950,000 or so much thereof as may be necessary for fiscal year 2010-2011, to provide funding for grants pursuant to chapter 42F, Hawaii Revised Statutes, to be distributed as follows:

- |                               |           |
|-------------------------------|-----------|
| (1) Catholic Charities Hawaii | \$350,000 |
| (2) Kapahulu Center           | \$300,000 |
| (3) Moiliili Community Center | \$150,000 |
| (4) Waikiki Community Center  | \$150,000 |

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

**SECTION 5.** There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$3,000,000 or so much thereof as



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may be necessary for fiscal year 2010-2011 to provide additional funding for the kupuna care program. This funding shall be in addition to the fiscal year 2010-2011 executive supplemental budget for the executive office on aging.

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

SECTION 6. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the Aging and Disability Resource Center.

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

SECTION 7. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the developmental disabilities medicaid waiver program.

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

SECTION 8. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2010-2011, for mental health services.

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

SECTION 9. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2010-2011, for the partnerships in community living program.

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

SECTION 10. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$1,400,000 or so much thereof as may be necessary for fiscal year 2010-2011, for substance abuse treatment.

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

SECTION 11. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$125,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the healthy aging partnerships program.

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

SECTION 12. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$332,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the Waianae District Comprehensive Health and Hospital Board, Incorporated to support its emergency room services.

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

SECTION 13. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$270,000 or so much thereof as may be necessary for fiscal year 2010-2011 for HIV/AIDS related services.

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

SECTION 14. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 to fund the development and implementation of a housing first pilot program, through a collaboration between the Hawaii public housing authority and the department of human services, for chronically homeless individuals, including those who have an addiction or mental illness, or both; provided that the Hawaii public housing authority, in collaboration with the department of human services shall submit a report to the legislature on the progress of the housing first pilot program no later than twenty days prior to the convening of the regular session of 2011.

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

SECTION 15. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2010-2011 for meals for the elderly for kupuna care.

The sum appropriated shall be expended by the department of health's executive office on aging for the purposes of this Act.

SECTION 16. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2010-2011 for Kokua Kalihi Valley Comprehensive Family Services.

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

SECTION 17. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2010-2011 to the Hawaii Medical Service Association for Keiki Care.

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

SECTION 18. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the Windward Oahu Spouse Abuse Shelter.

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

SECTION 19. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the Blueprint for Change Program for Neighborhood Place Walk-in Centers.

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

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SECTION 20. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii, the sum of \$550,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the Hawaii immigrant health initiative program.

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

SECTION 21. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$762,500 or so much thereof as may be necessary for fiscal year 2010-2011 to support domestic violence shelters statewide.

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

SECTION 22. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$210,000 for fiscal year 2010-2011 for the Hale Mahaolu for personal care services.

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

SECTION 23. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the shelter plus care program.

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

SECTION 24. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii for QUEST health care payments, the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the restoration of adult dental care formerly granted under program ID HMS 245 - QUEST health care payments; provided that the funds shall not be expended for any other purpose. The governor is authorized to utilize enhanced federal medical assistance percentages (FMAP) funds to offset the amount appropriated, provided that the total amount shall not exceed \$2,000,000. Any unexpended funds shall lapse to their respective funds.

The department of human services 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 of human services shall submit the report to the legislature no later than twenty days prior to the convening of the 2011 regular session.

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

SECTION 25. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2010-2011 for outstationed eligibility worker services.

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

SECTION 26. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$80,000 or so much thereof as may be necessary for fiscal year 2010-2011 for outreach services.

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

SECTION 27. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$44,636 or so much thereof as may be necessary for fiscal year 2010-2011 for outreach services to locate uninsured children.

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

SECTION 28. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$800,000 or so much thereof as may be necessary for fiscal year 2010-2011 for child care subsidies.

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

SECTION 29. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the general assistance program under section 346-71, Hawaii Revised Statutes, to restore the general assistance benefit amount to \$450 per person per month or as close to \$450 per person per month as possible, given the monthly caseload.

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

SECTION 30. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2010-2011 to Adult Friends for Youth for youth gang prevention and intervention services.

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

SECTION 31. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2010-2011 for domestic violence services.

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

SECTION 32. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2010-2011 for Volunteer Legal Services Hawaii to provide pro bono legal services for indigent persons.

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

SECTION 33. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$720,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the Legal Aid Society of Hawaii to provide general civil legal services.

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

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SECTION 34. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$282,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the Hawaii Family Law Clinic to provide services to obtain temporary restraining orders.

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

SECTION 35. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2010-2011 for Catholic Charities Hawaii to provide intra-familial sex assault services.

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

SECTION 36. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the Children's Alliance of Hawaii, Inc. to provide child sex assault services.

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

SECTION 37. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2010-2011 to the Office of Community Services for employment core services.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 38. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$75,000 or so much thereof as may be necessary for fiscal year 2010-2011 to the YMCA of Honolulu for the Weed and Seed Program.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 39. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$466,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the Kapiolani Medical Center for Women and Children for the sex abuse treatment center for statewide sex assault services.

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

SECTION 40. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2010-2011 for the Families for R.E.A.L. program.

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

SECTION 41. This Act shall take effect on July 1, 2010.

(Became law on July 6, 2010, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 192

H.B. NO. 2542

A Bill for an Act Relating to Non-General Funds.

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

## PART I

SECTION 1. The severe recession of 2008 swept across the nation and many parts of the world with unanticipated force and brought with it enormous challenges for governments at all levels. Its effects on businesses and employment are still being felt today, including a profound impact on Hawaii in terms of tax revenues and the state budget.

The legislature finds that due to the extraordinary fiscal circumstances the State is facing, non-general funds must be reviewed and scrutinized to determine if there are excess balances available to help address the critical budget shortfall in fiscal year 2010-2011.

The purpose of this Act is to help address the fiscal year 2010-2011 budget shortfall by transferring excess balances from various non-general funds into the State's general fund.

SECTION 2. The legislature determines that there is in the agricultural loan reserve fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the agricultural loan reserve fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 3. The legislature determines that there is in the state motor pool revolving fund at least \$1,500,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the state motor pool revolving fund to the general fund the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 4. The legislature determines that there is in the state risk management revolving fund at least \$2,000,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the state risk management revolving fund to the general fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 5. The legislature determines that there is in the stadium special fund at least \$2,000,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the stadium special fund to the general fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 6. The legislature determines that there is in the medicaid investigations recovery fund at least \$1,500,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the medicaid investigations recovery fund to the general fund the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 7. The legislature determines that there is in the Hawaii community development revolving fund, at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the Hawaii community development revolving fund to the

general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 8. The legislature determines that there is in the convention center enterprise special fund at least \$2,000,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the convention center enterprise special fund to the general fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 9. The legislature determines that there is in the foreign trade zones special fund at least \$300,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the foreign trade zones special fund to the general fund the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 10. The legislature determines that there is in the compliance resolution fund – business registration fund account at least \$1,500,000 in excess of the requirements of the fund account. On July 1, 2010, the director of finance is authorized to transfer from the compliance resolution fund – business registration fund account to the general fund the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 11. The legislature determines that there is in the department of commerce and consumer affairs special drivers education fund account at least \$1,400,000 in excess of the requirements of the fund account. On July 1, 2010, the director of finance is authorized to transfer from the special drivers education fund account to the general fund the sum of \$1,400,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 12. The legislature determines that there is in the loss mitigation grant fund at least \$3,200,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the loss mitigation grant fund to the general fund the sum of \$3,200,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 13. The legislature determines that there is in the department of education drivers education fund account at least \$1,000,000 in excess of the requirements of the fund account. On July 1, 2010, the director of finance is authorized to transfer from the drivers education fund account to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 14. The legislature determines that there is in the deposit beverage container deposit special fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the deposit beverage container deposit special fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 15. The legislature determines that there is in the Hawaii tobacco settlement special fund at least \$7,200,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the Hawaii tobacco settlement special fund to the general fund the sum of \$7,200,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 16. The legislature determines that there is in the neurotrauma special fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the neurotrauma special fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 17. The legislature finds that there is in the special fund for disability benefits over \$7,000,000 attributable to compound interest and penalties that have been collected by the fund since its inception. The legislature determines that there is in the special fund for disability benefits at least \$7,000,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the special fund for disability benefits to the general fund the sum of \$7,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 18. The legislature determines that there is in the land conservation fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the land conservation fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 19. The legislature determines that there is in the natural area reserve fund at least \$500,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the natural area reserve fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 20. The legislature determines that there is in the federal reimbursement maximization special fund at least \$500,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the federal reimbursement maximization special fund to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 21. The legislature determines that there is in the University of Hawaii housing assistance revolving fund at least \$2,000,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the University of Hawaii housing assistance revolving fund to the general fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 22. The legislature determines that there is in the university revenue-undertakings fund at least \$2,500,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the university revenue-undertakings fund to the general fund the sum of \$2,500,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 23. The legislature determines that there is in the University of Hawaii research and training revolving fund at least \$400,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the University of Hawaii research and training revolving fund to the general fund the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2010-2011.



SECTION 24. The legislature determines that there is in the judiciary computer system special fund at least \$2,000,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the judiciary computer system special fund to the general fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 25. The legislature determines that there is in the driver education and training fund, under the judiciary, at least \$1,500,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the driver education and training fund to the general fund the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2010-2011.

SECTION 26. The legislature determines that there is in the disaster loan revolving fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2010, the director of finance is authorized to transfer from the disaster loan revolving fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2010-2011.

## PART II

SECTION 27. Section 235-110.6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The tax credit claimed under this section by the principal operator shall be deductible from the principal operator’s individual or corporate income tax liability, if any, for the tax year in which the credit is properly claimed; provided that a husband and wife filing separate returns for a taxable year for which a joint return could have been made by them shall claim only the tax credit to which they would have been entitled had a joint return been filed. If the tax credit claimed by the principal operator under this section exceeds the amount of the income tax payments due from the principal operator, the excess of credit over payments due shall be refunded to the principal operator[.] from the state highway fund; provided that the tax credit properly claimed by a principal operator who has no income tax liability shall be paid to the principal operator[.] from the state highway fund; and provided further no refunds or payments on account of the tax credit allowed by this section shall be made for amounts less than \$1.”

## PART III

SECTION 28. 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:

- (1) Section 245-3(a)(5), after September 30, 2006, and prior to October 1, 2007, 1.0 cent per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;
- (2) Section 245-3(a)(6), after September 30, 2007, and prior to October 1, 2008:

- (A) 1.5 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;
  - (B) 0.25 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5; and
  - (C) 0.25 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;
- (3) Section 245-3(a)(7), after September 30, 2008, and prior to July 1, 2009:
- (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;
  - (B) 0.5 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
  - (C) 0.25 cents per cigarette shall be deposited to the credit of the community health centers special fund established pursuant to section 321-1.65; and
  - (D) 0.25 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;
- (4) Section 245-3(a)(8), after June 30, 2009, and prior to July 1, ~~2010~~ 2013:
- (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;
  - (B) 0.75 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
  - (C) 0.75 cents per cigarette shall be deposited to the credit of the community health centers special fund established pursuant to section 321-1.65; and
  - (D) 0.5 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234; and
- ~~(5) Section 245-3(a)(10), after June 30, 2010, and prior to July 1, 2011:~~
- ~~(A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;~~
  - ~~(B) 1.0 cent per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;~~
  - ~~(C) 1.0 cent per cigarette shall be deposited to the credit of the community health centers special fund established pursuant to section 321-1.65; and~~
  - ~~(D) 1.0 cent per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234; and~~

## ACT 193

- (6)] (5) Section 245-3(a)(11), after June 30, [2011,] 2013, and thereafter:
- (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;
  - (B) 1.5 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
  - (C) 1.25 cents per cigarette shall be deposited to the credit of the community health centers special fund established pursuant to section 321-1.65; and
  - (D) 1.25 cents per cigarette 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 29. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 30. This Act shall take effect on July 1, 2010.

(Became law on July 6, 2010, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 193

H.B. NO. 1818

A Bill for an Act Relating to Cognitive Restructuring.

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

SECTION 1. The legislature finds that there is a disproportionately high rate of arrest and incarceration among young men and women of Hawaiian ancestry. Many of these individuals are under forty years of age and should be provided rehabilitation opportunities.

A promising approach to reducing recidivism and helping inmates make the successful transition from prison to the community is cognitive restructuring and transition programs provided at correctional facilities. Such programs involve self-examination of an inmate's belief system, criminal addictive cycle, attitudes and thinking patterns, and development of relapse prevention plans for future situations. The programs assist offenders in restructuring their thought processes and teach cognitive skills that help with basic decision-making and problem-solving. The goal of cognitive restructuring is to guide offenders to consciously examine their own thoughts by engaging in processes that develop self-control, thus making them responsible for, and in charge of, their actions no matter how stressful the situation. When combined with strategies that help Hawaiian inmates get back in touch with the values of their culture, cognitive rehabilitation can help break the vicious cycle of crime and punishment, as knowledge of Hawaiian traditions and cultural values have helped many cope with social challenges.

The purpose of this Act is to authorize the department of public safety to offer reentry/reintegration programs within Hawaii's correctional facilities that include cognitive behavioral therapy with cultural and other interventions to address domestic violence, addictions, self-mastery through identity, and com-

munity connections to promote the successful transition from incarceration to the community.

SECTION 2. (a) The department of public safety may offer reentry/reintegration programs within Hawaii's correctional facilities that offer cognitive behavioral therapy with cultural and other interventions to address domestic violence, addictions, self-mastery through identity, and community connections to promote the successful transition from incarceration to the community.

(b) The department of public safety may implement this Act with all new contracts for reentry/reintegration programs upon approval of this Act.

(c) The department of public safety shall submit an annual report to the legislature on these programs in Hawaii's correctional facilities no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2011.

The annual report shall include but not be limited to:

- (1) Descriptions of the various programs;
- (2) Criteria for access/entry to the programs;
- (3) The number of native Hawaiians who participated in the programs;
- (4) The number of non-Hawaiians who participated in the programs;
- (5) The number of native Hawaiians who completed the programs;
- (6) The number of non-Hawaiians who completed the programs;
- (7) The number of participants paroled/"maxed out";
- (8) Recidivism after three months, six months, nine months, and one year; and
- (9) Successes and challenges in administering the programs.

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 shall take effect upon its approval.

(Became law on July 6, 2010, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 194

H.B. NO. 2266

A Bill for an Act Relating to Corrections.

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

SECTION 1. The legislature finds that rape is a violent, destructive crime—no less so when the victim is incarcerated. Even as courts and human rights standards increasingly confirm that prisoners have the same fundamental rights to safety, dignity, and justice as individuals living at liberty in the community, vulnerable men, women, and children continue to be sexually victimized by other prisoners and corrections staff. Tolerance of sexual abuse of prisoners in the government's custody is totally incompatible with American values.

The United States Congress affirmed the duty to protect incarcerated individuals from sexual abuse by unanimously enacting the Prison Rape Elimination Act of 2003. The Act called for the creation of a national commission to study the causes and consequences of sexual abuse in confinement and to

develop standards for correctional facilities nationwide that would set in motion a process to eliminate prison rape.

The purpose of this Act is to establish policies and standards to provide appropriate treatment to victims of prison rape and to prevent the occurrence of prison rape.

SECTION 2. The department of public safety, to the best of the department's ability, shall address sexual assault in prison and make every effort to seek grant moneys from the federal government to implement those efforts. The department shall place priority upon establishing:

- (1) Appropriate counseling services for sexual assault, to be made available to victims of prison rape within twenty-four hours of the report of an assault; and
- (2) Policies and standards of transparency to achieve a zero-tolerance policy for sexual assault.

SECTION 3. The department of public safety, no later than twenty days prior to the convening of each regular session, shall annually report data to the legislature regarding:

- (1) Sexual assault by persons in custody against other persons in custody of the department of public safety;
- (2) Sexual assault by correctional staff against persons in custody of the department of public safety;
- (3) Non-criminal sexual misconduct by staff, including sexual harassment of persons in custody of the department of public safety;
- (4) Criminal cases initiated, and closed by dismissal, plea, or verdict, for sexual assaults by or upon a person in custody of the department of public safety; and
- (5) Civil claims filed and closed by dismissal, settlement, or verdict for sexual assaults by or upon a person in custody of the department of public safety.

SECTION 4. The department of public safety shall report to the legislature no later than twenty days prior to the convening of the regular session of 2011 on its efforts to implement the federal Prison Rape Elimination Act of 2003 in state correctional facilities under the department's jurisdiction, including those facilities under contract with the department.

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

(Became law on July 6, 2010, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

**ACT 195**

H.B. NO. 2289

A Bill for an Act Relating to Gift Certificates.

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

SECTION 1. The legislature finds that on May 22, 2009, President Obama signed into law the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (which may be cited as the Credit CARD Act of 2009), which imposes sweeping changes to credit card industry practices and includes important provisions that create new federal regulation of the issuance and sale

of gift cards, gift certificates, and open-loop prepaid cards. The new law applies to both issuers and sellers of prepaid stored value products and sets minimum fees, expiration limits on prepaid products, and requires certain disclosures to consumers in connection with fees and expiration dates. Notably, the Credit CARD Act of 2009 does not apply to traditional paper gift certificates, but generally would apply to plastic cards and other payment codes or devices, including standard gift cards as well as so-called "open-loop" prepaid cards, such as those commonly issued by banks and usable over Visa, MasterCard, American Express, Discover, or similar payment networks.

Key provisions of the Credit CARD Act of 2009, relating to gift cards include:

- (1) Fees may not be imposed unless there has been no activity for at least a twelve-month period prior to the date of the fee;
- (2) Only one fee may be charged per month;
- (3) Gift cards must remain valid for at least five years; and
- (4) Permitted fees and expiration dates must be conspicuously disclosed.

There are several exemptions that include telephone services products, promotional cards, paper gift certificates, and products for event or venue admission, which take effect on August 22, 2010. The Credit CARD Act of 2009 also requires the Federal Reserve Board to issue rules it considers necessary to carry out the Act.

The legislature further finds that it is in the best interests of consumers in the State of Hawaii to adopt some of the key provisions of the Credit CARD Act of 2009. The purpose of this Act is to adopt these protections in Hawaii's laws.

SECTION 2. Section 481B-13, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

"(a) Any restaurant or person engaged in the business of offering services or goods for sale at retail may allow customers to purchase gift certificates~~]; provided that the certificate issuer shall honor the certificate for a period of at least two years from the date of issuance~~. A certificate issuer shall not charge a service fee, including but not limited to a service fee for dormancy or inactivity. Any activation or issuance fee charged shall not exceed the lesser of ten per cent of the face value of the certificate or \$5.

(b) The date of issuance and the expiration date shall be clearly identified on the face of the gift certificate, or, if an electronic card with a banked dollar value, clearly printed upon a sales receipt transferred to the purchaser of the electronic card upon the completed transaction. The expiration date shall be not less than ~~[two] five years after the date of issuance[-]; provided that the expiration date of certificates issued only in paper form shall be not less than two years after the date of issuance.~~ If the gift certificate does not have an expiration date, it shall be valid in perpetuity."

2. By amending subsection (e) to read:

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

"Certificate issuer" or "issuer" means a restaurant or a person engaged in the business of offering services or goods for sale at retail who sells gift certificates to customers.

"Gift certificate" or "certificate" includes any electronic card with a banked dollar value where the issuer has received payment for the full banked dollar value for the future purchase or delivery of goods or services, any certificate where the issuer has received payment for the full face value of the certificate

for future purchases or delivery of goods or services, and any other medium that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card, or other medium for goods, food, or services of at least an equal value. “Gift certificate” or “certificate” does not include a card, certificate, or other medium that is:

- (1) Used solely for telephone services;
- (2) Reloadable and not marketed or labeled as a gift card, gift certificate, or certificate;
- (3) A loyalty, award, or promotional gift card;
- (4) Not marketed to the general public; or
- (5) Redeemable solely for admission to events or venues at a particular location or group of affiliated locations, which may also include services or goods obtainable:
  - (A) At the event or venue after admission; or
  - (B) In conjunction with admission to such events or venues, at specific locations affiliated with and in geographic proximity to the event or venue.

“Service fee” means a periodic fee, charge, or penalty for holding or use of a gift certificate, but does not include a one-time initial activation or issuance fee.”

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, 2010.

(Became law on July 6, 2010, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 196

H.B. NO. 2832

A Bill for an Act Relating to Taro Security.

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

SECTION 1. The legislature established the taro security and purity task force (task force) in 2008 to seek solutions to challenges facing taro, taro farmers, and taro markets. The task force published the report “The Taro Lives; Abundance Returns to the Land” in 2009, which represents the first time that guidance for taro, taro research, and the problems facing taro farmers comes from the farmers and from the taro itself.

The legislature finds that the task force developed recommendations that need implementation. The task force members are dedicated to continuing their work to implement the recommended policies and programs.

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

**“§10- Taro security; funding.** (a) The office may seek available federal, state, county, or private funding to restore taro and lo'i cultivation. The office shall cooperate with other public and private agencies, as appropriate, in applying for funds pursuant to this section.

(b) The office may use and distribute funds received pursuant to subsection (a) for projects that use taro for:

- (1) Flood control;
- (2) Wetland restoration and preservation;
- (3) Food security;
- (4) Community economic development;
- (5) Job creation;
- (6) Education; and
- (7) Water-quality protection.”

SECTION 3. Act 211, Session Laws of Hawaii 2008, section 2, is amended by amending subsection (e) to read as follows:

“(e) The task force shall submit a preliminary report to the legislature documenting the status of its progress no later than twenty days prior to the convening of the regular session of 2009. The task force shall submit a final report to the legislature summarizing its program, the results achieved, actual expenditures, and recommended legislation no later than twenty days prior to the convening of the regular session of 2010.

The task force shall implement the recommendations in the final report submitted prior to the regular session of 2010, and shall submit a preliminary report to the legislature documenting the status of implementation no later than twenty days prior to the convening of the regular session of 2014. The task force shall submit a final report to the legislature summarizing its implementation accomplishments no later than twenty days prior to the convening of the regular session of 2015.”

SECTION 4. New statutory material is underscored.<sup>1</sup>

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

(Became law on July 6, 2010, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 197**

H.B. NO. 2919

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 sewer maintenance working supervisors, wastewater collection system inspection supervisors, wastewater collection system district supervisors, and wastewater collection system field services supervisors are currently not included under the definition of “sewer worker” by the employees’ retirement system, despite the fact that these workers are exposed to hazards that are similar to the other types of position classifications covered under that definition.

The purpose of this Act is to expand the definition of “sewer worker” to include sewer maintenance working supervisors, wastewater collection system inspection supervisors, wastewater collection system district supervisors, and wastewater collection system field services supervisors.



