

ACT 89

S.B. NO. 2446

A Bill for an Act Relating to the Recodification of the Education Statutes.

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

SECTION 1. The legislature finds that the traditional centralized school system is no longer the best model to meet the broad range of needs of our diverse student population. Thus, the legislature has begun a process of systemic reform, a “top-down support for bottom-up reforms” to provide individual schools with the flexibility and autonomy to develop and implement alternative administrative and instructional frameworks that will lead to better quality education and higher student performance. Our intent is to empower individual schools to be directly accountable for student achievement and to “put students first”.

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

**“CHAPTER
EDUCATION**

PART I. GENERAL PROVISIONS

§ -201 **Definitions.** As used in this chapter, the following terms have the following meanings unless the context indicates otherwise:

“Air conditioning” means any mechanical device that cools or heats air.

“Board” means the board of education.

“Cafeteria workers” includes all employees of any public school cafeteria other than the cafeteria manager.

“Councilor” means a member of a district school advisory council.

“Department” means the department of education.

“Early education” means a developmentally appropriate early childhood development and education program for children from birth to eight years of age.

“EDN 100” means the budget program identification number for the school-based budgeting program within the department.

“Educational officers” includes principals, vice-principals, and professional employees of the state and district offices of the department, except those employees in the classified service.

“Exceptional children” includes:

- (1) Persons under twenty years of age who deviate from the so-called normal person in physical, mental, social, or emotional characteristics or abilities to such an extent that specialized training, techniques, and equipment are required to enable these persons to attain the maximum of their abilities or capacities; provided that “exceptional children” shall not include “gifted and talented children”;
- (2) Persons under twenty years of age who by reason of physical defects cannot attend the regular public school classes with normal children; and
- (3) Persons under twenty years of age who are certified by a licensed physician eligible for membership in the state medical society as being

emotionally maladjusted or intellectually incapable of profiting from ordinary instructional methods.

“Gifted and talented children” means students residing in the State who are of compulsory school age and are enrolled in, and attending, a public school, and whose superior performance or potential indicates exceptional ability or talent. This ability or talent may occur singly in or in combination with any of the following areas: intellectual, creative or specific academic abilities, leadership capabilities, psychomotor abilities, or abilities in the performing or visual arts.

“Incumbent teachers” refers to teachers presently in service or on authorized leaves from the department.

“Job-sharing” means the voluntary sharing of a full-time, permanent employee’s position with another employee, with each employee working one-half of the total number of hours of work required per week and performing one-half of the work required of the respective full-time position, and with each employee receiving one-half of the salary to which each employee is respectively entitled and at least one-half of each employee benefit afforded to full-time employees.

“Private trade, vocational, or technical school” means any plan or method used by any person or persons, firm, or any other organization or corporation for giving instruction in any form or manner in any trade, occupation, or vocation for a consideration, reward, or promise of whatever nature, including correspondence schools located within the State, except as follows:

- (1) Schools maintained, or classes conducted, by employers for their own employees where no fee or tuition is charged;
- (2) Courses of instruction given by any fraternal society, benevolent order, or professional organization to its members, which courses are not operated for profit;
- (3) Flying schools qualified under the Federal Aviation Administration;
- (4) Classes conducted for less than five students at one and the same time;
- (5) Classes or courses of instruction that are conducted for twenty or fewer class sessions during any twelve month period;
- (6) Avocational, hobby, recreation, or health classes or courses;
- (7) Courses of instruction on religious subjects given under the auspices of a religious organization; and
- (8) Schools registered by the department of commerce and consumer affairs or by boards and commissions placed in the department of commerce and consumer affairs for administrative purposes.

“Public office” excludes notaries public, reserve police officers, officers of emergency organizations for civilian defense or disaster relief, or county charter commissions.

“Public schools” means all academic and noncollege type schools established and maintained by the department in accordance with law. All other academic and noncollege type schools are “private schools”, irrespective of the hours during which the sessions take place.

“Regional administrative unit” means a grouping of complexes established by the department for administrative support and organizational purposes.

“School-based budget flexibility” means an operating budget preparation and allocation process that provides maximum flexibility to individual schools, complexes, and learning support centers in the preparation and execution of their operating budgets.

“School/community-based management system” means a method of educational management that diffuses educational decisionmaking to involve or secure the input of those persons directly affected by the decision to be made at the school level, and encourages school-initiated methods for achieving educational goals established statewide by the board.

“School complex” means a grouping of schools established by the department for instructional, administrative, and organizational purposes.

“Special facilities” includes buildings, equipment, and materials; transportation; boarding homes; and personnel qualified to work with exceptional children.

“Special services” means physiotherapy, or any form of muscle training, speech training, occupational therapy, vocational training, psychological evaluation, or any of them.

“Student-centered schools” means the implementation of alternative frameworks with regard to curriculum; facilities management; instructional approach; length of the school day, week, or year; and personnel management.

“Superintendent” means the superintendent of education.

“Teacher” means a person whose duties in the public educational system are primarily teaching or instruction of students or related activities centered primarily on students and who is in close and continuous contact with students, and shall include but not be limited to classroom teachers, school librarians, counselors, registrars, and special education teachers.

“Vandalism” includes, but is not limited to, mischievous or malicious destruction of property, such as breakage of windows, lockers, and doors.

PART II. PROVISIONS AFFECTING STUDENTS

A. Student Performance Standards

§ -301 **Statewide performance standards.** (a) The board shall establish statewide performance standards and the means to assess the standards based upon the recommendations in the final report of the performance standards commission established pursuant to Act 334, Session Laws of Hawaii 1991; provided that the board may review and modify the performance standards, as the board deems necessary, to reflect the needs of public school students and educational goals adopted by the board.

(b) The board shall appoint a performance standards review commission, to be convened at the beginning of the 1997-1998 school year, and every four years thereafter, to assess the effectiveness of the performance standards. The commission shall include representatives of the Hawaii State Parent, Teacher, Student Association; the Hawaii State Student Council; the superintendent; the dean of the college of education of the University of Hawaii; and the professional education community. The commission may request the assistance of such department or school staff as may be necessary to facilitate its review.

(c) The commission shall review the implementation of the performance standards by the board and the schools to determine whether the standards should be modified. In making this determination, the commission shall seek public input by holding public forums to discuss the implementation and effectiveness of the performance standards. The commission shall submit a report of its findings and recommendations regarding the effectiveness of the standards and the need for modification of the standards to the board and the legislature prior to the convening of the 1999 regular session. The board shall consider and implement the modifications beginning with the 1999-2000 school year.

§ -302 **Student assessment waiver.** Any school electing to participate in school/community-based management may develop and implement its own student assessment mechanisms; provided that the board shall include the results of the assessments in the educational status report to the legislature and the governor required in section -1106.

B. Curriculum and Instruction

§ -401 **Incentive and innovation grants.** (a) There is established in the state treasury a trust fund to be known as the incentive and innovation grant trust fund to provide incentive and innovation grants to qualified schools. Expenditures from the trust fund shall be made by the department and shall be subject to the allotment and expenditure plan required under section 37-34.5. Notwithstanding any other law to the contrary, tax deductible donations may be made to, and received by, this trust fund.

(b) Grants shall be for such purposes as the funding of experimental and innovative instructional programs, in-service training, and other activities that promote innovation as outlined in the proposal.

(c) The board shall establish and appoint the members of a grant award panel, which shall consist of at least one representative from each of the following groups:

- (1) Parents;
- (2) Students;
- (3) Teachers;
- (4) School administrators;
- (5) School support staff;
- (6) Business persons; and
- (7) The military; whose participation shall be requested.

The panel shall include a representative from each school district among its members.

The panel shall review proposals and make recommendations to the superintendent on grant awards. Panel members shall serve for a term of two years without compensation, but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of their duties. A portion of the moneys in the incentive and innovation grant trust fund, not to exceed one per cent, shall be used to offset the expenses incurred by the review panel.

(d) The panel shall develop a process for submitting proposals that is distinguished by its simplicity and minimization of paperwork.

(e) All proposals for incentive and innovation grants shall include:

- (1) A clear statement of how the proposed program will improve student performance;
- (2) A method of evaluation to determine if the program has achieved its stated goals;
- (3) A detailed budget and expenditure plan, which shall include any commitment of existing funds under the school or schools' allotment toward the proposed program; and
- (4) Other criteria required by the panel.

(f) In the case of a renewal request, a school or schools shall submit a specific plan for establishing the program within the school or schools' biennium budget.

(g) The panel shall assist the superintendent in the evaluation of all grant programs under this section on a continuing basis. If an approved program fails to meet the requirements of its proposal, the panel shall recommend to the superintendent that funding for the grant shall be terminated.

(h) The superintendent shall submit a report to the legislature on the operations of the review panel at least twenty days before the convening of each regular session.

C. Supplementary Programs

§ -501 **Articulation agreement with the University of Hawaii; enrollment.** The department, in consultation with, and with the concurrence of, the

University of Hawaii, shall establish rules to permit qualified students to enroll in any vocational or academic courses offered by the University of Hawaii system; provided that the courses apply to the department's graduation requirements or are otherwise permitted by the department's rules or policies.

§ **-502 Dental hygiene instruction.** The department shall provide preventive dental hygiene instruction for the children of the State of school age in the public schools.

§ **-503 Nutrition workers.** The superintendent may appoint, with the approval of the board, two trained and experienced nutrition workers for the purpose of carrying on nutrition work in the public schools, under such rules as the board shall make from time to time. The salary of these workers shall be as provided by law.

§ **-504 School lunches.** School lunches shall be made available under the school lunch program in every school where the students are required to eat lunch at school.

§ **-505 School cafeterias; funds; expenditures.** (a) The price for the school lunch shall be set by the department to ensure that moneys received from the sale of the lunches shall be one-third of the cost of preparing the school lunch, rounded to the nearest 25 cents, adjusted during the first year of each fiscal biennium. The price for the school lunch shall be based on the average cost of preparing the school lunch over the three years preceding the second year of the biennium.

(b) All moneys received by or for the public school cafeterias from the sale of meals, the sale of services, the federal government, or any other source, shall be deposited in one special school lunch fund. Except as otherwise provided by the legislature, all expenditures for the operation of public school cafeterias shall be made from this fund.

(c) It is the intent of this section not to jeopardize the receipt of any federal aid and to the extent, and only to the extent necessary to effectuate this intent, the governor may modify the strict provisions of this section, but shall promptly report any such modification with the governor's reasons therefor to the next succeeding session of the legislature for review.

§ **-506 Transportation of school children.** (a) The department may provide suitable transportation to and from school and for educational field trips for all children in grades kindergarten to twelve and in special education classes. The department shall adopt such policy, procedure, and program as it deems necessary to provide suitable transportation. In formulating the policy, procedure, and program, the department shall consider the school district; the school attendance area in which a school child normally resides; the distance the school child lives from the school; the availability of public carriers or other means of transportation; the frequency, regularity, and availability of public transportation; and the grade level, physical handicap, or special learning disability of a school child, and it may also consider such conditions and circumstances unique or peculiar to a county or area.

(b) The department shall adopt rules under chapter 91 governing the supervision and administration of the transportation of school children under this section.

§ **-507 School bus contracts.** (a) Any other law to the contrary notwithstanding, school bus contracts between the State and a private contractor may be extended for two years by mutual agreement; provided that the parties may agree to

extend the contract for an additional two years thereafter. The compensation due to the contractor by the State for each extended year may be increased by an amount not to exceed five per cent of the previous year's compensation. In addition, the compensation due to the contractor by the State for any original or extended contract year may be increased by a reasonable amount for unanticipated inflationary increases in the cost of fuel. If the original contract between the State and a private contractor already includes an option to extend the contract period, this subsection shall apply after the contract option is exercised.

(b) In the renegotiation for the extension of any contract, the contractor shall be notified at least three months in advance to prepare data and facts relating to fuel cost for the justification of an increase in the amount for the new contract period.

(c) If a school is temporarily closed due to an unexpected disruption necessitating the closing of the school, the contractor and the State may enter into renegotiation for payments of fixed costs.

(d) The contract between the State and the contractor shall include an age limit for the school bus vehicles that may be used. The serviceability of a vehicle shall be determined by chapter 286.

(e) The contract between the State and the contractor shall include a provision requiring the contractor to equip the contractor's vehicles with the signs and visual signals described in sections 291C-95(d) and (g). The contract shall also include other provisions as may be deemed necessary by the State for the safety of school bus passengers and shall include provisions requiring periodic refurbishment of school buses over ten years old.

§ -508 After-school and weekend programs. The department and the appropriate county agencies may establish and regulate programs of after-school and weekend community-school activities for children, including but not limited to day-care programs, arts and crafts, hula, ukulele, and other educational or recreational projects, wherever feasible, at public school and public park facilities. In addition to any appropriation of public funds, reasonable fees established by the agencies operating the programs may be collected from children enrolled, in the furtherance of particular programs. The appropriate agencies may obtain from time to time the services of persons in a voluntary or unpaid capacity, exempt from chapters 76 and 77, as may be necessary for carrying out the purposes of this section, and may regulate their duties, powers, and responsibilities when not otherwise provided by law. Any person whose services have been so accepted, while engaged in the performance of duty under this section, shall be deemed a state employee or an employee of a political subdivision, as the case may be, in determining the liability of the State or the political subdivision for the negligent acts of these persons.

§ -509 Policy. The department shall develop a plan for quality voluntary early education that will be fully implemented and available statewide to all eligible children on a voluntary basis no later than January 1, 2000.

§ -510 Quality early education plan. (a) The department plan for quality early education shall focus on children from ages four up to six years.

(b) The board shall adopt standards and criteria for quality early education based on current national standards and the needs of Hawaii's children. The standards and criteria shall provide the basis upon which the early education plan shall be developed.

(c) The department of education shall work cooperatively with the department of human services, the department of health, college level education programs, the office of children and youth, early education organizations, parents of young

children, and other appropriate organizations, in developing a quality early education plan. The plan shall include but not be limited to the following:

- (1) Standards for curriculum, activities, facilities, and teacher training for early childhood education;
 - (2) Methods and materials designed to involve and educate parents and guardians in the education and development of their young children;
 - (3) A timetable and implementation schedule, approved by the board, to be submitted to the governor and the legislature;
 - (4) Costs for delivery of early childhood services, including how costs can be shared between the public and private sectors; and
 - (5) Assessment of training and certification capacity of teachers, including assurances by teacher training institutions to recruit and graduate qualified staff for early childhood education.
- (d) Early education shall be delivered through private providers to the maximum extent possible, and provision shall be made to enable parents and guardians to opt for home care if they so choose by providing early childhood education resources in each school for in-home use.
- (e) Beginning with the 1997-1998 school year, this section shall be interpreted as though the term "certification" read "licensing" or "credentialing", as the latter terms are used in part III, subpart D, and as circumstances require.

§ -511 Kindergartens; attendance. (a) The department may establish and maintain kindergartens with a program of instruction in school zones where there are at least fifteen children eligible to attend, as a part of the public school system. No child shall attend any kindergarten unless the child will be at least five years of age on or before December 31 of the school year; provided that a child attending a school that convenes after the regular school schedule shall be five years of age on or before one hundred twenty-five days following the date the school convenes; and provided further that the department may establish procedures and criteria to determine the psychological and physiological readiness of children for kindergarten and may grant an exception in the case of a child who is found to be ready.

(b) The department may accept gifts to establish and maintain kindergartens.

§ -512 Blind or visually handicapped concessionaires. (a) Each secondary public school, upon the approval of the principal and the district superintendent, may allow on the premises vending machines operated as a concession; provided that the concession shall be operated only by a blind or visually handicapped person, as defined in sections 235-1, 347-1, and 347-2. The location and operation of the vending machines and the items dispensed shall be approved by the department.

(b) The concession shall be awarded and operated under chapter 102; provided that the selection of a concessionaire shall be in accordance with departmental guidelines and shall take into consideration the price of the items sold and any revenue-sharing arrangement made with school-related program organizations.

