

ACT 141

S.B. NO. 2186

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

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

SECTION 1. Section 11-72, Hawaii Revised Statutes, is amended to read as follows:

“§11-72 Precinct officials; submission of names and assignment; vacancies. All qualified political parties shall submit names for precinct officials to the chief election officer not later than 4:30 p.m. on the ninetieth day prior to the close of filing for any primary, special primary, or special election. All precinct officials shall be able to read and write the English language. If any party shall fail to submit the required names by the above deadline, the chief election officer may fill such positions with available qualified persons.

In assigning the precinct officials the following criteria shall be followed:

- (1) The precinct officials shall be registered voters of the precinct in which they serve; but if qualified persons in the precinct or representative district are not readily available to serve, they may be chosen from without the precinct or representative district, or if qualified persons either in or without the precinct or representative district are not available to serve, the chief election officer may designate precinct officials who are not registered voters if the persons so designated are otherwise qualified and shall have attained the age of sixteen years on or before December 31, of the year preceding the appointment.
- (2) The chief election officer may designate more precinct officials than are needed in order to create a pool of qualified precinct officials who may be assigned to fill vacancies or to perform such duties as needed in any precinct.
- (3) No parent, spouse, child, or sibling of a candidate shall be eligible to serve as a precinct official in any precinct in which votes may be cast for the candidate; nor shall any candidate for any elective office be eligible to serve as a precinct official in the same election in which he is a candidate. No candidate who failed to be nominated in the primary or special primary election shall be eligible to serve as a precinct official in the general election next following.
- (4) The chairman of the precinct officials shall be of the same party as the governor and shall be the first named precinct official on the list prepared by the chief election officer. The remainder of the precinct officials shall be apportioned as follows:
 - (A) The total votes cast, except those cast for nonpartisan candidates, for all of the following offices which were on the ballot in the next preceding general election shall be divided into the total votes cast for all the candidates of each party for such offices: president and vice-president, United States senator, United States representative, governor and lieutenant governor, state senator, and state representative.

ACT 141

- (B) In ~~[[the]]~~ event that a party's proportion of votes cast exceeds fifty per cent, its share shall be one-half of the precinct officials. The remaining one-half shall be divided among the remaining parties in proportion to their respective total of votes cast for the offices set forth in subparagraph (A).
- (C) In the case of the above division resulting in parties having fractional positions a whole position shall go to the party with the larger number of votes cast.
- (D) Newly qualified parties may be assigned up to ten per cent of the total positions available at the discretion of the chief election officer.

In case of inability, failure, or refusal of any person so assigned to serve as a precinct official the chief election officer shall, so far as reasonably practicable, appoint a person to fill the vacancy from the same party as that of the person to be replaced. In case of doubt as to the party affiliation of a precinct official, the chief election officer shall use first, the party membership list; and second, the person's word."

SECTION 2. Section 11-213, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Primary and special primary. Each candidate whether or not successful in a primary or special ~~[[primary]]~~ election, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall file a final primary report certified pursuant to section 11-195 with the commission on forms provided by the commission no later than 4:30 p.m. on the twentieth calendar day after a primary or special primary election. The report shall include:

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each contribution and the name and address of each donor who contributes an aggregate of more than \$100;
- (3) A statement of all expenditures made, incurred, or authorized by or for a candidate including the name and address of each payee and the amount, date, and purpose of each expenditure; and
- (4) The cash balance and a statement of surplus or deficit."

SECTION 3. Section 11-216, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"~~[[f]]~~ In the event a determination is made that probable cause of a wilful violation exists, the commission shall promptly advise the lieutenant governor of its findings and also the applicable clerk of the state legislature in the case of a state office, or the clerk of the respective county legislative body in the case of a county office. In the event a determination is made that probable cause of an unintentional violation exists, the commission shall issue an order that may require the violator to:

- (1) Temporarily cease and desist violation of this subpart; or
- (2) File any report, statement, or other information as required by this subpart."

SECTION 4. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The board of acupuncture, board of public accountancy, board of barbers, board of cosmetology, boxing commission, board of chiropractic exam-

iners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of registration [for] of professional engineers, architects, [and] surveyors, and landscape architects, board of hearing aid dealers and fitters, board of massage, board of medical examiners, motor vehicle industry licensing board, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, board of examiners of nursing home administrators, board of dispensing opticians, board of examiners in optometry, board of osteopathic examiners, pest control board, board of pharmacy, board of physical therapy, board of psychology, board of detectives and guards, real estate commission, board of veterinary examiners, and state board of speech pathology and audiology are placed within the department of commerce and consumer affairs for administrative purposes.”

SECTION 5. Section 46-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This section and any ordinances or rules and regulations adopted in accordance with it, shall apply to those lands not contained within the forest reserve boundaries as established on January 31, 1957, or as subsequently amended.

Zoning in all counties shall be accomplished within the framework of a long range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner. Zoning in the counties of Hawaii, Maui, and Kauai means the establishment of districts of such number, shape, and area, and the adoption of regulations for each district as shall be deemed best suited to carry out the purposes of this section. In establishing or regulating the districts, full consideration shall be given to all available data as to soil classification and physical use capabilities of the land so as to allow and encourage the most beneficial use of the land consonant with good zoning practices. The zoning power granted herein shall be exercised by ordinance which may relate to:

- (1) The areas within which agriculture, forestry, industry, trade, and business may be conducted.
- (2) The areas in which residential uses may be regulated or prohibited.
- (3) The areas bordering natural watercourses, channels, and streams, in which trades or industries, filling or dumping, erection of structures, and the location of buildings may be prohibited or restricted.
- (4) The areas in which particular uses may be subjected to special restrictions.
- (5) The location of buildings and structures designed for specific uses and designation of uses for which buildings and structures may not be used or altered.
- (6) The location, height, bulk, number of stories, and size of buildings and other structures.
- (7) The location of roads, schools, and recreation areas.
- (8) Building setback lines and future street lines.
- (9) The density and distribution of population.
- (10) The percentage of lot which may be occupied, size of yards, courts, and other open spaces.
- (11) Minimum and maximum lot sizes.
- (12) Other such regulations as may be deemed by the boards or city council as necessary and proper to permit and encourage orderly development of land resources within their jurisdictions.

The council of any county shall prescribe such rules and regulations and

ACT 141

administrative procedures and provide such personnel as it may deem necessary for the enforcement of this section and any ordinance enacted in accordance therewith. The ordinances may be enforced by appropriate fines and penalties, civil or criminal, or by court order at the suit of the county or the owner or owners of real estate directly affected by the ordinances.

Any civil fine or penalty provided by ordinance under this section may be imposed by the district court, or by the zoning agency after an opportunity for a hearing, pursuant to chapter 91. Such a proceeding shall not be a prerequisite for any injunctive relief ordered by the circuit court.

Nothing in this section shall invalidate any zoning ordinances or regulation adopted by any county or other agency of government pursuant to the statutes in effect prior to July 1, 1957.

The powers granted herein shall be liberally construed in favor of the county exercising them, and in such a manner as to promote the orderly development of each county or city and county in accord with a long range, comprehensive, general plan, and to insure the greatest benefit for the State as a whole. This section shall not be construed to limit or ~~repeal~~ any powers now possessed by any county to achieve the ends through zoning and building regulations, except insofar as forest and water reserve zones are concerned and as provided in subsections (c) and (d).

Neither this section nor any ordinance enacted under this section shall prohibit the continuance of the lawful use of any building or premises for any trade, industry, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single family or duplex) or agricultural uses. Nothing in this section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262."