SECTION 2. Section 88-21, Hawaii Revised Statutes, is amended by amending the definition of "sewer worker" to read as follows:

"Sewer worker" means an employee of any county who is employed in any of the following classifications or classifications performing substantially the same work under classification titles not listed in this definition:

- (1) ~~[sewer]~~ Sewer maintenance helper or wastewater collection system helper~~;~~;
- (2) ~~[sewer]~~ Sewer maintenance repairer or wastewater collection system repairer~~;~~ ~~(3) sewer~~;
- (3) Sewer maintenance working supervisor;
- (4) Sewer maintenance supervisor I ~~[and]~~ or II or wastewater collection system supervisor I ~~[and]~~ or II~~;~~;
- (5) Wastewater collection system inspection supervisor;
- (6) Wastewater collection system district supervisor;
- (7) Wastewater collection system field services supervisor; ~~[(4) gas]~~
- (8) Gas detector~~;~~ ~~(5) gas~~;
- (9) Gas detector helper~~;~~ ~~(6) gas~~;
- (10) Gas detection supervisor~~;~~ ~~(7) cesspool~~;
- (11) Cesspool worker~~;~~ ~~(8) cesspool~~;
- (12) Cesspool pumping equipment operator I ~~;~~ ~~(9) cesspool pumping equipment operator II, (10) cesspool~~ or II;
- (13) Cesspool pumping supervisor~~;~~ or in any combination of these classifications."

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, 2011.

(Became law on July 6, 2010, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

A Bill for an Act Relating to Intoxicating Liquor.

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

SECTION 1. Section 281-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) It shall be unlawful for any person who keeps or maintains any restaurant or other premises where food, beverages, or entertainment are provided~~;~~ or brought in by patrons or guests, whether for compensation or not, or to which members of the public~~;~~ or members of an organization~~;~~ resort for food, refreshment, or entertainment~~;~~ and who is not a licensee of the commission under this chapter, to promote, encourage, aid, or permit the consumption of liquor on the premises, except during the hours between ~~[which licensed premises of dispensers are permitted to be open for the transaction of business in the county where the premises are located.]~~ 6:00 a.m. and 12:00 a.m. Any premises that desires to operate after 12:00 a.m. until 2:00 a.m. shall obtain a class 17 liquor license under section 281-31(q), and shall be subject to the requirements of this chapter and the rules adopted by the liquor commission of the county in

which the premises are located during all hours of operation, except as otherwise provided by law.”

SECTION 2. Section 281-31, Hawaii Revised Statutes, is amended to read as follows:

“§281-31 Licenses, classes. (a) Licenses may be granted by the liquor commission as provided in this section.

(b) Class 1. Manufacturer license. A license for the manufacture of liquor shall authorize the licensee to manufacture the liquor therein specified and to sell it at wholesale in original packages to any person who holds a license to resell it and to sell draught beer or wine manufactured from grapes or other fruits grown in the State in any quantity to any person for private use and consumption. Under this license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) Beer;
- (2) Wine;
- (3) Alcohol; and
- (4) Other specified liquor.

It shall be unlawful for any holder of a manufacturer license to have any interest whatsoever in the license or licensed premises of any other licensee. This subsection shall not prevent the holder of a manufacturer license under this chapter or under the law of another jurisdiction from maintaining any interest in the license or licensed premises of a wholesale dealer licensee under this chapter.

(c) Class 2. Restaurant license.

(1) A license under this class shall authorize the licensee to sell liquor specified in this subsection for consumption on the premises; provided that a restaurant licensee, with commission approval, may provide off-premises catering of food and liquor; provided further that the catering activity shall be directly related to the licensee's operation as a restaurant. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishment shall be as follows:

- (A) A standard bar; or
- (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

(2) If a licensee under class 2 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

(3) Of this class, there shall be the following kinds:

- (A) General (includes all liquor except alcohol);
- (B) Beer and wine; and
- (C) Beer.

Notwithstanding section 281-57, the commission may approve at one public hearing and without notice the change to a class 2 restaurant license of a licensee holding a class 5 dispenser license who meets the requirements of a class 2 license.

(d) Class 3. Wholesale dealer license. A license for the sale of liquor at wholesale shall authorize the licensee to import and sell only to licensees[,] or to others who are by law authorized to resell the liquor specified by the license but are not by law required to hold a license[, ~~the liquor therein specified~~]; provided

that ~~[samples of liquor may be sold]~~ a class 3 licensee may sell samples of liquor back to the manufacturer. Under ~~[the license,]~~ a class 3 license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) General (includes all liquor except alcohol);
- (2) Beer and wine; and
- (3) Alcohol.

If any wholesale dealer solicits or takes any orders in any county other than that where the dealer's place of business is located, the orders may be filled only by shipment direct from the county in which the wholesale dealer holds the dealer license. Nothing in this subsection shall prevent a wholesaler from selling liquor to post exchanges, ships' service stores, army or navy officers' clubs, or similar organizations located on army or navy reservations, or to any vessel other than vessels performing a regular water transportation service between any two or more ports in the State, or to aviation companies who operate an aerial transportation enterprise ~~[as a common carrier, under]~~ subject to chapter 269[,] and engaged in regular flight passenger services between any two or more airports in the State for use on aircraft, or aviation companies engaged in transpacific flight operations for use on aircraft outside the jurisdiction of the State.

(e) Class 4. Retail dealer license. A license to sell liquor at retail or to class 10 ~~[licenses]~~ licensees shall authorize the licensee to sell the liquor therein specified in their original packages. Under ~~[the license,]~~ a class 4 license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

- (1) General (includes all liquor except alcohol);
  - (2) Beer and wine; and
  - (3) Alcohol.
- (f) Class 5. Dispenser license.

(1) A license under this class shall authorize the licensee to sell liquor specified in this subsection for consumption on the premises. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishments shall be as follows:

- (A) A standard bar;
- (B) Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to commission rules;
- (C) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by commission rules; or
- (D) Premises in which employees or entertainers are compensated to sit with patrons, regardless of whether the employees or entertainers are consuming nonalcoholic beverages while in the company of the patrons pursuant to commission rules.

(2) If a licensee under class 5 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

(3) Of this class, there shall be the following kinds:

- (A) General (includes all liquor except alcohol);
- (B) Beer and wine; and
- (C) Beer.

(g) Class 6. Club license. A club license shall be general only ~~[(but~~ ~~excluding]~~ shall exclude alcohol~~)]~~ and shall authorize the licensee to sell liquor to members of the club and to guests of the club enjoying the privileges of mem-

bership[;] for consumption only on the premises kept and operated by the club; provided that the license shall also authorize any club member to keep in the member's private locker on the premises a reasonable quantity of liquor[; if] owned by the member[;] for the member's own personal use and not to be sold [and] that may be consumed only on the premises. A club licensee shall be authorized to host charitable functions that are open to the general public only pursuant to commission rules.

The categories of establishment shall be as follows:

- (1) A standard bar; or
- (2) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

(h) Class 8. Transient vessel license. A general license may be granted to the owner of any vessel for the sale of liquor [(other than alcohol)] on board the vessel while en route within the jurisdictional limits of the State and within any port of the State. Sales shall be made only for consumption by passengers and their guests on board the vessel. The license shall be issuable in each county where the sales are to be made; provided that the application for the license may be made by any agent representing the owner.

(i) Class 9. Tour or cruise vessel license. A general license may be granted to the owner of any tour or cruise vessel for the sale of liquor [(other than alcohol)] on board the vessel while in the waters of the State; provided that sales be made only for consumption by passengers on board while the vessel is in operation outside the port or dock of any island of the State, unless otherwise approved by the county where the license has been issued. The license shall be issuable in the county [wherein] where the home port of the vessel is situated. If, on any vessel for which no license has been obtained under this chapter, any liquor is sold or served within three miles of the shore of any island of the State, it shall constitute a violation of this chapter.

The categories of establishment shall be as follows:

- (1) A standard bar; or
- (2) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

(j) Class 10. Special license. A special license may be granted for the sale of liquor for a period not to exceed three days and pursuant to commission rule may be approved by the administrator for fundraising events by nonprofit organizations, political candidates, and political parties; provided that any registered educational or charitable nonprofit organization may sell liquors in their original packages for off-premises consumption. Of this class, there shall be the following kinds:

- (1) General (includes all liquor except alcohol);
- (2) Beer and wine; and
- (3) Beer.

[Under this license, the liquor therein specified] Liquor sold under a class 10 license shall be consumed on the premises.

(k) Class 11. Cabaret license. A cabaret license shall be general only [(but [excluding] shall exclude alcohol)] and shall authorize the sale of liquor for consumption on the premises. This license shall be issued only for premises where food is served, facilities for dancing by the patrons including a dance floor are provided, [~~including a dance floor;~~] and live or amplified recorded music or professional entertainment[;] except professional entertainment by a person who performs or entertains unclothed[;] is provided for the patrons; provided that

professional entertainment by persons who perform or entertain unclothed shall be authorized by:

- (1) A cabaret license for premises where professional entertainment by persons who perform or entertain unclothed was presented on a regular and consistent basis immediately prior to June 15, 1990; or
- (2) A cabaret license that, pursuant to rules adopted by the liquor commission, permits professional entertainment by persons who perform or entertain unclothed.

A cabaret license under paragraph (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall be transferable through June 30, 2000. A cabaret license under paragraph (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall not be transferable after June 30, 2000, except [~~when the transferee obtains~~] upon approval [from] by the liquor commission[-] and pursuant to rules adopted by the commission. Notwithstanding any rule of the liquor commission to the contrary, cabarets in resort areas may be opened for the transaction of business until 4 a.m. throughout the entire week.

(l) Class 12. Hotel license. A license to sell liquor in a hotel shall authorize the licensee to provide entertainment and dancing on the hotel premises and to sell all liquor[-] except alcohol[-] for consumption on the premises; provided that a hotel licensee, with commission approval, may provide off-premises catering of food and liquor[-] if the catering activity is directly related to the licensee's food service.

Procedures such as room service, self-service [~~{no-host}~~], minibars or similar service in guest rooms, and service at parties in areas that are the property of and contiguous to the hotel[-] are permitted with commission approval.

Any licensee who would otherwise fall within the hotel license class but holds a different class of license may be required to apply for a hotel license.

If the licensee applies for a change of classification prior to July 30, 1992, the licensee shall not be subject to the requirements of sections 281-52, 281-54, and 281-57 through 281-59.

Any licensee holding a class 12 license on May 1, 2007[-, and] who would otherwise [~~come within this class of~~] qualify for a class 15 license may apply to the liquor commission of the county in which the licensee is seeking a change in liquor license for a change to a class 15 license; provided that the licensee shall not be subject to the requirements of section 281-54 and sections 281-57 to 281-60.

If a licensee holding a class 12 license on May 1, 2007[-] applies for a change to a class 15 license, the respective liquor commission shall hold a public hearing upon notice[-, and upon]. On the day of hearing[-] or any adjournment thereof, the liquor commission shall consider the application, accept all written or oral testimony for or against the application, and render its decision granting or refusing the application. If the application is denied, the class 12 license shall continue in effect in accordance with law.

(m) Class 13. Caterer license. A general license may be granted to any applicant who serves food as part of their operation for the sale of liquor [~~{other than alcohol}~~] while performing food catering functions off the premises.

No catering service for the sale of liquor shall be performed off the licensee's premises[-] unless prior written notice of the service has been delivered to the office of the liquor commission of the county concerned. The notice shall state the date, time, and location of the proposed event and shall include a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators.

(n) Class 14. Brewpub license. A brewpub licensee:

- (1) Shall manufacture not more than ~~ten~~ thirty thousand barrels of malt beverages on the licensee's premises during the license year;
- (2) May sell malt beverages manufactured on the licensee's premises for consumption on the premises;
- (3) May sell malt beverages manufactured by the licensee in brewery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule;
- (4) May sell intoxicating liquor~~;~~ purchased from a class 1 manufacturer licensee~~;~~ or a class 3 wholesale dealer licensee~~;~~ to consumers for consumption on the licensee's premises. The categories of establishments shall be as follows:
  - (A) A standard bar; or
  - (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules;
- (5) May sell malt beverages manufactured on the licensee's premises to consumers in brewery-sealed kegs and growlers for off-premises consumption; provided that for purposes of this paragraph, "growler" means a glass container, not to exceed one half-gallon, which shall be securely sealed;
- (6) May sell malt beverages manufactured on the licensee's premises ~~to consumers;~~ in recyclable containers ~~[that may be]~~ provided by the licensee or by the consumer~~;~~ ~~not to~~ which do not exceed one gallon per container~~;~~ ~~which~~ and are securely sealed on the licensee's premises~~;~~ to consumers for off-premises consumption;
- (7) Shall comply with all regulations pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages; ~~and~~
- (8) May sell malt beverages manufactured on the licensee's premises in brewery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, ~~and~~ class 14 brewpub licensees, class 15 condominium hotel licensees, and consumers pursuant to conditions imposed by county regulations governing class 1 manufacturer licensees and class 3 wholesale dealer licensees~~;~~; and
- (9) May conduct the activities under paragraphs (1) to (8) at one location other than the licensee's premises; provided that:
  - (A) The manufacturing takes place in Hawaii; and
  - (B) The other location is properly licensed under the same ownership.

(o) Class 15. Condominium hotel license. A license to sell liquor in a condominium hotel shall authorize the licensee to provide entertainment and dancing on the condominium hotel premises and to sell all liquor~~;~~ except alcohol~~;~~ for consumption on the premises; provided that a condominium hotel licensee, with commission approval, may provide off-premises catering; provided further that the catering activity is directly related to the licensee's operation as a condominium hotel.

Procedures such as room service, self-service ~~[no-host];~~ minibars or similar service in apartments, and service at private parties in areas that are the property of and contiguous to the condominium hotel~~;~~ are permitted with commission approval.

A condominium hotel licensee shall not sell liquor in the manner authorized by a class 4 retail [~~dealer~~] license.

Any licensee who would otherwise [~~fall within~~] meet the criteria for the condominium hotel license class but holds a different class of license may be required to apply for a condominium hotel license.

- (p) Class 16. Winery license. A winery licensee:
  - (1) Shall manufacture not more than ten thousand barrels of wine on the licensee's premises during the license year;
  - (2) May sell wine manufactured on the licensee's premises for consumption on the premises;
  - (3) May sell wine manufactured by the licensee in winery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule;
  - (4) May sell wine manufactured on the licensee's premises [~~to consumers~~] in winery-sealed kegs and magnums to consumers for off-premises consumption; provided that for purposes of this paragraph, "magnum" means a glass container[;] not to exceed one half-gallon, which may be securely sealed;
  - (5) May sell wine manufactured on the licensee's premises [~~to consumers~~;] in recyclable containers [~~that may be~~] provided by the licensee or by the consumer[; ~~not to~~] which do not exceed one gallon per container[; ~~which~~] and are securely sealed on the licensee's premises[;] to consumers for off-premises consumption;
  - (6) Shall comply with all rules pertaining to class 4 retail dealer licensees when engaging in the retail sale of wine; and
  - (7) May sell wine manufactured on the licensee's premises in winery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, and class 15 condominium hotel licensees[;] pursuant to conditions imposed by county planning and public works departments and rules governing class 3 wholesale dealer licensees.

(q) Class 17. Bring-your-own-beverage license. In counties having a population in excess of 500,000, there is established a class 17 license; provided that in a county having a population of 500,000 or less, the respective commission may establish a class 17 license to which this subsection shall apply.

- (1) A general license of this class shall authorize the licensee to permit patrons to bring their own liquors for consumption on the premises between the hours of 6:00 a.m. to 2:00 a.m. the following day. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishments shall be as follows:
  - (A) Premises in which recorded music and live entertainment, including karaoke, are provided; or
  - (B) Premises in which recorded music and live entertainment, including karaoke and dancing, are provided.
- (2) If a licensee under this class desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

(3) A licensee under this class shall not be subject to liquor commission rules relating to percentage fees.

~~[(q)] (r)~~ Restaurants, retailers, dispensers, clubs, cabarets, hotels, caterers, brewpubs, ~~[and] condominium hotels, and bring-your-own-beverage establishments~~ licensed under class 2, class 4, class 5, class 6, class 11, class 12, class 13, class 14, ~~[and] class 15, and class 17~~ shall maintain at all times liquor liability insurance coverage in an amount ~~[of] not less than \$1,000,000[-]; provided that convenience minimarts holding a class 4 license shall not be required to maintain liquor liability insurance coverage in that amount.~~ Proof of coverage shall be kept on the premises and shall be made available for inspection by the commission at any time during the licensee's regular business hours. In the event of a licensee's failure to obtain or maintain the required coverage, the commission shall refuse to issue or renew a license[-] or shall suspend or terminate the license as appropriate. No license shall be granted, reinstated, or renewed until after the required insurance coverage is obtained.

For purposes of this subsection:

"Convenience minimarts" commonly refer to a neighborhood "mom and pop store".

~~[(r)] (s)~~ It shall be unlawful for any retail licensee[-] except a class 10 licensee[-] to purchase[-] or acquire[-, or sell] liquor from any person other than a wholesaler licensed pursuant to this chapter, except as otherwise provided in this section.

~~[(s)] (t)~~ Any provision to the contrary notwithstanding, ~~[at the discretion of the county liquor commission, permission may be granted to a bona fide hotel, restaurant, or club licensed under class 2, class 6, class 11, class 12, class 14, class 15, or class 16 to allow] a patron [to] may~~ remove from ~~[the] any class of licensed premises any portion of wine, liquor, or beer that was purchased on or brought onto the premises of the licensee engaged in meal service~~ for consumption with a meal; provided that it is recorked or resealed in its original container. ~~[This subsection applies only to a valid holder of a class 2, class 6, class 11, class 12, class 14, class 15, or class 16 license engaged in meal service.]~~

~~[(t)] (u)~~ Sections 281-57 to 281-60 shall not apply to classes 8 ~~[through], 9, 10, and 13."~~

SECTION 3. Section 281-45, Hawaii Revised Statutes, is amended to read as follows:

**"§281-45 No license issued, when.** No license shall be issued under this chapter:

- (1) To any minor or to any person who has been convicted of a felony and not pardoned ~~[(except], or to any other person not deemed by the commission to be a fit and proper person to have a license; provided that the commission may grant a license under this chapter to a corporation that has been convicted of a felony where the commission finds that the [organization's] corporation's officers and shareholders of twenty-five per cent or more of outstanding stock are fit and proper persons to have a license[-], or to any other person not deemed by the commission to be a fit and proper person to have a license];~~
- (2) To a corporation the officers and directors of which, or any of them, would be disqualified under paragraph (1) from obtaining the license individually, or a stockholder of which, owning or controlling twenty-five per cent or more of the outstanding capital stock, or to a general partnership, limited partnership, limited liability partner-



ship, or limited liability company whose partner or member holding twenty-five per cent or more interest of which, or any of them would be disqualified under paragraph (1) from obtaining the license individually;

- (3) Unless the applicant for a license or a renewal of a license, or in the case of a transfer of a license, both the transferor and the transferee, present to the issuing agency a signed certificate from the director of taxation and from the Internal Revenue Service showing that the applicant or the transferor and transferee do not owe the state or federal governments any delinquent taxes, penalties, or interest; or that the applicant, or in the case of a transfer of a license, the transferor or transferee, has entered into an installment plan agreement with the department of taxation and the Internal Revenue Service for the payment of delinquent taxes in installments and that the applicant is or the transferor or transferee is, in the case of a transfer of a license, complying with the installment plan agreement; or
- (4) To an applicant for a class 2, class 4~~[-]~~ except for convenience mini-marts, class 5, class 6, class 11, class 12, class 13, class 14, ~~or~~ class 15, or class 17 license<sup>1</sup> unless the applicant for issuance of a license or renewal of a license, or in the case of a transfer of a license, both the transferor and the transferee, present to the issuing agency proof of liquor liability insurance coverage in an amount of \$1,000,000; or
- (5) To any applicant who has had any liquor license revoked less than two years previous to the date of the application for any like or other license under this chapter.”

SECTION 4. Section 281-61, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The commission or board shall deny renewal of a class 2, class 4, class 5, class 6, class 11, class 12, class 13, class 14, ~~or~~ class 15, or class 17 license if the applicant for renewal fails to present proof of the liquor liability insurance required by section ~~[281-31(e)-]~~ 281-31(r).”

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 on July 1, 2010.

(Became law on July 6, 2010, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Prior to amendment a comma appeared here.

## ACT 199

H.B. NO. 2698

A Bill for an Act Relating to Technology.

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

SECTION 1. (a) Through Act 2, First Special Session Laws of Hawaii 2007, the legislature created the Hawaii broadband task force to provide recommendations on how to advance Hawaii's broadband capabilities and use. The legislature finds that advanced broadband services are essential infrastructure for an innovation economy and a knowledge society in the twenty-first century. High-speed broadband services at affordable prices are essential for the advancement of education, health, public safety, research and innovation, civic participation, e-government, economic development and diversification, and public safety and services. The legislature also recognizes the evolution in the manner in which communications and information services are delivered to the consumer, including by wireline, wireless, cable television, and satellite infrastructures, and that the voice, video, and data services provided over these infrastructures are converging.

Meeting the following goals is critical for Hawaii to compete successfully in the global economy of the twenty-first century:

- (1) Ensure access to broadband communications for all households, businesses, and organizations throughout Hawaii by 2012 at speeds and prices comparable to the average speeds and prices available in the top three performing countries in the world;
  - (2) Increase availability of advanced broadband communications service on a competitive basis to reduce prices, increase service penetration, and improve service to all persons in Hawaii;
  - (3) Increase broadband availability at affordable costs to low-income and other disadvantaged groups, including making low-cost, broadband-capable computers available to eligible recipients;
  - (4) Increase sharing of the infrastructure used to deploy broadband to speed up implementation, reduce costs to providers, reduce underlying costs to providers through incentives rather than eminent domain procedures, ease deployment of broadband, and ease entry into a competitive broadband marketplace;
  - (5) Increase flexible, timely, and responsible access to public rights-of-way and public facilities for broadband service providers; and
  - (6) Develop a more streamlined permit approval process that reduces the time and cost of infrastructure deployment, to be created jointly by disparate permitting agencies, stakeholders, and other interested parties.
- (b) The purpose of this Act is to begin implementation of activities to achieve these goals by:
- (1) Adding the functions of telework promotion and broadband assistance to the department of commerce and consumer affairs' responsibilities over cable programming under chapter 440G, Hawaii Revised Statutes;
  - (2) Appropriating moneys from the compliance resolution fund for fiscal year 2010-2011 to fund telework and broadband activities;
  - (3) Establishing a telework promotion and broadband assistance advisory council to meet the goals of expanded broadband and its products and services in the State of Hawaii;

- (4) Establishing a work group to develop procedures for streamlined permitting functions applicable to the development of broadband services or technology; and
- (5) Requiring the department of commerce and consumer affairs to report annually to the legislature on all expenditures of federal moneys received pursuant to the American Recovery and Reinvestment Act of 2009 or other federal funds, for purchasing broadband facilities, services, or equipment, or entering into contracts for broadband-related projects.