§ -513 Driver education. (a) The department may establish and administer a motor vehicle driver education and training program to be conducted at each public high school in the State.

(b) The department, for the purpose of this section, shall:

- (1) Set the prerequisites and priorities for enrollment in the course of driver education and training, which shall be open to every resident of the State who is fifteen years of age or older and under nineteen years of age;

- (2) Establish the requirements for and employ necessary instructors, who are certified to have completed satisfactorily an approved instructor's course, to conduct the course in driver education and training;
- (3) Issue a certificate of completion to every student upon satisfactory completion of the course in driver education and training;
- (4) Purchase, rent, or acquire by gift, materials and equipment necessary for the program established by this section; and
- (5) Cooperate with the chief of police in each county in promoting traffic safety.

(c) The department may adopt rules under chapter 91, necessary for the purposes of this section and section -514.

§ -514 Courses for instructors in driver education. (a) The department shall be responsible for conducting approved courses for instructors in driver education and training.

(b) The department shall certify any person who satisfactorily completes a course for instructors in driver education and training as provided in subsection (a).

§ -515 Motor vehicles for driving instruction; purchase and sale. Chapter 103D to the contrary notwithstanding, the department may enter into agreements with any dealer or company for the purchase of motor vehicles for driving instruction in the public schools if the agreements provide that the department pay \$1 for each motor vehicle, take title thereto in the name of the State, and agree to resell it to the seller for \$1 within sixty days following the last day of the school year. In the event of the seller's failure to repurchase, the department may retain the motor vehicle or dispose of it in accordance with rules adopted under chapter 91.

§ -516 Driver education fee. The board may assess a fee for each student enrolling in the driver education program. All such fees collected shall be deposited into the state treasury to the credit of the general fund.

§ -517 Traffic safety education. (a) The department may establish and administer a traffic safety education program to be conducted at each public school for students from grades kindergarten through twelve.

(b) The department may establish the requirements for the position of traffic safety education specialist and may employ at least one traffic safety education specialist for the purposes of this section. The traffic safety education specialist may be paid out of fees allocated to the director of commerce and consumer affairs from the special drivers education fund account pursuant to section 431:10C-115.

§ -518 Agricultural and industrial courses may be taught in public schools. The department may include agricultural and industrial pursuits among the branches of instruction taught by the public schools.

§ -519 Department may prescribe courses. The department may prescribe the manner and designate the places in which agricultural, domestic arts, and industrial courses shall be conducted, and determine the extent to which they shall be followed, either generally or to suit particular cases.

§ -520 Profits to pupils. All net profits arising from agricultural and industrial pursuits under sections -518 to -532 at any school, under the rules of the department:

- (1) Shall be used by the school for the purchase of equipment and material, not otherwise provided for in the school budget, that will be of general benefit to the pupils; or

(2) May be distributed among the pupils actually engaged in the pursuits. The department shall provide for the keeping of simple books of account, showing the source and distribution of the money resulting from the operations carried on pursuant to this section and section -518, and for the auditing of these books of account at least quarterly.

§ -521 Reserved.

§ -522 Accounting for vocational education programs. Vocational education programs shall be accounted for in accordance with procedures established by the comptroller.

§ -523 Public school laws relate to agricultural and industrial pursuits. All laws for the government, discipline, and welfare of the public schools, in their operation, shall be construed to include the enforcement of sections -518 to -532 in relation to agricultural and industrial pursuits in the schools.

§ -524 Establishing thirteenth and fourteenth years at Lahainaluna High School. The state board for vocational education, within the limits of available funds, shall extend to the thirteenth and fourteenth years vocational agriculture and farm shop training programs at the Lahainaluna High School, which program shall operate under the Smith-Hughes Act and the George-Barden Act and the state plan for vocational agriculture.

§ -525 Regulation of other schools and classes. The department, at its discretion, may regulate schools, classes, or courses excepted from the definition of "private trade, vocational, or technical school".

§ -526 License required for private trade, vocational, or technical school. No private trade, vocational, or technical school shall be operated by any person or persons, firm, or any other private organization or corporation for the purpose of teaching any trade, occupation, or vocation unless there is first secured from the department a license issued in accordance with sections -525 to -529 and in such form as the department may direct.

§ -527 Suspension and revocation of license; procedure. (a) The department, after notice and opportunity for a hearing, may suspend or revoke a license at any time when, in the judgment of the department, the licensee is not complying with sections -525 to -529 or the rules that may be adopted by the board. The notice of hearing shall be served personally or sent to the licensee by registered or certified mail with return receipt at the licensee's last known address.

(b) Notice of suspension or revocation shall be served personally upon the licensee or sent to the licensee by registered or certified mail with return receipt, and the licensee shall forward the licensee's license at once to the department, and cease at once to operate the private trade, vocational, or technical school.

(c) All proceedings shall be subject to chapter 91.

§ -528 Powers of department. No license shall be issued under sections -525 to -529 until the department has approved the method and content of the advertising, the standards and the methods of instruction, and the equipment provided. The department may consult with trade or vocational experts as to the

equipment provided and the standards and methods of instruction offered. The department may adopt reasonable rules relating to the enforcement of sections -525 to -529.

§ -529 **Penalty.** Any person, firm, or corporation that violates sections -525 to -529 shall be guilty of a misdemeanor, but shall be subject to a maximum fine of not more than \$100 or imprisonment for not more than ninety days, or both.

§ -530 **Vocational student internship program authorized.** To provide students with opportunities to apply knowledge and skills acquired in the classroom to real life work experiences, the department may establish and regulate a program of vocational student internship under conditions determined by the department.

§ -531 **Coverage for workers' compensation.** Whenever a student participating in the department's vocational student internship program undertakes to perform work for a private employer as part of the student's internship program, the State shall be deemed to be the responsible employer for the purposes of workers' compensation coverage, which shall be the student's exclusive remedy to the same extent as provided for in chapter 386 as against the State and the private employer participating in the program.

§ -532 **Rules.** The board may adopt necessary rules under chapter 91 to administer and implement sections -530 to -532, including the adoption of safety guidelines and safety inspection procedures of facilities where students are placed. The department shall inspect each facility annually prior to the placement of students with these facilities.

§ -533 **Adult and community education authorized.** To provide increased opportunity for the people of Hawaii, the department shall establish and regulate a program of adult and community education of less than college grade. The department shall provide public school buildings and other facilities, and use public school equipment under conditions determined by the department, when the equipment is needed, for adult and community education programs.

§ -534 **Scope of adult and community education programs offered.** As rapidly as resources are available and interest is developed, instructional programs shall be initiated in the following fields:

- (1) Basic elementary education. A foundation program in reading and speaking English, writing, and arithmetic for persons with no schooling or only primary grade training;
- (2) Advanced elementary education. A program in advanced elementary education for those persons who have completed four to eight years of schooling and who desire to obtain more complete mastery of the fundamentals;
- (3) Secondary education. A program of secondary education for those adults who, in youth, left school or for some reason had their education curtailed and who now desire to continue their education; for those youths who have been excepted from compulsory attendance under section -1234; and for those youths who are in need of courses to complete their high school graduation requirements;
- (4) Adult literacy education. A basic program in reading and writing English, and arithmetic for persons who need to develop or improve their

mastery of basic literacy skills in these areas for purposes of enhancing their personal, social, or employment lives;

- (5) Homemaking and parent education. A program in homemaking and parent education for all those parents and other adults who desire training in family life, including child care, nursing, budgeting, and other instruction basic to homemaking;
- (6) Community education. A program to facilitate understanding and enlightenment in civic duties, responsibilities, and obligations for all persons who desire to keep pace with today's community, national, and world developments and who realize the necessity of continuing study for the adequate fulfillment of their civic functions. Community education addresses responsibilities within a given community, especially concerns related to education and the schools, and offers additional services to supplement and enrich the educational program of in-school children and youths;
- (7) Naturalization training. The standard course of training provided by the United States Immigration and Naturalization Service, which shall be provided to all those persons who have filed applications for United States citizenship and desire to enroll in such a course under the supervision of the department; and
- (8) Cultural opportunities. A program of adult and community education that will meet the interests and desires of those people who wish to enrich and to broaden their cultural, recreational, and social interests.

§ -535 Advisory council for adult and community education. The board shall appoint an advisory council for adult and community education composed of fifteen or more representatives of industry, labor, civic organizations, and education. Appointments shall be for a term of two years with reappointments optional but not to exceed a total of six years on the advisory council.

§ -536 Financing adult and community education program. The financial support for this program shall be in part from fees collected from students enrolled, and in part from public funds appropriated for this purpose. Fees shall be set in accordance with the recommendations of the advisory council, and may be collected from students regularly enrolled; provided that:

- (1) Adults registered with the department of labor and industrial relations and unemployed shall be granted free enrollment in such courses as will tend to assist these persons in securing employment;
- (2) Adults certified by the department of human services as indigent may be enrolled on a nonfee basis in classes that will tend to assist these persons in becoming self-sustaining;
- (3) Discharged veterans who are entitled to federal educational assistance shall be enrolled upon authorization of the Department of Veterans Affairs and fees shall be charged against federal funds in accordance with Department of Veterans Affairs contract regulations; and
- (4) Administrative and supervisory costs, costs of instruction, and all other necessary expenses not covered by fees and other authorized charges shall be paid for out of funds appropriated for this purpose.

§ -537 Departmental duty toward exceptional children. (a) It is hereby declared to be of vital concern to the State that all exceptional children residing in the State be provided with instruction, special facilities, and special services for education, therapy, and training to enable them to live normal competitive lives. In order to effectively accomplish this purpose, the department shall establish and

administer instruction, special facilities, and special services for the education, therapy, and training of exceptional children, and provide in connection therewith corrective therapy, together with academic, occupational, and related training. The department shall cooperate with other agencies of the State charged with the administration of laws providing any type of service or aid to the exceptional child, and with the United States government through any appropriate agency or instrumentality in developing, extending, and improving the foregoing instruction, special facilities, and special services.

(b) This program shall include boarding facilities, when necessary, special classes in schools or homes, and such other facilities as shall be required to render appropriate services to the exceptional child. Existing facilities, buildings, and equipment belonging to, or operated by, the State shall be made available for these purposes when use thereof does not conflict with the primary use of the facilities.

§ -538 **Division of special education; personnel.** There shall be within the department a division of special education for the promotion, direction, supervision, and control of the program. The department may employ necessary personnel adequately qualified by training and experience to direct and supervise the types of instruction, special facilities, and special services specified in sections -537 to -544.

§ -539 **Facilities, service, when required.** Where one or more exceptional children are found in any one district superintendent's district, the superintendent of education shall provide instruction, special facilities, and special services according to the specifications of sections -537 to -544 in a manner most expedient and economical.

§ -540 **Eligibility standards.** The eligibility of exceptional children for instruction, special facilities, and special services shall be determined in accordance with those standards established by the department.

§ -541 **Coverage for workers' compensation.** Whenever an exceptional child as defined in section -101 undertakes to perform work for a private employer as part of the child's instructional program, the State shall be deemed to be the responsible employer for the purposes of workers' compensation coverage.

§ -542 **Studies, surveys, rules.** The department shall establish and make such studies, surveys, evaluations, and rules as are necessary to carry out the purposes of sections -537 to -544.

§ -543 **Occupational therapy services, physical therapy services, school health services, mental health services, psychological services, and medical services for diagnostic or evaluative purposes.** The department of health, within the funds available, shall be responsible for the related services of occupational therapy, physical therapy, school health, mental health, psychological, and medical services for evaluation or diagnostic purposes, and, within the funds available, shall provide for those exceptional children who need these services and who attend public school in the State. The department of health shall work in cooperation with the department of education to implement this section. The procedures to implement this section shall be in accordance with the department of health's rules.

§ -544 **Administrative hearing procedures and subpoena power relating to the education of handicapped children.** (a) An impartial hearing may be

requested by any parent or guardian of a handicapped child, or by the department, on any matter relating to the identification, evaluation, program, or placement of a handicapped child. The department shall adopt rules that conform to the requirements of any applicable federal statutes or regulations pertaining to the impartial hearing based on the education of a handicapped child. The rules shall require that any party may be present at the proceeding, be accompanied and advised by counsel or individuals with special knowledge or training with respect to the problems of handicapped children, may require witnesses to be under oath, cross-examine witnesses, and obtain a written or electronic verbatim record of the proceedings.

(b) Any party to these hearings or the hearings officer shall have the right to compel the attendance of witnesses upon subpoena issued by the hearings officer. The fees for attendance shall be the same as for the fees of witnesses before circuit court. In case of the failure of any person to comply with a subpoena, a circuit court judge of the judicial circuit in which the witness resides, upon application of the hearings officer, shall compel attendance of the person.

§ -545 Reserved.

§ -546 **Programs for gifted and talented children.** The department may provide a statewide flexible system of educational placement and programs within the public school system that the department determines is appropriate for meeting the unique educational needs of gifted and talented children. The nature and scope of the department's educational placement and programs shall be based on, but not be limited to, the following factors:

- (1) The availability of financial and physical resources within the department;
- (2) The nature of the child's gift or talent; and
- (3) Whether the child's educational placement and program should focus on, or be limited to, a particular area of gift or talent, or whether the educational placement and program should address other areas that may be beneficial to the development of the child as a whole.

§ -547 **Rules.** The board shall adopt necessary rules under chapter 91 to administer and implement sections -546 to -547.

PART III. PROVISIONS AFFECTING SCHOOL PERSONNEL

A. Specific Definitions

§ -601 **Definitions.** (a) For the purposes of sections -702 to -712, "school" includes every academic and noncollege type of school under governmental supervision.

(b) For the purposes of sections -901 to -909:

"Board" means the Hawaii teacher standards board.

"Credential" means an emergency or temporary license issued under this chapter based on standards and guidelines set by the board.

"License" means the document signifying the board's grant of permission to practice the profession of teaching.

"Teacher" means an employee of the department paid under the salary schedule contained in the unit 5 collective bargaining agreement.

This subsection is repealed on June 30, 2000.

B. Employment Conditions and Compensation

§ **-701 Selection of school personnel.** School/community-based management councils may participate in the selection of school personnel by providing input into the selection process.

§ **-702 Teachers; certificates; licenses and credentials.** (a) No person shall serve as a teacher before the 1997-1998 school year in any public school without first having obtained a certificate from the department, which certificate shall be issued without cost to the teacher, in such form as the department determines. The department shall establish types of certificates in the educational field and the requirements to qualify for those certificates.

(b) Beginning with the 1997-1998 school year, no person shall serve as a teacher in any public school without first having obtained a license or credential pursuant to subpart D from the department in such form as the department determines.

§ **-703 Teaching without certificates; licenses or credentials; penalty.** (a) Except as otherwise provided, before the 1997-1998 school year, whoever serves as a teacher in any public school without holding an unrevoked certificate issued under sections -702 to -743, and -801, shall be fined not more than \$25.

(b) Beginning with the 1997-1998 school year, whoever serves as a teacher in any public school without holding an unrevoked or unsuspended license or credential issued under subpart D, shall be fined not more than \$500.

§ **-704 District superintendents.** The superintendent of education, with the approval of the board, shall appoint district superintendents for schools.

§ **-705 Principals and acting principals.** Principals and acting principals shall meet the department's certification requirements and shall have served as a teacher for a period of not less than five years, of which one year must have been served as a teacher or as an exchange principal in the schools of Hawaii.

§ **-706 Considerations in appointing teachers.** In the appointment of teachers by the department, preference shall be given to local teachers of the same standing, grade, or rating as those teachers from without the State. The rating of a teacher shall not depend upon the number of pupils promoted or graduated, but solely upon the length of service, efficiency, and ability of the teacher.