SECTION 6. Section 46-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Neither this section nor any other law, county ordinance, or rule shall prohibit group living in facilities with eight or fewer residents and which are licensed by the State as provided for under section 321-15.6 or in intermediate care facilities for the mental retardation (ICF/MR-C) for persons, including the mentally ill, the elderly, the handicapped, the developmentally disabled, or the totally disabled persons, who are not related to the home operator or facility staff; provided that such group living facilities meet all applicable county requirements, not inconsistent with the intent of this subsection and including building height, setback, maximum lot coverage, parking, and floor area requirements. For purposes of this section, "mentally ill person" means a mentally ill person as defined under section 334-1; "elderly person" means an elderly person as defined under section [359-52;] 201E-230; "handicapped person" means an individual with a physical handicap as defined under section 515-2; "developmentally disabled person" means a person suffering from developmental disabilities as defined under section 333E-2; "totally disabled person" means a person totally disabled as defined under section 235-1; and "intermediate care facility/mental retardation-community (ICF/MR-C)" is defined as an identifiable unit providing residence and care for eight or fewer mentally retarded individuals. Its primary purpose is the provision of health, social and rehabilitation services to the mentally retarded through an individually designed active treatment

program for each resident. No person who is predominately confined to bed shall be admitted as a resident of such a facility.”

SECTION 7. Section 46-15.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The respective counties may conduct inspections to enforce sections [445-91] 445-92 to 445-96. Each county may conduct its inspections without a warrant if the conditions enumerated in subsection (c) exist. A county shall conduct its inspection with a warrant in accordance with this section if the circumstances enumerated in subsection (c) do not exist or if specific buildings or premises to be inspected can be identified through citizen complaint or by information obtained from state agencies under section 46-15.5. The issuance and execution of an administrative inspection warrant shall be as follows:

- (1) A judge of the circuit court, or any district judge within the judge’s jurisdiction, may issue warrants for the purpose of conducting administrative inspections. The warrants shall be issued upon proper oath or affirmation showing probable cause that:
 - (A) The conditions of a license under section 445-95 have been violated; or
 - (B) A person is operating a lodging or tenement house, group home, group residence, group living arrangement, hotel, boarding-house, or restaurant without a license;
- (2) A warrant shall issue only upon an affidavit of an individual having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that there is probable cause to believe the grounds for issuing a warrant exist, the judge shall issue a warrant identifying the area, premises, building, or records to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:
 - (A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;
 - (B) Be directed to a person authorized by the county to execute it;
 - (C) Command the person to whom it is directed to inspect the area, premises, building, or records identified for the purpose specified and, if appropriate, use reasonable force in conducting the inspection authorized by the warrant and direct the seizure of the property specified;
 - (D) Identify the item or types of property to be seized, if any; and
 - (E) Direct that it be served during the daylight business hours between 8:00 a.m. and 5:00 p.m. and designate the judge to whom it shall be returned;
- (3) A warrant issued pursuant to this section shall be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the

inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant; and

- (4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the issuing court."

SECTION 8. Section 53-84, Hawaii Revised Statutes, is amended to read as follows:

"§53-84 Incurring of indebtedness by the county. For the purpose of carrying out its powers, duties, and functions under this part, including for the payment of principal and interest upon any advances for moneys and plans for redevelopment projects, the county may:

- (1) Borrow and apply for and accept advances and loans; provided that unless the obligation of the county to repay such advances or satisfy such loans is limited to the revenues derived by the county from an undertaking as defined in section 53-85, the incurring by the county of any such indebtedness shall be carried out under and pursuant to chapter 47;
- (2) Issue its bonds under and pursuant to chapter 47, including, without limiting the foregoing, for the refunding of bonds issued by an agency of the county abolished as provided in section 53-81 and the refunding of bonds issued by the county under paragraph (3); and
- (3) Issue its bonds under and pursuant to section 53-16, all of the provisions of which shall be applicable to such bonds and to the county in the issuance thereof except as follows:
 - (A) Such bonds shall be issued only for the purpose of carrying out the powers, duties, and functions of the county under this part, including, without limiting the foregoing, the refunding of bonds issued by the county under this paragraph [(3)] or [the preceding] paragraphs (1) and (2) [of this section] or the refunding of bonds issued by an agency of the county abolished as provided in section 53-81;
 - (B) The principal of and interest on such bonds shall be payable and secured solely as provided in section 53-16(a)(1) and (2), and in no event shall be payable from the general fund of the county or from taxes or from any other funds or properties of the county other than those referred to in such paragraphs (1) and (2), nor shall such bonds be secured by the full faith and credit of the county or the general fund or the taxing power of the county;
 - (C) Neither the council nor any officer or employee of the county nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof;
 - (D) The bonds shall be limited obligations of the county payable and secured solely as provided in subparagraph (B) [of this section] and shall so state on their face;
 - (E) The words [] "members" [] or "officers" where used in section 53-16(e) shall mean members of the council and officers of the county; and
 - (F) The words "rents", "fees", and "revenues" where used in section 53-16(g) shall mean and include only those rents, fees, and revenues derived by the county from its activities under this part; the words "real or personal property" and "property"

where used in section 53-16(g) shall mean only the real or personal property held by the county for the purposes of this chapter and shall not include real or personal property held for other public uses and purposes, such as streets, parks, public buildings, publicly-owned utilities, and the like; and the word "bonds" where used in section 53-16(g) shall mean bonds of the county issued under section 53-16(g) as incorporated into this part and the bonds of any agency of the county abolished as provided in section 53-81."

SECTION 9. Section 92-24, Hawaii Revised Statutes, is amended to read as follows:

"§92-24 Directors of finance and commerce and consumer affairs; fees.

The director of finance and the director of commerce and consumer affairs each shall charge the following fees:

- (1) For administering any oath, \$1;
- (2) For preparing every photostat copy of any document on record in his office, 50 cents per page or portion thereof;
- (3) For preparing every typewritten copy of any document on record in his office, 50 cents per page or portion thereof;
- (4) For preparing a certificate of compliance, \$5 for the original certificate, and \$1 for each additional copy thereof, of which \$4 from each certificate and 75 cents of each additional copy shall be deposited in the special fund [authorized by section 416-97,] referred to in section 415-128, and the balance deposited to the general fund of the State;
- (5) For comparing any document submitted for certification, 15 cents per page or portion thereof;
- (6) For certifying any document on record in his office, 25 cents for each certification;
- (7) For all other acts and duties, the fees of which are not otherwise provided for, such charges as each may from time to time prescribe."

SECTION 10. Section 92-28, Hawaii Revised Statutes, is amended to read as follows:

"§92-28 State service fees, increase or decrease of. Any law to the contrary notwithstanding, the fees or other nontax revenues assessed or charged by any board, commission, or other governmental agency, may, with the approval of the governor, be increased or decreased by the body in an amount not to exceed fifty per cent of the statutorily assessed fee or nontax revenue, in order to maintain a reasonable relation between the revenues derived from such fee or nontax revenue and the cost or value of services rendered, comparability among fees imposed by the State, or any other purpose which it may deem necessary and reasonable; provided that the authority to increase or decrease fees or nontax revenues shall extend only to the following: chapters [6, 28 (pt III),] 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189, 231, 269, 271, 321, 338, 373, 403, 407, 408, 409, 415, 421, 422, 425, 431, [434,] 438, 439, 440, 442, [443A,] 447, 448, 450, 452, 453, 455, 456, 457, 458, 459, 460, 461, 463, 464, 466, 467, 469, 471, 482, 485, 501, 502, 505, 514A, 572, [and] 574[;], and 846 (pt II); and provided further that this section shall not apply to fees charged by the University of Hawaii or to judicial fees as may be set by any chapter mentioned above."