SECTION 2. Chapter 440G, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§440G- Other duties of the director; broadband services.** In conjunction with broadband services, the director shall:

- (1) Promote and encourage use of telework alternatives for public and private employees, including appropriate policy and legislative initiatives;
- (2) Advise and assist state agencies, and upon request of the counties, advise and assist the counties, in planning, developing, and administering programs, projects, plans, policies, and other activities to promote telecommuting by employees of state and county agencies;
- (3) Support the efforts of both public and private entities in Hawaii to enhance or facilitate the deployment of, and access to, competitively priced, advanced electronic communications services, including broadband and its products and services and Internet access services of general application throughout Hawaii;
- (4) Make recommendations to establish affordable, accessible broadband services to unserved and underserved areas of Hawaii and monitor advancements in communications that will facilitate this goal;
- (5) Advocate for, and facilitate the development and deployment of, expanded broadband applications, programs, and services, including telework, telemedicine, and e-learning, that will bolster the usage of and demand for broadband level telecommunications;
- (6) Serve as a broadband information and applications clearinghouse for the state and a coordination point for federal American Recovery and Reinvestment Act of 2009 broadband-related services and programs; and
- (7) Promote, advocate, and facilitate the implementation of the findings and recommendations of the Hawaii broadband task force established by Act 2, First Special Session Laws of Hawaii 2007.

The director shall submit an annual report to the legislature, no later than twenty days prior to the convening of each regular session, on the department's efforts to use broadband and its products and services to develop and expand telework initiatives, including telework participation levels and trends of both private and public sector employees in Hawaii.

Pursuant to chapter 440G-12(d), the director may appoint and employ engineers, accountants, attorneys, and professional, clerical, stenographic, or other assistants, as required, with or without regard to chapter 76.”

**SECTION 3. Telework promotion and broadband assistance advisory council; establishment; purpose.** (a) The administrator of the cable television division of the department of commerce and consumer affairs shall convene and chair the broadband assistance advisory council to advise the administrator on

policy and funding priorities to promote and encourage use of telework alternatives for public and private employees, and expedite deployment of affordable and accessible broadband services in Hawaii.

(b) The council shall be composed of the administrator of the cable television division and the following twelve members who shall be equally appointed by the president of the senate and by the speaker of the house of representatives as follows:

- (1) Two members of the senate, appointed by the president of the senate;
- (2) Two members of the house of representatives, appointed by the speaker of the house of representatives;
- (3) Four representatives of federal, state, and county government entities having a role in infrastructure deployment; management of public rights-of-way, regulation, and franchising; information technology; and economic development; and
- (4) Four representatives of Hawaii's private sector technology, telecommunications, and investment industries.

Except for the administrator of the cable television division, all members shall serve for a term of four years. Any vacancies occurring in the membership of the advisory council shall be filled for the remainder of the unexpired term in the same manner as the original appointments.

(c) The administrator of the cable television division shall serve as chairperson of the council. The council shall meet at times as may be called by the chairperson. Members shall be reimbursed for reasonable expenses, including travel expenses, necessary for the performance of their duties. Administrative support to the council shall be provided by the department of commerce and consumer affairs.

(d) The council shall:

- (1) Monitor the broadband-based development efforts of other states and nations in areas such as business, education, and health;
- (2) Advise the department on other states' best practices involving telework promotion and policies and strategies related to making affordable broadband services available to every Hawaii home and business;
- (3) Monitor broadband-related activities at the federal level;
- (4) Monitor regulatory and policy changes for potential impact on broadband deployment and sustainability in Hawaii; and
- (5) Encourage public-private partnerships to increase the deployment and adoption of broadband services and applications.

**SECTION 4. Work group; establishment; reporting.** (a) The administrator of the cable television division of the department of commerce and consumer affairs shall convene a work group to develop procedures for streamlined permitting functions that are applicable to the development of broadband services and broadband technology that are normally available to state and local governments for the use or development of broadband service or broadband technology. Members of the work group shall include:

- (1) The administrator of the cable television division, or the administrator's designee;
- (2) The mayor of the county of Hawaii, or the mayor's designee;
- (3) The mayor of the city and county of Honolulu, or the mayor's designee;
- (4) The mayor of the county of Kauai, or the mayor's designee;
- (5) The mayor of the county of Maui, or the mayor's designee;

- (6) The chairperson of the Hawaii broadband task force established by Act 2, First Special Session Laws of Hawaii 2007; and
  - (7) Two representatives of state agencies with jurisdiction over land use and permitting at the state level.
- (b) The work group shall submit to the legislature, no later than January 1, 2011, a report with its recommended procedures for streamlining and expediting all permitting functions normally available to state and local governments for the use or development of broadband service or broadband technology. The procedures shall be consistent across all counties and shall provide that any permitting fees and revenues traditionally accruing to the counties that relate to the use or development of broadband service or broadband technology shall continue to accrue to the counties after the procedures go into effect.

SECTION 5. The department of commerce and consumer affairs shall report annually to the legislature, no later than twenty days prior to the convening of each regular session, on the receipt and expenditure of federal moneys from the American Recovery and Reinvestment Act of 2009, and moneys from other federal appropriation measures or applicable federal acts, for the purposes of purchasing broadband facilities, services, or equipment or for entering into contracts for broadband-related projects by all state agencies for all state agencies approval.

SECTION 6. There is appropriated out of the compliance resolution fund subaccount CCA102, established under section 26-9(o), Hawaii Revised Statutes, the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2010-2011 to be used for the purposes of Section 2 of this Act.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 7. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect on July 1, 2010.

(Became law on July 6, 2010, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 200**

S.B. NO. 2548

A Bill for an Act Relating to Information Technology.

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

SECTION 1. The legislature finds that in March 2009, the auditor released Report No. 09-06: "Audit of the State of Hawaii's Information Technology: Who's in Charge?", conducted pursuant to section 23-4, Hawaii Revised Statutes, which requires the auditor to conduct postaudits of the transactions, accounts, programs, and performance of all departments, offices, and agencies of the State and its political subdivisions. Chief among the report's findings is the recommendation that the governor formally assign responsibility for the development and execution of the information technology strategic plan to the

State's chief information officer. The report also made several recommendations to the legislature to explicate the responsibilities of the various information technology governance entities.

The purpose of this Act is to implement the information technology recommendations of auditor's Report No. 09-06 by establishing a full-time chief information officer and an information technology steering committee. This Act also establishes the shared services technology special fund to facilitate the State's ability to generate overall cost reductions through economies of scale and decreased administrative burdens.

SECTION 2. Chapter 27, Hawaii Revised Statutes, is amended by adding a new section to part VII, to be appropriately designated and to read as follows:

**“§27- Information technology; chief information officer; information technology steering committee; establishment; responsibilities.** (a) There is established within the office of the governor a full-time chief information officer to organize, manage, and oversee statewide information technology governance, including supervision and oversight of the information and communication services division of the department of accounting and general services. The chief information officer shall be appointed by the governor as provided in section 26-34. The chief information officer shall report directly to the governor and, in conjunction with the information technology steering committee, shall:

- (1) Develop, implement, and manage statewide information technology governance;
- (2) Develop, implement, and manage the state information technology strategic plans;
- (3) Develop and implement statewide technology standards;
- (4) Report annually to the governor and the legislature on the status and implementation of the state information technology strategic plan; and
- (5) Perform other necessary or desirable functions to facilitate the intent of this section.

(b) There is established an information technology steering committee to assist the chief information officer in developing the State's information technology standards and policies, including but not limited to:

- (1) Assisting the chief information officer in developing and implementing the state information technology strategic plans;
- (2) Assessing executive branch departments' progress in meeting the objectives defined in the state information technology strategic plans and identifying best practices for shared or consolidated services;
- (3) Ensuring technology projects are selected based on their potential impact and risk to the State, as well as their strategic value;
- (4) Ensuring that executive branch departments maintain sufficient tools to assess the value and benefits of technology initiatives;
- (5) Assisting the chief information officer in developing state information technology standards and policies; and
- (6) Clarifying the roles, responsibilities, and authority of the information and communication services division, specifically as it relates to its statewide duties.

The members of the information technology steering committee shall be appointed by the senate president and speaker of the house of representatives in equal number respectively and shall include representatives from executive branch departments, including large user agencies such as the department of

education and the University of Hawaii; the judiciary; the legislature; and private individuals. The chief information officer shall serve as the chair of the committee and shall ensure that the committee is evaluated periodically.

(c) There is established within the department of budget and finance a special fund to be known as the shared services technology special fund to be administered and expended by the chief information officer for the purposes of this subsection. per cent of the receipts collected from special funds pursuant to section 36-27 shall be deposited into the shared services technology special fund. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the chief information officer and the information technology steering committee, including the employment and training of staff and any other activities deemed necessary by the chief information officer to carry out the purposes of this section."

SECTION 3. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

"§36-27 Transfers from special funds for central service expenses. (a) 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 and the subaccounts of its regional system boards;
- (14) Tourism special fund established under section 201B-11;
- (15) Universal service fund established under [~~chapter 269;~~] section 269-42;
- (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) Glass advance disposal fee [~~special fund~~] established by section 342G-82;
- (20) Center for nursing special fund under section 304A-2163;
- (21) Passenger facility charge special fund established by section 261-5.5;
- (22) Court interpreting services revolving fund under section 607-1.5;
- (23) Hawaii cancer research special fund;
- (24) Community health centers special fund;

- (25) Emergency medical services special fund; ~~and~~
- (26) Rental motor vehicle customer facility charge special fund established under section 261-5.6[~~5~~]; and
- (27) Shared services technology special fund under section 27-

shall deduct five per cent of all receipts of all 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.

(b) Notwithstanding any other law to the contrary, the director shall deposit per cent of all moneys collected pursuant to subsection (a) into the shared services technology special fund established pursuant to section 27- .”

SECTION 4. Section 36-30, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) 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 section 431P-2;
  - (11) Convention ~~[[center]]~~ enterprise special fund established under section 201B-8;
  - (12) Hawaii health systems corporation special funds and the subaccounts of its regional system boards;
  - (13) Tourism special fund established under section 201B-11;
  - (14) Universal service fund established under ~~[chapter 269;]~~ section 269-42;
  - (15) Emergency and budget reserve fund under section 328L-3;
  - (16) Public schools special fees and charges fund under section 302A-1130~~(F)~~;
  - (17) Sport fish special fund under section 187A-9.5;
  - (18) Center for nursing special fund under section 304A-2163;
  - (19) Passenger facility charge special fund established by section 261-5.5;
  - (20) Court interpreting services revolving fund under section 607-1.5;
  - (21) Hawaii cancer research special fund;
  - (22) Community health centers special fund;
  - (23) Emergency medical services special fund; ~~and~~
  - (24) Rental motor vehicle customer facility charge special fund established under section 261-5.6[~~5~~]; and



(25) Shared services technology special fund under section 27- 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.

- (b) Administrative expenses shall include:
  - (1) Salaries;
  - (2) Maintenance of buildings and grounds;
  - (3) Utilities; [and]
  - (4) General office expenses[-]; and
  - (5) Implementation of information technology policies developed by the chief information officer and the information technology steering committee pursuant to section 27-”

SECTION 5. The governor shall report to 2011 legislature with recommendations for:

- (1) The most appropriate state agency to house the chief information officer and any personnel under the authority of the chief information officer; whether as the executive of a separate agency or as part of an existing agency;
- (2) The appropriate funding level for the shared services technology special fund established in section 27- (c), Hawaii Revised Statutes, and the designated percentage of all moneys collected pursuant to section 36-27(a), Hawaii Revised Statutes, for deposit into the shared services technology special fund; and
- (3) Any legislation necessary to implement these recommendations.

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

SECTION 7. This Act shall take effect on January 1, 2011; provided that the amendments made to sections 36-27 and 36-30, Hawaii Revised Statutes, by sections 3 and 4 of this Act shall not be repealed when those sections are reenacted on June 30, 2015, by section 34 of Act 79, Session Laws of Hawaii 2009.

(Became law on July 6, 2010, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 201

S.B. NO. 2817

A Bill for an Act Relating to Solar Energy Devices.

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

SECTION 1. Section 196-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Every private entity shall adopt rules by December 31, 2006, that provide for the placement of solar energy devices[-], and revise those rules as necessary by July 1, 2011. The rules shall facilitate the placement of solar energy devices and shall not [~~unduly or unreasonably restrict that placement so as to~~]

impose conditions or restrictions that render the device more than twenty-five per cent less efficient or ~~to~~ increase the cost of installation, maintenance, and removal of the device by more than fifteen per cent. No private entity shall assess or charge any homeowner any fees or require an encumbrance on title for the placement of any solar energy device.”

SECTION 2. Section 196-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Every private entity shall adopt rules by December 31, 2006, that provide for the placement of solar energy devices~~[-]~~, and revise those rules as necessary by July 1, 2011. The rules shall facilitate the placement of solar energy devices and shall not ~~[unduly or unreasonably restrict that placement so as to]~~ impose conditions or restrictions that render the device more than twenty-five per cent less efficient or ~~to~~ increase the cost of installation, maintenance, and removal of the device by more than fifteen per cent. No private entity shall assess or charge any homeowner any fees for the placement of any solar energy device.”

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

SECTION 4. This Act, except section 2, shall take effect on July 1, 2010; provided that on June 30, 2015:

- (1) Section 1 of this Act shall be repealed; and
- (2) Section 2 of this Act shall take effect.

(Became law on July 6, 2010, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

## ACT 202

S.B. NO. 2386

A Bill for an Act Relating to the University of Hawaii Capital Improvements Program Project Assessment Special Fund.

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

SECTION 1. Chapter 304A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§304A- **University of Hawaii capital improvements program project assessment special fund.** (a) There shall be established in the university a special fund to be known as the University of Hawaii capital improvements program project assessment special fund for the purpose of defraying the costs involved in:

- (1) Carrying out capital improvements program projects managed by the university;
- (2) Equitably assessing, collecting, and distributing moneys for current and other expenses associated with capital improvements program projects, repair and maintenance projects, and major renovation projects;
- (3) Managing the payment of expenses assessable against capital improvements program projects managed by or through the university, such as printing, employee transportation requirements, project-related travel costs, travel per diem, and car mileage reimbursements,

in accordance with applicable laws and collective bargaining agreements; and

- (4) Managing funds representing accumulated vacation and sick leave credits and retirement benefits for non-general funded employees under the capital improvements program projects managed by the university.

(b) The president or the president's designee shall make reasonable assessments on capital improvements program projects, repair and maintenance projects, and major renovation projects managed by the university to carry out the program of centralized management, oversight, and administration of the projects. The assessments shall be based on the evaluation by the president or the president's designee of the reasonable historic and projected costs of providing such services. All assessments collected shall be deposited into the University of Hawaii capital improvements program project assessment special fund.

(c) The University of Hawaii capital improvements program project assessment special fund shall be administered by the office of capital improvements of the university.

(d) All expenditures from the University of Hawaii capital improvements program project assessment special fund shall be made by the president or the president's designee in accordance with applicable laws and rules."

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect on July 1, 2010.

(Became law on July 6, 2010, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 203

H.B. NO. 2084

A Bill for an Act Relating to the Federal Disproportionate Share Hospital Funds.

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

SECTION 1. The legislature has historically recognized the importance of making Medicaid coverage available for the State's most vulnerable populations and has acted to ensure that health care payments made with state funds or controlled by the State are sufficient to cover the actual costs of the care provided. Through the continued efforts of Hawaii's congressional delegation, a federal Medicaid disproportionate share hospital appropriation of \$15,000,000 has been secured for Hawaii. These funds cannot be expended without a matching state appropriation. Together, the combined state and federal funding will help to provide continuing health care in our communities.

In 2009, the legislature overrode the governor's veto of a bill that appropriated the state matching funds. That bill became Act 23, Special Session Laws of Hawaii 2009. To date, the governor has not released the state funds while the federal funds remain available to Hawaii.

The legislature finds that the \$15,000,000 in federal funds consists of \$2,500,000 appropriated for the fourth quarter of federal fiscal year 2008;

\$10,000,000 for federal fiscal year 2009, and \$2,500,000 for the first quarter of federal fiscal year 2010.

The amount of the state match is dependent upon the federal medical assistance percentage in the year the funds are spent. For 2010, the percentage is 54.24 per cent, with the State obligated to provide the remaining 45.76 per cent of the total funding, which is \$12,654,867.

The purpose of this Act is to extend until June 30, 2011, the lapsing of the appropriation authorized by Act 23, Special Session Laws of Hawaii 2009, so that previously allocated but unused funds will act as matching funds to secure critical federal funding.

SECTION 2. Act 23, Special Session Laws of Hawaii 2009, is amended by amending section 2 to read as follows:

“SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$12,291,054 or so much thereof as may be necessary for fiscal year 2009-2010 to match the federal disproportionate share hospital allowance allocated to the State; provided that some appropriated funds may be used to obtain matching federal disproportionate share hospital allowance for prior fiscal year expenditures by the State[-]; provided further that the sum appropriated shall not lapse until June 30, 2011.”

The sum appropriated shall be expended by the department of human services for the purposes 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.

(Became law on July 6, 2010, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 204

S.B. NO. 2461

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 although motor vehicle rental concessions at Hawaii's public airports contribute over \$30,000,000 a year in concession revenues to support Hawaii's public airports, the legislature in 2008 recognized that no facility improvements to those concessions would be made considering other airport priorities as to the use of the funds. Thus, in spite of years of discussions, the facilities over time have deteriorated and have not kept pace with motor vehicle rental facilities and services provided to visitors and residents at other public airports across the United States.

As a result, the legislature in 2008 passed Act 226, Session Laws of Hawaii 2008 (Act 226), which established a rental motor vehicle customer facility charge program similar to programs at more than one hundred other airports across the United States. Act 226 established a rental motor vehicle customer facility charge of \$1 per day. Act 226 also appropriated \$10,000,000 for planning, design, and some improvements. Recognizing the importance of the program to Hawaii's construction industry and economy, the legislature required the department of transportation to provide annual reports and timelines to ensure the “fast-tracking” of the facility projects and services.

The department has sought to fast-track the program in keeping with the legislative directive and, with the assistance of planners, designers, and other consultants, has completed initial designs and plans for the statewide program. The intent of this Act is to continue the fast-tracking by taking the program to the next level by increasing the rental motor vehicle customer facility charge to \$4.50 daily as recommended by consultants.

According to reports prepared by consultants, the increased charge of \$1 daily to \$4.50 daily is expected to fund the planned statewide program with no anticipated future increases. This fee and one-time step up is comparable to similar charges and programs at other airports. Delayed generation of revenues by stepping up these charges as proposed by some could likely result in the fee rising higher than \$5 daily, a scenario which must be avoided.

The charge of \$4.50 daily and revenues generated will strongly support the program as well as the bonds to finance the related construction projects, which will total about \$500,000,000, excluding finance charges. To avoid program delays, it is very important that the program have strong financing and a stream of revenues to attract the buyers of the bonds during these turbulent economic times. The one-time-increased charge, as opposed to stepped-up charges, will also result in as much as \$300,000,000 saved in finance costs. By fast-tracking the projects, it is anticipated that the program will benefit from about thirty per cent to forty per cent in construction cost savings.

As reported by consultants, the increased charge to \$4.50 daily is expected to have no adverse impact on rental motor vehicles at public airports or on public airport revenues. Other cities and airports have studied similar concerns and the studies have repeatedly found no correlation or adverse impact related to an increased charge. In fact, airports generally have seen an increase in revenues since the facilities attract motor vehicle rental companies to conduct their business at the airport.

The program does not require visitors and residents to rent a car at a public airport. Individuals will have the opportunity to rent vehicles from off-airport locations and thereby avoid having to pay the rental motor vehicle customer facility charge. To minimize the impact to travel agents and others marketing travel packages and quoting prices, this measure delays implementation of the increased rental motor vehicle customer facility charge until September 1, 2010.

While the goal of fast-tracking was to start the construction of the Honolulu international airport facility as early as the first quarter of 2010 and thereby provide critical jobs and support for Hawaii's economy, the failure to date of increasing the charge to \$4.50 daily has delayed the implementation of this start date as well as any related sale of bonds. Although this Act provides that the department has the discretion to raise and adjust the rental motor vehicle customer facility charge to meet the program's goals notwithstanding any law to the contrary, the department recently commented that the law needs to be clarified and that it cannot increase charges without proceeding through the administrative rulemaking process, which could take twelve months or longer. The legislature finds that it is preferable that it mandate the increase in charges so such minimum amount of customer facility charge fees, as recommended by the consultants, are collected by the department no later than September 1, 2010, to avoid and ensure that there are no further delays to the program if the department is not collecting the minimum customer facility charge fees by that date.

The intent of this Act is to continue the fast-tracking of this program and its projects, thereby providing critical jobs to Hawaii's residents and stimulating Hawaii's suffering economy by:

- (1) Raising the initial rental motor vehicle customer facility charge, as established by Act 226, Session Laws of Hawaii 2008, from \$1 daily

- to \$4.50 daily as recommended by consultants, so that the strength of the program can be maintained and the program can benefit from various anticipated costs savings;
- (2) Clarifying that the department of transportation can adjust the rental motor vehicle customer facility charge for companies without a concession at a state airport without having to utilize the administrative rulemaking process, as recently reported by the department; and
  - (3) Appropriating out of the rental motor vehicle customer facility charge special fund for rental car improvements statewide, the sum of \$71,800,000 for fiscal year 2010-2011, for planning, land and utility acquisition, design and program management, and construction to provide consolidated car rental facilities for the car rental agencies and other related improvements for the department of transportation's airport modernization program.

SECTION 2. Section 261-5.6, Hawaii Revised Statutes, is amended to read as follows:

**“[H]§261-5.6 [H] Rental motor vehicle customer facility charge special fund.**

(a) There is established in the state treasury the rental motor vehicle customer facility charge special fund to be administered by the director, into which shall be deposited all proceeds from the rental motor vehicle customer facility charge.

(b) Moneys in the rental motor vehicle customer facility charge special fund shall be used for enhancement, renovation, operation, and maintenance of existing rental motor vehicle customer facilities and the development of new rental motor vehicle customer facilities and related services at state airports, including:

- (1) Acquisition and maintenance of property or property rights for rental motor vehicle purposes;
- (2) Acquisition of equipment for and operation of a unified shuttle bus system to and from passenger terminals and the rental motor vehicle customer facilities;
- (3) Consultant fees;
- (4) Management, operation, and maintenance fees for rental motor vehicle customer facilities; and
- (5) Conceptual plans, plans, design, construction, operation, and maintenance of, or allocable to, the approved rental motor vehicle customer facilities and related services.

In planning the future needs and expenditures of these moneys, the director, or deputy designated by the director, shall, at least once a year, consult with lessors, as defined in section 437D-3, who are using or who in the future may use the facilities and services. No moneys shall be expended to plan, design, improve, enhance, acquire, or construct rental motor vehicle customer facilities, equipment, or services shared or to be shared by rental motor vehicle concessions at a state airport except as determined by the director; provided that the director shall not approve the expenditure of any moneys except for planning and design purposes to improve or construct rental [H]motor vehicle[H] customer facilities and related services located at an airport until a concession bid for rental motor vehicle concessions located at the public airport as of July 1, 2008, is first advertised, bid upon, and awarded by the department of transportation.

(c) The rental motor vehicle customer facility charge special fund shall be exempt from sections 36-30 and 103-8.5.

(d) Any resolution or certificate authorizing any issue of bonds relating to the use of the rental motor vehicle customer facility charge for an airport capital improvement program project approved by the legislature may establish other accounts within the rental motor vehicle customer facility charge special fund and require the transfer of the rental motor vehicle customer facility charge into the other accounts to pay debt service on the related bonds.”