§ **-707 Probationary period of employment.** (a) All teachers, principals, and vice-principals entering the service of the department for the first time shall serve as probationary employees of the department for a minimum period of two consecutive years; provided that:

- (1) The consecutive employment may be interrupted by maternity leave, sick leave, or any other leave approved by the department not exceeding a period of three years; by military leave not exceeding a period of five years; or by termination or nonrenewal of the probationary employment contract because of decrease in the number of pupils or for causes over which the department has no control, the period between employment not to exceed five years, without loss of credit for the period of probationary employment; and
- (2) At or prior to the end of two years of probation, the department may extend the probationary period of a teacher, principal, or vice-principal for additional periods not to exceed a total of five years.

(b) Any full-time intern teaching period served in the State shall be credited toward fulfillment of the probationary period. Any annual contract with any teacher, principal, or vice-principal during this probationary period of employment may or may not be renewed as the department shall determine. The department, during the probationary period, may discharge or demote a teacher, principal, or vice-principal.

§ -708 Reemployed teachers; rights. After the completion of the probationary period without discharge, such teachers as are thereupon reemployed shall continue in service in the public schools during good behavior and competent service and prior to the age at which the teachers are eligible for retirement, pursuant to section 88-73 or 88-281, and shall not be discharged or demoted except for one or more of the causes specified in section -709.

§ -709 Causes for discharge or demotion; preferred eligibility list. Causes for the discharge or demotion of a teacher shall be inefficiency or immorality; wilful violations of policies and rules of the department; or for other good and just cause. The department, without a hearing, may terminate the tenure rights of a teacher who fails to return to service, except when caused by illness, following the expiration of an approved leave of absence. Teachers may also be dismissed because of a decrease in the number of pupils or for other causes over which the department has no control. Dismissals due to a decrease in the number of pupils or for causes over which the department has no control shall begin with those teachers with the least number of years of service. The teachers so dismissed shall be placed on a preferred eligibility list and shall have the right to be restored to duty in the order of length of service whenever vacancies occur in which the teacher is qualified.

§ -710 Job-sharing. (a) A job-sharing program is established in the department subject to the requirements in this section.

(b) The superintendent shall announce the job-sharing program to all full-time, tenured, certificated personnel of the department, excluding educational officers, and shall solicit the voluntary requests of personnel interested in participating in the program.

The superintendent, in consultation with the recognized employee bargaining units, shall formulate and adopt guidelines for the implementation of this section. Employees who respond to the announcement and other persons who request information shall receive a full written description of the terms of the program when the guidelines are finalized, and those persons desiring to participate may apply to participate in the program. The employees who apply for participation shall obtain the concurrence of their immediate supervisor, other appropriate personnel officers, and the superintendent. Those persons who qualify then shall be interviewed by a personnel officer of the department.

Upon the selection of a permanent, full-time employee for job-sharing, the superintendent shall convert the position of the employee into two job-sharing positions, one of which shall be filled by the employee, and the other by the hiring of a new hire or by another tenured, certificated employee of the department, excluding any educational officer.

A person hired to fill a job-sharing position shall be recruited through this section and shall possess the minimum requirements of the full-time position that was converted into a job-sharing position under this section.

(c) Benefits that can be divided in half, such as the number of days of sick leave, and are considered to be an equitable share when divided, shall be computed on that basis. Benefits that cannot be divided, such as eligibility for membership in the public employees' health plan shall be given to the job-sharers without the foregoing division, notwithstanding any provision of chapter 87 or 88 to the

contrary. The newly hired job-sharer shall be excluded from collective bargaining under chapter 89.

The full-time permanent employee shall not lose membership in an employee bargaining unit because of participation in this program, any other law to the contrary notwithstanding. Union membership or service fees paid by the job-sharer under this section shall be at a level consistent with normal union membership dues or service fees. The State's contribution to the job-sharers' prepaid health, prepaid dental, and group life insurance plans shall be the same as for full-time employees, any other law to the contrary notwithstanding. Job-sharers shall be covered under chapter 386 and the applicable provisions of chapter 383. Service credit for the tenured teacher participating in the program under this section shall be given on the same basis as that for full-time employees. Nothing in this section shall be construed, however, to vest any person with any rights to permanent employment status, whether under civil service or otherwise, which did not exist prior to the participation of the person in the job-sharing program. The granting of tenure shall be under applicable statutes. No full-time position shall be abolished or reduced to a half-time position except for the purpose of job-sharing. In a reduction-in-force procedure, consideration of a job-sharer's tenure rights shall be on the same basis as that of a full-time employee. Nothing in this section shall impair the employment or employment rights or benefits of any employee.

(d) Tenured employees sharing full-time positions with other tenured employees shall not be required to relinquish their duty-free period. The job-sharing team shall submit to its principal a job-sharing proposal that preserves its duty-free period and meets the educational needs of its students. Where the job-sharing team cannot reach a reasonable scheduling agreement, the team may agree to waive its contractual rights by executing a contract waiver.

(e) Participation in the program shall require the commitment on the part of all parties to a contractual agreement for one year; provided that the employee shall be given the option to renew the contract for another year, subject to approval by the immediate supervisor and personnel officer of the department.

(f) No job-sharing position committed to a specified period of time under the terms of the contractual agreement shall be converted to full-time status before the termination of the contractual agreement. A job-sharing vacancy created by the resignation, retirement, or other permanent or temporary severance of employment with the department on the part of any person may be filled by the department either through recruitment of another person pursuant to this section, or by increasing the remaining half-time job-sharing person to full-time employment by mutual agreement.

(g) Upon the termination of contractual agreements, all job-sharing positions shall be renegotiated or reconverted to full-time positions, and the employees who held the full-time positions prior to their participation in the job-sharing program under this section shall be entitled to resume their positions without loss of previous tenure or other employee rights.

(h) Beginning with the 1997-1998 school year, this section shall be interpreted as though the term "certificated" read "licensed" or "credentialed", as the latter terms are used in subpart D, and as circumstances require.

§ -711 Authorized leaves of absence; tenure status unaffected. The granting of authorized leaves of absence by the department to regularly employed teachers shall not affect any of the tenure rights that the teacher may have acquired prior thereto under section -708.

§ **-712 School teachers afflicted with tuberculosis.** No person who has contracted tuberculosis, while afflicted with the disease, may be allowed to teach in any public school.

§ **-713 Exchange teachers and educational officers; terms of contract.**

(a) The superintendent may contract for the exchange of teachers and educational officers of the State with teachers and educational officers of any other state, country, or territory. Teachers and educational officers of the State so exchanged shall be paid their regular salaries. The qualifications of all teachers and educational officers from any such state, country, or territory so exchanged shall be equal to the qualifications of the teachers and educational officers exchanged by the State. In the selection of teachers and educational officers to be exchanged, preference shall be given in the following order: teachers over educational officers; principals and vice-principals over other educational officers.

(b) All teachers and educational officers so exchanged by the State shall be furnished transportation to and from the state, country, or territory with which exchanged.

(c) No compensation shall be paid by the State to teachers and educational officers exchanged from any other state, country, or territory; provided that in any case where the exchanged teacher or educational officer sent from Hawaii becomes incapacitated or, for any reason, leaves the exchange position permanently, the department may pay the visiting exchange teacher or educational officer an amount not to exceed the salary rating of the teacher or educational officer on exchange from Hawaii. The arrangement may continue until the end of the current school year or until such time as some satisfactory adjustment has been made.

§ **-714 Sabbatical leaves authorized.** (a) The department may grant a year's or six months' sabbatical leave of absence to any teacher or educational officer who has served seven years in the public schools of the State. The teacher or educational officer shall be guaranteed a return to the teacher's or educational officer's or an equivalent position at the expiration of the leave.

(b) In granting sabbatical leaves, the department shall consider, but not be limited to, the following:

- (1) The nature and length of professional educational course work, research, or other professional activity approved by the department; and
- (2) Applicant's seniority; provided that seniority shall not be the dominant factor in granting sabbatical leaves.

(c) The leave shall not be extended beyond one year and may not be repeated until after a period of seven additional years of service.

§ **-715 Pay while on sabbatical.** Teachers or educational officers on sabbatical leave shall be paid an amount equal to one-half of the salary to which the teacher or educational officer would be entitled if regularly reappointed. The payments shall be made in regular monthly installments, the last two of which shall not be made until after the teacher or educational officer has returned to the teacher's or educational officer's position in the department. A teacher or educational officer granted sabbatical leave may engage in any form of employment provided the conditions established in section -716 are fulfilled.

§ **-716 Conditions of sabbatical leave of absence.** (a) A teacher or educational officer on sabbatical leave shall devote one-half of the teacher's or educational officer's total leave to professional educational course work, research, or other professional activity approved by the department. The department shall establish guidelines and criteria of professional educational course work, research,

or other professional activity. Before granting a sabbatical leave to a teacher or educational officer, the department and the teacher or educational officer shall enter into a contract, which shall provide for the following:

- (1) That the teacher or educational officer agrees to return to serve in the department, the University of Hawaii, or any community college for a period of not less than two years within one year after termination of the teacher's or educational officer's sabbatical leave;
- (2) That upon failure of the teacher or educational officer to comply with paragraph (1), the teacher or educational officer agrees to refund to the department all moneys received while on sabbatical leave;
- (3) That upon failure of the teacher or educational officer to comply with paragraph (2), the teacher or educational officer agrees to pay for all costs incurred by the department in enforcing paragraph (2);
- (4) That upon failure to comply with paragraph (1), the teacher's or educational officer's Hawaii teaching certificate shall be canceled by the department; and
- (5) Any other provisions deemed necessary by the department to be included in the contract.

(b) Beginning with the 1997-1998 school year, this section shall be interpreted as though the term "certificate" read "license" or "credential", as the latter terms are used in subpart D, and as circumstances require.

§ -717 **Leaves of teachers, coffee schedule.** The board and superintendent may arrange for the attendance at summer school of not more than twenty per cent of the teachers serving in schools that are on the coffee schedule, provided each such teacher can be replaced with a satisfactory substitute. The salary of the substitute teacher shall be paid out of the appropriation, salaries for substitute teachers.

§ -718 **Classification, teachers.** (a) The designation of any teacher to any given class shall be determined by the department in accordance with its certification requirements.

(b) Teachers shall be classified as follows:

- (1) A Class I teacher is any teacher who holds a certificate issued by the department and who does not qualify as a Class II, III, IV, V, VI, or VII teacher as described below;
- (2) A Class II teacher is any teacher who holds a certificate issued by the department based upon four acceptable years of college education and other requirements as may be established by the department;
- (3) A Class III teacher is any teacher who holds a certificate issued by the department based upon five acceptable years of college education and other requirements as may be established by the department;
- (4) A Class IV teacher is any teacher who holds a certificate issued by the department based upon five acceptable years of college education and fifteen additional credits approved by the department and other requirements as may be established by the department;
- (5) A Class V teacher is any teacher who holds a certificate issued by the department based upon five acceptable years of college education and thirty additional credits approved by the department and other requirements as may be established by the department;
- (6) A Class VI teacher is any teacher who holds a certificate issued by the department based upon five acceptable years of college education and forty-five additional credits approved by the department and other requirements as may be established by the department; and

- (7) A Class VII teacher is any teacher who holds a certificate issued by the department based upon five acceptable years of college education and sixty-six additional credits approved by the department and other requirements as may be established by the department, or any teacher who holds a certificate issued by the department based upon a doctorate and who teaches subjects in or related to the teacher's major.

(c) Any teacher teaching technical school courses who is transferred to a community college under the jurisdiction of the board of regents of the University of Hawaii shall not suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege.

(d) Beginning with the 1997-1998 school year, this section shall be interpreted as though the terms "certification" and "certificate" read "licensing" or "credentialing", and "license" or "credential", as the latter terms are used in subpart D, and as circumstances require.

§ -719 **Classification, educational officers.** The board shall classify all educational officer positions of the department and adopt a classification/compensation plan for these educational officer positions; provided that the classification/compensation plan shall include a classification appeals procedure.

§ -720 **Classification/compensation appeals board; adjustments to classification/compensation plan.** (a) There shall be established a classification/compensation appeals board within the department for administrative purposes. The appeals board shall be composed of three members. One member shall be appointed by the board of education and one member appointed by the exclusive bargaining unit representing educational officers. The third member shall be appointed by the governor and shall serve as chairperson. No member shall be an employee of the department, a member of the board of education, or an employee of the organization representing educational officers. The appeals board shall sit as an appellate body on matters of classification/compensation. All decisions of the appeals board shall be by majority vote and be binding on both parties.

(b) The appeals board shall meet biennially every even-numbered year to receive pricing appeals from affected persons and parties relating to the classification/compensation plan. All petitions for appeal shall be filed with the appeals board within twenty days from the date set by the appeals board for receipt of these appeals.

The appeals board shall meet on a quarterly basis as needed to receive classification appeals. All petitions for educational officer classification appeals shall be filed with the appeals board within twenty working days from the date of receipt of notification of the classification action or twenty working days from the date of receipt of the superintendent's written decision on the employee's internal administrative review appeal.

(c) The appeals board shall function independently of the board of education and the department, but may procure office facilities and clerical assistance from them. Neither the appeals board nor any of its members or staff shall consult with any member of the board of education or department except on notice and opportunity for the appealing employee or the employee's representative to participate.

The appeals board shall adopt policies and standards relative to classification/compensation. The appeals board may adopt rules pursuant to chapter 91 for the conduct of appeal hearings.

(d) The appeals board shall make whatever adjustments that are necessary to the affected classes where the appeals have been filed in the classification/compensation plan.

The appeals board shall hear pricing appeals and complete the final adjustment to the classification/compensation plan by the first Wednesday of December of all even-numbered years. Following the final pricing adjustment to the classification/compensation plan, the superintendent shall submit to the legislature, through the office of the governor, a report setting forth the classification/compensation plan and the cost thereof for its information and approval. The approved classification/compensation plan shall be effective as of July 1 of each odd-numbered year.

The appeals board shall hear classification appeals on a quarterly basis upon receipt of the appeals. The effective date of the appeals for twelve-month educational officers shall be the first pay period immediately following the receipt of the current position description by the classification/compensation section of the department. The effective date for ten-month officers shall be the beginning of the appropriate semester (September or January).

(e) Notwithstanding any other laws to the contrary, each member of the appeals board shall receive \$50 per day for each day on which work is done by them in connection with authorized activities of the appeals board. The cost thereof shall be met by legislative appropriations for the appeals board.

§ -721 Salary; assistant superintendents, district superintendents, deputy district superintendents. The salaries of assistant superintendents, district superintendents, and deputy district superintendents shall be set by the board. Effective July 1, 1991, the salaries of deputy district superintendents shall be not less than \$65,683 nor more than \$72,886 a year.

§ -722 Salary ranges, teachers. Salary ranges for teachers of the department shall be subject to the requirements of sections -724 and -726 and shall be as follows:

DEPARTMENT OF EDUCATION
SALARY RANGES

Class	POSITIONS	DOESR
	I	1
	II	3
	III	5
	IV	6
	V	7
	VI	8
	VII	9

§ -723 Salary ranges, educational officers. Salary ranges for educational officer positions of the department shall be determined by the board based on the position classification/compensation plan approved by the board. Salary ranges for educational officer positions shall be subject to the requirements of sections -725 and -726.

§ -724 Teachers salary schedule. (a) The salary schedule for all teachers of the department of education shall be negotiated pursuant to section 89-9.

(b) All teachers must meet the following requirements:

- (1) A teacher must earn at least five credits within a three-year cycle in order to receive increment or longevity step increases in the third year of the three-year cycle;

- (2) A teacher who fails to meet the requirement set forth in paragraph (1) shall not be eligible for any increment or longevity step increases until the teacher earns the credit requirement for the three-year cycle;
- (3) Any credit earned in excess of any three-year credit requirement may not be carried over beyond the three-year cycle; and
- (4) Credits earned can be in the form of in-service, university, or other credits approved by the department.