SECTION 11. Section 104-1, Hawaii Revised Statutes, is amended by

ACT 141

amending the definitions of "basic hourly rate" and "overtime compensation" to read as follows:

- "(1) "Basic hourly rate" means the hourly wage paid to a laborer or mechanic for work performed during nonovertime hours, but shall not include the cost to an employer of furnishing fringe benefits whether paid directly or indirectly to the laborer or mechanic as provided in [subsection] paragraph (6);"
- "(5) "Overtime compensation" means compensation based on one and one-half times the laborers or mechanics basic hourly rate of pay plus the cost to an employer of furnishing a laborer or mechanic with fringe benefits as described in [subsection] paragraph (6);"

SECTION 12. Section 174C-5, Hawaii Revised Statutes, is amended to read as follows:

"[§174C-5] General powers and duties. The general administration of the state water code shall rest with the commission on water resource management. In addition to its other powers and duties, the commission:

- (1) Shall carry out topographic surveys, research, and investigations into all aspects of water use and water quality.
- (2) Shall designate water management areas for regulation under this chapter where the commission, after the research and investigations mentioned in paragraph (1), shall consult with the appropriate county council and county water agency, and after public hearing and published notice, finds that the water resources of the areas are being threatened by existing or proposed withdrawals of water.
- (3) Shall establish an instream use protection program designed to protect, enhance, and reestablish, where practicable, beneficial instream uses of water in the State.
- (4) May contract and cooperate with the various agencies of the federal government and with state and local administrative and governmental agencies or private persons.
- (5) May enter, after obtaining the consent of the property owner, at all reasonable times upon any property other than dwelling places for the purposes of conducting investigations and studies, or enforcing any of the provisions of this code, being liable, however, for actual damage done. If consent cannot be obtained, reasonable notice shall be given prior to entry.
- (6) Shall cooperate with federal agencies, other state agencies, county or other local governmental organizations, and all other public and private agencies created for the purpose of utilizing and conserving the waters of the State, and assist such organizations and agencies in coordinating the use of their facilities and participate in the exchange of ideas, knowledge, and data with such organizations and agencies. For this purpose the commission shall maintain an advisory staff of experts.
- (7) Shall prepare, publish, and issue such printed pamphlets and bulletins as the commission deems necessary for the dissemination of information to the public concerning its activities.
- (8) May appoint and remove agents and employees including [hearing] hearings officers, specialists, and consultants necessary to carry out the purposes of this chapter and may be engaged by the commission without regard to the requirements of chapters 76 and 77 and section 78-1.

- (9) May acquire, lease, and dispose of such real and personal property as may be necessary in the performance of its functions, including the acquisition of real property for the purpose of conserving and protecting water and water related resources as provided in section 174C-14.
- (10) Shall identify, by continuing study, those areas of the State where salt water intrusion is a threat to fresh water resources and report its findings to the appropriate county mayor and council and the public.
- (11) Shall provide such coordination, cooperation, or approval necessary to the effectuation of any plan or project of the federal government in connection with or concerning the waters of the State. The commission shall approve or disapprove such federal plans or projects on behalf of the State. No other agency or department of the State shall assume the duties delegated to the commission under this paragraph, except that the department of health shall continue to exercise such powers vested in it with respect to water quality, and except that the department of [planning] business and economic development shall continue to carry out its duties and responsibilities under chapter 205A.
- (12) Plan and coordinate programs for the development, conservation, protection, control, and regulation of water resources based upon the best available information, and in cooperation with federal agencies, other state agencies, county or other local governmental organizations, and other public and private agencies created for the utilization and conservation of water.
- (13) Shall catalog and maintain an inventory of all water uses and water resources.”

SECTION 13. Section 201E-2, Hawaii Revised Statutes, is amended by amending the definition of “eligible developer” to read:

“ “Eligible developer” means any person, partnership, cooperative (including limited equity housing cooperatives as defined in chapter [421G,] 421H, firm, nonprofit or profit corporation, or public agency determined by the corporation:

- (1) To be qualified by experience and financial responsibility and support to construct housing of the type described and of the magnitude encompassed by the given project;
- (2) To have submitted plans for a project adequately meeting the objectives of this chapter, the maintenance of aesthetic values in the locale of the project, and the requirements of all applicable environmental statutes, and rules; and
- (3) To meet all other requisites the corporation deems to be just and reasonable, and all requirements stipulated in this chapter.”

SECTION 14. Section 201E-3, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“**[§201E-3] Housing finance and development corporation; establishment; board; staff.** (a) There is established the housing finance and development corporation to be placed within the department of [planning] business and economic development for administrative purposes. The corporation shall be a public body and a body corporate and politic with perpetual existence.

(b) The corporation shall be headed by a board of directors which consists of eight members, of whom six shall be public members appointed by the governor as provided in section 26-34. Two public members shall be appointed at large; the remaining public members shall be appointed from each of the counties of Honolulu,

ACT 141

Hawaii, Maui, and Kauai. The director of [planning] business and economic development and the special assistant for housing shall be ex officio voting members.

(c) The governor shall select a chairperson and vice-chairperson from among the members. The director of [planning] business and economic development shall not be ex officio chairperson of the board.”

SECTION 15. Section 201E-161, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§201E-161]]~~ **Mortgage guaranty agreements.** (a) In order to induce appropriate officials of any agency or instrumentality of the United States to commit to insure and insure mortgages under the provisions of the National Housing Act, as amended, the corporation may enter into guaranty agreements with such officials whenever:

- (1) The purchaser-mortgagor in question is ineligible for mortgage insurance purposes under the National Housing Act because of credit standing, debt obligation or income characteristics;
- (2) The purchaser-mortgagor in question is a “displaced person” as defined in chapter 111 and the guaranty agreement will enable the purchaser-mortgagor to obtain suitable replacement housing in accordance with that chapter; and
- (3) The corporation finds that such purchaser-mortgagor would be a satisfactory credit risk with ability to repay the mortgage loan if the purchaser-mortgagor were to receive budget, debt, management and related counseling.

(b) Such guaranty agreements may obligate the corporation to:

- (1) Provide or cause to be provided such counseling; and
- (2) Indemnify an agency or instrumentality of the United States for a period not to exceed five years for any loss sustained by such agency or instrumentality by reason of insurance of a mortgage.

[(b)] (c) The total of guaranties made pursuant to this section and guaranties made pursuant to section 201E-160 shall not exceed \$10,000,000.”

SECTION 16. Section 208-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The [members of the board of planning and economic development, as constituted by section 26-18, and the] following ex officio members: director of labor and industrial relations, director of finance, superintendent of education, and chairman of the board of land and natural resources, are designated as an area redevelopment council to advise and assist the director of business and economic development in carrying out the program provided for by this chapter.”

SECTION 17. Section 209E-2, Hawaii Revised Statutes, is amended by amending the definitions of “department” and “director” to read:

““Department” means the department of [planning] business and economic development.

“Director” means the director of [planning] business and economic development.”

SECTION 18. Section 226-55, Hawaii Revised Statutes, is amended to read as follows:

“**§226-55 Office of state planning; duties.** The office shall provide as-

sistance and staff services to the policy council in administering this chapter. To further the intent and purpose of this chapter, the office shall:

- (1) Provide recommendations to the governor and the policy council on conflicts between and among this chapter, state functional plans approved by the governor, county general plans and development plans, and state programs;
- (2) Review and evaluate this chapter and recommend amendments as needed to the policy council;
- (3) Review, as necessary, major plans, programs, projects, and regulatory activities proposed by state and county agencies, and provide advisory opinions and reports to the policy council as needed;
- (4) Analyze existing state policies, planning and program operations, laws, rules and practices relative to formulation, implementation, and coordination of the state plan;
- (5) Review state capital improvement projects for consistency with this chapter and report findings and recommendations to the governor prior to allocation of funds;
- (6) Conduct special studies and prepare reports that address major policy issues relating to statewide growth and development;
- (7) Cooperate with all public agencies to ensure an ongoing, uniform, and reliable base of data and projections;
- (8) Assist the policy council in conducting a comprehensive review of part I [of this chapter] at least every four years following enactment by the legislature, and part III [of this chapter] at least every odd-numbered year;
- (9) Assist the policy council in preparing and submitting its biennial review and report to the legislature in accordance with section 226-62;
- (10) Prepare and adopt in consultation with the policy council, administrative guidelines in accordance with this chapter and chapter 91;
- (11) Provide other technical assistance and staff services to the policy council as needed; and
- (12) Prepare guidelines for the development and implementation of the state functional plans in accordance with [sections 226-57 and 226-58].