SECTION 3. Section 261-7, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) Notwithstanding any laws to the contrary, the department may establish, levy, assess, and collect rental motor vehicle customer facility charges[; which] without regard to chapter 91, which shall be paid to the department periodically as determined by the department[. These charges] and shall be used to pay for, or finance on a long-term basis or other-term basis where appropriate, the design, planning, construction, and other uses of the rental motor vehicle customer facility charges as set forth by the rental motor vehicle customer facility charge special fund in section 261-5.6.

The rental motor vehicle customer facility charges shall be levied, assessed, and collected from all rental motor vehicle customers who benefit from the use of any type of rental motor vehicle facility or service provided by the department at a state airport.

Beginning September 1, 2010, the department shall levy, assess, and collect a rental motor vehicle customer facility charge of \$4.50 per day, or any portion of a day that a rental motor vehicle is rented or leased, by a rental motor vehicle concession where customers pick up and return rental vehicles to a facility at a state airport as determined by the director.

All rental motor vehicle customer facility charges shall be collected by lessors as defined in section 437D-3 and who operate a [ear] rental motor vehicle concession awarded by the department at a state airport; provided that customers of lessors, as defined in section 437D-3, who do not operate a [ear] rental motor vehicle concession at a state airport but whose customers benefit from the use of a [ear] rental motor vehicle facility or service at a state airport paid for by rental motor vehicle customer facility charges, shall collect from [such ear] rental motor vehicle customers, rental motor vehicle customer facility charges in an amount determined by the department in its sole discretion that represents a fair share of the cost and ongoing expenses relating to customer use of [such a] the facility or service[.] notwithstanding any law to the contrary and without regard to the requirements of chapter 91. All rental motor vehicle customer facility charges collected by [such] the lessor shall be paid to the department.

Notwithstanding any law to the contrary, the department may negotiate and contract the management, maintenance, and operations of the facility and related services with one or more airport concessions or their designee that share in the use of a rental motor vehicle customer facility at a state airport.”

SECTION 4. Act 226, Session Laws of Hawaii 2008, is amended by repealing section 9.

[“SECTION 9. Notwithstanding section 7 of this Act, the department of transportation, as of September 1, 2008, shall levy, assess, and collect a rental motor vehicle customer facility charge of \$1 per day, or any portion of a day that a rental motor vehicle is rented or leased, by a rental motor vehicle concession where customers pick up and return rental vehicles to a facility at a state airport as determined by the director. Moneys shall continue to be collected only until such time that the sum of \$25,000,000 is collected and deposited into the rental motor vehicle customer facility charge special fund.

The provisions of this section shall not impair, limit, or restrict the department of transportation from levying, assessing, establishing, and collecting rental motor vehicle customer facility charges as set forth in section 7 of this Act.”]

SECTION 5. There is appropriated out of the rental motor vehicle customer facility charge special fund established by section 261-5.6, Hawaii Revised Statutes, for rental car improvements statewide, the sum of \$71,800,000 or so much thereof as may be necessary for fiscal year 2010-2011, for planning, land and utility acquisition, design and program management, and construction to provide consolidated car rental facilities for the car rental agencies and other related improvements for the department of transportation’s airport modernization program; provided that the sum appropriated shall be reduced by any moneys appropriated by the legislature in the supplemental budget act of 2010 for such purposes.

The sum appropriated shall be expended by the department of transportation 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, 2010.

(Became law on July 6, 2010, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

## ACT 205

H.B. NO. 2774

A Bill for an Act Relating to Human Services.

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

### PART I

SECTION 1. The number of individuals who require treatment for mental health issues is growing. Prescription medications such as psychotropic drugs have become increasingly expensive and are not always effective for every patient. With the current difficult economic climate, alternatives must be explored to implement cost-saving measures while preserving an appropriate level of care. While the legislature finds that patients should have access to necessary medication, the medication should also be monitored for effectiveness, and the possibility of using generic medications should be explored.

SECTION 2. Section 346-59.9, Hawaii Revised Statutes, is amended to read as follows:

**“§346-59.9 Psychotropic medication.** (a) This section shall apply only to the QUEST, QUEST Expanded Access, and fee-for-service programs administered by the department when the department or the department’s contracted health plan is the primary insurer. When the department is the secondary insurer, the department and its contracted health plans shall be responsible only for the secondary insurer’s share of any psychotropic medication covered by the primary insurer.



[(a)] (b) The department and its contracted health plans 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 psychiatrist, physician, or an advanced practice registered nurse with prescriptive authority under chapter 457, duly licensed in the State.] antipsychotic medication.

(c) The department and its contracted health plans shall not impose any restriction or limitation on the coverage for, or a recipient's access to, antidepressant medication other than:

- (1) Requiring that an individual must have two failed attempts on a generic antidepressant medication to receive coverage for a new brand-name antidepressant prescription; and
- (2) Requiring that if an individual does not have two failed attempts on a generic antidepressant medication, that individual shall receive coverage for a brand-name antidepressant medication with prior authorization by the contracted health plan; provided that while a prior authorization request for a brand-name antidepressant medication submitted by the prescriber is pending, a supply of the prescribed medication sufficient to last until the request is resolved shall be covered if requested by the prescriber.

For purposes of this subsection, a "failed attempt" means that the prescribed generic antidepressant medication up to the maximum FDA-approved dosage is not effective in treating the individual, or the individual's compliance is compromised due to the side effects caused by the medication.

(d) The department and its contracted health plans shall not impose any restriction or limitation on the coverage for, or a recipient's access to, anti-anxiety medication other than:

- (1) Requiring that an individual must have two failed attempts on a generic anti-anxiety medication to receive coverage for a new brand-name anti-anxiety prescription; and
- (2) Requiring that if an individual does not have two failed attempts on a generic anti-anxiety medication, that individual shall receive coverage for a brand-name anti-anxiety medication with prior authorization by the contracted health plan; provided that while a prior authorization request for a brand-name anti-anxiety medication submitted by the prescriber is pending, a supply of the prescribed medication sufficient to last until the request is resolved shall be covered if requested by the prescriber.

For purposes of this subsection, a "failed attempt" means that the prescribed generic anti-anxiety medication up to the maximum FDA-approved dosage is not effective in treating the individual, or the individual's compliance is compromised due to the side effects caused by the medication.

(e) The department and its contracted health plans shall not require any individual stable on a brand-name antidepressant medication on or before July 1, 2010, to transfer to a different antidepressant medication, generic or brand-name, unless the individual's condition becomes unstable and requires the medication to be replaced.

(f) The department and its contracted health plans shall not require any individual stable on a brand-name anti-anxiety medication on or before July 1, 2010, to transfer to a different anti-anxiety medication, generic or brand-name, unless the individual's condition becomes unstable and requires the medication to be replaced.

(g) The department and its QUEST contracted health plans shall have the authority to investigate fraud, abuse, or misconduct.

~~[(b)]~~ (h) The department shall report to the legislature no later than twenty days before the convening of each regular session on:

- (1) The number of brand-name and generic prescriptions written ~~[pursuant to this section;]~~ to which this section applies; and
- (2) The ~~[cost and impact of psychiatrists, physicians, or advanced practice nurses prescribing medications, pursuant to this section, that are not part of the existing formulary; and~~
- (3) ~~The overall use of psychotropic medication under chapter 346.]~~ amount expended on brand-name prescriptions and the amount expended on generic prescriptions written each fiscal year to which this section applies.

(i) All psychotropic medications covered by this section shall be prescribed by a psychiatrist, a physician, or an advanced practice registered nurse with prescriptive authority under chapter 457 and duly licensed in the state.

~~[(e)]~~ (j) As used in this section[, “psychotropic”]:

“Anti-anxiety medication” means those medications included in the United States Pharmacopeia’s anxiolytic therapeutic category.

“Antidepressant medication” means those medications included in the United States Pharmacopeia’s antidepressant therapeutic category.

“Antipsychotic medication” means those medications included in the United States Pharmacopeia’s antipsychotic therapeutic category.

“Psychotropic medication” means only [those agents] antipsychotic, antidepressant, or anti-anxiety medications approved by the United States Food and Drug Administration for the treatment of mental or emotional disorders.”

SECTION 3. The department of human services, in conjunction with health care providers, health care plans, and mental health advocates, shall submit a report detailing the status of the implementation of part I of this Act, including the numbers of persons that use each type of coverage provided therein, to the legislature no later than twenty days prior to the convening of the regular session of 2011.

## PART II

SECTION 4. The department of human services currently provides certain death benefits for individuals who were medical assistance or financial assistance recipients at the time of death. The legislature finds it appropriate for the department of human services to issue a death benefit amount equivalent to the Social Security Administration’s one-time lump-sum death benefit if the deceased individual is ineligible for the Social Security Administration’s one-time lump-sum death benefit, and to bear a larger cost for certain services for unclaimed corpses, if necessary.

SECTION 5. Section 346-15, Hawaii Revised Statutes, is amended to read as follows:

**“§346-15 ~~[Burial of] Death benefits for deceased medical or financial assistance recipients [or] and disposition of unclaimed corpses.~~** (a) ~~[The] Where the decedent was a medical assistance or financial assistance recipient at the time of death and is ineligible for the Social Security Administration’s one-time lump-sum death benefit, the department [of human services] may [bear the cost of the burial of deceased medical or financial assistance recipients or unclaimed corpses. Burial services include the customary mortuary, crematory, cemetery, and other services essential in providing a dignified burial.] issue a lump-sum~~

death benefit in an amount equal to the Social Security Administration's one-time lump-sum death benefit for the year in which the recipient died.

~~(b) [The department may pay for mortuary and crematory services to be furnished by any licensed provider of mortuary and crematory services. Mortuary and crematory payments shall be made to the extent of cost, or in the sum of \$400, whichever is less.] The department may authorize and bear the cost of the mortuary and crematory services for unclaimed corpses furnished by any licensed provider of mortuary or crematory services. Payments for mortuary and crematory services shall be made to the extent of the cost, or in the sum of \$800 in total, whichever is less, for each unclaimed corpse.~~

~~[(c) The department may pay for cemetery services, to be furnished by any licensed provider of cemetery services. Cemetery payments shall be made to the extent of cost, or in the sum of \$400, whichever is less.~~

~~(d) In cases where the decedent is survived by relatives, the relatives shall be permitted to make their own arrangements for the burial or cremation of their deceased relative.~~

~~(e) The person submitting an application for funeral payments under the department's funeral payment program,]~~

(c) Any person submitting an application for the lump-sum death benefit described in subsection (a), on behalf of a deceased medical or financial assistance recipient, shall have sixty days from the date of the death of the deceased to submit the application [for funeral payments] to the department. [This subsection shall not apply to applications submitted by the respective county medical examiner or coroner on behalf of unclaimed corpses.

~~(f) All unclaimed corpses shall be cremated. The department of human services shall authorize the cremation of unclaimed corpses.~~

~~(g) (d) A person or public or private agency, including the department [of human services], shall not be liable for any damage or subject to criminal prosecution for any act done pursuant to and in compliance with this section.~~

~~(h) (e) For the purposes of this section, "unclaimed corpse" means the remains of any deceased person for whom no one has assumed responsibility for disposition of the body within five working days, excluding weekends, from the date of death and about whom the department and the respective county medical examiner or coroner have no actual knowledge of a legally responsible party.~~

~~(i) (f) The department shall adopt rules pursuant to chapter 91 for purposes of administering and implementing this section."~~

PART III

SECTION 6. The department of human services is prohibited from expending any moneys from the Medicaid budget on purposes or programs that have not been explicitly authorized by the legislature. Moneys appropriated for Medicaid programs may not be transferred, shifted, moved, changed, or spent on any programs other than programs directly related to Medicaid or programs specifically appropriated for by the legislature; provided that for nine months beginning on May 1, 2010, the department of human services may expend up to \$5,000,000 for the Hawaii premium plus program created by the department under section 17-1709.2, Hawaii Administrative Rules.

PART IV

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other

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

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

SECTION 9. This Act shall take effect on July 1, 2010; provided that on June 30, 2012, this Act shall be repealed and sections 346-15 and 346-59.9, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act; and provided further that section 6 of this Act shall take effect retroactive to May 1, 2010.

(Became law on July 6, 2010, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 206

S.B. NO. 466

A Bill for an Act Relating to Pollution.

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

SECTION 1. Chapter 342F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§342F- Leaf blowers; restrictions.** (a) In any urban land use district, as designated pursuant to section 205-2, it shall be unlawful for any person to operate a leaf blower within a residential zone or within one hundred feet of a residential zone in the State, except between the hours of 8:00 a.m. and 6:00 p.m. on any day except Sunday or a state or federal holiday, and between the hours of 9:00 a.m. and 6:00 p.m. on Sunday or any state or federal holiday.

(b) Violators shall be fined \$50 for the first violation, \$100 for the second violation, \$200 for the third violation, and \$500 for each subsequent violation.

(c) Government entities, and agents acting on behalf of government entities, shall not be subject to this section.

(d) Any county may adopt a rule or ordinance that places stricter limitations on the use of leaf blowers than are in this section. In case of a conflict between the requirements or limitations of this section and any county rule or ordinance regarding the use of leaf blowers, the more restrictive requirements shall apply.

(e) For the purposes of this section:

“Leaf blower” means any machine used to blow leaves, dirt, or other debris off sidewalks, driveways, lawns, and other surfaces.

“State holiday” means any day established as a state holiday in section 8-1.”

SECTION 2. Chapter 342H, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§342H- Leaf blower debris.** (a) It shall be unlawful for any person to use or operate a leaf blower in such a manner as to blow, dispel, or make airborne dust, leaves, grass cuttings, paper, trash, or any other type of unattached debris or material, beyond the boundaries of the parcel of property being cleaned, unless the consent of the adjoining owner or person in possession of the adjoining property is obtained.

(b) It shall be unlawful for any person to use or operate a leaf blower in such a way as to blow leaves, dirt, and other debris onto the public rights-of-way or onto private property not owned, leased, or controlled by the leaf blower operator or the employer or contractor of the leaf blower operator and to allow the debris to remain there in excess of thirty minutes.

(c) For purposes of this section:

“Leaf blower” shall have the same meaning as defined in section 342F- .

“Parcel” means a legal lot of record. Contiguous parcels owned by the same individual or entity shall be considered one parcel for purposes of this section.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 2010.

(Became law on July 6, 2010, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 207

H.B. NO. 2283

A Bill for an Act Relating to Public Procurement.

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

SECTION 1. Section 103D-101, Hawaii Revised Statutes, is amended to read as follows:

~~“[§103D-101] [Requirement] Requirements of [good-faith-] ethical public procurement. (a) All public employees shall conduct and participate in public procurement in an ethical manner. In conducting and participating in procurement, public employees shall:~~

- (1) Act as a fiduciary and trustee of public moneys;
- (2) Remain independent from any actual or prospective bidder, offeror, contractor, or business;
- (3) Act only in the public interest;
- (4) Abide by the statutes and administrative rules relating to public procurement;
- (5) Identify and maximize efficiencies in the public procurement process;
- (6) Encourage economic competition by:
  - (A) Ensuring that all persons are afforded an equal opportunity to compete in a fair and open environment; and
  - (B) Researching innovative goods and services to meet the public’s needs;
- (7) Avoid the intent and appearance of unethical behavior;
- (8) Avoid social interactions with any actual or prospective bidder, offeror, contractor, business, or other interested parties during the procurement process;
- (9) Maintain confidentiality in a manner that ensures a fair procurement process;

- (10) Remain impartial in dealings with any actual or prospective bidder, offeror, contractor, business, or other interested parties; and  
 (11) Identify and eliminate any conflicts of interest.

(b) Any actual or prospective bidder, offeror, contractor<sup>1</sup>, or business taking part in the conduct of public procurement, shall act in good faith to practice purchasing ethics, and when applicable, display business integrity as a responsible offeror through the public procurement process, including but not limited to the following:

- (1) Avoiding the intent and appearance of unethical behavior or business practices;  
 (2) Refraining from any activity that would create the appearance of impropriety or conflicts of personal interest and the interests of the State or counties;  
 (3) Identifying and eliminating any conflicts of interest; and  
 (4) Ensuring that all persons are afforded an equal opportunity to compete in a fair and open environment.

(c) All parties involved in the negotiation, performance, or administration of state contracts shall act in good faith.”

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 6, 2010, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. So in original.

**ACT 208**

S.B. NO. 2165

A Bill for an Act Relating to Private Guards.

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

SECTION 1. Chapter 463, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§463- Guards; registration, instruction, training, testing, and continuing education required; renewal of registration.** (a) Effective July 1, 2013, all guards, and all agents, operatives, and assistants employed by a guard agency, private business entity, or government agency who act in a guard capacity shall apply to register with the board, and meet the following registration, instruction, and training requirements prior to acting as a guard:

- (1) Be not less than eighteen years of age;  
 (2) Possess a high school education or its equivalent;  
 (3) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person's performance in the profession; and  
 (4) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the individual to act as a guard, unless the conviction has been annulled or expunged by court order; provided that the individual shall submit to a national criminal history record check as authorized by federal law, including but not limited to the Private Security Officer Employment Authorization Act of 2004, and specified in the rules of the board.

The board shall determine whether an individual qualifies for registration pursuant to this subsection.

(b) All classroom instruction required under this section shall be provided by an instructor who is approved by the board and who may be an employee, manager, or owner of a guard agency in this State if the course of study meets board-approved curricula. Course curricula shall meet the specific standards of this section and all other applicable requirements of this chapter, and shall be established by the board.

(c) Guards and individuals acting in a guard capacity shall successfully complete the classroom instruction specified by this section, pass a written test, and undergo four hours of on-the-job training supervised by an individual who has successfully completed all of the requirements of this section or who has otherwise been approved by the board for on-the-job training. Guards and individuals acting in a guard capacity shall successfully complete:

- (1) Eight hours of classroom instruction before the first day of service; and
- (2) Four hours of classroom instruction annually thereafter.

(d) The content of classroom instruction required under this section shall include, but not be limited to:

- (1) State and federal law regarding the legal limitations on the actions of guards, including instruction in the law concerning arrest, search and seizure, and the use of force as these issues relate to guard work;
- (2) Access control, safety, fire detection and reporting, and emergency response;
- (3) Homeland security issues and procedures;
- (4) When and how to notify public authorities;
- (5) Techniques of observation and reporting of incidents, including how to prepare an incident report;
- (6) The fundamentals of patrolling;
- (7) Professional ethics; and
- (8) Professional image and aloha training.

(e) Before beginning employment as a guard or in a guard capacity, in addition to the classroom instruction required by this section, guards and individuals acting in a guard capacity who carry a firearm or other weapon, including but not limited to an electric gun as defined in section 134-1, while on-duty in a guard capacity shall possess a valid permit to acquire the ownership of a firearm issued by county police pursuant to section 134-2 and shall satisfy the requirements of section 134-2(g).

(f) The board may adopt rules pursuant to chapter 91 that mandate additional training, instruction, testing, and continuing education for guards and agents, operatives, and assistants employed in a guard capacity.

(g) Prior to the June 30, 2014 renewal of the guard registration and every registration renewal thereafter, the applicant shall pay all required fees, and have had at least four hours of continuing education as specified in the rules of the board.

The board may conduct a random audit, pursuant to rules adopted pursuant to chapter 91, of registrants applying for renewal of a registration to determine whether the continuing education requirements of this subsection have been met.

The failure, neglect, or refusal of any registered guard to pay the renewal fee or meet the continuing education requirements shall constitute a forfeiture of the guard's registration. A forfeited registration may be restored upon written application within one year from the date of forfeiture, payment of the required

renewal fee plus penalty fees, and meeting the continuing education requirements in effect at the time of restoration.”

SECTION 2. Section 463-1, Hawaii Revised Statutes, is amended by amending the definition of “guard” to read as follows:

““Guard” means a [~~licensed~~] registered uniformed or nonuniformed person responsible for the safekeeping of a client’s properties and persons within contractually prescribed boundaries, and for observation and reporting relative to such safekeeping. “Guard” shall not include any active duty federal, state, or county law enforcement officers or personnel.”

SECTION 3. Section 463-8, Hawaii Revised Statutes, is amended to read as follows:

**“§463-8 [Guards] Principal guards and guard agencies; qualifications for license.** (a) The board may grant a principal guard license to any suitable individual, or a guard agency license to any suitable firm making written application therefor. The applicant, if an individual, or the principal guard of a firm shall:

- (1) Be not less than eighteen years of age;
- (2) Have had a high school education or its equivalent;
- (3) Have had experience reasonably equivalent to at least four years of full-time guard work;
- (4) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person’s performance in the profession;
- (5) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the applicant to engage in the profession, unless the conviction has been annulled or expunged by court order; and
- (6) Possess a history of honesty, truthfulness, financial integrity, and fair dealing.

A firm applying for a guard agency license shall have in its employ an individual who is licensed and registered as a guard pursuant to section 463- and who shall be designated as the principal guard for the firm, and shall provide a bond as required under section 463-12.

(b) A guard agency may employ as many agents, operatives, and assistants in a guard capacity and as necessary for the conduct of business; provided that the principal guard shall be held responsible for, and have direct management and control of, the agency and the agency’s employees while they are acting within the scope and purpose of the guard agency’s business. These employees shall ~~[not be required to have guard licenses, and shall]:~~

- (1) ~~[Have had an eighth grade education or its equivalent;]~~ Have had a high school education or its equivalent;
- (2) Not be presently suffering from any psychiatric or psychological disorder which is directly related and detrimental to a person’s performance in the profession;
- (3) Not have been convicted in any jurisdiction of a crime which reflects unfavorably on the fitness of the employee to engage in the profession, unless the conviction has been annulled or expunged by court order; and
- (4) Be registered with the board upon employment with the agency.

The employer, with the written authorization of the employee, shall conduct a criminal history records check, in accordance with section 463- and the rules of the board adopted pursuant thereto, of all new employees employed in a guard



capacity directly through the Hawaii criminal justice data center upon certification to the board that the signature on the authorization is authentic.”

SECTION 4. Section 463-9, Hawaii Revised Statutes, is amended to read as follows:

“§463-9 Form of application for license~~]~~ or registration. Application for a license or registration shall be made on a form prescribed by the board which may require a statement of the applicant’s full name, age, date and place of birth, residence and business address, the business or occupation the applicant has engaged in for ten years immediately preceding the date of the filing of the application with names and addresses of employers, the date and place of any arrest or conviction of a crime where there has not been any order annulling or expunging the sentence or of any offense involving moral turpitude, whether the applicant has received treatment for any psychiatric or psychological disorder, or whether the treatment has ever been recommended, and such information, including fingerprints of the applicant and such other information as the board may require to investigate the character, competency, and integrity of the applicant. The board shall conduct such investigation of the applicant’s background, character, competency, and integrity as it deems appropriate, and shall request, in accordance with section 846-2.7, criminal history records of the applicant from each jurisdiction in which the application form indicates the applicant lived for any substantial period of time. The Hawaii criminal justice data center shall provide such information on request to the director of commerce and consumer affairs.”