(c) A teacher is required to spend at least one year in Class III before going on to Class IV, at least one year in Class IV before going on to Class V, at least one year in Class V before going on to Class VI, and at least one year in Class VI before going on to Class VII.

(d) In case of promotion from a teaching position to an educational officer, the employee shall receive compensation at the lowest step of the higher grade that exceeds the employee's existing compensation by at least eight per cent if such a step exists.

(e) Effective July 1, 1996, the per diem rate for substitute teachers shall be based on the annual entry step salary rate established for a Class II teacher on the most current teachers' salary schedule. The per diem rate shall be derived from the annual rate in accordance with the following formula:

$$\text{Per Diem Rate} = \text{Annual Salary Rate} \div 12 \text{ months} \div 21 \\ \text{Average Working Days Per Month}$$

§ -725 Educational officers salary schedules. (a) The salary schedule for all educational officers of the department shall be negotiated pursuant to section 89-9.

(b) Any principal, vice principal, or other educational officer on a ten-month work year must earn at least six credits within a three-year cycle in order to receive an increment or longevity step increase in the third year of the three-year cycle.

§ -726 Salary increases; annual, longevity. (a) Teachers and educational officers who have completed a year's satisfactory service and who have complied with the other requirements of sections -702 to -743, and -801, shall be entitled to an annual increment.

(b) Teachers and educational officers who have served satisfactorily for three years in their maximum increment step or in any longevity step and who have complied with the other requirements of sections -702 to -743, and -801, shall receive longevity step increases.

§ -727 Salary ratings of entering or reentering teachers; credit for military service. (a) Any teacher with more than one year of teaching experience, and so accredited by the department, entering or reentering the service of the department shall have the teacher's salary rating determined by the personnel executive of the department, any other law to the contrary notwithstanding, so that the salary rating shall be equal to the salary ratings held by incumbent teachers in the department with the identical number of years of experience.

(b) Any teacher who served on active duty with the armed forces of the United States shall be given credit by the department for the teacher's military service in the determination of the teacher's salary, the teacher's eligibility for leaves of absence, and for all other purposes of seniority. Both reentering and entering teachers shall have each year of their military service or six months thereof credited as a year of teaching experience; provided that no more than four years of credit for military service shall be allowed. Evidence of military service shall be by certificate.

§ **-728 Change in classification.** Any teacher who qualifies for a higher class shall be transferred to the higher class as of the beginning of the next semester and shall receive the salary at the appropriate step and range of the higher class.

§ **-729 Educational officers; demotion, transfers.** Any educational officer demoted to a position in a lower salary range shall continue to be paid the educational officer's previous salary for the first year of the educational officer's demotion, after which time the educational officer shall be compensated at the appropriate step in the salary range to which the educational officer has been demoted. Unless otherwise provided by the department, any educational officer who is in a school in which the school rating has declined to a number that would place the educational officer in a lower classification shall continue to be paid at the educational officer's same salary range as long as the educational officer remains in the same position in the same school.

§ **-730 Reserved.**

§ **-731 Teachers with special assignments, vocational agriculture, and technical school teachers.** Teachers with special assignments, where their responsibilities are greater, may be provided additional benefits by the department. In determining additional benefits for vocational agriculture and technical school teachers, the department may allow credit for practical experience.

§ **-732 Educational officer with special assignments.** Educational officers at the state, district, and school levels with special assignments, where their responsibilities are greater than the responsibilities falling within the scope of their ordinary duties and responsibilities, shall be provided additional benefits by the department.

§ **-733 Additional benefits to certain teachers.** The department shall provide additional benefits to grade level chairpersons, department heads, registrars, and librarians in schools. The department shall also provide additional benefits to teachers assigned to schools in areas designated as limited environment communities by the department.

§ **-734 Pay of teachers under the Konawaena coffee vacation plan.** Teachers under the Konawaena coffee vacation plan shall be paid, under such conditions as the department may require, their monthly accruing salaries during the months of September and October of each year during which the plan is in operation.

§ **-735 Noncertificated personnel.** (a) All noncertificated administrative, professional, and technical personnel not engaged in instructional work shall be placed by the department in the appropriate salary ranges within the educational officers schedule.

(b) Beginning with the 1997-1998 school year, this section shall be interpreted as though the term "certificate" read "license" or "credential", as the latter terms are used in subpart D, and as circumstances require.

§ **-736 Educational assistants.** All educational assistants employed in the department shall be employed under the provisions of chapter 76 and shall have their compensation fixed in accordance with chapter 77; provided that:

- (1) The monthly rate of compensation so determined shall be multiplied by ten and then divided by twelve and the resulting amount shall be the employee's monthly salary payable over a twelve-month period;

- (2) Weekly working hours for educational assistants shall be established in the same manner as working hours for teachers; and
- (3) Educational assistants shall have the same vacation and sick leave allowances as teachers.

§ **-737 Cafeteria managers.** All cafeteria managers employed in the department shall be employed under chapter 76 and shall have their salaries fixed in accordance with chapter 77, and the monthly rates of basic compensation so determined shall be payable over a twelve-month period without proration or deduction for periods when school is not in session. Cafeteria managers shall have the same vacation and sick leave allowances as school teachers and principals.

§ **-738 Reserved.**

§ **-739 Cafeteria workers.** All cafeteria workers employed in the department shall be employed under chapter 76 and shall have their compensation fixed in accordance with chapter 77, and the monthly rates of basic compensation so determined shall be payable for employment over a twelve-month period. All cafeteria workers shall be employed on a full-time basis, except that a limited number of part-time workers may be employed by the department. No cafeteria worker employed on a part-time basis shall work less than twenty hours per week. The department shall establish a schedule, based on factors that determine the need for part-time workers, fixing the number of part-time workers that may be employed by the department.

§ **-740 Reserved.**

§ **-741 Evaluation of teachers and educational officers.** The department shall establish an evaluation program for all teachers and educational officers. The evaluation shall be performed at least once in each school year. The program shall define the criteria for evaluation and assign responsibilities for the application of the criteria. The evaluation of a teacher or educational officer shall be on the basis of efficiency, ability, and such other criteria as the department shall determine.

§ **-742 House parents; statewide center for students with hearing and visual impairments.** All house parents at the statewide center for students with hearing and visual impairments employed in the department shall be employed under chapter 76 and shall have their compensation fixed in accordance with chapter 77, and the monthly rates of basic compensation so determined shall be payable for employment over a twelve-month period. All house parents shall be employed for twelve months on a full-time basis.

§ **-743 Public schools; minimum staffing levels.** (a) Schools with only one class for each grade level in kindergarten through grade six shall be exempt from the average statewide class size ratio that may be established under any collective bargaining agreement between the teacher's exclusive bargaining representative and the department. These schools shall maintain a minimum staffing level of not less than one full-time equivalent teacher position per grade level per school, for kindergarten to grade six. This subsection shall not apply to a school with fewer than twelve students in any one grade level.

(b) The department shall carry out the purposes of this section using existing resource teachers within the state and district offices.

C. Staff Development and Incentives

§ **-801 Incentive packages for quality teachers.** Teachers in the public school system may accept incentive packages provided by local communities for the purpose of retaining those teachers in schools with high teacher turnover. Packages may include such items as:

- (1) Provision of housing;
- (2) Provision of mileage reimbursement;
- (3) Provision of discounts at local businesses; and
- (4) Other items not covered by chapter 89, and agreed upon by the community.

D. Hawaii Teacher Standards Board

§ **-901 Reserved.**

§ **-902 Hawaii teacher standards board established.** (a) There is established the Hawaii teacher standards board, which shall be placed within the department for administrative purposes only. The board shall consist of nine members, including four certified teachers, three educational officers, the chairperson of the board of education or the chairperson's designee, and the dean of the University of Hawaii college of education or the dean's designee.

(b) Except for the chairperson of the board of education, and the dean of the college of education, the governor shall appoint the members of the board pursuant to section 26-34, from a list of qualified nominees submitted to the governor by the departments, agencies, and organizations representative of the constituencies of the board. To the extent possible, the board membership shall reflect representation of elementary and secondary school personnel and the neighbor islands.

(c) Appointed board members shall serve three-year terms.

(d) Board members shall receive no compensation. When board duties require that a board member take leave of the board member's duties as a state employee, the appropriate state department shall allow the board member to be placed on administrative leave with pay and shall provide substitutes, when necessary, to perform that board member's duties. Board members shall be reimbursed for necessary travel expenses incurred in the conduct of official board business.

(e) The chairperson of the board shall be designated by the members of the board.

§ **-903 Licensing and credentialing standards.** (a) The board shall establish licensing and credentialing standards that govern teacher licensing and credentialing within the department. Licensing and credentialing standards established by the board shall be adopted as rules under chapter 91.

(b) In the development of its standards, the board shall consider the existing teacher applicant pool that is available in the State and the level of the qualifications of these applicants, as well as the nature and availability of existing pre-service higher education teacher training programs. The board shall also consider alternative certification, such as national teacher examinations, and credentials that certify competency in subject areas or programs taught in the public schools.

§ **-904 Powers and duties of the board.** In addition to establishing standards for the issuance of licenses and credentials, the board's powers shall also include:

- (1) Setting and administering its own budget;

- (2) Adopting, amending, repealing, or suspending the policies, standards, or rules of the board in accordance with chapter 91;
- (3) Receiving grants or donations from private foundations;
- (4) Submitting an annual report to the governor and the legislature on the board's operations;
- (5) Conducting a cyclical review of standards and suggesting revisions for their improvement;
- (6) Establishing licensing and credentialing fees in accordance with chapter 91; and
- (7) Establishing penalties in accordance with chapter 91.

§ **-905 Powers and duties of the department.** The department shall retain all of its rights and powers except for the authority provided to the board under this subpart. The department's powers and duties under this subpart shall be limited to administering the teacher licensing and credentialing process, including:

- (1) Issuing, renewing, revoking, suspending, and reinstating licenses and credentials;
- (2) Issuing credentials, not to exceed one year at a time, pending the submittal of transcripts and other documentation;
- (3) Issuing credentials, not to exceed one year at a time, to fill vacancies only after exhausting all reasonable recruitment means to find qualified, interested, and acceptable candidates;
- (4) Applying licensing and credentialing standards on a case-by-case basis and conducting licensing and credentialing evaluations;
- (5) Preparing and disseminating teacher licensing and credentialing information to schools and operational personnel;
- (6) Developing applicable rules and procedures;
- (7) Administering reciprocity agreements with other states; and
- (8) Implementing changes made by the board to licensing and credentialing standards.

§ **-906 Teachers; license or credential required; renewals.** (a) Beginning with the 1997-1998 school year, no person shall serve as a teacher in a public school without first having obtained a license or credential from the department under this subpart. All licenses issued by the department shall be renewable every five years, provided the licensee continues to satisfy the board's licensing standards. All credentials issued by the department shall be renewable every year, up to a maximum of three years; provided the credential holder continues to satisfy the board's credentialing standards and actively pursues appropriate licensing.

(b) No person shall be issued a license or credential without having first paid the fee established by the board in accordance with chapter 91.

§ **-907 Hawaii teacher standards board revolving fund.** There is established within the state treasury a revolving fund to be known as the Hawaii teacher standards board revolving fund, into which shall be deposited all fees collected pursuant to section -906, and all other moneys received by the board in the form of appropriations, fines, grants, or donations. The revolving fund shall be administered by the department and used to pay the expenses of the board, including but not limited to the payment of all operational and personnel costs, and reimbursements to board members for travel expenses incurred.

§ **-908 Refusal, suspension, revocation, and reinstatement of licenses and credentials.** (a) The superintendent shall serve as the final adjudicator for appeals relating to licensing and credentialing, including but not limited to the

issuance or nonissuance of licenses and credentials, and the suspension, nonrenewal, and revocation of licenses and credentials.

(b) The superintendent shall establish procedures for the conduct of proceedings for the consideration of requests filed with the department. In every case to revoke or suspend a license or credential, the superintendent shall give the person concerned written notice and a hearing in conformity with chapter 91, and the superintendent shall provide for confidentiality of the proceedings to protect the parties. In all proceedings before it, the superintendent may administer oaths, compel the attendance of witnesses and production of documentary evidence, and examine witnesses. In case of disobedience by any person to any order of the superintendent or to any subpoena issued by the superintendent, or the refusal of any witness to testify to any matter that the person may be questioned lawfully, any circuit judge, on application of the board or a member thereof, shall compel obedience in the case of disobedience of the requirements of a subpoena issued by a circuit court or a refusal to testify.

(c) Any applicant who has been refused a license or credential, or any licensee or credential holder whose license or credential has been suspended or revoked, shall have the right to appeal the superintendent's decision to the circuit court of the circuit in which the applicant, licensee, or credential holder resides in the manner provided in chapter 91.

(d) Upon revocation of a license or credential, the department may disclose the name, birthdate, Social Security number, and any other pertinent information about the former holder of the license or credential for the purpose of exchanging information under chapter 315 with other national or state teacher certification agencies about school personnel who have had licenses, credentials, or other certificates revoked.

§ **-909 Penalty.** Any person who engages in the profession of teaching in a public school without first being issued a license or credential shall be fined not more than \$500. Any person who knowingly or intentionally violates this subpart by employing an individual as a public school teacher who does not possess a valid license or credential may be fined not more than \$500. All fines shall be deposited into the Hawaii teacher standards board revolving fund.

§ **-910 Repeal.** This subpart D, sections -901 to -910, is repealed on June 30, 2000.

PART IV. PROVISIONS AFFECTING SYSTEM STRUCTURE

A. Specific Definitions

§ **-1001 Specific definitions.** For the purposes of sections -1256 to -1265, "school" means any day care center, child care facility, headstart program, preschool, kindergarten, elementary, or secondary school, public or private, including any special school for children in the State.

B. Accountability

§ **-1101 Reserved.**

§ **-1102 Student bias.** No person in the State, on the basis of sex, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational or recreational program or activity receiving state or county financial assistance or utilizing state or county facilities.

§ -1103 **Reporting of crime-related incidents.** The board shall adopt rules pursuant to chapter 91 to:

- (1) Require a report to appropriate authorities from a teacher, official, or other employee of the department who knows or has reason to believe that an act has been committed or will be committed, which:
 - (A) Occurred or will occur on school property during school hours or during activities supervised by the school; and
 - (B) Involves crimes relating to arson, assault, burglary, disorderly conduct, dangerous weapons, dangerous drugs, harmful drugs, extortion, firearms, gambling, harassment, intoxicating drugs, marijuana or marijuana concentrate, murder, attempted murder, sexual offenses, rendering a false alarm, criminal property damage, robbery, terroristic threatening, theft, or trespass;
- (2) Establish procedures for disposing of any incident reported; and
- (3) Impose, in addition to any other powers or authority the department may have to discipline school officials, appropriate disciplinary action for failure to report these incidents, including probation, suspension, demotion, and discharge of school officials.

§ -1104 **Indemnity upon reporting.** The State shall indemnify and hold harmless anyone participating in good faith in making a report pursuant to section -1103 from any civil liability that might otherwise be incurred or imposed by, or as a result of, the making of the report.

§ -1105 **Reserved.**

§ -1106 **Educational assessment and accountability; annual reports.**

(a) The department shall submit to the legislature and to the governor, at least twenty days prior to the convening of each regular legislative session, an educational status report that includes but is not limited to the following:

- (1) Results of school-by-school assessments of educational outcomes, including reference to such student performance standards and school-by-school assessment models as may be developed by the commission on performance standards and adopted by the board;
- (2) Summaries of school improvement plans;
- (3) Summary descriptions of the demographic makeup of the schools, with indications of the range of these conditions among schools within Hawaii;
- (4) Comparisons of conditions affecting Hawaii's schools with the conditions of schools in other states; and
- (5) Other such assessments as may be deemed appropriate by the board.