The office may contract with public and private agencies and persons for special research and planning assistance.”

SECTION 19. Section 235-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) A corporation, foreign or domestic, is taxable upon the income received or derived from property owned, trade or business carried on, and any and every other source in the State. In addition thereto a domestic corporation is taxable upon its income from property owned, trade or business carried on, and any and every other source outside the State, unless subjected to income tax thereon in any other jurisdiction. Subjection to federal tax does not constitute subjection to income tax in another jurisdiction. “Corporation” includes any professional corporation incorporated pursuant to chapter 415A or 416.”

SECTION 20. Section 235-55.8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For the purposes of this section, a qualified exemption is defined to include those exemptions permitted under this chapter; provided that a person for whom exemption is claimed has physically resided in the State for more than nine

ACT 141

months during the taxable year; and provided further that multiple exemptions shall not be granted because of age, deficiencies in vision or hearing, or other disability. For purposes of claiming the credit only, a minor child receiving support from the department of [social] human services [and housing] of the State, social security survivor's benefits, and the like, may be considered a dependent and a qualified exemption of the parent or guardian."

SECTION 21. Section 235-110.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There shall be allowed to each taxpayer subject to the tax imposed by this chapter a capital goods excise tax credit which shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is [[]]properly[()] claimed.

The amount of the tax credit shall be determined by the application of the following rates against the cost of the eligible depreciable tangible personal property used by the taxpayer in a trade or business and purchased and placed in service within Hawaii after December 31, 1987. For calendar years beginning after: December 31, 1987, the applicable rate shall be 3 per cent; December 31, 1988, and thereafter, the applicable rate shall be 4 per cent. For taxpayers with fiscal taxable years, the applicable rate shall be the rate for the calendar year in which the eligible tangible personal property used in the trade or business is purchased and placed in service within Hawaii.

In the case of partners, S corporation shareholders, or beneficiaries of estates and trusts who are taxable on the distributive share of net income received, the credit under this section for the taxable year shall be allowable only to the extent of the ratio of the distributive share of income received from the partnership, S corporation, estate or trust to the entire gross income subject to the tax imposed by this chapter.

In the case of eligible tangible personal property for which a credit for sales or use taxes paid to another state is allowable under section 238-3(i), the amount of the credit allowed under this section shall not exceed the amount of the use tax actually paid under chapter 238 relating to such tangible personal property.

If a deduction is taken under section 179 (with respect to election to expense certain depreciable business assets) of the Internal Revenue Code of 1954, as amended, no credit shall be allowed for that portion of the cost of property for which the deduction was taken."

SECTION 22. Section 304-66.2, Hawaii Revised Statutes, is amended to read as follows:

"[[]§304-66.2 **Qualifications for residency program.**[()] The school of medicine of the University of Hawaii shall recommend that two positions within the University of Hawaii medical residency program be filled each year commencing in 1987, in accordance with this subpart, by persons who have the necessary qualifications, other than the qualification of residency training, to take the examination for licensure as physicians under chapter 453, and who volunteer to enter into contracts under section 304-66.3, whether or not they are graduates of the school of medicine of the University of Hawaii. The department of [social services and housing] corrections and the department of health shall notify the school of medicine of the type of physicians needed by the correctional facilities and by rural communities. The school of medicine shall establish procedures to provide for applications by, and selection of, persons who are qualified and interested to fill the positions."

SECTION 23. Section 304-66.4, Hawaii Revised Statutes, is amended to read as follows:

“**[[§304-66.4]] Penalty for breach of contract.** A person who is placed in the residency program under this subpart, but who breaches any term of the contract under section 304-66.3, shall pay to the State damages of \$10,000; provided that a contract shall not be deemed breached if the person has obtained a permanent license to practice medicine under chapter 453, but could not fulfill the requirements of section 304-66.3(3) and (4) because no employment vacancy existed in the correctional facilities of the department of [social services and housing] corrections or no shortage of physicians existed in any rural community and the department of [social services and housing] corrections or department of health, as applicable, certifies that no employment vacancy or shortage existed.”

SECTION 24. Section 321-11.2, Hawaii Revised Statutes, is amended to read as follows:

“**[[§321-11.2 Adult foster homes.** (a)]] The department of health is authorized to certify adult foster homes for developmentally disabled individuals requiring such care beyond the eighteenth birthday.

[[b)]] The rules of the department of [social] human services [and housing] adopted under authority of section 346-17, which prescribe the standards of conditions and competence of operation of child foster boarding homes shall apply to adult foster homes. Notwithstanding chapter 91, to the contrary, the rules shall be considered adopted by the department of health on the effective date of this Act for the purpose of regulating adult foster care homes and shall be valid until the department of health adopts rules pursuant to chapter 91. The department of health shall adopt rules pursuant to chapter 91 necessary for the purposes of this [[section]].

[[c)]] Rate of payment for adult foster homes is to be determined on the same basis as domiciliary care homes as provided under section 346-53.”

SECTION 25. Section 321D-1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established a statewide interdepartmental cluster for services to children within the department of health which shall be comprised of representatives of major child-serving agencies with statewide authority and responsibility. The cluster shall include the department of education, the department of health, the department of [social] human services [and housing], the judiciary, and the office of children and youth as regular members. The department of health shall staff the cluster and provide an identified place where development and coordination of service plans and programs for the multisystem children having severe emotional and developmental problems may be done on a systematic basis.”

SECTION 26. Section 333F-13, Hawaii Revised Statutes, is amended to read as follows:

“**[[§333F-13]] Payments for care and treatment of persons receiving services; liability.** A parent, guardian of the property, or other person liable for the support of any person receiving services under this chapter may be required to pay such sums as may be determined by the department for the care and treatment of the person. The parent or guardian of the property of a minor receiving services under this chapter shall be liable for such care and treatment until the person admitted

ACT 141

has reached the age of majority. The liability of a guardian of the property of a person under this section shall be limited to the estate of the ward and shall not be recoverable out of the individual assets of the guardian. Every person receiving services under this chapter and any property of the person's estate not exempt from execution shall be liable for the expense of the person's care and treatment. The attorney general, whenever requested by the director, shall take such steps as may be appropriate, by civil action if necessary, to enforce any liability established by this section. The attorney general may designate any appropriate county attorney to act in the attorney general's behalf in any enforcement proceeding.

The department, with the approval of the governor and from the funds appropriated to the department for the care and treatment of persons with developmental disabilities or mental retardation, may transfer from time to time to the department of [social] human services [and housing] such amounts as may be requested by the department of [social] human services [and housing] to match federal funds available under Title XIX of the Social Security Act to assist any indigent or medically indigent persons to pay for the care and treatment of any person receiving services under this chapter. The department may expend federal funds so received for the purposes of this chapter."

SECTION 27. Section 338-21, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All children born out of wedlock, irrespective of the marriage of either natural parent to another, become legitimate (1) on the marriage of the natural [[parents[]] with each other, (2) on the voluntary, written acknowledgements of paternity under oath signed by the natural father and the natural mother, or (3) on establishment of the parent and child relationship under chapter 584, and are entitled to the same rights as those born in wedlock and shall take the name so stipulated by their parents or, if the parents do not agree on the name, shall take the name specified by a court of competent jurisdiction to be the name that is in the best interests of the child. If legitimation is accomplished before the original certificate of birth is filed with the department of health, the original certificate of birth shall contain the name so stipulated. The child or children or the parents thereof may petition the department of health to issue a new original certificate of birth, and not a duplicate of the original certificate that has been amended, altered, or modified, in the new name of the legitimated child, and the department shall issue the new original certificate of birth upon being satisfied that the child or children has or have been legitimated. As used in this section "name" includes the first name, middle name, or last name."