SECTION 5. Section 463-13, Hawaii Revised Statutes, is amended to read as follows:

“§463-13 Exemptions. This chapter does not apply to any person, firm, company, partnership, or corporation or any bureau or agency whose business is exclusively the furnishing of information as to the business and financial standing and credit responsibility of persons, firms, or corporations, or as to personal habits and financial responsibility, of applicants for insurance, indemnity bonds, or commercial credit, ~~[or a person employed exclusively and regularly by one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship,]~~ or an attorney at law in performing the attorney’s duties as such attorney at law.”

SECTION 6. The board of private detectives and guards, pursuant to the authority granted to it by section 463-3, Hawaii Revised Statutes, and in accordance with chapter 91, Hawaii Revised Statutes, shall adopt rules to effectuate the provisions of this Act.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect upon its approval; provided that this Act shall be repealed on July 1, 2016; and provided further that sections 463-1, 463-8, 463-9, and 463-13, Hawaii Revised Statutes, shall be reenacted in the form in which they existed on the day before the effective date of this Act.

(Became law on July 6, 2010, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 209

H.B. NO. 979

A Bill for an Act Relating to the Environment.

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

SECTION 1. The legislature finds that an austere state economy dictates a review of all sources of income to maximize the use of state funds. This review is necessary to ensure basic programs in health, public safety, education, and the environment are not ignored.

This Act redirects certain state funds to provide continued maintenance and support for state environmental programs such as invasive species control and mitigation, reforestation, and sediment run-off mitigation.

SECTION 2. Section 171-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created in the department a special fund to be designated as the “special land and development fund”. Subject to the Hawaiian Homes Commission Act of 1920, as amended, and section 5(f) of the Admission Act of 1959, all proceeds of sale of public lands, including interest on deferred payments; all moneys collected under section 171-58 for mineral and water rights; all rents from leases, licenses, and permits derived from public lands; all moneys collected from lessees of public lands within industrial parks; all fees, fines, and other administrative charges collected under this chapter and chapter 183C; a portion of the highway fuel tax collected under chapter 243; all moneys collected by the department for the commercial use of public trails and trail accesses under the jurisdiction of the department; transient accommodations tax revenues collected pursuant to section 237D-6.5(b)(2); and private contributions for the management, maintenance, and development of trails and accesses shall be set apart in the fund and shall be used only as authorized by the legislature for the following purposes:

- (1) To reimburse the general fund of the State for advances made that are required to be reimbursed from the proceeds derived from sales, leases, licenses, or permits of public lands;
- (2) For the planning, development, management, operations, or maintenance of all lands and improvements under the control and management of the board, including but not limited to permanent or temporary staff positions who may be appointed without regard to chapter 76;
- (3) To repurchase any land, including improvements, in the exercise by the board of any right of repurchase specifically reserved in any patent, deed, lease, or other documents or as provided by law;
- (4) For the payment of all appraisal fees; provided that all fees reimbursed to the board shall be deposited in the fund;
- (5) For the payment of publication notices as required under this chapter; provided that all or a portion of the expenditures may be charged to the purchaser or lessee of public lands or any interest therein under rules adopted by the board;
- (6) For the management, maintenance, and development of trails and trail accesses under the jurisdiction of the department;
- (7) For the payment to private land developers who have contracted with the board for development of public lands under section 171-60;

- (8) For the payment of debt service on revenue bonds issued by the department, and the establishment of debt service and other reserves deemed necessary by the board;
- (9) To reimburse the general fund for debt service on general obligation bonds issued to finance departmental projects, where the bonds are designated to be reimbursed from the special land and development fund;
- (10) For the protection, planning, management, and regulation of water resources under chapter 174C; ~~and~~
- (11) For invasive species control and mitigation by the invasive species council under chapter 194;
- (12) To promote reforestation and sediment run-off mitigation; and
- ~~(11)~~ (13) For other purposes of this chapter.”

SECTION 3. Section 173A-5, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) The fund shall be used for:

- (1) The acquisition of interests or rights in land having value as a resource to the State, whether in fee title or through the establishment of permanent conservation easements under chapter 198 or agricultural easements;
- (2) The payment of any debt service on state financial instruments relating to the acquisition of interests or rights in land having value as a resource to the State;
- (3) Annual administration costs for the fund, not to exceed five per cent of annual fund revenues of the previous year~~[; and]~~;
- (4) Costs related to the operation, maintenance, and management of lands acquired by way of this fund that are necessary to protect, maintain, or restore resources at risk on these lands, or that provide for greater public access and enjoyment of these lands; provided that the costs related to the operation, maintenance, and management of lands acquired by way of this fund do not exceed five per cent of annual fund revenues of the previous year~~[-]~~;
- (5) Invasive species control and mitigation by the invasive species council under chapter 194; and
- (6) Reforestation and sediment run-off mitigation.”

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, 2010, and shall be repealed on June 30, 2013; provided that sections 171-19(a) and 173A-5(h), Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 2010.

(Became law on July 6, 2010, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

## ACT 210

H.B. NO. 1665

A Bill for an Act Relating to Hawaiian Fishponds.

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

SECTION 1. Section 171-28, Hawaii Revised Statutes, is amended to read as follows:

**“§171-28 Government-owned Hawaiian [~~fish ponds~~] fishponds; sale prohibition.** (a) The board may investigate and develop scientific commercial management practices for government-owned Hawaiian [~~fish ponds~~] fishponds and reconstruct, rehabilitate, improve, and stock the [~~fish ponds~~] fishponds; and expend moneys from the special land and development fund. All revenues derived from any government-owned Hawaiian [~~fish pond~~] fishpond shall be deposited in the fund.

(b) The board may lease government-owned Hawaiian [~~fish ponds~~] fishponds with legislative authorization as provided under section 171-53(c); provided that in lieu of legislative authorization, the board may lease such [~~fish ponds~~] fishponds if:

- (1) A public hearing is conducted on the proposed lease on the island where the [~~fish pond~~] fishpond is located;
- (2) The board finds that the proposed lease does not cause a substantial adverse environmental or ecological impact on the [~~fish pond~~] fishpond or surrounding area; and
- (3) The proposed lease is not in violation of applicable federal, state, or county laws.

(c) Any law to the contrary notwithstanding, the board may not sell the fee interest in public lands on which government-owned Hawaiian fishponds are located.”

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.

(Became law on July 6, 2010, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

## ACT 211

H.B. NO. 2003

A Bill for an Act Relating to Campaign Financing.

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

## PART I

SECTION 1. This Act updates, organizes, and clarifies current campaign finance laws.

The laws have their genesis in Act 185, Session Laws of Hawaii 1973. Over the past thirty-seven years, numerous amendments have been made to the campaign finance laws in a piecemeal fashion and, apparently, with little regard to the laws as a whole. The resulting laws are unorganized, difficult to read, and inconsistent in some areas. The current campaign finance laws are codified in part XII, subpart B of chapter 11, Hawaii Revised Statutes.

This Act organizes the campaign finance laws into a new part of chapter 11, with ten subparts. Long and involved sections are divided into shorter sections with clear titles for quick reference. All the laws on one subject are grouped together, in contrast to current campaign finance laws that require a reader to search through the entire subpart for laws that may apply to that one subject.

This Act is a product of the campaign spending commission's blue ribbon recodification committee (committee). The committee completed its work in 2008 after meeting regularly for nine months. The committee comprised the commission's staff and seventeen attorneys who were experienced in campaign finance law and who represented various interests.

The purpose of this Act is to update, organize, and clarify current campaign finance laws and make minor substantive changes to the current laws.

**PART II**

SECTION 2. Chapter 11, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . CAMPAIGN FINANCE**

**A. General Provisions**

**§11-A Purpose.** The purpose of this part is to provide transparency in the campaign finance process. Any ambiguity in the provisions of this part shall be construed to support transparency.

**§11-B Definitions.** When used in this part:

“Advertisement” means any communication, excluding sundry items such as bumper stickers, that:

- (1) Identifies a candidate directly or by implication, or identifies an issue or question that will appear on the ballot at the next applicable election; and
- (2) Advocates or supports the nomination, opposition, or election of the candidate, or advocates the passage or defeat of the issue or question on the ballot.

“Ballot issue committee” means a noncandidate committee that has the exclusive purpose of making or receiving contributions, making expenditures, or incurring financial obligations for or against any question or issue appearing on the ballot at the next applicable election.

“Campaign funds” means contributions, interest, rebates, refunds, loans, or advances received by a candidate committee or noncandidate committee.

“Candidate” means an individual who seeks nomination for election or seeks election to office. An individual remains a candidate until the individual's candidate committee terminates registration with the commission. An individual is a candidate if the individual does any of the following:

- (1) Files nomination papers for an office for the individual with the county clerk's office or with the chief election officer's office, whichever is applicable;

- (2) Receives contributions, makes expenditures, or incurs financial obligations of more than \$100 to bring about the individual's nomination for election, or to bring about the individual's election to office;
- (3) Gives consent for any other person to receive contributions, make expenditures, or incur financial obligations to aid the individual's nomination for election, or the individual's election, to office; or
- (4) Is certified to be a candidate by the chief election officer or county clerk.

"Candidate committee" means an organization, association, or individual that receives campaign funds, makes expenditures, or incurs financial obligations on behalf of a candidate with the candidate's authorization.

"Clearly identified" means the inclusion of name, photograph or other similar image, or other unambiguous identification of a candidate.

"Commission" means the campaign spending commission.

"Commissioner" means any person appointed to the commission.

"Contribution" means:

- (1) A gift, subscription, deposit of money or anything of value, or cancellation of a debt or legal obligation and includes the purchase of tickets to fundraisers, for the purpose of:
  - (A) Influencing the nomination for election, or the election, of any person to office;
  - (B) Influencing the outcome of any question or issue that has been certified to appear on the ballot at the next applicable election; or
  - (C) Use by any candidate committee or noncandidate committee for the purpose of subparagraph (A) or (B);
- (2) The payment, by any person or party other than a candidate, candidate committee, or noncandidate committee, of compensation for the services of another person that are rendered to the candidate, candidate committee, or noncandidate committee without charge or at an unreasonably low charge for a purpose listed in paragraph (1);
- (3) A contract, promise, or agreement to make a contribution; or
- (4) Any loans or advances that are not documented or disclosed to the commission as provided in section 11-SS;

"Contribution" does not include:

- (1) Services voluntarily provided without compensation by individuals to or on behalf of a candidate, candidate committee, or noncandidate committee;
- (2) A candidate's expenditure of the candidate's own funds; provided that this expenditure shall be reportable as other receipts and expenditures;
- (3) Any loans or advances to the candidate committee; provided that these loans or advances shall be reported as loans; or
- (4) An individual, candidate committee, or noncandidate committee engaging in internet activities for the purpose of influencing an election if:
  - (A) The individual, candidate committee, or noncandidate committee is uncompensated for the internet activities; or
  - (B) The individual, candidate committee, or noncandidate committee uses equipment or services for uncompensated internet activities, regardless of who owns the equipment and services.

“Earmarked funds” means contributions received by a candidate committee or noncandidate committee on the condition that the funds be contributed to or expended on certain candidates, issues, or questions.

“Election” means any election for office or for determining a question or issue provided by law or ordinance.

“Election period” means:

- (1) The two-year time period between the day after the general election through the day of the next general election, if a candidate is seeking nomination or election to a two-year office;
- (2) The four-year time period between the day after the general election through the day of the next general election, if a candidate is seeking nomination or election to a four-year office; or
- (3) For a special election, the period between the day after the general election for that office through the day of the special election.

“Equipment and services” includes computers, software, internet domain names, internet service providers, and any other technology that is used to provide access to or use of the Internet.

“Expenditure” means:

- (1) Any purchase or transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, or payment incurred or made, or the use or consumption of a non-monetary contribution for the purpose of:
  - (A) Influencing the nomination for election, or the election, of any person seeking nomination for election or election to office, whether or not the person has filed the person’s nomination papers;
  - (B) Influencing the outcome of any question or issue that has been certified to appear on the ballot at the next applicable election; or
  - (C) Use by any party for the purposes set out in subparagraph (A) or (B);
- (2) Any payment, by any person other than a candidate, candidate committee, or noncandidate committee, of compensation for the services of another person that are rendered to the candidate, candidate committee, or noncandidate committee for any of the purposes mentioned in paragraph (1)(A); provided that payment under this paragraph shall include provision of services without charge; or
- (3) The expenditure by a candidate of the candidate’s own funds for the purposes set out in paragraph (1)(A).

“Expenditure” does not include:

- (1) Services voluntarily provided without compensation by individuals to or on behalf of a candidate, candidate committee, or noncandidate committee;
- (2) Voter registration efforts that are nonpartisan; or
- (3) An individual, candidate committee, or noncandidate committee engaging in internet activities for the purpose of influencing an election if:
  - (A) The individual, candidate committee, or noncandidate committee is uncompensated for internet activities; or
  - (B) The individual, candidate committee, or noncandidate committee uses equipment or services for uncompensated internet activities, regardless of who owns the equipment and services; provided that the internet activity exclusion does not apply to any payment for an advertisement other than a nominal fee; the pur-

chase or rental of an electronic address list made at the direction of a candidate committee or noncandidate committee; or an electronic mail address list that is transferred to a candidate committee or noncandidate committee.

“House bulletin” means a communication sponsored by any person in the regular course of publication for limited distribution primarily to its employees or members.

“Immediate family” means a candidate’s spouse or reciprocal beneficiary, as defined in section 572C-3, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses or reciprocal beneficiaries of such persons.

“Independent expenditure” means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate that is not made in concert or cooperation with or at the request or suggestion of the candidate, the candidate committee, a party, or their agents.

“Individual” means a natural person.

“Internet activities” include:

- (1) Sending or forwarding electronic messages;
- (2) Providing a hyperlink or other direct access to another person’s website;
- (3) Blogging;
- (4) Creating, maintaining, or hosting a website;
- (5) Paying a nominal fee for the use of another person’s website; and
- (6) Any other form of communication distributed over the Internet.

“Limited liability company” means a business entity that is recognized as a limited liability company under the laws of the state in which it is established.

“Loan” means an advance of money, goods, or services, with a promise to repay in full or in part within a specified period of time. A loan does not include expenditures made on behalf of a candidate committee or noncandidate committee by a candidate, volunteer, or employee if:

- (1) The candidate, volunteer, or employee’s aggregate expenditures do not exceed \$1,500 within a thirty-day period;
- (2) A dated receipt and a written description of the name and address of each payee and the amount, date, and purpose of each expenditure is provided to the candidate committee or noncandidate committee before the candidate committee or noncandidate committee reimburses the candidate, volunteer, or employee; and
- (3) The candidate committee or noncandidate committee reimburses the candidate, volunteer, or employee within forty-five days of the expenditure being made.

“Newspaper” means a publication of general distribution in the State issued once or more per month, which is written and published in the State.

“Noncandidate committee” means an organization, association, party, or individual that has the purpose of making or receiving contributions, making expenditures, or incurring financial obligations to influence the nomination for election, or the election, of any candidate to office, or for or against any question or issue on the ballot; provided that a noncandidate committee does not include:

- (1) A candidate committee;
- (2) Any individual making a contribution or making an expenditure of the individual’s own funds or anything of value that the individual originally acquired for the individual’s own use and not for the purpose of evading any provision of this part; or



- (3) Any organization that raises or expends funds for the sole purpose of producing and disseminating informational or educational communications that are not made to influence the outcome of an election, question, or issue on a ballot.

“Office” means any Hawaii elective public or constitutional office, excluding county neighborhood board and federal elective offices.

“Other receipts” means the candidate’s own funds, interest, rebates, re-funds, and any other funds received by a candidate committee or noncandidate committee, but does not include contributions received from other persons or loans.

“Party” means any political party that satisfies the requirements of section 11-61.

“Person” means an individual, a partnership, a candidate committee or noncandidate committee, a party, an association, a corporation, a business entity, an organization, or a labor union and its auxiliary committees.

“Political committees established and maintained by a national political party” means:

- (1) The National Committee;
- (2) The House Campaign Committee; and
- (3) The Senate Campaign Committee.

“Qualifying contribution” means an aggregate monetary contribution of \$100 or less by an individual Hawaii resident during a matching payment period that is received after a candidate files a statement of intent to seek public funds. A qualifying contribution does not include a loan, an in-kind contribution, or the candidate’s own funds.

“Special election” means any election other than a primary or general election.

“Treasurer” means a person appointed under section 11-M and unless expressly indicated otherwise, includes deputy treasurers.

### **B. Campaign Spending Commission**

**§11-C Campaign spending commission established; composition.** (a) There is established a campaign spending commission, which shall be placed within the department of accounting and general services for administrative purposes.

(b) The commission shall consist of five members representing the general public and who are appointed by the governor from a list of ten nominees submitted by the judicial council. A vacancy on the commission shall be filled from the list of nominees or by the reappointment of a commissioner whose term has expired, subject to the limit on length of service imposed by section 26-34. The judicial council shall meet and expeditiously select additional persons for the list of nominees whenever the number of the eligible nominees falls below five. Notwithstanding section 26-34, appointments to the commission shall not be subject to the advice and consent of the senate.

(c) The judicial council may solicit applications for the list of nominees through community organizations and advertisements in any newspaper.

**§11-D Terms of office.** The term of each commissioner shall be four years.

**§11-E No compensation.** The commissioners shall serve without compensation but shall be reimbursed for reasonable expenses, including travel expenses, incurred in the discharge of their duties.

**§11-F Duties of the commission.** The duties of the commission under this part are to:

- (1) Develop and adopt forms required by this part;
- (2) Adopt and publish a manual for all candidates, candidate committees, and noncandidate committees, describing the requirements of this part, including uniform and simple methods of recordkeeping;
- (3) Preserve all reports required by this part for at least ten years from the date of receipt by the commission;
- (4) Permit the inspection, copying, or duplicating of any report required by this part pursuant to rules adopted by the commission under chapter 91; provided that this paragraph shall not apply to the sale or use of information under section 11-CC;
- (5) Ascertain whether any candidate, candidate committee, noncandidate committee, or party has failed to file a report required by this part or has filed a substantially defective or deficient report. The commission shall notify these persons by first class mail that a fine may be assessed for the failure to file or the filing of a substantially defective or deficient report, and the defective or deficient report shall be corrected and explained. All fines collected under this section as authorized by section 11-JJJ shall be deposited in the general fund of the State;
- (6) Hold public hearings;
- (7) Investigate and hold hearings for receiving evidence of any violations pursuant to subpart I of this part;
- (8) Adopt rules pursuant to chapter 91;
- (9) Request the initiation of prosecution for the violation of this part pursuant to section 11-KKK;
- (10) Administer and monitor the distribution of public funds under this part;
- (11) Suggest accounting methods for candidates, candidate committees, or noncandidate committees in connection with reports and records required by this part;
- (12) Employ or contract with, without regard to chapters 76, 78, and 89, persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation; provided that the commission shall have the authority, at its discretion, to dismiss persons employed by or contracted with the commission;
- (13) Conduct random audits and field investigations, as necessary; and
- (14) File for injunctive relief when indicated.

**§11-G Advisory opinions.** The commission may render written advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to this part, as to whether the facts and circumstances of a particular case constitute or will constitute a violation under this part. If no advisory opinion is rendered within ninety days after all information necessary to issue an opinion has been obtained, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation under this part. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the candidate, any candidate committee or noncandidate committee, or other person or entity subject to this part, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the requester in the request for an

advisory opinion. Nothing in this section shall be construed to allow the commission to issue rules through an advisory opinion.

**§11-H Political activities prohibited.** (a) No commissioner or employee of the commission shall participate in any political campaign, including making a contribution to a candidate, candidate committee, or noncandidate committee, during the commissioner's term of office or employee's term of employment.

(b) Each commissioner and employee of the commission shall retain the right to:

- (1) Register and vote in any election;
- (2) Participate in the nonpolitical activities of a civic, community, social, labor, or professional organization, or of a similar organization;
- (3) Be a member of a political party or other noncandidate political organization and participate in its activities to the extent consistent with law; and
- (4) Otherwise participate fully in public affairs, except as prohibited by law, in a manner that does not materially compromise the commissioner's or the employee's efficiency or integrity as a commissioner or employee or the neutrality, efficiency, or integrity of the commission.

(c) Any commissioner or employee of the commission may request an advisory opinion from the state ethics commission to determine whether a particular activity constitutes or would constitute a violation of the code of ethics under part II of chapter 84 or this section.

**§11-I Exemptions.** (a) The commission shall be exempt from section 26-35(a)(1), (4), and (5) and shall:

- (1) Make direct communications with the governor and legislature;
- (2) Make all decisions regarding employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the commission without the approval of the comptroller; and
- (3) Purchase all supplies, equipment, or furniture without the approval of the comptroller.

(b) The commission shall follow and be subject to all applicable personnel laws.

### C. Registration

**§11-J Registration of candidate committee or noncandidate committee.**

(a) Each candidate committee or noncandidate committee shall register with the commission by filing an organizational report as set forth in section 11-K or 11-L, as applicable.

(b) Before filing the organizational report, each candidate committee or noncandidate committee shall mail or deliver an electronic filing form to the commission.

(c) The electronic filing form shall include a written acceptance of appointment and certification of each report, as follows:

- (1) A candidate committee shall file a written acceptance of appointment by the chairperson and treasurer and a certification by the candidate and treasurer of each filed report; or
- (2) A noncandidate committee shall file a written acceptance of appointment by the chairperson and treasurer and a certification by the chairperson and treasurer of each filed report.

(d) The organizational report for a candidate committee shall be filed within ten days of the earlier of:

- (1) The date the candidate files nomination papers for office; or
- (2) The date the candidate or candidate committee receives contributions or makes or incurs expenditures of more than \$100 in the aggregate during the applicable election period.

(e) An organizational report need not be filed under this section by an elected official who is a candidate for reelection to the same office in successive elections and has not sought election to any other office during the period between elections, unless the candidate is required to report a change in information pursuant to section 11-L.

(f) A candidate shall have only one candidate committee.

(g) The organizational report for a noncandidate committee shall be filed within ten days of receiving contributions or making or incurring expenditures of more than \$1,000, in the aggregate, in a two-year election period; provided that within the thirty-day period prior to an election, a noncandidate committee shall register by filing an organizational report within two days of receiving contributions or making or incurring expenditures of more than \$1,000, in the aggregate, in a two-year election period.

**§11-K Organizational report, candidate committee.** (a) The candidate committee organizational report shall include:

- (1) The committee's name and address, including web page address, if any;
- (2) The candidate's name, address, and telephone number;
- (3) The office being sought by the candidate, district, and party affiliation;
- (4) The chairperson's name and address and, if appointed, the deputy chairperson's name and address;
- (5) The treasurer's name and address and, if appointed, all deputy treasurers' names and addresses;
- (6) The name and address of each depository institution in which the committee will maintain any of its accounts and the applicable account number;
- (7) A certification by the candidate and treasurer of the statements in the organizational report; and
- (8) The name and address of each contributor who contributed an aggregate amount of more than \$100 to the candidate committee since the last election applicable to the office being sought and the amount and date of deposit of each such contribution.