(b) The department shall provide electronic access to computer-based financial management, student information, and other information systems to the legislature and the auditor. The auditor shall submit to the legislature and the governor, at least twenty days prior to the convening of each legislative session, a fiscal accountability report that includes but is not limited to the following:

- (1) The financial analysis of expenditures by the department with respect to the following areas:
 - (A) Administration;
 - (B) Facilities and operations;
 - (C) Teacher support and development;
 - (D) Pupil support;
 - (E) Instructional support; and
 - (F) Classroom instruction;

- and
- (2) The measures of accuracy, efficiency, and productivity of the department, districts, and schools in delivering resources to the classroom and the student.

C. Organization

§ -1201 Department of education; board of education; superintendent of education. (a) There shall be a principal executive department to be known as the department of education, which shall be headed by an elected policy-making board to be known as the board of education. The board shall have power in accordance with law to formulate statewide educational policy, adopt student performance standards and assessment models, monitor school success, and to appoint the superintendent of education as the chief executive officer of the public school system.

(b) The board shall appoint, and may remove, the superintendent by a majority vote of its members. The superintendent:

- (1) May be appointed without regard to the state residency provisions of section 78-1(b);
- (2) May be appointed for a term of up to four years; and
- (3) May be terminated only for cause.

§ -1202 Department of education; statewide and regional administrative services. The department shall serve as the central support system responsible for the overall administration of statewide educational policy, interpretation, and development of standards for compliance with state and federal laws, and coordination and preparation of a systemwide budget for the public schools. The department may establish regional administrative units to provide administrative support to the schools for personnel, fiscal, and procurement services. The regional administrative units may also be assigned responsibility for the administration and operation of special education programs and special schools.

§ -1203 Principal; authority and responsibility. The role of the principal shall include but not be limited to overseeing the day-to-day management of the school, the primary function of which is to develop and deliver instructional services to students in accordance with statewide educational policy and standards. The principal shall ensure that the curriculum facilitates the achievement of the statewide student performance standards adopted for the public school system.

§ -1204 Learning support centers. Beginning with the 1995-1996 school year and until June 30, 1999, school-level support for curriculum and instruction shall be provided through learning support centers to be governed by schools within each complex. The centers shall assist school personnel in the delivery of instructional services by providing support through curriculum development, student assessment, staff development, and resource allocation. The types of services offered and the manner in which these services are provided by the centers, as well as the prioritization and allocation of available resources, shall be determined by policies established by each complex. Any regional administrative units established by the department shall be assigned all administrative functions and provide administrative support to the learning support centers.

§ -1205 Compensation; expenses. Board of education members shall be allowed:

- (1) Compensation at the rate of \$100 per day for each day's actual attendance at meetings;
- (2) Transportation fares between islands and abroad; and
- (3) Personal expenses at the rates specified by section 78-15, while attending board meetings or while on official business as authorized by the chairperson, when the board meetings or official business require a board member to leave the island upon which the board member resides.

§ -1206 Organization; quorum; meetings. The board shall elect from its own membership a chairperson and a vice-chairperson. A majority of all members to which the board is entitled shall constitute a quorum to do business and the concurrence of a majority of all members to which the board is entitled shall be necessary to make any action of the board valid; provided that due notice shall have been given to all members of the board or a bona fide attempt shall have been made to give due notice to all members of the board to whom it was reasonably practicable to give due notice. Meetings shall be called and held, at the call of the chairperson or by a quorum, as often as may be necessary for the transaction of the department's business.

§ -1207 School district advisory councils; duties. (a) There shall be a school district advisory council in each school district. The number of members on the school district advisory council in the respective school districts shall be as follows:

- First school district (Hawaii): seven members;
- Second school district (Maui): five members;
- Third school district (Honolulu): five members;
- Fourth school district (Central Oahu): five members;
- Fifth school district (Leeward Oahu): five members;
- Sixth school district (Windward Oahu): five members;
- Seventh school district (Kauai): five members.

(b) Any other law to the contrary notwithstanding, the governor shall appoint the members of each school district advisory council. The appointments shall be made without consideration of the appointee's party affiliation or preference, or nonpartisanship. Each councilor shall serve for a term commencing upon the councilor's appointment and ending upon the expiration of the term of office of the governor. In addition to the number of members set forth in this section, each member of the board shall be an ex officio, nonvoting member of the school district advisory council in the member's at-large school board district.

(c) Each school district advisory council shall serve in an advisory capacity to the board and to the member or members of the board from its school district. Each school district advisory council shall:

- (1) Inform the board on educational matters of interest to the school district;
- (2) Disseminate information and interpret decisions and policies of the board to the people of the school district;
- (3) Act as an advisory body to the district superintendent of each school district, and, upon the district superintendent's request, assist the district superintendent in disseminating information, interpreting decisions and policies, and obtaining public reaction;
- (4) Present and explain local or school district public concern with the policies and administrative rules of the department;

- (5) Work with and among the several other school district advisory councils to ensure cooperation on educational matters of mutual interest and concern; and
- (6) Advise the board in the development of policies.

§ **-1208 Eligibility; expenses.** (a) Notwithstanding section 78-1(b), each councilor appointed by the governor need only reside in the school district in which the councilor is appointed to serve. No councilor shall hold any other public office under the state or county governments.

(b) Councilors shall serve without pay but shall be reimbursed for necessary expenses while attending meetings and while in the discharge of their responsibilities. Payments for expenses shall be made by warrants signed by the chairperson of the school district advisory council.

§ **-1209 Organizations; quorum; meetings.** (a) Each school district advisory council shall elect its own chairperson and may elect other officers that may be necessary to effectively carry out its functions.

(b) Part I of chapter 92 shall apply to all meetings of the council. Meetings shall be called and held, at the call of the chairperson or a quorum, as often as may be necessary to carry out its functions.

§ **-1210 Educational districts not applicable.** The educational districts established by section 4-1 shall not be applicable to, nor alter, the school board or departmental school districts, established by section 13-1, or the school districts established for administrative purposes by the department.

§ **-1211 Duties of superintendent.** (a) Under policies established by the board, the superintendent shall be designated as the chief executive officer of the public school system having jurisdiction over the internal organization, operation, and management of the public school system, as provided by law; and shall administer programs of education and public instruction throughout the State, including education at the preschool, primary, and secondary school levels, and such other programs as may be established by law.

(b) Except as otherwise provided, the superintendent shall sign all drafts for the payment of moneys, all commissions and appointments, all deeds, official acts, or other documents of the department. The superintendent may use a printed facsimile signature in approving appointments, contracts, and other documents. The superintendent, at such time as may be prescribed by the board, shall present to the board full annual reports of the principal transactions within the department during the last completed year, which reports together with such recommendations as the board may think proper, shall be presented to the governor and the legislature.

§ **-1212 Rules.** Subject to chapter 91, the board may adopt rules for the government of all teachers, educational officers, other personnel, and pupils, and for carrying out the transaction of its business.

§ **-1213 Seal.** The department shall adopt a seal, the impression of which shall be necessary to authenticate all of its appointments, commissions, final acts of the nature of record, and all other documents issued by it. Upon authorization by the superintendent, a facsimile impression of the seal may be used to authenticate these documents.

§ **-1214 Power of appointment, removal.** The department, from time to time, may appoint and remove such teachers, educational officers, and other person-

nel as may be necessary for carrying out the purposes of sections -301, -401, -501 to -510, -701, -1101 to -1106, -1201 to -1224, -1401 to -1405, -1501 to -1503, and -1601 to -1606, and regulate their duties, powers, and responsibilities, when not otherwise provided by law.

§ **-1215 Reallocation of vacant positions.** (a) To promote decentralization and facilitate restructuring of the department, the department of education, without regard to the position variance requirements of the department of budget and finance, may:

- (1) Reallocate existing vacant positions throughout the department;
- (2) Directly authorize and implement internal reorganization actions;
- (3) Reassign employee duties;
- (4) Authorize position classifications; and
- (5) Conduct recruitment;

provided that any action taken pursuant to this section shall be to redirect resources from the state and district offices to the individual schools and learning support centers.

(b) The governor, the department of human resources development, and the department of budget and finance shall facilitate, expedite, and assist the department of education in the implementation of its decentralization and staffing reallocation plan.

(c) The department of education shall submit an annual report of reallocations to the department of budget and finance by December 31 of each year.

§ **-1216 Authority to create temporary positions.** The department may create temporary positions as it deems necessary; provided that:

- (1) The department's expenditures shall not exceed its allocated budget;
- (2) The term of each position shall not exceed one year; and
- (3) The department shall report the creation of temporary positions to the department of budget and finance.

§ **-1217 Records, evidence.** The department shall cause all its proceedings, doings, and acts to be recorded, and these records, from time to time, shall be filed in the archives of the department. A certified copy of a record or any portion thereof, when signed by the superintendent under the seal of the department, shall be competent evidence of all it contains in any court.

§ **-1218 Publications by department.** The department may prepare or cause to be prepared, printed, and published, such reports, pamphlets, duplicate certificates, outlines of courses, etc., as in the discretion of the department may seem advisable, and sell or dispose of the publications. All sums of money received from the sale of the publications shall be deposited to the credit of the general fund of the State.

§ **-1219 Teachers' conventions.** The department may establish and maintain one or more teachers' conventions or institutes, or it may authorize and permit their establishment by and among its teachers, and may direct and authorize the attendance of teachers thereat, as a part of their duties, and may permit the closing of schools at specified limited times, in order to permit their attendance at the conventions or institutes.

§ **-1220 Public library system; board control.** The board, through the state librarian, shall have direct control of the public library system, but not

including school libraries. The board may adopt rules under chapter 91 for the purpose of this section.

§ -1221 **Bonds for return of military equipment.** The department may execute and deliver bonds in the name of the State to the United States, as provided by any act of Congress, to insure the safe return of any public animals, tentage, uniforms, arms, equipment, and means of transportation procured by the department from the United States for use in the public schools of the State maintaining a course or courses in military training as provided by act of Congress.

§ -1222 **Gifts.** The board may receive and manage moneys or other property, real, personal, or mixed, that may be given, bequeathed, devised, or in any manner received from sources other than the legislature or any federal appropriation for the purposes of the department. All such moneys received by, or on behalf of, the department shall be paid into the state treasury, and all such moneys are appropriated for the use of the department. The board shall cause to be kept suitable books of accounts wherein shall be recorded each gift, the essential facts of its management, and the expenditure of the income.

§ -1223 **Reserved.**

§ -1224 **Student-centered schools; programs and administration.** (a) Any public school, up to a total of twenty-five schools, may establish a student-centered school; provided that:

- (1) Any public school that establishes a student-centered school shall be exempt from all applicable state laws; except those regarding:
 - (A) Collective bargaining under chapter 89; provided that the exclusive representatives and the employers defined in chapter 89 may enter into agreements that contain cost and noncost items to facilitate decentralized decision-making;
 - (B) State procurement laws; and
 - (C) Religious, racial, or sexual bias, and health and safety requirements;
- (2) The school establishes a local school board as its governing body composed of, at a minimum, one representative from the following participant groups:
 - (A) Principals;
 - (B) Instructional staff members selected by the school instructional staff;
 - (C) Support staff selected by the support staff of the school;
 - (D) Parents of students attending the school selected by the parents of the school;
 - (E) Student body representatives selected by the students of the school; and
 - (F) The community at-large selected by the board of education;
- (3) The local school board may formulate school-based educational policy and goals in accordance with statewide educational performance standards, adopt school performance standards and assessment mechanisms, monitor school success, and may select the principal as the chief executive officer of the school in accordance with chapter 89. The principal shall consult and work collaboratively with the local school board and have jurisdiction over the internal organization, operation, and management of the school;

- (4) The local school board has developed a detailed implementation plan containing the elements prescribed under subsection (b) for a student-centered school that has been approved by three-fifths of the school's administrative, support, and teaching personnel, and parents; provided that the school personnel may request their bargaining unit representatives to certify and conduct the elections for their respective bargaining units;
 - (5) The detailed implementation plan has been submitted to the board of education for review;
 - (6) The detailed implementation plan assures compliance with statewide student performance standards; and
 - (7) No student-centered schools shall charge tuition.
- (b) The detailed implementation plan for the student-centered school shall include but not be limited to the following:
- (1) A description of the administrative and educational framework;
 - (2) Specific student outcomes to be achieved;
 - (3) The curriculum, instructional framework, and assessment mechanisms to be used to achieve student outcomes;
 - (4) Governance structure of the school;
 - (5) Facilities management plan; and
 - (6) Annual financial and program audits.
- (c) The board of education shall review the proposed student-centered school plan to assure that it complies with statewide educational performance standards. Unless the board of education finds that the plan conflicts with statewide educational performance standards, the plan shall become effective within thirty days after its submission. If the board of education finds a conflict with statewide educational performance standards, it shall notify the local school board of the finding in writing to enable the local school board to appropriately amend the plan to resolve the conflict.
- (d) Student-centered schools shall receive an allocation of state general funds on a per student basis that is equal to the statewide per pupil expenditure for average daily attendance; provided that the allocation for self-contained special education students and for other special education students shall be adjusted appropriately to reflect the additional expenses incurred for the students in these programs.
- (e) All federal and other financial support for student-centered schools shall be equal to all other public schools; provided that if administrative services are provided to the school by the department, the school shall reimburse the department for the actual costs of the administrative services in an amount that does not exceed 6.5 per cent of the school's allocation. Any student-centered school shall be eligible to receive any financial grant or award for which any other public school may submit a proposal. All additional funds that are generated by the local school board shall be considered supplementary and may be expended at the discretion of the local school board.
- (f) The department shall require every student-centered school to conduct self-evaluations annually. The self-evaluation process shall include but not be limited to the following:
- (1) The identification and adoption of benchmarks to measure and evaluate administrative and instructional programs as provided in this section; and
 - (2) The impact upon the students of the student-centered school.
- The department shall evaluate each student-centered school four years after its establishment to assure compliance with the statewide student performance standards. Upon a determination by the board of education that student achievement within a student-centered school does not meet the student performance standards,

the board of education, upon a two-thirds majority vote, may deny the continuation of the student-centered school.

§ -1225 Reserved.

§ -1226 **Mandate to initiate school/community-based management system.** The department, through the board and its superintendent, shall formulate policies, including criteria and procedures to determine which schools and learning support centers shall participate in the system, to initiate a school/community-based management system in the public schools.

§ -1227 **Educational objectives.** The board shall formulate such policy and exercise such control as may be necessary to define a common set of educational goals that the schools subject to the school/community-based management system shall be responsible for fulfilling. The board shall also be responsible for formulating standards for measuring the efforts of each participating school toward achieving those goals each year. The participating schools shall be free to use all reasonable means to accomplish those goals with the resources available to them.

§ -1228 **Waiver of policy, rule, or procedures.** Any state agency that may be required to act under state law on a matter affecting an individual school, its school community, or a learning support center shall waive otherwise applicable policies, rules, or procedures when requested to do so by a school or a learning support center participating in the school/community-based management system unless the agency, within thirty days, can justify a denial to the appropriate authority. The board shall adopt procedures necessary to process waivers initiated by schools or learning support centers subject to the school/community-based management system. This section shall apply to collective bargaining agreements as provided for in all relevant collective bargaining agreements negotiated pursuant to chapter 89.

§ -1229 **Rules.** The board may adopt rules under chapter 91 to implement sections -302, -1226 to -1228, and -1608.

§ -1230 **Department powers and duties.** (a) The department shall have entire charge and control and be responsible for the conduct of all affairs pertaining to public instruction. The department may establish and maintain schools for secular instruction at such places and for such terms as in its discretion it may deem advisable and the funds at its disposal may permit. The schools may include high schools, kindergarten schools, schools or classes for pregrade education, boarding schools, and evening and day schools. The department may also maintain classes for technical and other instruction in any school where there may not be pupils sufficient in number to justify the establishment of separate schools for these purposes.