SECTION 28. Section 347D-1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established a Hawaii state coordinating council on deafness within the department of [social] human services [and housing] for administrative purposes. The council shall consist of:

- (1) Seven representatives of state agencies, including the departments of health, education, labor and industrial relations, [social] human services [and housing], personnel services, the University of Hawaii, and the office of the governor;
- (2) Seven members who are hearing impaired or who are immediate family members of hearing impaired persons; and

- (3) Seven members of the public who have an interest in hearing impaired persons.”

SECTION 29. Section 350-1, Hawaii Revised Statutes, is amended by amending the definition of “child abuse or neglect” to read:

“ “Child abuse or neglect” means the acts or omissions of any person who, or legal entity which, is in any manner or degree related to the child, is residing with the child, or is otherwise responsible for the child’s care, that have resulted in the physical or psychological health or welfare of the child, who is under the age of eighteen, to be harmed, or to be subject to any reasonably foreseeable, substantial risk of being harmed. The acts or omissions are indicated for the purposes of reports by circumstances that include but are not limited to:

- (1) When the child exhibits evidence of:
 - (A) Substantial or multiple skin bruising or any other internal bleeding;
 - (B) Any injury to skin causing substantial bleeding;
 - (C) Malnutrition;
 - (D) Failure to thrive;
 - (E) Burn or burns;
 - (F) Poisoning;
 - (G) Fracture of any bone;
 - (H) Subdural hematoma;
 - (I) Soft tissue swelling;
 - (J) Extreme pain;
 - (K) Extreme mental distress;
 - (L) Gross degradation;
 - (M) Death; and

such injury is not justifiably explained, or when the history given concerning such condition or death is at variance with the degree or type of such condition or death, or circumstances indicate that such condition or death may not be the product of an accidental occurrence; or
- (2) When the child has been the victim of sexual contact or conduct, including, but not limited to, [rape, sodomy,] sexual assault as defined in the penal code, molestation, sexual fondling, incest, or prostitution; obscene or pornographic photographing, filming, or depiction; or other similar forms of sexual exploitation; or
- (3) When there exists injury to the psychological capacity of a child as is evidenced by an observable and substantial impairment in the child’s ability to function; or
- (4) When the child is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision; or
- (5) When the child is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; provided that this paragraph shall not apply when such drugs are provided to the child pursuant to the direction or prescription of a practitioner, as defined in section 712-1240.”

SECTION 30. Section 351-84, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Moneys remaining after disbursement under subsection (b) shall be

disbursed to a judgment creditor, for the purpose of satisfying a judgment, [[moneys]] from the special account if:

- (1) The judgment creditor is a victim, a victim's representative, or other person specified in section 351-31, or a person who is not specified in section 351-31 but is the victim of a crime subject to this part;
- (2) The judgment is for the damages arising out of the criminal act of the convicted person;
- (3) A certified copy of the judgment is presented to the commission; and
- (4) There is no order staying the judgment or enjoining disbursement.

Judgment creditors shall be paid out of the special account in the order in which certified copies of the judgments are presented to the commission."

SECTION 31. Section 353-11.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except for the director and employees of the department of corrections, members of the Hawaii paroling authority, and those persons specified in section [353-47,] 353-29, no person shall enter or remain on the grounds of any state correctional facility unless permission to so enter or remain has been obtained from the administrator of the correctional facility, the administrator's designated representatives, or the director."

SECTION 32. Section 353-22.6, Hawaii Revised Statutes, is amended to read as follows:

"[[§353-22.6]] **Victim restitution.** The director of corrections shall enforce victim restitution orders against moneys earned by the prisoner while incarcerated. The amount deducted and paid once annually to the victim shall be ten per cent of the prisoner's annual earnings. This section shall not apply to moneys earned on work furlough pursuant to section [353-22.5.] 353-17."

SECTION 33. Section 353-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to any other responsibility or duty prescribed by law for the Hawaii paroling authority, the paroling authority shall:

- (1) Serve as the central paroling authority for the State;
- (2) In selecting individuals for parole, consider for parole all committed persons, except in cases where the penalty of life imprisonment not subject to parole has been imposed, regardless of the nature of the offense committed;
- (3) Determine the time at which parole shall be granted to any eligible individual as that time at which maximum benefits of the correctional institutions to the individual have been reached and the element of risk to the community is minimal;
- (4) Establish rules of operation to determine conditions of parole applicable to any individual granted parole;
- (5) Provide continuing custody, control, and supervision of paroled individuals;
- (6) Revoke or suspend parole and provide for the authorization of return to a correctional institution for any individual who violates parole or any condition of parole when, in the opinion of the Hawaii paroling authority, the violation presents a risk to community safety or a significant deviation from any condition of parole;

- (7) Discharge an individual from parole when supervision is no longer needed;
- (8) Interpret the parole program to the public in order to develop a broad base of public understanding and support; and
- (9) Recommend to the legislature sound parole legislation and recommend to the governor sound parole administration.”

SECTION 34. Section 353D-4, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§353D-4]]~~ **Advisory council.** There is established within the department for administrative purposes an offender family service center program advisory council. The council shall consist of seven members, of whom two shall be offender family members. The members of the council shall be appointed by the director of [social services] corrections in consultation with private secular and religious organizations. The council may review and make recommendations to the director to improve the services rendered by the center.”

SECTION 35. Section 392-5, Hawaii Revised Statutes, is amended to read as follows:

“**§392-5 Excluded services.** “Employment” as defined in section 392-3 does not include the following service:

- (1) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, performed in any calendar quarter by an individual if the cash remuneration paid by the employer for such service is less than \$225;
- (2) Service not in the course of the employer’s trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. An individual shall be deemed to be regularly employed to perform service not in the course of the employer’s trade or business during a calendar quarter only if (A) on each of some twenty-four days during the quarter the individual performs the service for some portion of the day, or (B) the individual was regularly employed (as determined under subparagraph (A)) by the employer in the performance of the service during the preceding calendar quarter;
- (3) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;
- (4) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident thereto, except (A) the service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States), and (B) the service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employer who, for some portion in each of twenty different calendar weeks in either the

- current or preceding calendar year, had in the employer's employ one or more persons performing the service, whether or not the weeks were consecutive and whether or not the same individuals performed the service in each week, and (C) service performed in connection with the catching or taking of salmon or halibut for commercial purposes;
- (5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of the child's father or mother;
 - (6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter;
 - (7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more such states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to such service, exempt from the tax imposed by section 3301 of the Internal Revenue Code of 1954;
 - (8) Service with respect to which temporary disability compensation is payable for sickness under a temporary disability insurance system established by an act of Congress;
 - (9) Service performed in any calendar quarter in the employ of any non-profit organization exempt from income tax under section 501 of the Internal Revenue Code of 1954, if (A) the remuneration for such service is less than \$50, or (B) the service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university, or (C) the service is performed by a duly ordained, commissioned, or licensed minister or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of nonsecular duties required by the order, or (D) the service is performed for a church by an employee who fails to meet the eligibility requirements of section 392-25;
 - (10) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents, if (A) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (B) eighty-five per cent or more of its income consists of amounts collected from members and amounts contributed by the employer of the members for the sole purpose of making such payments and meeting expenses;
 - (11) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or their designated beneficiaries, if (A) admission to membership in the association is limited to individuals who are officers or employees of the United States government, and (B) no part of the net earnings of the association inures (other than through such payments) to the benefit of any private shareholder or individual;
 - (12) Service performed in the employ of a school, college, or university, not exempt from income tax under section 501 of the Internal Revenue Code of 1954, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university;

- (13) Service performed in the employ of any instrumentality wholly owned by a foreign government, if: (A) the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and (B) the United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
- (14) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law;
- (15) Service performed by an individual for an employer as an insurance agent or as an insurance solicitor, if all such service performed by the individual for the employer is performed for remuneration solely by way of commission;
- (16) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
- (17) Service covered by an arrangement between the department and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employer during the period covered by the employer's duly approved election, are deemed to be performed entirely within the agency's state;
- (18) Service performed by an individual who, pursuant to the Federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation;
- (19) Domestic, which includes attendant care, and day care services authorized by the department of human services under the Social Security Act, as amended, performed by an individual in the employ of a recipient of social service payments;
- (20) Service performed by a vacuum cleaner salesman for an employing unit, if all such services performed by the individual for such employing unit are performed for remuneration solely by way of commission; or
- (21) Service performed by a participant in the workfare program for an employing unit under the supported work [[]subcomponent[[]] of section 346-205."