(b) Any change in information previously reported in the organizational report with the exception of subsection (a)(8) shall be electronically filed with the commission within ten days of the change being brought to the attention of the committee chairperson or treasurer.

**§11-L Organizational report, noncandidate committee.** (a) The noncandidate committee organizational report shall include:

- (1) The committee's name, which shall incorporate the full name of the sponsoring entity, if any. An acronym or abbreviation may be used in other communications if the acronym or abbreviation is commonly known or clearly recognized by the general public. The committee's name shall not include the name of a candidate;
- (2) The committee's address, including web page address, if any;
- (3) The area, scope, or jurisdiction of the committee;

- (4) The name and address of the committee's sponsoring entity. If the committee does not have a sponsoring entity, the committee shall specify the trade, profession, or primary interest of contributors to the committee;
- (5) The name, address, telephone number, occupation, and principal place of business of the chairperson;
- (6) The name, address, telephone number, occupation, and principal place of business of the treasurer and any other officers;
- (7) An indication as to whether the committee was formed to support or oppose a specific ballot question or candidate and, if so, a brief description of the question or the name of the candidate;
- (8) An indication as to whether the committee is a political party committee;
- (9) The name, address, telephone number, occupation, and principal place of business of the custodian of the books and accounts;
- (10) The name and address of the depository institution in which the committee will maintain its campaign account and each applicable account number;
- (11) A certification by the chairperson and treasurer of the statements in the organizational report; and
- (12) The name, address, employer, and occupation of each contributor who contributed an aggregate amount of more than \$100 to the noncandidate committee since the last election and the amount and date of deposit of each such contribution.

(b) Any change in information previously reported in the organizational report, with the exception of subsection (a)(12), shall be electronically filed with the commission within ten days of the change being brought to the attention of the committee chairperson or treasurer.

**§11-M Treasurer.** (a) Every candidate committee or noncandidate committee shall appoint a treasurer on or before the day it files an organizational report. The following shall be permissible:

- (1) Up to five deputy treasurers may be appointed;
- (2) A candidate may be appointed as the treasurer or deputy treasurer; and
- (3) An individual who is not an officer or treasurer may be appointed by the candidate, on a fee or voluntary basis, to specifically prepare and file reports with the commission.

(b) A treasurer may resign or be removed at any time.

(c) In case of death, resignation, or removal of the treasurer, the candidate, candidate committee, or noncandidate committee shall promptly appoint a successor. During the period that the office of treasurer is vacant, the candidate, candidate committee, or chairperson, or party chairperson in the case of a party, whichever is applicable, shall serve as treasurer.

(d) Only the treasurer and deputy treasurers shall be authorized to receive contributions or to make or incur expenditures on behalf of the candidate committee or noncandidate committee.

- (e) The treasurer shall establish and maintain itemized records showing:
  - (1) The amount of each monetary contribution;
  - (2) The description and value of each nonmonetary contribution; and
  - (3) The name and address of each contributor making a contribution of more than \$25 in value; provided that information regarding the employer and occupation of contributors shall also be collected and maintained for a noncandidate committee.

(f) The treasurer shall maintain detailed accounts, bills, receipts, and other records to establish that reports were properly prepared and filed.

(g) The records shall be retained for at least five years after the report is filed.

**§11-N When an individual may not serve as a committee officer.** No candidate committee or noncandidate committee that supports or opposes a candidate shall have an officer who serves as an officer on any other candidate committee or noncandidate committee that supports or opposes the same candidate.

**§11-O Termination of candidate committee's or noncandidate committee's registration.** A candidate committee or noncandidate committee may terminate its registration if:

- (1) The candidate committee or noncandidate committee:
  - (A) Files a request for registration termination form;
  - (B) Files a report disclosing contributions and expenditures not previously reported by the committee, and the committee has no surplus or deficit; and
  - (C) Mails or delivers to the commission a copy of the committee's closing bank statement; and
- (2) The request is approved by the commission.

**§11-P Ballot issue committee; contributions and expenditures.** (a) A ballot issue committee shall receive contributions or make expenditures only for or against any issue appearing on the ballot at the next applicable election.

(b) A ballot issue committee is prohibited from receiving contributions or making expenditures to influence the nomination or election of a candidate to office.

(c) A ballot issue committee shall return all surplus funds to the contributors or donate funds to a community service, educational, youth, recreational, charitable, scientific, or literary organization within ninety days after the election for which the issue appeared on the ballot. Surplus funds that are not returned or donated within ninety days after the election for which the issue appeared on the ballot shall escheat to the Hawaii election campaign fund.

(d) Every ballot issue committee shall terminate its registration with the commission by filing a termination report to be approved as provided in section 11-O. The termination report shall be filed within ninety days after the election for which the issue appeared on the ballot.

#### **D. Reporting and Filing with the Commission**

**§11-Q Filing of reports, generally.** (a) Every report required to be filed by a candidate or candidate committee shall be certified by the candidate and treasurer.

(b) Every report required to be filed by a noncandidate committee shall be certified by the chairperson and treasurer.

(c) All reports required to be filed under this part shall be filed on the commission's electronic filing system.

(d) For purposes of this part, whenever a report is required to be filed with the commission, "filed" means that a report shall be filed with the commission's electronic filing system by the date and time specified for the filing of the report by:

- (1) The candidate or candidate committee of a candidate who is seeking election to the:
  - (A) Office of governor;
  - (B) Office of lieutenant governor;
  - (C) Office of mayor;
  - (D) Office of prosecuting attorney;
  - (E) County council;
  - (F) Senate;
  - (G) House of representatives;
  - (H) Office of Hawaiian affairs; or
  - (I) Board of education; or
- (2) A noncandidate committee required to be registered with the commission pursuant to section 11-L.
- (e) To be timely filed, a committee's reports shall be filed with the commission's electronic filing system on or before 11:59 p.m. Hawaiian standard time on the filing date specified.
- (f) All reports filed under this part are public records.

**§11-R Candidate committee reports.** (a) The candidate and treasurer shall file preliminary, final, and supplemental reports that shall disclose the following information:

- (1) The candidate committee's name and address;
  - (2) The cash on hand at the beginning of the reporting period and election period;
  - (3) The reporting period and election period aggregate totals for each of the following categories:
    - (A) Contributions;
    - (B) Expenditures;
    - (C) Other receipts; and
    - (D) Loans;
  - (4) The cash on hand at the end of the reporting period; and
  - (5) The surplus or deficit at the end of the reporting period.
- (b) Schedules filed with the reports shall include the following additional information:
- (1) The amount and date of deposit of each contribution and the name and address of each contributor who makes contributions aggregating more than \$100 in an election period; provided that if all the information is not on file, the contribution shall be returned to the contributor within thirty days of deposit;
  - (2) The amount and date of deposit of each contribution and the name, address, occupation, and employer of each contributor who makes contributions aggregating \$1,000 or more during an election period; provided that if all the information is not on file, the contribution shall be returned to the contributor within thirty days of deposit;
  - (3) All expenditures, including the name and address of each payee and the amount, date, and purpose of each expenditure. Expenditures for consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements shall be itemized to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose;
  - (4) The amount, date of deposit, and description of other receipts and the name and address of the source of each of the other receipts;
  - (5) Information about each loan received by the committee, together with the names and addresses of the lender and each person liable

directly, and the amount of each loan. A copy of the executed loan document shall be received by the commission by mail or delivery on or before the filing date for the report covering the reporting period when the loan was received. The document shall contain the terms of the loan, including the interest and repayment schedule. Failure to disclose the loan or to provide documentation of the loan to the commission shall cause the loan to be treated as a contribution, subject to all relevant provisions of this part;

- (6) A description of each durable asset, the date of acquisition, value at the time of acquisition, and the name and address of the vendor or contributor of the asset; and
  - (7) The date of disposition of each durable asset, value at the time of disposition, the method of disposition, and the name and address of the person receiving the asset.
- (c) The candidate committee shall file a late contribution report as provided in section 11-W if the committee receives late contributions from any person aggregating more than \$500.

**§11-S Time for candidate committee to file preliminary, final, and supplemental reports.** (a) The candidate and treasurer of the candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file preliminary, final, and supplemental reports.

- (1) The filing dates for preliminary reports are:
  - (A) July 31 of the election year;
  - (B) Ten calendar days prior to a primary, each special, or each nonpartisan election; and
  - (C) Ten calendar days prior to a general election; provided that this preliminary report does not need to be filed by a candidate who is unsuccessful in a primary, special, or nonpartisan election or a candidate who is elected to office in the primary, initial special, or initial nonpartisan election.

Each preliminary report shall be current through June 30 for the report filed on July 31 and current through the fifth calendar day before the filing deadline of other preliminary reports.

- (2) The filing date for the final primary report is twenty calendar days after a primary, initial special, or initial nonpartisan election. The report shall be current through the day of the applicable election.
- (3) The filing date for the final election period report is thirty calendar days after a general, subsequent, subsequent special, or subsequent nonpartisan election. The report shall be current through the day of the applicable election. The final election period report shall be filed by a candidate who is unsuccessful in a primary, initial special, or initial nonpartisan election or a candidate who is elected to office in the primary, initial special, or initial nonpartisan election.
- (4) The filing dates for supplemental reports are:
  - (A) January 31 after an election year; and
  - (B) July 31 after an election year.

The report shall be current through December 31 for the report filed on January 31 and current through June 30 for the report filed on July 31.

- (b) A candidate and treasurer of the candidate committee of each candidate with a deficit or surplus whose name will not appear on the ballot in the immediately succeeding election shall file a supplemental report every six months on January 31 and July 31 until:



- (1) The candidate's name appears on the ballot and then is subject to the reporting requirements in subsection (a); or
- (2) The committee's registration is terminated as provided in section 11-O.

The report shall be current through December 31 for the report filed on January 31 and current through June 30 for the report filed on July 31.

(c) A candidate and treasurer of the candidate committee of each candidate shall continue to file all required reports until the committee's registration is terminated as provided in section 11-O.

**§11-T Noncandidate committee reports.** (a) The authorized person in the case of a party, or treasurer in the case of a noncandidate committee that is not a party, shall file preliminary, final, and supplemental reports that disclose the following information:

- (1) The noncandidate committee's name and address;
  - (2) The cash on hand at the beginning of the reporting period and election period;
  - (3) The reporting period and election period aggregate totals for each of the following categories:
    - (A) Contributions;
    - (B) Expenditures; and
    - (C) Other receipts;
  - (4) The cash on hand at the end of the reporting period; and
  - (5) The surplus or deficit at the end of the reporting period.
- (b) Schedules filed with the reports shall include the following additional information:

- (1) The amount and date of deposit of each contribution and the name, address, occupation, and employer of each contributor making a contribution aggregating more than \$100 during an election period, which was not previously reported; provided that if all the information is not on file, the contribution shall be returned to the contributor within thirty days of deposit;
  - (2) All expenditures, including the name and address of each payee and the amount, date, and purpose of each expenditure. Expenditures for consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements shall be itemized to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose;
  - (3) The amount, date of deposit, and description of other receipts and the name and address of the source of each of the other receipts;
  - (4) A description of each durable asset, the date of acquisition, value at the time of acquisition, and the name and address of the vendor or contributor of the asset; and
  - (5) The date of disposition of a durable asset, value at the time of disposition, method of disposition, and name and address of the person receiving the asset.
- (c) No loan may be made or received by a noncandidate committee.
- (d) The authorized person in the case of a party, or treasurer in the case of a noncandidate committee that is not a party, shall file a late contribution report as provided in section 11-W if the committee receives late contributions from any person aggregating more than \$500 or makes late contributions aggregating more than \$500.

**§11-U Time for noncandidate committee to file preliminary, final, and supplemental reports.** (a) The filing dates for preliminary reports are:

- (1) Ten calendar days prior to a primary, special, or nonpartisan election; and
- (2) Ten calendar days prior to a general election.

Each preliminary report shall be current through the fifth calendar day prior to the filing of the report.

(b) The filing date for the final primary report is twenty calendar days after the primary, initial special, or initial nonpartisan election. The report shall be current through the day of the applicable election.

(c) The filing date for the final election period report is thirty calendar days after a general, subsequent special, or subsequent nonpartisan election. The report shall be current through the day of the applicable election.

(d) The filing dates for supplemental reports are:

- (1) January 31 after an election year; and
- (2) July 31 after an election year.

The report shall be current through December 31 for the report filed on January 31 and current through June 30 for the report filed on July 31.

(e) The authorized person in the case of a party, or treasurer in the case of any other noncandidate committee, shall continue to file all reports until the committee's registration is terminated as provided in section 11-O.

**§11-V Reporting expenditures.** For purposes of this part, an expenditure is deemed to be made or incurred when the services are rendered or the product is delivered. Services rendered or products delivered for use during a reporting period are deemed delivered or rendered during the period or periods of use; provided that these expenditures shall be reasonably allocated between periods in accordance with the time the services or products are actually used.

**§11-W Late contributions; report.** (a) The candidate, authorized person in the case of a noncandidate committee that is a party, or treasurer in the case of a candidate committee or other noncandidate committee, that, within the period of fourteen calendar days through four calendar days prior to any election, makes contributions aggregating more than \$500, or receives contributions from any person aggregating more than \$500, shall file a late contribution report by means of the commission's electronic filing system on or before the third calendar day prior to the election.

(b) The late contribution report shall include the following information:

- (1) Name, address, occupation, and employer of the contributor;
- (2) Name of the candidate, candidate committee, or noncandidate committee making or receiving the contribution;
- (3) The amount of the contribution;
- (4) The contributor's aggregate contributions to the candidate, candidate committee, or noncandidate committee; and
- (5) The purpose, if any, to which the contribution will be applied.

(c) A late contribution report filed pursuant to this section shall be in addition to any other report required to be filed by this part.

**§11-X Final election period report for candidate committee or noncandidate committee receiving and expending \$1,000 or less during the election period.**

(a) Any provision of law to the contrary notwithstanding, a candidate committee or noncandidate committee whose aggregate contributions and aggregate expenditures for the election period total \$1,000 or less, shall electronically file only

a final election period report, and need not file a preliminary and final primary report, a preliminary and final general report, or a special election report.

(b) Until the candidate committee's or noncandidate committee's registration is terminated as provided in section 11-O, supplemental reports and other reports required by this part shall be filed.

**§11-Y Failure to file report; filing a substantially defective or deficient report.** (a) True and accurate reports shall be filed with the commission on or before the due dates specified in this part. The commission may assess a fine against a candidate committee or noncandidate committee that is required to file a report under this part if the report is not filed by the due date or if the report is substantially defective or deficient, as determined by the commission.

(b) The fine for not filing a report by the due date, if assessed, shall not exceed \$50 per day for the first seven days, beginning with the day after the due date of the report, and shall not exceed \$200 per day thereafter; provided that:

(1) In aggregate, the fine shall not exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report; and

(2) The minimum fine for a report filed more than four days after the due date, if assessed, shall be \$200.

(c) Subsection (b) notwithstanding, if a candidate committee does not file the second preliminary primary report or the preliminary general report, or if a noncandidate committee does not file the preliminary primary report or the preliminary general report by the due date, the fine, if assessed, shall not exceed \$300 per day; provided that:

(1) In aggregate, the fine shall not exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report; and

(2) The minimum fine, if assessed, shall be \$300.

(d) If the commission determines that a report is substantially defective or deficient, the commission shall notify the candidate committee by first class mail that:

(1) The report is substantially defective or deficient; and

(2) A fine may be assessed.

(e) If the corrected report is not filed with the commission's electronic filing system on or before the fourteenth day after the notice of defect or deficiency has been mailed, the fine, if assessed, for a substantially defective or deficient report shall not exceed \$50 per day for the first seven days, beginning with the fifteenth day after the notice was sent, and shall not exceed \$200 per day thereafter; provided that:

(1) In aggregate, the fine shall not exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report; and

(2) The minimum fine for not filing a corrected report more than eighteen days after the notice, if assessed, shall be \$200.

(f) The commission shall publish on its website the names of all candidate committees that have failed to:

(1) File a report; or

(2) Correct a report within the time allowed by the commission.

(g) All fines collected under this section shall be deposited into the general fund.

**§11-Z Electioneering communications; statement of information.** (a) Each person who makes a disbursement for electioneering communications in

an aggregate amount of more than \$2,000 during any calendar year shall file with the commission a statement of information within twenty-four hours of each disclosure date provided in this section.

(b) Each statement of information shall contain the following:

- (1) The name of the person making the disbursement, name of any person or entity sharing or exercising discretion or control over such person, and the custodian of the books and accounts of the person making the disbursement;
- (2) The state of incorporation and principal place of business or, for an individual, the address of the person making the disbursement;
- (3) The amount of each disbursement during the period covered by the statement and the identification of the person to whom the disbursement was made;
- (4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified;
- (5) If the disbursements were made by a candidate committee or non-candidate committee, the names and addresses of all persons who contributed to the candidate committee or noncandidate committee for the purpose of publishing or broadcasting the electioneering communications;
- (6) If the disbursements were made by an organization other than a candidate committee or noncandidate committee, the names and addresses of all persons who contributed to the organization for the purpose of publishing or broadcasting the electioneering communications; and
- (7) Whether or not any electioneering communication is made in coordination, cooperation, or concert with or at the request or suggestion of any candidate, candidate committee, or noncandidate committee, or agent of any candidate if any, and if so, the identification of the candidate, a candidate committee or a noncandidate committee, or agent involved.

(c) For purposes of this section:

“Disclosure date” means, for every calendar year, the first date by which a person has made disbursements during that same year of more than \$2,000 in the aggregate for electioneering communications, and the date of any subsequent disbursements by that person for electioneering communications.

“Electioneering communication” means any advertisement that is broadcast from a cable, satellite, television, or radio broadcast station; published in any periodical or newspaper; or sent by mail at a bulk rate, and that:

- (1) Refers to a clearly identifiable candidate;
- (2) Is made, or scheduled to be made, either within thirty days prior to a primary or initial special election or within sixty days prior to a general or special election; and
- (3) Is not susceptible to any reasonable interpretation other than as an appeal to vote for or against a specific candidate.

“Electioneering communication” shall not include communications:

- (1) In a news story or editorial disseminated by any broadcast station or publisher of periodicals or newspapers, unless the facilities are owned or controlled by a candidate, candidate committee, or non-candidate committee;
- (2) That constitute expenditures by the disbursing organization;
- (3) In house bulletins; or

(4) That constitute a candidate debate or forum, or solely promote a debate or forum and are made by or on behalf of the person sponsoring the debate or forum.

(d) For purposes of this section, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

**§11-AA Fundraiser; notice of intent.** (a) No fundraiser shall be held unless a notice of intent to hold the fundraiser is filed with the commission setting forth the name and address of the person in charge, the price per person, the date, hour, and place of the fundraiser, and the method thereof.

(b) The person in charge of the fundraiser shall file the notice with the commission prior to the fundraiser.

(c) As used in this section, "fundraiser" means any function held for the benefit of a candidate, candidate committee, or noncandidate committee that is intended or designed, directly or indirectly, to raise contributions for which the price or suggested contribution for attending the function is more than \$25 per person.

**§11-BB Reporting deadline.** When any reporting deadline falls on a Saturday, Sunday, or holiday designated in section 8-1, the reporting deadline shall be the next succeeding day that is not a Saturday, Sunday, or holiday.

**§11-CC Sale or use of information.** No information in the reports or copies of the reports filed with the commission shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose.

### E. Contributions; Prohibitions; Limits

**§11-DD Contributions, generally.** (a) Monetary contributions and other campaign funds shall be promptly deposited in a depository institution, as defined by section 412:1-109, duly authorized to do business in the state, including a bank, savings bank, savings and loan association, depository financial services loan company, credit union, intra-Pacific bank, or similar financial institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration in the name of the candidate, candidate committee, or noncandidate committee, whichever is applicable.

(b) A candidate, candidate committee, or noncandidate committee, shall not accept a contribution of more than \$100 in cash from a single person without issuing a receipt to the contributor and keeping a record of the contribution.

(c) Each candidate committee or noncandidate committee shall disclose the original source of all earmarked funds, the ultimate recipient of the earmarked funds, and the fact that the funds are earmarked.

**§11-EE False name contributions prohibited.** (a) No person shall make a contribution to any candidate, candidate committee, or noncandidate committee in any name other than that of the person who owns the money, property, or service.

(b) All contributions made in the name of a person other than the owner of the money, property, or service shall escheat to the Hawaii election campaign fund.

**§11-FF Anonymous contributions prohibited.** (a) Except as provided in subsection (d), no person shall make an anonymous contribution to any candidate, candidate committee, or noncandidate committee.

(b) A candidate, candidate committee, or noncandidate committee shall not knowingly receive, accept, or retain an anonymous contribution, or report such contribution as an anonymous contribution, except as provided in this section.

(c) An anonymous contribution shall not be used or expended by the candidate, candidate committee, or noncandidate committee, but shall be returned to the contributor. If the contributor cannot be identified, the contribution shall escheat to the Hawaii election campaign fund.

(d) This section shall not apply to amounts that aggregate to less than \$500 that are received from ten or more persons at the same political function. The receipt of these contributions shall be disclosed in a report filed pursuant to sections 11-R and 11-T.

**§11-GG Fundraising on state or county property prohibited.** (a) Except as provided in subsection (b), no person shall solicit a contribution in a government facility that is used for the discharge of official duties by an officer or employee of the State or county.

(b) The prohibition in subsection (a) shall not apply to any government facility that permits use by nongovernmental organizations for a fee or with reservations; provided that the government facility's use rules do not prohibit political activities on the premises. Government facilities that permit use for political activities shall be available to a candidate, candidate committee, or noncandidate committee for fundraising activities pursuant to the same terms and conditions that would otherwise apply to use by nongovernmental organizations.

(c) A person who violates the prohibition of fundraising on state or county property shall be guilty of a misdemeanor.

**§11-HH Contributions by state and county contractors prohibited.** (a) It shall be unlawful for any person who enters into any contract with the State, any of the counties, or any department or agency thereof either for the rendition of personal services, the buying of property, or furnishing of any material, supplies, or equipment to the State, any of the counties, any department or agency thereof, or for selling any land or building to the State, any of the counties, or any department or agency thereof, if payment for the performance of the contract or payment for material, supplies, equipment, land, property, or building is to be made in whole or in part from funds appropriated by the legislative body, at any time between the execution of the contract through the completion of the contract, to:

- (1) Directly or indirectly make any contribution, or promise expressly or impliedly to make any contribution to any candidate committee or noncandidate committee, or to any candidate or to any person for any political purpose or use; or
- (2) Knowingly solicit any contribution from any person for any purpose during any period.

(b) Except as provided in subsection (a), this section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any noncandidate committee by any person other than the state or county contractor for the purpose of influencing the nomination for election, or the election of any person to office.

(c) For purposes of this section, "completion of the contract" means that the parties to the government contract have either terminated the contract

prior to completion of performance or fully performed the duties and obligations under the contract, no disputes relating to the performance and payment remain under the contract, and all disputed claims have been adjudicated and are final.