(b) The department shall regulate the courses of study to be pursued in all grades of public schools and classify them by such methods as the department deems proper; provided that the course of study and instruction in the first eight grades shall be so regulated that not less than fifty per cent of the study and instruction in each school day is devoted to the oral expression, the written composition, and the spelling of the English language, except for special projects using the Hawaiian language as approved by the board.

(c) Nothing in this section shall interfere with those persons attending a summer school.

§ -1231 **Schools; opening and closing.** The board may open new schools or close existing schools.

§ -1232 Public schools special fees and charges; standards; grouping of students. (a) No equipment, material, or other fees shall be assessed against any pupil in any school, except that the department may assess and collect special fees and charges from pupils for co-curricular activities and from pupils who negligently break, damage, lose, or destroy school books, equipment, or supplies. Any pupil found to be responsible for the loss, destruction, breakage, or damage of school books, which shall include library and textbooks, of equipment, or of supplies, shall make restitution to the school in any manner, including the payment by the pupil or the pupil's parents of the actual replacement costs.

(b) No pupil shall be required to make restitution in any manner unless the pupil and the pupil's parents or guardians have been notified and have been given an opportunity to be heard before the principal of the school on the charges that the pupil was responsible for the loss, destruction, breakage, or damage of school books, equipment, or supplies.

(c) If the principal, upon a hearing on the charges, has reasonable cause to believe that the pupil is responsible for the loss, destruction, breakage, or damage of school books, equipment, or supplies, the principal shall design a restitution program that shall be submitted to the pupil and the pupil's parents or guardian for agreement in writing.

If restitution is made in this fashion, then no information about the charges, the hearing, and the actions taken shall be communicated to any person not directly involved in the proceedings.

If the pupil and parent or guardian do not agree with the determination made by the principal, the principal shall report to the district superintendent the determination and the findings made by the principal, including all the records and documents regarding the investigation, for any further action.

(d) Notwithstanding any other provisions in this section to the contrary, the State may elect to bring any appropriate action for the recovery of all damages to school properties. Nothing in this section shall limit the right of the State to bring any action against any person to recover the damages.

(e) Special fees and charges collected from pupils for co-curricular activities shall be deposited into insured checking or savings accounts and expended by each individual school under rules adopted by the department pursuant to chapter 91.

(f) Special fees and charges collected from pupils who negligently break, damage, lose, or destroy school books, equipment, or supplies shall be deposited in a fund and expended by the department under rules adopted pursuant to chapter 91.

(g) The department may continue to group pupils within any public school in accordance with their abilities and educational needs.

§ -1233 Public schools; attendance. (a) Except as authorized by section -511, no child shall attend any public school unless the child will be at least six years of age before January 1 of the school year; provided that:

- (1) A child attending a school that convenes after the regular school schedule shall be six years of age on or before one hundred twenty-five days following the date the school shall convene; and
- (2) The department may establish procedures and criteria to determine the psychological and physiological readiness of children for public school and may grant an exception in the case of a child who is found to be ready.

(b) All teachers who teach in the first and second grades and principals of public schools shall enforce this section and require proof of age by birth certificates or certificates of registration, or if none can be obtained, then by satisfactory evidence.

§ -1234 **Attendance compulsory; exceptions.** (a) Unless excluded from school or excepted from attendance, all children who will have arrived at the age of at least six years, and who will not have arrived at the age of eighteen years before January 1 of any school year, shall attend either a public or private school for and during the school year, and any parent, guardian, and other person having the responsibility for, or care of, a child whose attendance at school is obligatory shall send the child to some such school. Attendance shall not be compulsory in the following cases:

- (1) Where the child is physically or mentally unable to attend school (deafness and blindness excepted), of which fact the certificate of a duly licensed physician shall be sufficient evidence;
- (2) Where the child who has reached the fifteenth anniversary of birth is suitably employed and has been excused from school attendance by the superintendent or the superintendent's authorized representative, or by a family court judge;
- (3) Where, upon investigation by the family court, it has been shown that for any other reason the child may properly remain away from school;
- (4) Where a child has graduated from high school; or
- (5) Where the child is enrolled in an appropriate alternative educational program as approved by the superintendent or the superintendent's authorized representative in accordance with the plans and policies of the department, or notification of intent to home school has been submitted to the principal of the public school that the child would otherwise be required to attend in accordance with department rules adopted to achieve this result.

(b) Any employer who employs a child who is excused from school attendance in accordance with subsection (a)(2) shall notify the child's school within three days upon termination of the child's employment.

§ -1235 **Emergency measures.** The department of health may implement emergency measures to refuse, modify, or limit attendance at any school in the State pursuant to section 321-1 if it is determined that there is imminent danger of an epidemic or serious outbreak of communicable disease.

§ -1236 **Exclusion from school.** (a) If for any reason a child becomes a detriment to the morals or discipline of any school, the child may be precluded from attending school by the principal, with the approval of the district superintendent. The department shall seek the active participation of other public and private agencies in providing help to these children before and after they have left school. An appeal may be taken on behalf of the child to the superintendent of education within ten days from the date of such action.

(b) Any child who is found to be in possession of a firearm while attending school shall be excluded from attending school for not less than one year. The due process procedures of chapter 8-19, Hawaii administrative rules, shall apply to any child who is alleged to be in possession of a firearm while attending school. The superintendent may modify the exclusion of a child found to be in possession of a firearm while attending school on a case-by-case basis. If a child is excluded from attending school, the superintendent shall ensure that substitute educational activities or other appropriate assistance shall be provided. The superintendent shall submit to the United States Department of Education, the board, and the legislature an annual report indicating the number of students excluded, the types of firearms found in their possession, and the schools from which they were excluded.

(c) No child who is seventeen years of age or over shall be admitted to the ninth grade of a public four-year high school, and no child who is eighteen years of

age or over shall be admitted to the tenth grade of a public senior high school, except upon the written permission of the superintendent when in the superintendent's opinion the facts warrant admission.

§ **-1237 Penalty.** If any child of school age persists in absenting oneself from school, the family court judge, upon a proper petition, citation, or complaint being made by the school teacher or any other officer or agent of the department, or police officer, or any other person, shall cause the child, and the father or mother, guardian, or other person having charge of the child, to be summoned to appear before the judge. Upon its being proved that the person responsible for the child had not used proper diligence to enforce the child's regular attendance at school, the responsible party shall be guilty of a petty misdemeanor. This section shall not apply to any child not liable to compulsory attendance at school.

§ **-1238 Enforcement.** The department shall be charged with the enforcement of sections -1234 to -1237. Nothing in this section shall relieve any chief of police or police officer of the chief's or officer's responsibility for the enforcement of these sections, but their enforcement shall be subject to the plans and policies of the department.

§ **-1239 Attendance records; availability to authorized police officers.** Dates of attendance of a student shall be made available to authorized police officers upon request.

§ **-1240 Permit to leave grounds.** All principals in the public schools, upon the written request of the parent, guardian, or other person having the care and control of any pupil attending any public school, shall permit any such pupil to leave the school grounds during intermissions. Any principal granting such a permit shall not be held liable for the action of the pupil during the intermissions and while the pupil remains outside of the school grounds.

§ **-1241 Religious education.** (a) The department shall provide for the release of, and shall release, any pupil in any public school from attendance at the public school for a period not to exceed sixty minutes each week during the school year, on such days and during such school hours as the department shall designate, for the purpose of receiving religious instruction from the religious organization of the pupil's choice when the release is requested in writing by a parent, guardian, or other person having custody or control of the pupil. Actual attendance at the sessions of the religious instruction shall count as attendance at the public schools for all purposes where attendance forms the basis of computation.

(b) The privilege of this release shall be withdrawn by the department in case the pupil does not actually attend the sessions of religious instruction. No teacher of the public schools shall participate in religious instruction during the school hours for which the teacher is employed to teach in the public schools, and no public funds shall be used directly or indirectly for religious instruction, at any time when its use would otherwise be required in connection with the regular program of the school.

§ **-1242 Religious holy days.** The board shall release any public school student from school attendance for the purpose of observing religious holy days that fall on regularly scheduled school days, when the release is requested in writing by a parent, guardian, or other person having custody or control of the pupil. Actual attendance at observances shall count as an excused absence at the public schools for all purposes where attendance forms the basis of computation.

§ -1243 **Punishment of pupils limited.** No physical punishment of any kind may be inflicted upon any pupil, but reasonable force may be used by a teacher in order to restrain a pupil in attendance at school from hurting oneself or any other person or property, and reasonable force may be used as defined in section 703-309(2) by a principal or the principal's agent only with another teacher present and out of the presence of any other student but only for the purposes outlined in section 703-309(2)(a).

§ -1244 **School districts.** For the better control and management of the public schools, the department may designate school districts, establish their boundaries, and alter the same from time to time as in its discretion it deems most advisable. These districts shall be so arranged that there shall be no unassigned locality.

§ -1245 **Attend school in what district.** All persons of school age shall be required to attend the school of the district in which they reside, unless it appears to the department to be desirable to allow the attendance of pupils at a school in some other district, in which case the department may grant this permission.

§ -1246 **Records of pupils; release from attendance.** All schools shall keep a correct register of the names, sex, age, and nationality, as far as ascertainable, date of entering school, and the places of residence of the children attending their respective schools. No school shall grant a release to any child under eighteen years of age, who is registered as attending the child's school, for the purpose of attending another school, unless the consent and approval of the parents or guardians of the child is given in writing with the facts and reasons therefor. The register shall be carefully preserved, and as often as the department shall direct, the register or a true copy thereof shall be filed in the office of the department.

§ -1247 **Transfer to another school.** No school shall receive any child under eighteen years of age, who has attended another school of the same class in the same district, unless the child produces to the school to be entered, a certificate of release of the school last attended by the child. If the child applies to attend a school of higher grade, a certificate of proficiency shall be required or a lawful excuse for its absence. The children from one district desiring to enter a school in another district may be received or admitted upon producing a certificate of release from the school last attended in the other district.

§ -1248 **Schools not to sell merchandise, etc.** It shall be unlawful for any public school, without the written permission of the department, to operate stores or to sell merchandise, with the following exceptions: school lunches, milk, ice cream, candy, things made or grown at the school as part of the educational program, and in cases where classroom efficiency, uniformity, or standardization of particular supplies is essential, textbooks, equipment, and necessary school supplies and equipment, may be sold by any school. The department, with the advice of the comptroller, shall adopt rules in conformance with chapter 91 necessary for the purposes of this section.

§ -1249 **Use of school grounds by county recreation departments.** The board, upon request by a county, shall make school grounds available after school hours in the county where the request is made, for use by the county requesting the same whenever this can be done without interference with the normal and usual activities of the school and its pupils.

§ -1250 Use of school facilities for recreational and community purposes. All public school buildings, facilities, and grounds shall be available for general recreational purposes, and for public and community use, whenever these activities do not interfere with the normal and usual activities of the school and its pupils. Any other law to the contrary notwithstanding, the department shall adopt rules under chapter 91 as are deemed necessary to carry out the purposes of this section and may issue licenses, revocable permits, concessions, or rights of entry to school buildings and grounds for such periods of use as deemed appropriate by the department. All such dispositions, including those in excess of fourteen days, need not be approved by the board of land and natural resources; provided that approval by the board of land and natural resources shall be required when the dispositions are for periods in excess of a year. The department may assess and collect fees and charges from the users of school buildings, facilities, grounds, and equipment. The fees and charges shall be deposited into a separate fund and expended by the department under rules as may be adopted by the board.

§ -1251 Use of school facilities for after school child care. The department may enter into agreements and contracts with individuals, organizations, or agencies for the use of public school buildings, facilities, and grounds for the operation of after school child care programs. The board shall issue such rules as are necessary to carry out the purposes of this section.

§ -1252 Use of school buildings. The fullest freedom shall be given to citizens of the State to use for lawful purposes all public school buildings throughout the State during the hours the structures are not in use for strictly educational purposes; provided that the person vested with the proper authority over the building shall issue a permit to the applicant, when the proposed use is shown to be lawful by the applicant.

§ -1253 Sale of school lands unnecessary for school purposes. The chairperson of the board of land and natural resources is hereby requested, upon the recommendation and approval of the superintendent, to sell any state lands, including the buildings thereon, once used but no longer necessary for school purposes.

§ -1254 Unauthorized vehicles on school or public library grounds. Any unauthorized vehicle parked on school or public library grounds may be towed away at the owner's expense, or the owner or driver of the vehicle may be arrested by any police officer without warrant, on complaint of the principal, librarian, or other person in charge of the school or library. Notwithstanding any other law to the contrary, upon conviction for parking an unauthorized vehicle on school or public library grounds, the owner or driver of the vehicle shall be fined not more than \$50.

§ -1255 Vandalism damage to public school property. (a) Any pupil found to be responsible for an act of vandalism against any public school, building, facility, or ground shall make restitution in any manner, including monetary restitution by the pupil or pupil's parents, or guardian, or both.

This section shall be in addition to, and shall in no way limit the provisions of any other law concerning, offenses against property rights.

(b) No pupil, parent, or guardian shall be required to make restitution in any manner unless the pupil and the parents or guardian have been notified and have been given an opportunity to be heard, on any report of vandalism involving the pupil, and the pupil, parent, or guardian have executed a written agreement to make restitution.

(c) The principal of the school in which the vandalism occurred shall make or order an investigation of the vandalism. If after the investigation, the principal has reasonable cause to believe that a specific pupil is responsible for the vandalism, the principal shall schedule a conference with the pupil and the pupil's parents or guardian. Except for the principal of the school in which the vandalism occurred, the pupil and the parents or guardian, no other person shall be permitted to be in the conference for any reason.

(d) At the conference, the principal of the school in which the vandalism occurred shall present the findings of the investigation and the requirements of restitution to the pupil and parents or guardian.

If the pupil and the parents or guardian agree with the findings of the principal and the manner in which restitution is to be made, the principal and the pupil and parent or guardian shall execute a written agreement which shall specify the manner in which restitution is to be made.

Agreements shall be made only for damages that do not exceed \$3,500.

If restitution is made in this fashion, then no information about the investigation, conference, and the actions taken shall be communicated to any person not directly involved in the proceedings.

If the pupil and parent or guardian do not agree with the findings made by the principal, the principal shall report the findings, including all the records and documents regarding the investigation and conference, to the district superintendent, who shall review the findings and may refer the matter to the attorney general for any further action pursuant to section 577-3.

(e) If the damages exceed \$3,500, the principal shall report the matter to the district superintendent, who shall refer the matter to the attorney general for any further action pursuant to section 577-3.

(f) Notwithstanding any provisions in this section to the contrary, the State may elect to bring any appropriate action for the recovery of all damages to school properties. Nothing in this section shall limit the right of the State to bring an action against any person to recover these damages.

§ -1256 Immunization upon entering school; tuberculosis clearance.

(a) No child shall attend any school in the State unless the child presents to the appropriate school official certification from a licensed physician stating that the child has received immunizations against communicable diseases as required by the department of health.

(b) No child shall be admitted to attend any school for the first time in the State unless the child presents to the appropriate school official certification from a licensed physician or other authorized personnel stating the child has received a tuberculin test or x-ray and is free from tuberculosis in a communicable form.

§ -1257 Provisional entrance to school. (a) A child may enter school provisionally upon submitting written proof from a licensed physician or an authorized representative of the department of health stating that the child is in the process of receiving the required immunizations. Further certification showing that the required immunizations have been completed must be submitted to the appropriate school official no later than three months after the child first entered the school.

(b) Provisional entrance to school may be suspended by the department of health when there is danger of an epidemic from any of the communicable diseases for which immunization is required.