SECTION 36. Section 394-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department may adopt rules to further clarify qualifying businesses and industries, eligible job positions for training, and eligible persons for job training to promote economic expansion within the State and may consult with the department of [planning] business and economic development prior to issuing these rules.”

SECTION 37. Section 403-65, Hawaii Revised Statutes, is amended by amending its title to read as follows:

ACT 141

“§403-65 Directors meetings; examination of reports.”

SECTION 38. Section 403-94, Hawaii Revised Statutes, is amended to read as follows:

“§403-94 Loan to officers, directors, or employees; restrictions; liability of officers and directors. Except as herein provided, no bank shall make any loan or loans to any of its officers, directors, agents, or employees, or to any company, firm, copartnership, or association, excluding however corporations, in which any of the officers or directors of the bank may be interested, either directly or indirectly, except upon the written application of such person, firm, copartnership, or association, stating the line of credit applied for, terms and security, if any, offered therefor to the board of directors or to the advisory, discount, or executive committee of the board, and then only with the written approval of a majority of the board or a majority of the advisory, discount, or executive committee of the bank before the loan is made, and the approval of the loan as allowed by the board or the advisory, discount, or executive committee of the bank shall be made a part of the minutes of the next directors’ meeting of the bank. Loans may be made to any officer, director, agent, or employee of any bank, without such application and approval, (1) in any amounts where the loans are secured by bonds of the State, bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States, where the amount of the collateral is equal to at least one hundred five per cent of the amount of any such loan; and (2) in amounts, excluding loans so secured, not in excess of \$20,000 in aggregate principal owing by any such individual at any one time. Any officer, director, agent, or employee of any bank who knowingly permits the funds of the bank to be loaned in a dishonest manner or contrary to this chapter shall be held responsible in the officer’s, director’s, agent’s, or employee’s individual capacity for all damages which the bank, its shareholders, depositors, creditors, or any persons shall have sustained in consequence thereof.”

SECTION 39. Section 403-196.5, Hawaii Revised Statutes, is amended to read as follows:

“[§403-196.5] Priority of expenses and claims. In the event of the insolvency or voluntary or involuntary liquidation of any bank under this chapter, the expenses and claims shall have priority in the following order:

- (1) Administrative expenses;
- (2) Unsecured claims for wages, salaries, or commissions, including vacation, severance or sick leave pay, earned by an individual within ninety days before the date of the commissioner’s possession in an amount not exceeding \$2,000 for each individual;
- (3) Claims of depositors. Any corporation guaranteeing or insuring the deposits is subrogated to all rights of the owners of such deposits to the extent of payment. The right of any agency of the United States insuring deposits to be subrogated to the rights of depositors upon payment of their claims may not be less extensive than the law of the United States requires as a condition of the authority to issue such insurance or make such payments to depositors of national banks;
- (4) All other unsecured claims in amounts allowed by the court, including claims of secured creditors to the extent the amount of their claims exceed the present fair market value of their collateral. The claim of a lessor for damages resulting from the termination of a lease of property may not be allowed in an amount in excess of the rent reserved

by the lease, without acceleration, for sixty days after the lessor repossessed the leased property, or the leased property was surrendered to the lessor, whichever first occurs, whether before or after the commissioner took possession of the institution, plus any unpaid rent due under the lease, without acceleration, on the date of possession or surrender. A claim for damages resulting from the termination of an employment contract, may not be allowed in an amount in excess of the compensation provided by the contract, without acceleration, for ninety days after the employee was directed to terminate or the employee terminated performance under the contract, whichever first occurs, whether before or after the commissioner took possession of the institution, plus any unpaid compensation due under the contract, without acceleration, on the date the employee was directed to terminate or the employee terminated performance. Claims for damages resulting from the termination of employment contracts of persons who were in control of the institution are not entitled to priority under this [subsection;] paragraph:

- (5) Claims for debts that are subordinated under the provisions of a subordination agreement or other instrument;
- (6) Claims of depositors who are controlling persons;
- (7) Claims of persons who were at any time in control of the institution;
- (8) All other claims."

SECTION 40. Section 415-5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) To the extent that an agent has been successful on the merits or otherwise in [[]defense of any proceeding referred to in subsection (b) or (c), or in[]] defending any claim, issue, or matter therein, the agent shall be indemnified by the corporation against expenses actually and reasonably incurred by the agent in connection therewith."

SECTION 41. Section 415B-7, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-7 Corporate name.** The corporate name shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, or trade name existing or registered under the laws of this State or any foreign corporation or partnership authorized to transact business or trade name registered in this State, or a name the exclusive right to which is, at the time reserved in the manner provided under the laws of this State, [[]or the name of a corporation which has in effect a registration of its corporate name as provided under the laws of this State,[]] except that this provision shall not apply if the applicant delivers to the director for filing either of the following:

- (1) The written consent of the other corporation or holder of a reserved or registered name to use the same or substantially identical name and one or more words are added to make the name distinguishable from the other name, or
- (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State."

SECTION 42. Section 415B-92, Hawaii Revised Statutes, is amended to read as follows:

ACT 141

“§415B-92 Plan of distribution. Subject to this chapter, a plan providing for the distribution of assets may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

- (1) The board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at an annual or special meeting of members entitled to vote thereon. Written notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at the meeting, pursuant to this chapter. The plan of distribution shall be adopted upon receiving at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast.
- (2) If there are no members or no members entitled to vote on the plan of distribution, a plan shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office.”

SECTION 43. Section 415B-96, Hawaii Revised Statutes, is amended to read as follows:

“§415B-96 Revocation of voluntary dissolution proceedings. At any time prior to the filing of the articles of dissolution by the director, a corporation may revoke the action [therefore] theretofore taken to dissolve the corporation in the following manner:

- (1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of revocation be submitted to a vote at an annual or special meeting of members entitled to vote thereon. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at the meeting pursuant to this chapter. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast.
- (2) If there are no members or no members entitled to vote on the revocation of voluntary dissolution proceedings, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Upon the adoption of the resolution by the members, or by the board of directors where there are no members or no members entitled to vote thereon, the corporation may again conduct its affairs.”

SECTION 44. Section 415B-108, Hawaii Revised Statutes, is amended to read as follows:

“§415B-108 Sale, lease, exchange, or mortgage of assets. A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, of the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

- (1) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending the sale, lease, exchange, mortgage, pledge, or other disposition and direct that it be submitted to a vote at an annual or special meeting of members entitled to vote thereon. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, of the property and assets of the corporation shall be given to each member entitled to vote at the meeting, pursuant to this chapter. At the meeting the members may authorize the sale, lease, exchange, mortgage, pledge, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. The authorization shall require at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast. Notwithstanding the authorization by a vote of members, the board of directors may abandon the sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members; or
- (2) If there are no members or no members entitled to vote thereon, a sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, of the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

Nothing in this section shall require a vote of the members with respect to any sublease, exchange, mortgage, pledge, or distribution of assets of the corporation in the normal and continuing course of the corporation's business."