**§11-II Contributions by foreign national or foreign corporation prohibited.**

(a) Except as provided in subsection (b), no contributions or expenditures shall be made to or on behalf of a candidate, candidate committee, or noncandidate committee, by a foreign national or foreign corporation, including a domestic subsidiary of a foreign corporation, a domestic corporation that is owned by a foreign national, or a local subsidiary where administrative control is retained by the foreign corporation, and in the same manner prohibited under 2 United States Code section 441e and 11 Code of Federal Regulations section 110.20, as amended.

- (b) A foreign-owned domestic corporation may make contributions if:
- (1) Foreign national individuals do not participate in election-related activities, including decisions concerning contributions or the administration of a candidate committee or noncandidate committee; or
  - (2) The contributions are domestically-derived.

**§11-JJ Contributions to candidate committees; limits.** (a) No person shall make contributions to:

- (1) A candidate seeking nomination or election to a two-year office or to a candidate committee in an aggregate amount greater than \$2,000 during an election period;
- (2) A candidate seeking nomination or election to a four-year nonstate-wide office or to a candidate committee in an aggregate amount greater than \$4,000 during an election period; or
- (3) A candidate seeking nomination or election to a four-year statewide office or to a candidate committee in an aggregate amount greater than \$6,000 during an election period.

(b) For purposes of this section, the length of term of an office shall be the usual length of term of the office as unaffected by reapportionment, a special election to fill a vacancy, or any other factor causing the term of the office the candidate is seeking to be less than the usual length of term of that office.

**§11-KK Contributions to noncandidate committees; limits.** No person shall make contributions to a noncandidate committee in an aggregate amount greater than \$1,000 in an election. This section shall not apply to ballot issue committees.

**§11-LL Family contributions.** (a) A contribution by a dependent minor shall be reported in the name of the minor but included in the aggregate contributions of the minor's parent or guardian.

(b) A contribution by the candidate's immediate family shall be exempt from section 11-HH, but shall be limited in the aggregate to \$50,000 in any election period; provided that the aggregate amount of loans and contributions received from the candidate's immediate family does not exceed \$50,000 during an election period.

**§11-MM Contributions to a party.** (a) No person shall make contributions to a party in an aggregate amount greater than \$25,000 in any two-year election period, except as provided in subsection (b).

(b) No political committee established and maintained by a national political party shall make contributions to a party in an aggregate amount greater than \$50,000 in any two-year election period.

(c) If a person makes a contribution to a party that is earmarked for a candidate or candidates, the contribution shall be deemed to be a contribution from both the original contributor and the party distributing such funds to a candidate or candidates. The earmarked funds shall be promptly distributed by the party to the candidate.

(d) This section shall not prohibit a candidate from making contributions to the candidate's party if contributions are not earmarked for another candidate.

**§11-NN Aggregation of contributions and expenditures.** (a) All contributions and expenditures of a person whose contributions or expenditures are financed, maintained, or controlled by any corporation, labor organization, association, party, or any other person, including any parent, subsidiary, branch, division, department, or local unit of the corporation, labor organization, association, party, political committees established and maintained by a national political party, or by any group of those persons shall be considered to be made by a single person.

(b) A contribution by a partnership shall not exceed the limitations in this section and shall be attributed to the partnership and to each partner in direct proportion to the partner's share of the partnership profits, according to instructions that shall be provided by the partnership to the party, candidate, or committee receiving the contribution.

(c) A contribution by a limited liability company shall be treated as follows:

- (1) A contribution by a limited liability company that is treated as a partnership by the Internal Revenue Service shall be considered a contribution from a partnership;
- (2) A contribution by a limited liability company that is treated as a corporation by the Internal Revenue Service shall be considered a contribution from a corporation;
- (3) A contribution by a limited liability company with a single individual member that is not treated as a corporation by the Internal Revenue Service shall be attributed only to that single individual member; and
- (4) A limited liability company that makes a contribution shall, at the time the limited liability company makes the contribution, provide information to the party, committee, or candidate receiving the contribution specifying how the contribution is to be attributed.

(d) A person's contribution to a party that is earmarked for a candidate or candidates shall be included in the aggregate contributions of both the person and the party. The earmarked funds shall be promptly distributed by the party to the candidate.

(e) A contribution by a dependent minor shall be reported in the name of the minor but included in the aggregate contributions of the minor's parent or guardian.

**§11-OO Contributions limited from nonresident persons.** (a) Contributions from all persons who are not residents of the state at the time the contributions are made shall not exceed thirty per cent of the total contributions received by a candidate or candidate committee for each election period.



(b) This section shall not be applicable to contributions from the candidate's immediate family.

**§11-PP Other contributions and expenditures.** (a) Expenditures or disbursements for electioneering communications as defined in section 11-Z, or any other coordinated activity made by any person for the benefit of a candidate in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate committee, or their agents, shall be considered to be a contribution to the candidate and expenditure by the candidate.

The financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, candidate committee, or agents shall be considered to be a contribution to the candidate.

This subsection shall not apply to candidates for governor or lieutenant governor supporting a co-candidate in the general election.

(b) "Coordinated activity" means:

- (1) The payment by any person in cooperation, consultation, or concert with, at the request of, or pursuant to, any general or particular understanding with a candidate, candidate committee, the party of a candidate, or an agent of a candidate, candidate committee, or the party of a candidate;
- (2) The payment by any person for the production, dissemination, distribution, or republication of any written, graphic, or other form of campaign material, in whole or in part, prepared by a candidate, candidate committee, or noncandidate committee, or an agent of a candidate, candidate committee, or noncandidate committee; or
- (3) Any payment by any person or contract for any electioneering communication, as defined in section 11-Z, where the payment is coordinated with a candidate, candidate committee, the party of the candidate, or an agent of a candidate, candidate committee, or the party of the candidate.

(c) No expenditure for a candidate who files an affidavit with the commission agreeing to limit aggregate expenditures by the candidate, including coordinated activity by any person, shall be made or incurred by a candidate committee or noncandidate committee without authorization of the candidate or the candidate's authorized representative. Every expenditure so authorized and made or incurred shall be attributed to the candidate with whom the candidate committee or noncandidate committee is directly associated for the purpose of imposing the expenditure limitations set forth in section 11-000.

**§11-QQ Excess contribution; return; escheat.** (a) Any candidate, candidate committee, or noncandidate committee that receives in the aggregate more than the applicable contribution limit in section 11-JJ, 11-KK, 11-LL, or 11-MM shall return any excess contribution to the contributor within thirty days of receipt of the excess contribution. Any excess contribution not returned to the contributor within thirty days shall escheat to the Hawaii election campaign fund.

(b) A candidate, candidate committee, or noncandidate committee that complies with this section prior to the initiation of administrative action shall not be subject to any fine under section 11-JJJ.

## F. Loans

**§11-RR Loan to candidate committee.** (a) A candidate or candidate committee may receive a loan from any or all of the following:

- (1) The candidate's own funds;
- (2) A financial institution regulated by the State or a federally chartered depository institution and made in accordance with applicable law in the ordinary course of business;
- (3) The candidate's immediate family in an aggregate amount not to exceed \$50,000 during an election period; provided that the aggregate amount of loans and contributions received from the immediate family shall not exceed \$50,000 during an election period; and
- (4) Persons other than the candidate, a financial institution described in paragraph (2), or the candidate's immediate family, in an aggregate amount not to exceed \$10,000 during an election period; provided that:
  - (A) If the \$10,000 limit for loans from persons other than the immediate family is reached, the candidate and candidate committee shall be prohibited from receiving or accepting any other loans until the \$10,000 is repaid in full; and
  - (B) If a loan from persons other than the candidate's immediate family is not repaid within one year of the date that the loan is made, the candidate and candidate committee shall be prohibited from accepting any other loans. All campaign funds, including contributions subsequently received, shall be used to repay the outstanding loan in full.

(b) For purposes of this section, a "loan" does not include expenditures made on behalf of a candidate committee by a candidate, volunteer, or employee if:

- (1) The candidate's, volunteer's, or employee's aggregate expenditures do not exceed \$1,500 within a thirty-day period;
- (2) A dated receipt and a written description of the name and address of each payee and the amount, date, and purpose of each expenditure is provided to the candidate committee before the candidate committee reimburses the candidate, volunteer, or employee; and
- (3) The candidate committee reimburses the candidate, volunteer, or employee within forty-five days of the expenditures being made.

**§11-SS Reporting loan; written loan agreement.** (a) Every loan shall be reported as provided in section 11-R.

(b) Every loan in excess of \$100 shall be documented as provided in section 11-R.

(c) A loan shall be treated as a contribution, subject to all relevant provisions of this part, if the loan is not reported or documented as provided in section 11-R.

**§11-TT Noncandidate committee loan prohibited.** A noncandidate committee shall not receive or make a loan.

## G. Expenditures

**§11-UU Campaign funds only used for certain purposes.** (a) Campaign funds may be used by a candidate, treasurer, or candidate committee:

- (1) For any purpose directly related:

- (A) In the case of the candidate, to the candidate's own campaign;  
or
- (B) In the case of a candidate committee or treasurer of a candidate committee, to the campaign of the candidate, question, or issue with which they are directly associated;
- (2) To purchase or lease consumer goods, vehicles, equipment, and services that provide a mixed benefit to the candidate. The candidate, however, shall reimburse the candidate's candidate committee for the candidate's personal use unless the personal use is de minimis;
- (3) To make donations to any community service, educational, youth, recreational, charitable, scientific, or literary organization; provided that in any election period, the total amount of all donations shall be no more than twice the maximum amount that one person may contribute to that candidate pursuant to section 11-JJ; provided further that no contributions shall be made from the date the candidate files nomination papers to the date of the general election;
- (4) To make donations to any public school or public library; provided that in any election period, the total amount of all contributions shall be no more than twice the maximum amount that one person may contribute to that candidate pursuant to section 11-JJ; provided further that any donation under this paragraph shall not be aggregated with or imputed toward any limitation on donations pursuant to paragraph (3);
- (5) To purchase not more than two tickets for each event held by another candidate or committee, whether or not the event constitutes a fundraiser as defined in section 11-AA;
- (6) To make contributions to the candidate's party so long as the contributions are not earmarked for another candidate; or
- (7) To pay for ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an office.
- (b) Campaign funds may be used for the candidate's next subsequent election upon registration for the election pursuant to section 11-J.

**§11-VV Prohibited uses of campaign funds.** Campaign funds shall not be used:

- (1) To support the campaigns of candidates other than the candidate with which they are directly associated;
- (2) To campaign against any other candidate not directly opposing the candidate with which they are directly associated; or
- (3) For personal expenses.

**§11-WW Exceptions.** Notwithstanding sections 11-UU and 11-VV:

- (1) A party may support more than one candidate; and
- (2) A candidate for the office of governor or lieutenant governor may support a co-candidate in the general election.

**§11-XX Disposition of campaign funds; termination of registration.** (a) The candidate committee and candidate who receives contributions for an election but fails to file nomination papers for that election shall return residual funds to the contributors no later than ninety days after the date on which nominations for that election shall be filed. Funds not returned to contributors shall escheat to the Hawaii election campaign fund.

(b) The candidate committee and candidate who withdraws or ceases to be a candidate for the election because of death, disqualification, or other

reasons shall return residual funds to the contributors no later than ninety days after the candidate ceases to be a candidate. Funds not returned to contributors shall escheat to the Hawaii election campaign fund.

(c) A candidate who is elected to office, including a candidate subject to term limits and a candidate who resigned before the end of the term of office and the candidate committee of such a candidate, may use campaign funds as provided in section 11-UU or return funds to contributors until four years from the date of the election for which the campaign funds were received. Funds that are not used or returned to contributors shall escheat to the Hawaii election campaign fund.

(d) A candidate who loses an election and the candidate committee of such a candidate may use campaign funds as provided in section 11-UU or return funds to contributors until one year from the date of the election for which the campaign funds were received. Funds that are not used or returned to contributors shall escheat to the Hawaii election campaign fund.

(e) A candidate committee that disposes of campaign funds pursuant to this section shall terminate its registration with the commission as provided in section 11-O.

(f) Notwithstanding any of the foregoing, campaign funds may be used for the candidate's next subsequent election as provided in section 11-UU upon registration for the election pursuant to section 11-J.

(g) The commission shall adopt rules pursuant to chapter 91 to carry out the purposes of this section.

## H. Advertisements

**§11-YY Advertisements.** (a) Any advertisement shall contain:

- (1) The name and address of the candidate, candidate committee, non-candidate committee, or other person paying for the advertisement; and
- (2) A notice in a prominent location stating either that:
  - (A) The advertisement is published, broadcast, televised, or circulated with the approval and authority of the candidate; provided that an advertisement paid for by a candidate, candidate committee, or ballot issue committee does not need to include the notice; or
  - (B) The advertisement is published, broadcast, televised, or circulated without the approval and authority of the candidate.

(b) The fine for violation of this section, if assessed by the commission, shall not exceed \$25 for each advertisement that lacks the information required by this section, and shall not exceed an aggregate amount of \$5,000.

**§11-ZZ House bulletins.** The costs of preparing, printing, and circulating house bulletins and the writings, drawings, and photographs contained therein, except for paid political advertisements, shall be exempt from the provisions of this part.

## I. Enforcement

**§11-AAA Subpoena powers.** (a) The commission may subpoena witnesses, examine them under oath, and require the production of books, papers, documents, or objects to the commission office or at any place in the State whether or not the subpoena is in connection with any hearing; provided that the person

or documents subpoenaed shall be relevant to a matter under study or investigation by the commission.

(b) The books, papers, documents, or objects may be retained by the commission for a reasonable period of time for examination, audit, copying, testing, and photographing.

(c) The subpoena power shall be exercised by the chairperson of the commission, or the chairperson's designee.

(d) Upon application of the commission, obedience to the subpoena shall be enforced by the circuit court in the county in which the person subpoenaed resides or is found, in the same manner as a subpoena issued by a circuit court.

**§11-BBB Filing of complaint.** (a) A person alleging violations of this part shall file a complaint with the commission.

(b) A complaint initiated by the commission shall be in writing and signed by the executive director.

(c) A complaint by a person other than the executive director shall be in writing, signed by the person filing the complaint, and notarized.

**§11-CCC Notice of complaint; opportunity to explain or respond to complaint.** (a) The commission shall give notice of receipt of the complaint and a copy of the complaint to the respondent.

(b) The respondent may explain or otherwise respond in writing to the complaint and explain or otherwise respond to the complaint at a meeting promptly noticed by the commission and conducted under chapter 92.

**§11-DDD Initial determination by the commission.** The commission shall promptly determine, without regard to chapter 91, to:

- (1) Summarily dismiss the complaint;
- (2) Investigate further;
- (3) Make a preliminary determination; or
- (4) Refer the complaint to an appropriate prosecuting attorney for prosecution under section 11-KKK.

**§11-EEE Preliminary determination regarding probable cause.** (a) Upon hearing the response, if the respondent explains or otherwise responds to the complaint, and upon completion of any investigation, the commission may make a prompt preliminary determination as to whether probable cause exists that a violation of this part has been committed. The preliminary determination with findings of fact and conclusions of law shall be served upon the respondent by certified mail.

(b) The respondent shall be afforded an opportunity to contest the commission's preliminary determination of probable cause by making a request for a contested case hearing under chapter 91 within twenty days of receipt of the preliminary determination. Failure to request a contested case hearing shall render the commission's preliminary determination final.

**§11-FFF Waiver of further proceedings.** The commission may waive further proceedings due to action the respondent takes to remedy or correct the alleged violation, including the payment of any administrative fine. The commission shall make the remedial or corrective action taken by the respondent, the commission's decision in light of the action to waive further proceedings, and the commission's justification for its decision a part of the public record.

**§11-GGG Contested case hearing.** (a) A contested case hearing shall be conducted pursuant to chapter 91 and any rules adopted by the commission, except as provided in this section.

(b) If a hearing is held before the commission, the commission shall not be bound by strict rules of evidence when conducting a hearing to determine whether a violation of this part has occurred, and the degree or quantum of proof required shall be a preponderance of the evidence.

(c) The commission or hearings officer, if there is no dispute as to the facts involved in a particular matter, may permit the parties to proceed by memoranda of law in lieu of a hearing unless the procedure would unduly burden any party or is otherwise not conducive to the ends of justice.

(d) A record shall be made of the proceeding.

(e) All parties shall be afforded full opportunity to present evidence and argument on all issues involved.

(f) Any person who appears before the commission shall have all of the rights, privileges, and responsibilities of a witness appearing before the courts of this State. All witnesses summoned before the commission or hearings officer shall receive reimbursements as paid in like circumstances in the courts of this State. Any person whose name is mentioned during a proceeding before the commission and who may be adversely affected thereby may appear or file a written statement for incorporation into the record of the proceeding.

(g) If a hearing is held before a hearings officer, the hearings officer shall render a recommended decision for the commission's consideration. Any party adversely affected by the decision may file written exceptions with the commission within fifteen days after receipt of a copy of the decision by certified mail.

(h) The commission, as expeditiously as possible after the close of the commission's hearing, shall issue its final determination of violation together with separate findings of fact and conclusions of law regarding whether a violation of this part has been committed.

**§11-HHH Dismissal.** The complaint shall be dismissed if the commission makes a final determination that there is no violation of this part.

**§11-III Final determination of violation; order.** If the commission makes a final determination of a violation of this part, its written decision with findings of fact and conclusions of law may order any of the following:

- (1) The return of any contribution;
- (2) The reimbursement of any unauthorized expenditure;
- (3) The payment of any administrative fine to the general fund of the State;
- (4) The respondent to cease and desist violations of this part; or
- (5) Any report, statement, or other information to be filed that may be required by this part.

**§11-JJJ Administrative fines; relief.** (a) The commission may make a decision or issue an order affecting any person violating any provision of this part or section 281-22 that may provide for the assessment of an administrative fine as follows:

- (1) If an individual, an amount not to exceed \$1,000 for each occurrence or an amount equivalent to three times the amount of an unlawful contribution or expenditure; or
- (2) If a corporation, organization, association, or labor union, an amount not to exceed \$1,000 for each occurrence;

provided that whenever a corporation, organization, association, or labor union violates this part, the violation may be deemed to be also that of the individual directors, officers, or agents of the corporation, organization, association, or labor union, who have knowingly authorized, ordered, or done any of the acts constituting the violation.

(b) Any order for the assessment of an administrative fine shall not be issued against a person without providing the person written notice and an opportunity to be heard at a hearing conducted under chapter 91. A person may waive these rights by written stipulation or consent.

(c) If an administrative fine is imposed upon a candidate, the commission may order that the fine, or any portion, be paid from the candidate's personal funds.

(d) If the person to whom the commission's order is directed does not comply with the order, the first circuit court, upon application of the commission, shall issue an order requiring the person to comply with the commission's order. Failure to obey such a court order shall be punished as contempt.

(e) Any administrative fine collected by the commission shall be deposited in the general fund of the State.

(f) Any person or the commission may sue for injunctive relief to compel compliance with this part.

(g) The provisions of this section shall not prohibit prosecution under any appropriate provision of the Hawaii Penal Code or section 11-LLL.

(h) This section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the fines prescribed by sections 11-Y and 11-YY(b).

**§11-KKK Criminal referral.** In lieu of an administrative determination that a violation of this part has been committed, the commission may refer the complaint to the attorney general or county prosecutor at any time it believes the respondent may have recklessly, knowingly, or intentionally committed a violation.

**§11-LLL Criminal prosecution.** (a) Any person who recklessly, knowingly, or intentionally violates any provision of this part shall be guilty of a misdemeanor.

(b) Any person who knowingly or intentionally falsifies any report required by this part with the intent to circumvent the law or deceive the commission or who violates section 11-EE or 11-FF shall be guilty of a class C felony. A person charged with a class C felony shall not be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853.

(c) A person who is convicted under this section shall be disqualified from holding elective public office for a period of four years from the date of conviction.

(d) For purposes of prosecution for violation of this part, the offices of the attorney general and the prosecuting attorney of the respective counties shall be deemed to have concurrent jurisdiction to be exercised as follows:

- (1) Prosecution shall commence with a written request from the commission or upon the issuance of an order of the court; provided that prosecution may commence prior to any proceeding initiated by the commission or final determination;
- (2) In the case of statewide offices, parties, or issues, the attorney general or the prosecuting attorney for the city and county of Honolulu shall prosecute any violation; and

- (3) In the case of all other offices, parties, or issues, the attorney general or the prosecuting attorney for the respective county shall prosecute any violation.

In the commission's choice of prosecuting agency, it shall be guided by whether any conflicting interest exists between the agency and its appointive authority.

(e) The court shall give priority to the expeditious processing of prosecutions under this section.

(f) Prosecution for violations of this part shall not commence after five years have elapsed from the date of the violation or date of filing of the report covering the period in which the violation occurred, whichever is later.

(g) This section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the fines prescribed by sections 11-Y and 11-YY(b).

## J. Partial Public Financing

**§11-MMM Hawaii election campaign fund; creation.** (a) The Hawaii election campaign fund is created as a trust fund within the state treasury.

(b) The fund shall consist of:

- (1) All moneys collected from persons who have designated a portion of their income tax liability to the fund as provided in section 235-102.5(a);
- (2) Any general fund appropriations; and
- (3) Other moneys collected pursuant to this part.

(c) Moneys in the fund shall be paid to candidates by the comptroller as prescribed in section 11-WWW and may be used for the commission's operating expenses, including staff salaries and fringe benefits.

**§11-NNN Depletion of fund.** (a) The commission shall be under no obligation to provide moneys to candidates if, in the partial public funding program or comprehensive public funding for elections to the county of Hawaii council, moneys in the Hawaii election campaign fund are near depletion.

(b) For the purpose of the partial funding program, if the Hawaii election campaign fund is close to depletion as determined by the commission, the commission shall determine the amounts available to eligible candidates based on their order of eligibility in qualifying for partial public funds, as determined by the date of filing of an application for public funds with the commission pursuant to section 11-TTT; provided that the application has been accepted by the commission.

(c) For the purpose of the comprehensive public funding for elections to the county councils, if the Hawaii elections campaign fund is close to depletion, the commission shall determine whether the program shall be operative in accordance with this part.

**§11-OOO Voluntary expenditure limits; filing affidavit.** (a) Any candidate may voluntarily agree to limit the candidate's expenditures and those of the candidate's candidate committee or committees and the candidate's party on the candidate's behalf by filing an affidavit with the campaign spending commission.

(b) The affidavit shall state that the candidate knows the voluntary campaign expenditure limitations as set out in this part and that the candidate is voluntarily agreeing to limit the candidate's expenditures and those made on the



candidate's behalf by the amount set by law. The affidavit shall be subscribed to by the candidate and notarized.

(c) The affidavit shall remain effective until the termination of the candidate committee or the opening of filing of nomination papers for the next succeeding election, whichever occurs first. An affidavit filed under this section may not be rescinded.

(d) From January 1 of the year of any primary, special, or general election, the aggregate expenditures for each election by a candidate who voluntarily agrees to limit campaign expenditures, inclusive of all expenditures made or authorized by the candidate alone, all treasurers, the candidate committee, and noncandidate committees on the candidate's behalf, shall not exceed the following amounts expressed, respectively multiplied by the number of voters in the last preceding general election registered to vote in each respective voting district:

- (1) For the office of governor - \$2.50;
- (2) For the office of lieutenant governor — \$1.40;
- (3) For the office of mayor — \$2.00;
- (4) For the offices of state senator, state representative, and county council member — \$1.40; and
- (5) For the board of education and all other offices — 20 cents.