§ -1258 Exemptions. A child may be exempted from the required immunizations:

- (1) If a licensed physician certifies that the physical condition of the child is such that immunizations would endanger the child's life or health; or
- (2) If any parent, custodian, guardian, or any other person in loco parentis to a child objects to immunization in writing on the grounds that the immunization conflicts with that person's bonafide religious tenets and practices. Upon showing the appropriate school official satisfactory evidence of the exemption, no certificate or other evidence of immunization shall be required for entry into school.

§ -1259 Exemptions from immunization; not recognized; epidemic conditions. If at any time there is, in the opinion of the department of health, danger of an epidemic from any of the communicable diseases for which immunization is required under sections -1256 to -1265, no exemption from immunization against the disease shall be recognized. Quarantine shall be a legal alternative to immunization.

§ -1260 Immunization of indigent children. The department of health shall provide all immunizations and tuberculin tests to comply with sections -1256 to -1265, as far as public funds will permit, to each child whose parents, guardians, or custodians cannot afford to have the child immunized or tested for tuberculosis, and who have not been exempted under section -1258. Nothing in this section shall preclude the department of health from distributing immunizations and vaccines to physicians or other authorized persons as required by law or by the rules of the department of health.

§ -1261 Physical examination required. No child shall be admitted to any school for the first time in the State unless the child presents to the appropriate school official a certification from a licensed physician stating that the child has undergone a physical examination. The physical examination shall be performed within a year of the date of entry into school. A child may enter school provisionally upon submitting written proof from a licensed physician or other authorized representative of the department of health stating that the child is in the process of undergoing a physical examination. Further certification showing that the required physical examination has been completed must be submitted to the appropriate school official no later than three months after the child first entered the school.

§ -1262 Health certificates. The department of education shall provide health certificate forms for immunization and physical examination to the schools, private physicians, and authorized personnel of the department of health. Any immunization record signed by a licensed physician may be accepted by the appropriate school official as certification of immunization if the information is transferred to the health certificate form and verified by the appropriate school official.

§ -1263 Notification for noncompliance. If a child does not complete the immunizations required under section -1256 or the physical examination required under section -1261 within the three-month period provided after provisional entry into school, the department of education shall refer the child to the department of health. The department of health shall cause a notice to be sent to the parent of the child stating that if the required immunizations or physical examination is not completed within thirty days of the date of the notice, the child shall not be admitted to school.

§ -1264 Rules. The department of health shall adopt rules under chapter 91 relating to immunization and tuberculin testing under sections -1256

to -1265. Immunizations required, and the manner and frequency of their administration, shall conform with recognized standard medical practices. The list of diseases and minimum requirements for protection under sections -1256 to -1265 may be revised whenever the department of health deems it necessary for the protection of public health.

§ **-1265 Enforcement.** The department of health shall administer and enforce the immunization and tuberculin test requirements under sections -1256 to -1265.

PART V. PROVISIONS AFFECTING FINANCIAL STRUCTURE

A. Specific Definitions

§ **-1301 Definitions.** For the purposes of sections -1406 to -1409: "Enrollment" means the number of students registered in the regular public schools, with each regular student and each special student being counted as one. "Moneys" means funds which are not committed to positions.

B. Budget

§ **-1401 School system financial accountability.** (a) Beginning with the 1995-1997 fiscal biennium, the department's administrative expenditures shall not exceed 6.5 per cent of the total department operating budget unless approved by the legislature.

(b) The department shall not transfer any funds appropriated under the school-based budgeting program EDN 100 of the state budget, except for unforeseeable circumstances that pose a threat to the health and safety of personnel and students, and subject to approval by the governor and notification to the legislature.

§ **-1402 School-based budget flexibility.** Beginning with the 1995-1997 fiscal biennium, the department shall implement school-based budget flexibility for schools, complexes, and learning support centers. The flexibility shall be limited to the school-based budgeting program EDN 100 of the department.

§ **-1403 School budget, general fund.** The salaries of the superintendent, teachers, office force, and all other employees of the department, and all items of general expense, including books, materials, supplies, and equipment, shall be included in the departmental estimate in such form and detail as the director of finance shall require, together with such statistical and supporting data as the director may request.

§ **-1404 Department of education storeroom; revolving fund.** There shall be a storeroom established by the department to provide schools a source for commonly used educational, office, and custodial supplies. There is established a revolving fund to be known as the "storeroom revolving fund," into which shall be deposited the receipts from charges made to schools for the supplies and cost of issuing the supplies from the storeroom and transfers from other accounts or funds. Receipts and transfers deposited into the storeroom revolving fund may be expended to purchase educational, office, and custodial supplies, and equipment and services needed to operate the storeroom. Balances in excess of \$400,000 at the end of each fiscal year shall lapse into the general fund.

§ **-1405 Inactive student activity accounts.** Student activity funds that are left in the school for a period of five years after the graduation of the class shall be deposited into the nonappropriated local school fund account unless the graduating class donates, in writing, the funds to the school within the five-year period.

§ **-1406 School priority program; established.** (a) There is established within the department a school priority program to augment regular instruction and other educational services at the discretion of the individual public schools. Further, it is the intent of the legislature that the school priority program promote the equitable distribution of educational resources statewide, strengthen the scope of decision making, increase flexibility in resource allocation at the school level, and provide a systematic method of conforming resource allocation to the unique needs and priorities of individual schools.

(b) All moneys to carry out the purposes of the school priority program under this section -1409 shall be allocated by the legislature through appropriations out of the state general fund.

(c) The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this section to section -1409.

§ **-1407 Distribution of resources.** The superintendent shall allot the moneys of the school priority program to the school districts based on enrollment. In the allotment of positions to the districts, the superintendent shall calculate each district's entitlement based on enrollment and may deploy one instructional resource augmentation position for each two-hundred-fifty students enrolled in each school; provided that all positions shall be deployed.

§ **-1408 Use of resources by schools.** School principals shall consult with teachers, parents, and students to solicit their advice on the use of moneys and positions. Prior to expending moneys and implementing position assignments, principals shall submit plans for the use of the moneys and positions to their district superintendents who shall review the plans for conformance with departmental policies and rules. Upon approval of the plans, moneys may be expended by the principals for supplies, textbooks, equipment, and services. Positions may be used to meet the unique needs of the schools.

§ **-1409 Departmental controls.** The superintendent shall develop and implement appropriate planning procedures and follow-up accountability reports, without regard to chapter 91, to ensure sound planning, control, and accountability in the use of moneys allocated by the legislature to the school priority program. The procedures and reports, however, shall recognize the need for providing the schools latitude and discretion to determine their needs and priorities, and shall avoid imposing undue amounts of paperwork and administrative burdens on the schools.

The department shall submit an annual report to the legislature, which shall include but not be limited to an accounting of how funds were used by the schools.

§ **-1410 Summer schools; funds, expenditures.** All moneys received by and for the public summer schools from tuition and other fees or from any other source shall be deposited in a special summer school fund; and except as otherwise provided by the legislature, all expenditures for the operation of public summer schools shall be made from this fund.

C. Federal Funding

§ **-1501 Administration and use of federal funds, including pregrade education.** (a) The board, designated as the administrators of such funds as may be allotted to the State under federal legislation for public educational purposes, subject to such limitations as may be imposed by congressional action, shall use and expend the funds:

- (1) To improve the program of the public schools of the State, including any grades up to the fourteenth grade or such lower grade as shall be prescribed as a maximum for such purposes by the act of Congress concerned, by expanding the educational offerings, particularly in the rural districts;
- (2) For the payment of salaries to teachers;
- (3) To employ additional teachers to relieve overcrowded classes;
- (4) To adjust the salaries of teachers to meet the increased cost of living, within such limits as may be fixed by, and pursuant to, state law;
- (5) To provide for the purchase of supplies, apparatus, and materials for the public schools; and
- (6) For any of such purposes and to such extent as shall be permitted by the acts of Congress concerned.

(b) The board shall organize and conduct a program of public pregrade education to the extent that funds provided therefor by the United States government are, or from time to time may become, available. In establishing and carrying on the pregrade education, any such federal funds shall be expended during any school year as nearly as practicable in each of the school supervisory districts of the State in the proportion that the number of inhabitants of each district of less than six years of age bears to the total number of the inhabitants of the entire State within the age limits, as shown by the latest report of the department of health preceding the opening of the school year.

§ **-1502 Custodian of federal funds.** The director of finance is designated as custodian of all funds received as the state apportionment under any federal appropriations for public educational purposes and the director shall disburse the funds, pursuant to the requirements, restrictions, and regulations of the federal acts under which the funds may be provided, on vouchers approved by the board, or by any subordinate thereunto duly authorized by the board.

§ **-1503 Authority to secure federal funds.** The department, director of finance, and governor may take such steps and perform such acts as may be necessary or proper in order to secure any such federal funds for the purposes specified in sections -1501 and -1502.

PART VI. PROVISIONS AFFECTING FACILITIES

A. Facilities and Equipment

§ **-1601 Noise and climate control at school facilities.** (a) The department shall plan for, and request appropriations necessary to implement, acoustic noise control and air conditioning of existing and new school facilities in areas that are susceptible to extremes of temperature or affected by aircraft, traffic, and other noise. The department shall develop appropriate standards and consider local conditions for deciding whether acoustic noise control and air conditioning of existing and new school facilities are required for effective classroom instruction. In all cases where acoustic treatment of school facilities is planned, the department shall utilize

the services of individuals qualified by training and experience to recommend appropriate noise control procedures and components. Acoustic noise control and air conditioning shall be given equal weight as all other factors in the criteria used by the department in setting priorities for school construction and renovations.

(b) In any case where air conditioners are installed in a particular school, the department may require that the approximate cost of electricity and maintenance for air conditioners not installed by the department of accounting and general services be paid by a private entity until the department establishes temperature and noise standards and a policy relating to air conditioning.

§ **-1602 School inspection program.** The department of education, in consultation and cooperation with the department of health and the department of accounting and general services, shall establish a school inspection program to maintain high levels of hygiene, sanitation and health, safety, maintenance, and physical appearance for each school for the benefit of students, administrators, and staff. The program shall include but not be limited to the following:

- (1) The utilization of checklists that reflect basic standards;
- (2) The involvement of students, parents, and staff; and
- (3) Regularly scheduled announced inspections and unannounced inspections of school grounds, restrooms, cafeterias, locker rooms, classrooms, and other facilities.

§ **-1603 Donated school equipment and fixtures; repair and maintenance responsibility.** (a) The department may accept donations of school equipment or fixtures on behalf of the department, individual schools, or school complexes. Donations that meet current educational specifications or exceed existing educational specifications shall be deemed acceptable in instances where the donations enhance the school environment or improve the administration of school programs in accordance with criteria established by the department pursuant to chapter 91.

(b) In the case of fixtures that are to be installed in existing or new school facilities, the department of accounting and general services shall thereafter be responsible for the repair and maintenance of the donated fixtures. In the case of equipment that supports the school's curriculum and programs, the department of education shall thereafter be responsible for the repair and maintenance of the donated equipment.

(c) The department may accept a donation only if the equipment or fixture is useful to enhance the physical environment or safety of a school, or is a benefit to learning.

(d) The private source making a donation shall not be liable upon any claim for injury arising from the donated equipment or fixture; provided that this provision shall not affect the responsibility or liability of manufacturers of defective products nor shall it reflect the responsibilities of negligent persons who cause dangerous conditions that result in injury.

§ **-1604 School-level minor repairs and maintenance accounts.** (a) The department shall establish school-level minor repairs and maintenance accounts for the use of each public school, which shall not exceed \$8,000 per school. The accounts shall be comprised of funds appropriated to the department for school-level minor repairs and maintenance and shall not be used for any other purpose, nor shall any other funds be deposited into the accounts.

(b) Funds in this account shall be expended at the direction of the school principal to contract for minor repairs and maintenance. Any funds appropriated for

this purpose that are unencumbered at the close of each fiscal year shall lapse into the general fund.

(c) Each school principal, through the superintendent, shall submit a report annually to the department of accounting and general services on expenditures made from this account.

§ -1605 Prioritization of repair and maintenance. Each school shall meet with the department of accounting and general services on an annual basis to advise the department of school needs. Before any repair and maintenance projects for the upcoming fiscal year are implemented, each individual school administration shall prioritize and approve its repair and maintenance needs, and approve the scope of the implementation plan for the individual projects. After schools have prioritized their repair and maintenance projects, a statewide list shall be prepared, reviewed, and approved by the department of education; provided that the department may make adjustments among schools and districts. Each school repair and maintenance priority listing shall be approved by the individual school administration and submitted to the department of accounting and general services for implementation. The department of accounting and general services shall implement the school repair and maintenance program in accordance with the priorities set forth by the individual school administration.

§ -1606 Public school facilities. The department may enter into such contracts, lease-purchase agreements, or other transactions as may be necessary for the acquisition of public school facilities on such terms as it may deem appropriate, subject to the provisions imposed upon it by law.

§ -1607 Reserved.

§ -1608 Classroom cleaning project; established. (a) There is established a classroom cleaning project in schools designated to participate in school/community-based management. Each SCBM school, through its council, may develop mechanisms to provide for classroom cleaning, including but not limited to having parent, student, or other community groups clean the classrooms on a regular, continuing basis.

(b) SCBM schools may use any available resources to achieve the purposes of this section; provided that no full-time custodial staff currently employed at the school shall be displaced."

SECTION 3. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

"§36-27 Transfers from special funds for central service expenses. Except as provided in this section, and notwithstanding any other law to the contrary, from time to time the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special summer school fund under section [298-3.5;] ____-1410;
- (2) School cafeteria special funds of the community colleges and the department of education;
- (3) Special funds of the student housing, summer session, division of continuing education and community service, campus center, and bookstores of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital and operations special fund;

- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Spouse and child abuse special account under section 346-7.5;
- (11) Spouse and child abuse special account under section 601-3.6;
- (12) Funds of the employees' retirement system created by section 88-109;
- (13) Unemployment compensation fund established under section 383-121;
- (14) Hawaii hurricane relief fund established under chapter 431P;
- (15) The University of Hawaii tuition and fees special fund; and
- (16) Division of community hospitals' special funds,

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year."

SECTION 4. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special summer school fund under section [298-3.5;] -1410;
- (3) School cafeteria special funds of the community colleges[,] and the department of education;
- (4) Special funds of the student housing, summer session, division of continuing education and community service, campus center, and bookstores of the University of Hawaii;
- (5) State educational facilities improvement special fund;
- (6) Special funds established by section 206E-6;
- (7) Aloha Tower fund created by section 206J-17;
- (8) Spouse and child abuse special account under section 346-7.5;
- (9) Spouse and child abuse special account under section 601-3.6;
- (10) Funds of the employees' retirement system created by section 88-109;
- (11) Unemployment compensation fund established under section 383-121;
- (12) Hawaii hurricane relief fund established under chapter 431P; and¹
- (13) Convention center capital and operations special fund established under section 206X-10.5;
- (14) The University of Hawaii tuition and fees special fund; and
- (15) Division of community hospitals' special funds,

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 5. Section 89-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

- (1) Nonsupervisory employees in blue-collar positions;
- (2) Supervisory employees in blue-collar positions;
- (3) Nonsupervisory employees in white-collar positions;
- (4) Supervisory employees in white-collar positions;
- (5) Teachers and other personnel of the department of education under the same salary schedule, including part-time employees working less than twenty hours a week who are equal to one-half of a full-time equivalent;
- (6) Educational officers and other personnel of the department of education under the same salary schedule;
- (7) Faculty of the University of Hawaii and the community college system;
- (8) Personnel of the University of Hawaii and the community college system, other than faculty;
- (9) Registered professional nurses;
- (10) Institutional, health, and correctional workers;
- (11) Firefighters;
- (12) Police officers; and
- (13) Professional and scientific employees, other than registered professional nurses.