SECTION 45. Section 415B-155, Hawaii Revised Statutes, is amended to read as follows:

"§415B-155 Fees for filing documents and issuing certificates. The following fees shall be paid to the director upon the filing of corporate documents:

- (1) Articles of incorporation, \$25;
- (2) Articles of amendment, \$10;
- (3) Restated articles of incorporation, \$10;
- (4) Articles of merger or consolidation, \$50;
- (5) Articles of dissolution, \$10;
- (6) Annual report of nonprofit domestic and foreign corporations, \$1;
- (7) Filing any other statement or report, except an annual report, of a nonprofit domestic or foreign corporation, \$10;
- (8) Application for a certificate of authority, \$25;
- (9) Application for a certificate of withdrawal, \$10;
- (10) Reservation of corporate name, \$10;
- (11) Transfer of reservation of corporate name, \$10;
- (12) Good standing certificate, \$15;
- (13) Special handling fee for review of corporation documents, excluding articles of merger or consolidation, \$40;
- (14) Special handling fee for review of articles of merger or consolidation, \$100;
- (15) Special handling fee for certificates issued by the department, \$10 per certificate; and

ACT 141

(16) Special handling fee for certification of documents, \$1 per page.

All special handling fees shall be credited to a special fund which may be established for use by the department in expediting the processing of documents. At least two temporary business registration assistant I positions shall be paid out of the special fund.”

SECTION 46. Section 415B-157, Hawaii Revised Statutes, is amended to read as follows:

“**§415B-157 Penalties imposed upon corporation.** Any domestic or foreign corporation that fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a penalty of \$25 to be assessed by the director. The director may waive the imposition of the penalty upon a showing of good cause.

Any domestic or foreign corporation that fails or refuses to truthfully and fully answer, within the time prescribed by this chapter[()], interrogatories pro- pounded by the director pursuant to this chapter[()] shall be subject to a class C felony.”

SECTION 47. Section 421H-1, Hawaii Revised Statutes, is amended by amending the definition of “limited-equity housing cooperative” to read as follows:

“(2) “Limited-equity housing cooperative” means a stock cooperative corporation which is organized as a nonprofit corporation under sections 416-19 and 416-26 or chapter 415B for the purpose of holding title to, either in fee simple or for a term of years, improved real property, if all or substantially all of the shareholders of such corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation, which right of occupancy is trans- ferable only concurrently with the transfer of the share or shares of stock in the corporation held by the person having such right of oc- cupancy; provided the corporation also:

- (A) Is organized so that the consideration paid for an individual membership share by the first occupant following construction or acquisition by the corporation, including the principal amount of obligation incurred to finance the membership share, does not exceed seven per cent of the respective dwelling unit’s devel- opment cost, acquisition cost, or of the fair market value appraisal by the permanent lender, whichever is greater; and
- (B) Holds title to real property as the beneficiary of a trust providing for distribution for public or charitable purposes upon termination of the trust; or
- (C) Holds title to real property subject to conditions which will result in reversion to a public or charitable entity for affordable housing upon dissolution of the corporation; or
- (D) Holds a leasehold interest conditioned on the corporation’s con- tinued qualification under this chapter and providing for reversion to a public entity or charitable corporation for affordable hous- ing.”

SECTION 48. Section 425-12, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The following special handling fees shall be assessed by the director for expeditious review of the following documents:

- (1) For limited partnerships: certificate of amendment, \$40; certificate of cancellation, \$10; annual statement, \$10; certificate of limited partnership, \$1 a page; certificate of good standing, \$10;
- (2) For general partnerships: registration statement, \$10; change of name statement, \$10; partnership dissolution statement, \$10; annual statement, \$10; certification of general partnership, \$1 a page; certificate of good standing, \$10;
- (3) For foreign general and foreign limited partnerships: registration statement of foreign general partnership, \$10; registration statement of foreign limited partnership, \$40; withdrawal application, \$10; annual statement, \$10; certification of foreign general or foreign limited partnership, \$1 a page; certificate of good standing, \$10.

All special handling fees shall be credited to the special fund authorized by section [416-97.] 415-128.”

SECTION 49. Section 425-22, Hawaii Revised Statutes, is amended to read as follows:

“**§425-22 Formation.** Two or more persons (as defined in section 425-102), any of whom may be acting in a fiduciary capacity, desirous of forming a limited partnership, shall sign and file a certificate, as follows:

- (1) The certificate shall state:
 - (A) The name of the partnership;
 - (B) The character of the business;
 - (C) The location of the principal place of business;
 - (D) The name and place of residence of each member; general and limited partners being respectively designated;
 - (E) The term for which the partnership is to exist;
 - (F) The amount of cash and a description of and the agreed value of the other property contributed by each limited partner;
 - (G) The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they are to be made;
 - (H) The time, if agreed upon, when the contribution of each limited partner is to be returned;
 - (I) The share of the profits or the other compensation by way of income which each limited partner is to receive by reason of the limited partner’s contribution;
 - (J) The right, if given, of a limited partner to substitute an assignee as contributor in the limited partner’s place, and the terms and conditions of the substitution;
 - (K) The right, if given, of the partners to admit additional limited partners;
 - (L) The right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income and the nature of the priority;
 - (M) The right, if given, of the remaining general partner or partners to continue the business on the death or retirement of a general partner, or on the order of a court of competent jurisdiction adjudicating a general partner incompetent to manage the general partner’s person or the general partner’s property; and
 - (N) The right, if given, of a limited partner to demand and receive property other than cash in return for the limited partner’s contribution.

ACT 141

- (2) The certificate shall be certified by each of the persons and shall be filed in the office of the director of commerce and consumer affairs.

A limited partnership is formed if there has been a substantial compliance in good faith with the foregoing requirements.

The director shall preserve the certificate and keep a record of the same, which shall be duly indexed. The certificate, record, and index shall, during all business hours, be open to the inspection of the public, free of charge. A fee of \$1.50 shall be charged for each name signed to any certificate. A special handling fee of \$40, credited to the special fund authorized by section [416-97] 415-128 may be charged to expedite the processing of the certificate of limited partnership required to be filed pursuant to this section."

SECTION 50. Section 444-16.5, Hawaii Revised Statutes, is reenacted.

"§444-16.5 Bond. The contractors license board may require each licensee, applicant, individual or corporate, who is a specialty contractor to put up bond in the sum of not less than \$5,000 executed by the licensee or applicant as principal and by a surety company authorized to do business in the State as surety.

The board may require each licensee, applicant, individual or corporate, who is a general contractor to put up a bond in the sum of not less than \$5,000 executed by the licensee or applicant as principal and by a surety company authorized to do business in the State as surety.

The board, in exercising its discretion shall take into consideration the licensee's or applicant's financial condition and experience in the field.

The bond shall be in such form as the board may prescribe, conditioned upon the payment of wages, as defined in section 104-1(6), to the employees of the contractor or any other person or entity entitled to such wages when due, and giving employees or any other person or entity entitled to such wages who have not been paid a right of action on the bond in their own names; and upon the honest conduct of the business of the licensee, and upon the right of any person injured or damaged by any wrongful act of the licensee to bring an action on the bond; provided that any claim for wages shall have priority over all other claims."

SECTION 51. Section 478-9, Hawaii Revised Statutes, is amended to read as follows:

"§478-9 Rejection of federal law. It is hereby explicitly stated by the terms of this [Act] section that the provisions of Title V, Part A-Mortgage Usury Laws, Mortgages, Section 501(a)(1) and of Part B-Business and Agricultural Loans, of the Depository Institutions Deregulation and Monetary Control Act of 1980 shall not apply with respect to loans, mortgages, credit sales, and advances made in this State, and that this State does not want the provisions of Title V, Part A-Mortgage Usury Laws, Mortgages, Section 501(a)(1) and of Part B-Business and Agricultural Loans, of the Depository Institutions Deregulation and Monetary Control Act of 1980 to apply with respect to loans, mortgages, credit sales, and advances made in this State."

SECTION 52. Section 480-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Whenever the State, any county, or city and county is injured in its business or property by reason of anything forbidden or declared unlawful by this chapter, it may sue to recover threefold the [[actual]] damages sustained by it."

SECTION 53. Section 480-14, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If judgment is in favor of the State or any of its political subdivisions or governmental agencies under any provision of this chapter, the attorney general shall be awarded reasonable attorney’s fees together with the cost of suit; provided further that in any class action lawsuit brought by the attorney general in behalf of indirect purchasers, the attorney general shall in addition be awarded an amount commensurate with expenses reasonably expected to be expended in distribution of damages [[]to[]] the indirect purchasers.”