**§11-PPP Tax deduction for qualifying contributions.** (a) An individual resident of Hawaii may claim a state income tax deduction pursuant to section 235-7(g)(2), for contributions to a candidate who files an affidavit pursuant to section 11-000 and does not exceed the expenditure limit. Cancelled checks or copies of the same shall be considered adequate receipt forms to attach to the tax form to claim the credit.

(b) The commission shall forward a certified copy of the affidavit to the director of taxation.

(c) If a candidate has not filed the affidavit pursuant to section 11-000, the candidate shall inform all contributors in writing immediately upon receipt of the contribution that they are not entitled to a tax deduction for their contributions to the candidate. The director of taxation shall not allow any contributor to take a deduction, pursuant to section 235-7(g)(2), for any contribution to a candidate for a statewide or county office who has not filed the affidavit pursuant to section 11-000.

**§11-QQQ Maximum amount of public funds available to candidate.** (a) The maximum amount of public funds available in each election to a candidate for the office of governor, lieutenant governor, or mayor shall not exceed ten per cent of the expenditure limit established in section 11-000(d) for each election.

(b) The maximum amount of public funds available in each election to a candidate for the office of state senator, state representative, county council member, and prosecuting attorney shall not exceed fifteen per cent of the expenditure limit established in section 11-000(d) for each election.

(c) For the office of Hawaiian affairs, the maximum amount of public funds available to a candidate shall not exceed \$1,500 in any election year.

(d) For the board of education and all other offices, the maximum amount of public funds available to a candidate shall not exceed \$100 in any election year.

(e) Each candidate who qualified for the maximum amount of public funding in any primary election and who is a candidate for a subsequent general election shall apply with the commission to be qualified to receive the maximum

amount of public funds as provided in this section for the respective general election. For purposes of this section, "qualified" means meeting the qualifying campaign contribution requirements of section 11-UUU.

**§11-RRR Candidate exceeds voluntary expenditure limit.** A candidate who files the affidavit agreeing to limit expenditures and who exceeds the expenditure limit for that election shall:

- (1) Notify all opponents, the chief election officer, and the commission by telephone and writing on the day the expenditure limit is exceeded;
- (2) Pay the balance of the full filing fee; and
- (3) Provide reasonable notice to all contributors within thirty days of exceeding the limit that the expenditure limit was exceeded and contributions to the candidate no longer qualify for a state income tax deduction.

**§11-SSS Reserving use of contributions.** A candidate who files the affidavit voluntarily agreeing to limit expenditures and who receives contributions that in aggregate exceed the expenditure limit for an election shall reserve use of any contributions that exceed the limit until after the applicable election.

**§11-TTT Eligibility requirements for public funds.** In order to be eligible to receive public funds for an election, a candidate shall certify that the candidate will meet all the following requirements:

- (1) The candidate and any candidate committee authorized by the candidate shall not incur campaign expenses in excess of the expenditure limitations imposed by section 11-OOO;
- (2) The candidate has qualified to be on the election ballot in a primary or general election;
- (3) The candidate has filed a statement of intent to seek qualifying contributions. A contribution received before the filing of a statement of intent to seek public funds shall not be considered a qualifying contribution;
- (4) The candidate or candidate committee authorized by the candidate has received the minimum qualifying contribution amounts for the office sought by the candidate as set forth in section 11-UUU;
- (5) The aggregate of contributions certified with respect to any person under paragraph (4) does not exceed \$100;
- (6) The candidate agrees to obtain and furnish any evidence relating to expenditures that the commission may request;
- (7) The candidate agrees to keep and furnish records, books, and other information that the commission may request;
- (8) The candidate agrees to an audit and examination by the commission pursuant to section 11-ZZZ and to pay any amounts required to be paid pursuant to that section; and
- (9) Each candidate and candidate committee in receipt of qualifying contributions that may be taken into account for purposes of public funding shall maintain, on a form prescribed by the commission, records that show the date and amount of each qualifying contribution and the full name and mailing address of the person making the contribution. The candidate and the candidate committee authorized by the candidate shall transmit to the commission all reports with respect to these contributions that the commission may require.

**§11-UUU Minimum qualifying contribution amounts; qualifying contribution statement.** (a) As a condition of receiving public funds for a primary or general election, a candidate shall not be unopposed in any election for which public funds are sought, shall have filed an affidavit with the commission pursuant to section 11-000 to voluntarily limit the candidate's campaign expenditures, and shall be in receipt of the following sum of qualifying contributions from individual residents of Hawaii:

- (1) For the office of governor — qualifying contributions that in the aggregate exceed \$100,000;
  - (2) For the office of lieutenant governor — qualifying contributions that in the aggregate exceed \$50,000;
  - (3) For the office of mayor for each respective county:
    - (A) County of Honolulu — qualifying contributions that in the aggregate exceed \$50,000;
    - (B) County of Hawaii — qualifying contributions that in the aggregate exceed \$15,000;
    - (C) County of Maui — qualifying contributions that in the aggregate exceed \$10,000; and
    - (D) County of Kauai — qualifying contributions that in the aggregate exceed \$5,000;
  - (4) For the office of prosecuting attorney for each respective county:
    - (A) County of Honolulu — qualifying contributions that in the aggregate exceed \$30,000;
    - (B) County of Hawaii — qualifying contributions that in the aggregate exceed \$10,000; and
    - (C) County of Kauai — qualifying contributions that in the aggregate exceed \$5,000;
  - (5) For the office of county council — for each respective county:
    - (A) County of Honolulu - qualifying contributions that in the aggregate exceed \$5,000;
    - (B) County of Hawaii — qualifying contributions that in the aggregate exceed \$1,500;
    - (C) County of Maui — qualifying contributions that in the aggregate exceed \$5,000; and
    - (D) County of Kauai — qualifying contributions that in the aggregate exceed \$3,000;
  - (6) For the office of state senator — qualifying contributions that, in the aggregate exceed \$2,500;
  - (7) For the office of state representative — qualifying contributions that, in the aggregate, exceed \$1,500;
  - (8) For the office of Hawaiian affairs — qualifying contributions that, in the aggregate, exceed \$1,500; and
  - (9) For all other offices, qualifying contributions that, in the aggregate, exceed \$500.
- (b) A candidate shall obtain the minimum qualifying contribution amount set forth in subsection (a) once for the election period.
- (1) If the candidate obtains the minimum qualifying contribution amount, the candidate is eligible to receive:
    - (A) The minimum payment in an amount equal to the minimum qualifying contribution amounts; and
    - (B) Payments of \$1 for each \$1 of qualifying contributions in excess of the minimum qualifying contribution amounts; and

(2) A candidate shall have at least one other qualified candidate as an opponent for the primary or general election to receive public funds for that election.

(c) The candidate shall not receive more than the maximum amount of public funds available to a candidate pursuant to section 11-QQQ; provided that the candidate shall not receive public funds for a primary election if the candidate does not obtain the minimum qualifying contribution amounts before the date of the primary election.

**§11-VVV Application for public funds.** (a) Each application for public funds shall be signed by the candidate and notarized, and accompanied by the qualifying campaign contribution statement or statements.

(b) The application shall be mailed or delivered to the commission and shall not be valid unless received by the commission no later than thirty days after the general election.

(c) Each candidate in receipt of the minimum qualifying contribution amount established for the office that the candidate seeks may apply to the commission for public funding after the candidate has become a candidate in a primary or general election.

**§11-WWW Payment to candidate.** (a) Upon the commission's approval of the application and statement of qualifying contributions, the commission shall direct the comptroller to distribute matching public funds up to the maximum amount of public funds allowed by section 11-QQQ. Public funds shall be distributed to the candidate within twenty days from the date that the candidate's initial application and qualifying contribution statement is approved by the commission.

(b) The commission shall make additional determinations within fourteen days after receiving a complete application and supplemental statement of qualifying contributions from a candidate.

(c) All determinations made by the commission under this section are final and conclusive, except to the extent they are subject to examination and audit by the commission under section 11-ZZZ.

**§11-XXX Use of public funds.** (a) Public funds shall be deposited in a depository institution, as defined in section 412:1-109, duly authorized to do business in the State, such as a bank, savings bank, savings and loan association, depository financial services loan company, credit union, intra-Pacific bank, or similar financial institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(b) No expenditures of any public funds shall be made except by checks drawn on such checking account.

(c) Public funds shall be only used to:

(1) Defray expenditures of the candidate or the candidate committee authorized by the candidate; and

(2) Repay loans, the proceeds of which were used to defray expenditures.

(d) Public funds shall not be transferred to another candidate for any election.

(e) Unexpended public funds shall be returned to the commission by the deadline for filing the final report for the election for which the funds were received.

**§11-YYY Post-election report required.** The treasurer shall electronically submit an expenditure of public funds report to the commission no later than twenty days after a primary election and no later than thirty days after a general election certifying that all public funds paid to the candidate have been used as required by this part.

Should the commission determine that any portion of the public funds have been used for noncampaign or other improper expenses, it shall report such finding to the attorney general and shall order the candidate to return all or part of the funds paid to that candidate for a primary or general election. When public funds are returned, the funds shall be deposited into the Hawaii election campaign fund.

**§11-ZZZ Post-election examination and audit; return of funds.** (a) The commission shall examine and audit the public funds received by all candidates, qualifying contributions, and the expenditures made by all candidates within sixty days after each general election.

(b) The commission shall adopt rules, pursuant to chapter 91, prior to the payment of public money, regarding expenditures which qualify under section 11-XXX.

(c) If the commission determines that any payment of public funds to a candidate exceeded the aggregate amount to which the candidate was entitled, the commission shall notify the candidate within two years of the payment of the public funds and the candidate shall repay the excess amount to the Hawaii election campaign fund.

(d) If the commission determines that any public funds were used for any improper purpose, the commission shall notify the candidate, and the candidate shall pay to the Hawaii election campaign fund an amount equal to three hundred per cent of such amount in addition to any fines under section 11-JJJ and section 11-LLL.

**§11-AAAA Report and recommendation.** In January of each year, the commission shall submit to the legislature:

- (1) A study and recommendations of reasonable campaign expenditure and contribution limits and the factors which may be relevant in their establishment; and
- (2) A report concerning the status of the Hawaii election fund."

SECTION 3. Chapter 11, Hawaii Revised Statutes, is amended by adding a new section to the new part added by section 2 of this Act, to be appropriately designated and to read as follows:

**"§11- Filing report by corporations.** (a) A corporation shall file a report with the commission for contributions from its own treasury that aggregate more than \$1,000 per two year election period made directly to a candidate or candidate committee; provided that this section shall not authorize contributions to a candidate or candidate committee where otherwise prohibited by this part. The reporting shall be made pursuant to the time requirements contained in section 11-U and section 11-W.

(b) The filing shall include the name of the corporation, business address, a contact individual, and amounts contributed that are more than \$100 to each candidate or candidate committee."

## PART III

SECTION 4. Section 12-6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Upon the showing of a certified copy of an affidavit which has been filed with the campaign spending commission pursuant to section ~~[11-208]~~ 11-000 by a candidate who has voluntarily agreed to abide by spending limits, the chief election officer or clerk shall discount the filing fee of the candidate by the following amounts:

- (1) For the office of governor and lieutenant governor—\$675;
- (2) For the office of mayor—\$450; and
- (3) For all other offices—\$225.”

SECTION 5. Section 235-7, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) In computing taxable income there shall be allowed as a deduction:

- (1) Political contributions by any taxpayer not in excess of \$250 in any year; provided that such contributions are made to a central or county committee of a political party whose candidates shall have qualified by law to be voted for at the immediately previous general election; or
- (2) Political contributions by any individual taxpayer in an aggregate amount not to exceed \$1,000 in any year; provided that such contributions are made to candidates as defined in section ~~[11-191]~~ 11-B, who have agreed to abide by the campaign expenditure limits as set forth in section ~~[11-209]~~ 11-000; and provided further that not more than \$250 of an individual's total contribution to any single candidate shall be deductible for purposes of this section.”

SECTION 6. Section 281-22, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding chapter 11 or any other law to the contrary, no commission employee shall solicit or receive contributions, or receive or transfer money or anything of value from a licensee for the purpose of supporting, advocating, or aiding in the election or defeat of a candidate for public office. Violation of this subsection shall be:

- (1) Punishable by summary dismissal of the employee; and
- (2) Subject to ~~penalties~~ fines in accordance with section ~~[11-228]~~ 11-JJJ.”

SECTION 7. Section 853-4, Hawaii Revised Statutes, is amended to read as follows:

“**§853-4 Chapter not applicable; when.** This chapter shall not apply when:

- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
- (2) The offense charged is:
  - (A) 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 or by 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;
    - (S) A violation of an order issued pursuant to chapter 586;
    - (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; or
    - (W) Electronic enticement of a child in the second degree;
  - (14) The defendant has been charged with:
    - (A) Knowingly or intentionally falsifying any report required under chapter 11, [~~subpart B of part XII,~~] part with the intent

to circumvent the law or deceive the campaign spending commission; or

- (B) Violating section ~~[41-204]~~ 11-EE or ~~[41-202;]~~ 11-FF; or
- (15) The defendant holds a commercial driver's license and has been charged with violating a traffic control law, other than a parking law, in connection with the operation of any type of motor vehicle.

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

SECTION 8. 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 or by 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;
  - (S) A violation of an order issued pursuant to chapter 586;
  - (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
  - (X) An offense under part IV, chapter 291E;
- (14) The defendant has been charged with:
- (A) Knowingly or intentionally falsifying any report required under chapter 11, ~~subpart B of part XII,~~ part      with the intent to circumvent the law or deceive the campaign spending commission; or
  - (B) Violating section ~~[11-201]~~ 11-EE or ~~[11-202;]~~ 11-FF; or
- (15) The defendant holds a commercial driver's license and has been charged with violating a traffic control law, other than a parking law, in connection with the operation of any type of motor vehicle. The court may adopt by rule other criteria in this area."

SECTION 9. Chapter 11, part XII, subpart B, Hawaii Revised Statutes, is repealed.

**PART IV**

SECTION 10. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 11. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 12. In codifying the new sections added by part II of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.<sup>1</sup>

SECTION 13. This Act shall take effect upon approval; provided that section 3 shall take effect on January 1, 2011; and provided further that, on January 1, 2011, section 7 shall be repealed and section 8 shall take effect.

(Became law on July 6, 2010, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

**Note**

1. No Ramseyer clause.

## ACT 212

H.B. NO. 2318

A Bill for an Act Relating to the Homeless.

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

SECTION 1. Housing first, also known as rapid re-housing, is a recent innovation in human-service programs meant to assist homeless individuals. Housing first is an alternative to a system of emergency shelters and transitional housing progressions. Rather than moving homeless individuals through different levels of housing on their way to independent living, housing first moves homeless individuals immediately to their own apartments. By creating a stable housing environment, other issues that affect the household can be addressed, including employment, job training, and health care.

Homeless individuals, especially the chronically homeless with disabilities such as addictions and mental illnesses, are extremely fragile. Chronically homeless individuals are the least likely of the homeless population to reach independent living.

The purpose of this Act is to establish a housing first special fund to fund housing first programs and services and to require the Hawaii public housing authority to implement housing first programs and services, as the authority deems appropriate for clientele who would most likely benefit and succeed from housing first programs and services, and subject to the availability of existing funds or housing first special fund moneys.

SECTION 2. Chapter 356D, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§356D-A Housing first special fund.** (a) There is established in the state treasury the housing first special fund, into which shall be deposited:

- (1) Appropriations by the legislature to the special fund; and
- (2) Gifts, donations, and grants from public agencies and private persons.

Each county may provide matching funds, which shall also be deposited into the housing first special fund.

(b) Moneys in the housing first special fund shall be administered and expended by the Hawaii public housing authority and shall be used to provide housing first programs and services.

**§356D-B Housing first programs.** (a) The Hawaii public housing authority, in collaboration with the department of human services and consultation with the United States Department of Housing and Urban Development, as necessary, shall implement housing first programs and services, as the authority deems appropriate for clientele who would most likely benefit from and succeed with the implementation of housing first programs and services, and subject to the availability of existing funds or housing first special fund moneys.

(b) The principles of housing first include:

- (1) Moving chronically homeless individuals into housing directly from streets and shelters, without a precondition of accepting or complying with treatment; provided that the authority may condition continued tenancy through a housing first program on participation in treatment services;
- (2) Providing robust support services for program participants, predicated on assertive engagement instead of coercion;

- (3) Granting chronically homeless individuals priority as program participants in housing first programs;
- (4) Embracing a harm-reduction approach to addictions, rather than mandating abstinence, while supporting program-participant commitments to recovery; and
- (5) Providing program-participants with leases and tenant protections as provided by law.

The Hawaii public housing authority, in collaboration with the department of human services, may contract with housing first consultants to effectuate the purposes of this section.

(c) Housing first programs shall incorporate the following:

- (1) Identification of target populations, specifically chronically homeless individuals;
- (2) Developing assessments for the chronically homeless population;
- (3) Developing service components, including:
  - (A) Financial assistance;
  - (B) In-home case management services;
  - (C) Affordable housing requirements;
  - (D) Landlord cultivation;
  - (E) Housing-placement requirements; and
  - (F) Support services to move program-participants toward self-sufficiency.

(d) The Hawaii public housing authority, in collaboration with the department of human services, shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2011. The annual report shall include:

- (1) The total number of participants in housing first programs;
- (2) The annual costs of the programs;
- (3) The types of support services offered; and
- (4) Information regarding the duration of services required for each participant.

(e) As used in this section, "chronically homeless individual" means a homeless individual who has an addiction or a mental illness, or both."

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. 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 5. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall, as appropriate:

- (1) Add the two new sections in section 2 of this Act to chapter 346, Hawaii Revised Statutes;
- (2) Substitute the words "department of human services" or "department" wherever the words "Hawaii public housing authority" or "authority" appear;
- (3) Substitute "section 346-A" or "§346-A" wherever "section 356D-A" or "§356D-A" appear; and
- (4) Substitute "section 346-B" or "§346-B" wherever "section 356D-B" or "§356D-B" appear.

SECTION 6. This Act shall take effect on July 1, 2010; provided that section 5 shall take effect upon the enactment of Senate-Bill No. 910, S.D. 1,

H.D. 2, C.D. 1<sup>2</sup> or any other House or Senate bill passed by the 2010 legislature which transfers homeless programs from the Hawaii public housing authority to the department of human services.

(Became law on July 6, 2010, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

**Notes**

1. Edited pursuant to HRS §23G-16.5.
2. Act 89.

# PROPOSED CONSTITUTIONAL AMENDMENTS

## S.B. NO. 2807

A Bill for an Act Proposing an Amendment to Article VII, Section 6, of the Hawaii Constitution, Relating to the Tax Rebate Requirement.

*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 6, of the Hawaii Constitution to amend the requirement that excess general fund revenues be returned to taxpayers of the State as a tax refund or tax credit and allow the legislature to deposit these excess revenues into one or more funds, as provided by law, to serve as temporary sources of funding for the State in times of an emergency, economic downturn, or unforeseen reduction in revenue.

SECTION 2. Article VII, section 6, of the Hawaii Constitution is amended to read as follows:

### “DISPOSITION OF EXCESS REVENUES

**Section 6.** Whenever the state general fund balance at the close of each of two successive fiscal years exceeds five percent of general fund revenues for each of the two fiscal years, the legislature in the next regular session shall provide for a tax refund or tax credit to the taxpayers of the State, or make a deposit into one or more funds, as provided by law, which shall serve as temporary supplemental sources of funding for the State in times of an emergency, economic downturn, or unforeseen reduction in revenue, as provided by law.”

SECTION 3. The question printed on the ballot shall be as follows:

“Shall the legislature be provided with the choice, when the state general fund balance at the close of each of two successive fiscal years exceeds five per cent of the general fund revenues for each of the two fiscal years, to provide a tax refund or tax credit to the taxpayers of the State, or to make a deposit into one or more funds, as provided by law, which shall serve as temporary supplemental sources of funding for the State in times of an emergency, economic downturn, or unforeseen reduction in revenue?”

SECTION 4. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Hawaii Constitution.

## H.B. NO. 2376

A Bill for an Act Proposing Amendments to the Hawaii Constitution Relating to the Board of Education.

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

SECTION 1. Article X, section 2, of the Hawaii Constitution is amended to read as follows:

# PROPOSED CONSTITUTIONAL AMENDMENTS

## “BOARD OF EDUCATION

**Section 2.** ~~There shall be a board of education [composed of members who shall be elected in a nonpartisan manner by qualified voters, as provided by law, from two at large school board districts. The first school board district shall be comprised of the island of Oahu and all other islands not specifically enumerated. The second school board district shall be comprised of the islands of Hawaii, Maui, Lanai, Molokai, Kahoolawe, Kauai and Niihau. Each at large school board district shall be divided into departmental school districts, as may be provided by law. There shall be at least one member residing in each departmental school district. The Hawaii State Student Council shall select a public high school student to serve as a nonvoting member on the board of education]. The governor shall nominate and, by and with the advice and consent of the senate, appoint the members of the board of education, as provided by law.”~~

SECTION 2. Article XVIII of the Hawaii Constitution is amended by adding a new section to be appropriately designated and to read as follows:

## “BOARD OF EDUCATION TRANSITION

**Section .** There shall be a period of transition from the elected to the appointed board of education, as provided by law.”

SECTION 3. The question to be printed on the ballot shall be as follows:

“Shall the Board of Education be changed to a board appointed by the Governor, with the advice and consent of the Senate, as provided by law?”

SECTION 4. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.<sup>1</sup>

SECTION 5. These amendments shall take effect upon compliance with article XVII, section 3, of the Hawaii Constitution.

### Note

1. Edited pursuant to HRS §23G-16.5.

**COMMITTEE REPORTS ON BILLS ENACTED  
AND PROPOSED CONSTITUTIONAL AMENDMENTS**

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**TABLES SHOWING EFFECT OF ACTS**

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#### PROPOSED CONSTITUTIONAL AMENDMENTS

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#### Notes

1. Became law without the Governor's signature.
2. Vetoed on April 22, 2010 and overridden on April 29, 2010.
3. Vetoed on April 14, 2010 and overridden on April 29, 2010.
4. See also Senate Floor Amendment 11.
5. See also House Floor Amendment 4.
6. Vetoed on April 25, 2010 and overridden on April 29, 2010.

7. See also Senate Floor Amendment 6.
8. See also Senate Floor Amendment 9.
9. See also Senate Floor Amendment 7.
10. See also House Floor Amendment 5.
11. See also Senate Floor Amendment 4.

## TABLES SHOWING EFFECT OF ACTS

### Twenty-Fifth State Legislature 2010 Regular Session

Key: Am = Amended  
 N = New  
 R = Repealed  
 Sp = Special Session

\_\_\_ = Section number  
 to be assigned in  
 HRS Supplement

### A. SECTIONS OF HAWAII REVISED STATUTES (HRS) AFFECTED

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