Because of the nature of work involved and the essentiality of certain occupations [which] that require specialized training, units (9) through (13) are designated as optional appropriate bargaining units. Employees in any of these optional units may [either] vote either for separate units or for inclusion in their respective units (1) through (4). If a majority of the employees in any optional unit desire to constitute a separate appropriate bargaining unit, supervisory employees may be included in the unit by mutual agreement among supervisory and nonsupervisory employees within the unit; if supervisory employees are excluded, the appropriate bargaining unit for [such] these supervisory employees shall be (2) or (4), as the case may be.

The compensation plans for blue-collar positions pursuant to section 77-5 and for white-collar positions pursuant to section 77-13, the salary schedules for teachers pursuant to section [297-33] -724 and for educational officers pursuant to section [297-33.1] -725, and the appointment and classification of faculty pursuant to sections 304-11 and 304-13, existing on July 1, 1970, shall be the bases for differentiating blue-collar from white-collar employees, professional from institutional, health and correctional workers, supervisory from nonsupervisory employees, teachers from educational officers, and faculty from nonfaculty. In differentiating supervisory from nonsupervisory employees, class titles alone shall not be the basis for determination, but, in addition, the nature of the work, including whether or not a major portion of the working time of a supervisory employee is spent as part of a crew or team with nonsupervisory employees, shall also be considered."

SECTION 6. Section 89-10.6, Hawaii Revised Statutes, is amended to read as follows:

"§89-10.6 School/community-based management waiver. A school or a learning support center participating in the school/community-based management program [shall have the authority to] may initiate a waiver from policies, rules, or procedures, including collective bargaining agreements, as provided for in section [296C-4.] -1228."

SECTION 7. Section 89-23, Hawaii Revised Statutes, is amended to read as follows:

“[[§89-23]] Classroom cleaning; exception. No collective bargaining agreement or executive policy put forth after July 1, 1993, shall contain provisions [which] that may preclude the implementation of the classroom cleaning [program] project established in section [[296C-8],] _____-1608, unless a contract waiver process exists between the parties.”

SECTION 8. Section 92F-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any [provision] other law to the contrary notwithstanding, each agency shall make available for public inspection and duplication during regular business hours:

- (1) Rules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability adopted by the agency;
- (2) Final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases;
- (3) Government purchasing information, including all bid results, except to the extent prohibited by section 92F-13;
- (4) Pardons and commutations, as well as directory information concerning an individual's presence at any correctional facility;
- (5) Land ownership, transfer, and lien records, including real property tax information and leases of state land;
- (6) Results of environmental tests;
- (7) Minutes of all agency meetings required by law to be public;
- (8) Name, address, and occupation of any person borrowing funds from a state or county loan program, and the amount, purpose, and current status of the loan;
- (9) Certified payroll records on public works contracts;
- (10) Regarding contract hires and consultants employed by agencies: the contract itself, the amount of compensation, the duration of the contract, and the objectives of the contract;
- (11) Building permit information within the control of the agency;
- (12) Water service consumption data maintained by the boards of water supply;
- (13) Rosters of persons holding licenses or permits granted by an agency that may include name, business address, type of license held, and status of the license;
- (14) The name, compensation (but only the salary range for employees covered by or included in chapters 76[,] and 77, [297,] and sections _____-702 to _____-743, and _____-801, or bargaining unit (8)), job title, business address, business telephone number, job description, education and training background, previous work experience, dates of first and last employment, position number, type of appointment, service computation date, occupational group or class code, bargaining unit code, employing agency name and code, department, division, branch, office, section, unit, and island of employment, of present or former officers or employees of the agency; provided that this [provision] paragraph shall not require the creation of a roster of employees; and provided further that this [provision] paragraph shall not apply to information regarding present or former employees involved in an undercover capacity in a law enforcement agency;
- (15) Information collected and maintained for the purpose of making information available to the general public; and

- (16) Information contained in or compiled from a transcript, minutes, report, or summary of a proceeding open to the public.”

SECTION 9. Section 102-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The bidding requirements of subsection (a) shall not apply to concessions or space on public property set aside for the following purposes:

- (1) For operation of ground transportation services at airports;
- (2) For lei vendors;
- (3) For airline and aircraft operations;
- (4) For automatic teller machines and vending machines, except vending machines located at public schools operated by blind or visually handicapped persons in accordance with section [298-21.5;] -512;
- (5) For operation of concessions set aside without any charge;
- (6) For operation of concessions by handicapped [persons,] or blind persons; except concessions operated in the public schools by blind or visually handicapped persons in accordance with section [298-21.5;] -512;
- (7) For operation of concessions on permits revocable on notice of thirty days or less; provided that no such permits shall be issued unless the premises covered therein [shall] are no longer [be] being used for the existing purposes, and that the permit is issued as a temporary use of the premises until the governmental agency proceeds to apply the premises for the new use thereof; and provided further that no permits shall be issued for more than one year;
- (8) For operation of concessions or concession spaces for a beach service association dedicated to the preservation of the Hawaii beachboy tradition, incorporated as a nonprofit corporation in accordance with state law, and whose members are appropriately licensed or certified as required by law; and
- (9) For operation of concessions at county zoos or botanic parks, by support groups that are incorporated as nonprofit corporations in accordance with state law, for purposes of supporting county aims and goals of the zoo and botanic parks.”

SECTION 10. Section 235-55.6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Special rules. For purposes of this section:

- (1) Maintaining household. An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for [such] the period is furnished by [such] the individual (or, if [such] the individual is married during [such] the period, is furnished by [such] the individual and the individual’s spouse).
- (2) Married couples must file joint return. If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and the taxpayer’s spouse file a joint return for the taxable year.
- (3) Marital status. An individual legally separated from the individual’s spouse under a decree of divorce or of separate maintenance shall not be considered as married.
- (4) Certain married individuals living apart. If:
 - (A) An individual who is married and who files a separate return:

- (i) Maintains as the individual's home a household [which] that constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and
 - (ii) Furnishes over half of the cost of maintaining [such] the household during the taxable year,
- and
- (B) During the last six months of [such] the taxable year [such] the individual's spouse is not a member of [such] the household, [such] the individual shall not be considered as married.
- (5) Special dependency test in case of divorced parents, etc. If:
 - (A) Paragraph (2) or (4) of section 152(e) of the Internal Revenue Code of [1954,] 1986, as amended, applies to any child with respect to any calendar year[;], and
 - (B) [Such] The child is under age thirteen or is physically or mentally incompetent of caring for the child's self[;],

in the case of any taxable year beginning in [such] the calendar year, [such] the child shall be treated as a qualifying individual described in subsection (b)(1)(A) or (B) (whichever is appropriate) with respect to the custodial parent (within the meaning of section 152(e)(1) of the Internal Revenue Code of [1954,] 1986, as amended), and shall not be treated as a qualifying individual with respect to the noncustodial parent.
- (6) Payments to related individuals. No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual:
 - (A) With respect to whom, for the taxable year, a deduction under section 151(c) of the Internal Revenue Code of [1954,] 1986, as amended (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or the taxpayer's spouse, or
 - (B) Who is a child of the taxpayer (within the meaning of section 151(c)(3) of the Internal Revenue Code of [1954,] 1986, as amended) who has not attained the age of nineteen at the close of the taxable year.

For purposes of this paragraph, the term "taxable year" means the taxable year of the taxpayer in which the service is performed.
- (7) Student. The term "student" means an individual who, during each of five calendar months during the taxable year, is a full-time student at an educational organization.
- (8) Educational organization. The term "educational organization" means a school operated by the department of education [or licensed under chapter 298,] under chapter , an educational organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986, as amended, or a university, college, or community college.
- (9) Identifying information required with respect to service provider. No credit shall be allowed under subsection (a) for any amount paid to any person unless:
 - (A) The name, address, taxpayer identification number, and general excise tax license number of [such] the person are included on the return claiming the credit,
 - (B) If the person is located outside the State, the name, address, and taxpayer identification number, if any, of the person and a statement indicating that the service provider is located outside the State and that the general excise tax license and, if applicable, the taxpayer identification numbers are not required, or

- (C) If [such] the person is an organization described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a) of the Internal Revenue Code, the name and address of [such] the person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required."

SECTION 11. Section 246-32, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) This subsection applies to property owned in fee simple, leased, or rented for a period of one year or more, by the person using the property for the exempt purposes, hereinafter referred to as the person claiming the exemption. If the property for which exemption is claimed is leased or rented, the lease or rental agreement shall be in force and recorded in the bureau of conveyances.

Exemption is allowed by this subsection to the following property:

- (1) Property used for school purposes including:

(A) Kindergartens, grade schools, junior high schools, and high schools, which carry on a program of instruction meeting the requirements of the compulsory school attendance law, section [298-9,] -1234, or which are for preschool children who have attained or will attain the age of five years [on or before December 31] before January 1 of the school year[.]; provided that any claim for exemption based on any of the foregoing uses shall be accompanied by a certificate issued by or under the authority of the department of education stating that the foregoing requirements are met;

(B) Junior colleges or colleges carrying on a general program of instruction of college level. The property exempt from taxation under this paragraph is limited to buildings used for educational purposes (including dormitories), housing owned by the school or college and used as residence for personnel employed at the school or college, campus and athletic grounds, and realty used for vocational purposes incident to the school or college.

- (2) Property used for hospital and nursing home purposes, including housing for personnel employed at the hospital[; in]. In order to qualify under this paragraph the person claiming the exemption shall present with the claim a certificate issued by or under the authority of the department of health that the property for which the exemption is claimed consists [in,] of, or is a part of, hospital or nursing home facilities [which] that are properly constituted under the law and maintained to serve, and [which] that do serve the public.
- (3) Property used for church purposes, including incidental activities, parsonages, and church grounds, the property exempt from taxation being limited to realty exclusive of burying grounds (exemption for which may be claimed under paragraph (4)).
- (4) Property used as cemeteries (excluding[, however,] property used for cremation purposes) maintained by a religious society, or by a corporation, association, or trust organized for [such] this purpose.
- (5) Property dedicated to public use by the owner, which dedication has been accepted by the State or any county, reduced to writing, and

recorded in the bureau of conveyances; and property which has been set aside for public use and actually used therefor for a period not less than five years after enactment of this section.

- (6) Property owned by any nonprofit corporation, admission to membership of which is restricted by the corporate charter to members of a labor union; property owned by any government employees' association or organization, one of the primary purposes of which is to improve employment conditions of its members; property owned by any trust, the beneficiaries of which are restricted to members of a labor union; and property owned by any association or league of federal credit unions chartered by the United States, the sole purpose of which is to promote the development of federal credit unions in the State. Notwithstanding any provision in this section to the contrary, the exemption shall apply to property or any portion thereof [which] that is leased, rented, or otherwise let to another, if [such] the leasing, renting, or letting is to a nonprofit association, organization, or corporation."

SECTION 12. Section 286-181, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) As used in this section "school vehicle" means any publicly or privately owned motor vehicle used to transport pupils to and from a school, as defined in section [298-41 or] -1001, school functions, or school-related events, except:

- (1) A motor vehicle used for the transportation of pupils attending schools above the twelfth grade or pupils over eighteen years of age;
- (2) A [privately owned] privately-owned passenger vehicle when the transportation is provided without compensation of any kind;
- (3) A motor vehicle used for the transportation of pupils together with other passengers as a part of the regularly scheduled operation of a mass transit system; or
- (4) A [privately owned] privately-owned motor vehicle when the transportation is provided by a community association or a nonprofit corporation, duly incorporated with the department of commerce and consumer affairs, which operates for the purpose of promoting recreation, health, safety, ridesharing, or social group functions."

SECTION 13. Section 312-8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The literacy and lifelong learning program shall not affect existing department of education programs relating to adult education as provided under [part I of chapter 301.] sections -533 to -536."

SECTION 14. Section 321-115, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) It shall be unlawful for any person to vend prophylactics in mechanical coin-operated machines on the premises of any school in this State. The term "school" as used [herein] in this section shall have the same meaning as defined by section [297-1.] -601."

SECTION 15. Section 431:10C-115, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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

- (1) Fifty per cent to the commissioner to be expended for the operation of the drivers education program provided in section 286-128(m); and
- (2) Fifty per cent to the director of commerce and consumer affairs for:
 - (A) The drivers education program administered by the department of education for high school students; and
 - (B) The traffic safety education program established and administered by the department of education pursuant to section [299-5.] —517.—”

SECTION 16. Section 461J-1, Hawaii Revised Statutes, is amended by amending the definition of “educational institution” to read as follows:

““Educational institution” means public [and private] schools as defined under chapter [297,] —, privately operated schools of lower education, and colleges, the University of Hawaii, and other universities.”

SECTION 17. Section 571-14, Hawaii Revised Statutes, is amended to read as follows:

“§571-14 Jurisdiction; adults. The court shall have exclusive original jurisdiction:

- (1) To try any offense committed against a child by the child’s parent or guardian or by any other person having the child’s legal or physical custody, and any violation of section 707-726, 707-727, 709-902, 709-903, 709-903.5, 709-904, 709-905, 709-906, or [298-12,] —1237, whether or not included in other provisions of this paragraph or paragraph (2).
- (2) To try any adult charged with:
 - (A) Deserting, abandoning, or failing to provide support for any person in violation of law;
 - (B) An offense, other than a felony, against the person of the defendant’s husband or wife;
 - (C) Any violation of an order issued pursuant to chapter 586; or
 - (D) Any violation of an order issued by a family court judge.

In any case within paragraph (1) or (2), the court, in its discretion, may waive its jurisdiction over the offense charged.

- (3) In all proceedings under chapter 580, and in all proceedings under chapter 584.
- (4) In proceedings under chapter 575, the Uniform Desertion and Non-support Act, and under chapter 576, the Uniform Reciprocal Enforcement of Support Act.
- (5) For commitment of an adult alleged to be mentally defective or mentally ill.
- (6) In all proceedings for support between parent and child or between husband and wife.
- (7) In all proceedings for waiver of jurisdiction over an adult who was a child at the time of an alleged criminal act as provided in section 571-22.
- (8) In all proceedings under chapter 586, Domestic Abuse Protective Orders.
- (9) In all proceedings to appoint a guardian of the person of an adult.
- (10) For the protection of dependent adults under chapter 346, part X.

In any case within paragraph (3), (4), or (6), the attorney general, through the child support enforcement agency, may exercise concurrent jurisdiction as provided in chapter 576E.”

SECTION 18. Section 708-813, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- “(1) A person commits the offense of criminal trespass in the first degree if:
- (a) That person knowingly enters or remains unlawfully:
 - (i) In a dwelling; or
 - (ii) In or upon the premises of a hotel or apartment building; [or]
 - (b) That person:
 - (i) Knowingly enters or remains unlawfully in or upon premises [which] that are fenced or enclosed in a manner designed to exclude intruders; and
 - (ii) Is in possession of a firearm, as defined in section 134-1, at the time of [such] the intrusion;
 - or
 - (c) That person enters or remains unlawfully in or upon the premises of any public school[,], as defined in section [297-1,] -601, or any private school, after reasonable warning or request to leave by school authorities or a police officer.”

SECTION 19. Chapters 296, 296C, 296D, 297, 297D, 298, 299, 300, and 301, Hawaii Revised Statutes, are repealed.

SECTION 20. Act 364, Session Laws of Hawaii 1993, section 31, is amended by Act 272, Session Laws of Hawaii 1994, is amended to read as follows:

“SECTION 31. This Act shall take effect upon its approval; provided that sections 27 and 28 shall take effect on July 1, 1993; and provided further that the provisions of section 11 concerning pay adjustments [and the provisions of section 13 concerning reallocation of vacant positions] shall be repealed on June 30, 1997.”

SECTION 21. This Act shall be amended to conform to all other acts passed by the legislature during this regular session of 1996, whether enacted before or after the effective date of this Act, unless the other acts specifically provide otherwise; provided that the numbering, structure, and organization of the new chapter in section 2 of this Act shall control.

SECTION 22. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 23. This Act shall take effect upon its approval.

(Approved June 7, 1996.)

Note

1. “And” should be underscored.