SECTION 54. Section 482-3, Hawaii Revised Statutes, is amended to read as follows:

“**§482-3 Record, issuance and effect of certificate.** Upon receiving the application accompanied by the fee, the director of commerce and consumer affairs shall cause the print, label, trademark, service mark, or trade name to be recorded and shall issue to the applicant a certificate of registration under the seal of the director; and the certificate of registration shall be constructive notice to all persons of the applicant’s claim of the use of the print, label, trademark, service mark, or trade name throughout the State, for the term of one year from the date thereof; provided that the director shall not register any print, label, trademark, service mark, or trade name which is substantially identical with any registered print, label, trademark, service mark, or trade name or with the name of any corporation or partnership registered in accordance with chapters 415, 415A, 415B, 416, 418, and 425; provided further that the print, label, trademark, service mark, or trade name is continued in actual use by the applicant in the State or elsewhere in the United States or is registered in the name of the applicant in the patent and trademark office of the United States. The acceptance of an application and issuance of a certificate of registration by the director shall not abrogate or limit any common law or other right of any person to any corporation or partnership name, trade name or trademark.

The registration of a print, label, trademark, service mark, or trade name may be renewed at any time during a period of its registration for additional periods of ten years from the date of renewal by the filing of an application for renewal of registration in the form as the director may provide. Upon filing the application for renewal the applicant shall pay the director a fee of \$25, of which \$15 shall be deposited in the special fund authorized by section 415-128, and the balance deposited to the general fund of the State.

The director may make, amend, and repeal such rules as may be necessary to carry out the purposes of this section.”

SECTION 55. Section 485-2, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“**§485-2 Commissioner of securities[; rules and regulations; deputies; vacancies].**”

SECTION 56. Section 502-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The registrar shall accept and file in the registrar’s office, upon the payment of the fee as provided in section 502-25, any plan of land prepared in the manner prescribed by this section. Every such plan shall contain a short name of the tract; the name of the ahupuaa [[]or[]] ili, district, and island; such data concerning the original title of the land as may be known, together with name of the last owner of record and the owner’s address; the signature of the surveyor and the

ACT 141

surveyor's address; the signature of the maker and the maker's address; date of survey, scale, the meridian line, area, the true azimuths and lengths of principal lines; and the names of all known adjoining owners. One or more durable monuments shall be placed on the land which shall connect with the government triangulation system and which monuments shall be placed as indicated on the plan. Whenever the land platted is made up of more than one original title, it shall be necessary to show all original title lines in broken lines as follows:

.....”

SECTION 57. Section 560:2-105.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§560:2-105.5] Escheat of kuleana lands.** Any provision of law to the contrary notwithstanding, if the owner of an inheritable interest in kuleana land dies intestate, or dies partially intestate and that partial intestacy includes the [decedent's] interest in the kuleana land, and if there is no taker under article II, such inheritable interest shall pass to the department of land and natural resources to be held in trust until the office of Hawaiian affairs develops a land management plan for the use and management of such kuleana properties, and such plan is approved by the department of land and natural resources. Upon approval, the department of land and natural resources shall transfer such kuleana properties to the office of Hawaiian affairs. For the purposes of this section, “kuleana lands” means those lands granted to native tenants pursuant to L. 1850, p. 202 entitled “An Act Confirming Certain Resolutions of the King and Privy Council, Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands and House Lots, and Certain Other Privileges”, as originally enacted and as amended.”

SECTION 58. Section 586-10.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§586-10.5] Reports by the department of [social] human services [and housing].** In cases where there are allegations of domestic abuse involving a minor family or household member, the employee or appropriate nonjudicial agency designated by the family court to assist the petitioner shall report the matter to the department of [social] human services [and housing], as required under chapter 350, and shall further notify the department of the granting of the temporary restraining order and of the hearing date. The department of [social] human services [and housing] shall provide the family court with an oral or written report of the investigation's progress on or before the hearing date.”

SECTION 59. Section 588-4, Hawaii Revised Statutes, is amended to read as follows:

“**[§588-4] Duties of the director.** The director shall:

- (1) Enter into agreements with police departments, departments of the prosecuting attorneys and county corporation counsels, the departments of the attorney general, health, [social] human services [and housing], and other public and private agencies, including agreements for the temporary assignment of appropriate personnel from each agency to the program;

- (2) Enter into contracts for the provision of specialized training and continuing education for interviewers of child sex abuse victims from both public and private agencies;
- (3) Arrange for the conduct of interviews of child sex abuse victims at the child's home or other appropriate setting, to include the selection of the interviewer for each child sex abuse victim;
- (4) Coordinate the therapeutic and treatment services by public and private agencies for child sex abuse victims;
- (5) Coordinate the flow of information between the agencies responsible for criminal prosecution and those agencies responsible for protective action in civil proceedings;
- (6) Arrange for the exchange of information, to include statistical data from public and private agencies involved in child sex abuse programs and issues;
- (7) Develop recommendations and plans for action to assist the public and private agencies involved in child sex abuse cases; and
- (8) Prepare and maintain records and reports for the program."

SECTION 60. Section 710-1077, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- "(1) A person commits the offense of criminal contempt of court if:
- (a) The person recklessly engages in disorderly or contemptuous behavior, committed during the sitting of a court in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due to its authority;
 - (b) The person creates a breach of peace or a disturbance with intent to interrupt a court's proceedings;
 - (c) As an attorney, clerk, or other officer of the court, the person knowingly fails to perform or violates a duty of the person's office, or knowingly disobeys a lawful directive or order of a court;
 - (d) The person knowingly publishes a false report of a court's proceedings;
 - (e) Knowing that the person is not authorized to practice law, the person represents the person's self to be an attorney and acts as such in a court proceeding;
 - (f) The person intentionally records or attempts to record the deliberation of a jury;
 - (g) The person knowingly disobeys or resists the process, injunction, or other mandate of a court;
 - (h) The person intentionally refuses to be qualified as a witness in any court or, after being qualified, to answer any proper interrogatory without a privilege to refuse to answer;
 - (i) Being a juror, the person intentionally, without permission of the court, fails to attend a trial or official proceeding to which the person has been summoned or at which the person has been chosen to serve; or
 - (j) The person is in violation or disobedience of any injunction or order expressly provided for in part V of chapter 712."

SECTION 61. Section 804-4, Hawaii Revised Statutes, is amended to read as follows:

"**§804-4 When a matter of right.** If the charge is for an offense for which bail is allowable under section 804-3, the defendant may be admitted to bail before conviction as a matter of right. The right to bail shall continue after conviction of

ACT 141

a misdemeanor, petty misdemeanor or violation, and release on bail may continue, in the discretion of the court after conviction of a felony until the final determination of any motion for a new trial, appeal, habeas corpus, or other proceedings which are made, taken, issued, or allowed for the purpose of securing a review of the rulings, verdict, judgment, sentence, or other proceedings of any court or jury in or by which the defendant has been arraigned, tried, convicted, or sentenced; except that no bail shall be allowed after conviction and prior to sentencing in cases where bail was not available after conviction and prior to sentencing in cases where bail was not available under section 804-3, or where bail was denied or revoked before conviction; and provided further that no bail shall be allowed pending appeal of a felony conviction where a sentence of imprisonment has been imposed. The court shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ ~~of~~ certiorari, be detained, unless the court finds:

- (1) By clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released; and
- (2) That the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

If the court makes such findings, he shall order the release of the person in accordance with the provisions of section 804-7.1. No defendant entitled to bail, whether bailed or not, shall, without the defendant's written consent, be subject to the operation of any sentence passed upon the defendant while any proceedings to procure a review of any action of the trial court or jury in the premises are pending and undetermined, except as provided in section 641-14(a).''

SECTION 62. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 63. This Act shall take effect on July 1, 1988.

(Approved June 1, 1988.)