

ACT 149

H.B. NO. 985

A Bill for an Act Relating to Procurement.

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

SECTION 1. Chapter 103, Hawaii Revised Statutes, is amended by adding to part I a new section to be appropriately designated and to read as follows:

“§103- **Definitions.** The definitions of chapter 103D shall apply to this chapter unless the context clearly requires otherwise.”

SECTION 2. Chapter 103D, Hawaii Revised Statutes, is amended by adding to part IV four new sections to be appropriately designated and to read as follows:

“§103D- **Indigenous and Polynesian introduced plants; use in public landscaping.** (a) Wherever and whenever feasible, all plans, designs, and specifications for new or renovated landscaping of any building, complex of buildings, facility, complex of facilities, or housing developed by the State with public moneys shall incorporate indigenous land plant species as defined in section 195D-2, and plant species brought to Hawaii by Polynesians before European contact, such as the kukui, noni, and coconut; provided that:

- (1) Suitable cultivated plants can be made available for this purpose without jeopardizing wild plants in their natural habitat; and
- (2) Wherever and whenever possible, indigenous plants shall be used for landscaping on the island or islands on which the species originated.

(b) Each plant or group of plants used pursuant to subsection (a) shall be clearly identified with signs for the edification of the general public.

§103D- **Provisions for pollution control.** All contracts shall make provisions for control of pollution when encountered in the performance of the contract.

§103D- **Energy efficiency through life-cycle costing.** (a) The procurement practices of the State shall include energy efficient standards and policies, including life-cycle costing.

(b) In implementing life-cycle costing, the purchasing agency shall be guided by energy efficiency standards and policies for purchasing various items developed and promulgated by the United States Department of Energy and other federal agencies, and nationally recognized trade associations, including but not limited to the National Association of State Purchasing Officials, the National Institute of Governmental Purchasing, Inc., the National Association of Purchasing Management, and the Air Conditioning and Refrigeration Institute. The purchasing agency shall notify bidders of information, procedures, and forms required in implementing energy efficiency standards and policies. The information required shall include purchasing standards and policies developed by federal agencies and by nationally recognized agencies and associations, as well as energy consumption and life-cycle cost data.

(c) The purchasing agency shall consider purchasing via the life-cycle costing method those classes of items for which nationally recognized energy efficiency data have been developed. These items shall include but not be limited to automobiles and air conditioning systems. The watt-saving variety of common-sized fluorescent lamps shall be purchased except where standard wattage of those lamps is specifically required by the using agency.

§103D- **Value engineering clauses.** The State shall insert clauses providing for value engineering incentives in all public works contracts for amounts in excess of \$250,000. The clauses shall provide:

- (1) That cost reduction proposals submitted by contractors:
 - (A) Must require, in order to be applied to the contract, a change order thereto; and
 - (B) Must result in savings to the State or county, as the case may be, by providing less costly items than those specified in the contract without impairing any of their essential functions and character-

istics such as service life, reliability, substitutability, economy of operation, ease of maintenance, and necessary standardized features;

and

- (2) That accepted cost reduction proposals shall result in an equitable adjustment of the contract price so that the contractor will share a portion of the realized cost reduction.”

SECTION 3. Chapter 103D, Hawaii Revised Statutes, is amended by adding to part X four new sections to be appropriately designated and to read as follows:

“**§103D- Taxpayer preference.** For evaluation purposes, the bidder’s tax-exempt price shall be increased by the applicable retail rate of general excise tax and the applicable use tax. For competitive sealed bids, the lowest responsive, responsible bidder, taking into consideration the above increase, shall be awarded the contract, but the contract amount of any contract awarded shall be the amount of the price offered and shall not include the amount of the increase.

§103D- Preference for qualified community rehabilitation programs. When a governmental body contracts for services, a five per cent preference shall be given to services to be provided by nonprofit corporations or public agencies operating qualified community rehabilitation programs in conformance with criteria established by the department of labor and industrial relations pursuant to chapter 91; provided that contracts awarded under this section shall be exempt from the wages provision of section 103-55. The policy board shall adopt rules under chapter 91 to establish the preference for nonprofit corporations or public agencies operating qualified community rehabilitation programs consistent with this section.

§103D- Purchases from qualified community rehabilitation programs. (a) Any governmental body, without advertising or calling for bids, may purchase goods or services provided by qualified community rehabilitation programs serving persons with disabilities that have indicated an interest in supplying the goods or services and on an equitable basis may apportion the business among the interested programs; provided that the goods and services meet the specifications and needs of the purchasing agency and are purchased at a fair market price as determined by the appropriate public agency; and provided further that the programs comply with the following:

- (1) Meet all of the requirements of a qualified community rehabilitation program under section 103D-1001; and
 - (2) Maintain a disabled to non-disabled employee ratio equal to or in excess of three-to-one for work hours of direct labor at all times on the work contracted.
- (b) The purchasing agency shall:
- (1) Receive and review proposals submitted by qualified community rehabilitation programs to provide goods or services and determine if they are suitable for purchase by the agency;
 - (2) Negotiate the conditions and terms for the purchase, including the price of the offer, between the agency and the qualified community rehabilitation program; provided that the price of the offer shall not exceed the fair market price and there is assurance that the qualified community rehabilitation program proposal is in compliance with all administrative rules related to purchasing; and

- (3) Ensure that any goods or service purchased from a qualified community rehabilitation program shall not be placed on the Hawaii products list under section 103D-1002.

§103D- Qualified community rehabilitation program; proposal to provide goods and services. A qualified community rehabilitation program shall be allowed to sell only goods or services, also to include building custodial and grounds maintenance services, to a governmental body. A proposal shall be submitted to the purchasing agency containing the following information:

- (1) A description of the goods or service;
- (2) The price of the goods or service; and
- (3) Documents and information necessary to qualify as a qualified community rehabilitation program under section 103D-1001.”

SECTION 4. Section 103D-1001, Hawaii Revised Statutes, is amended by adding five new definitions to be appropriately inserted and to read as follows:

““Direct labor” means all work required for preparation, processing, or packing of goods or performance of services, but not work relating to supervision, administration, inspection, or shipping.

“Fair market price” means the price of a product or service paid by a willing buyer to a willing seller, that is reasonably comparable to prices on the open market.

“Person with disabilities” means any person who is so severely incapacitated by any physical or mental disability that the person cannot engage in normal competitive employment because of the disability.

“Public agency” means any agency of the State or county.

“Qualified community rehabilitation program” means a nonprofit community rehabilitation program for persons with disabilities that:

- (1) Is organized and incorporated under the laws of the United States or this State, and located in this State;
- (2) Is operated in the interest of and employees¹ persons with disabilities;
- (3) Does not inure any part of its net income to any shareholder or other individual;
- (4) Complies with all applicable occupational health and safety standards required by the federal, state, and county governments; and
- (5) Holds a current certificate from the United States Department of Labor pursuant to the Fair Labor Standards Act, Title 29 United States Code section 214(c), and is certified by the state department of labor and industrial relations under section 387-9 and applicable administrative rules relating to the employment of persons with disabilities.”

SECTION 5. Section 76-55, Hawaii Revised Statutes, is amended to read as follows:

“**§76-55 Membership of civil service.** All regular employees and all other employees having a permanent appointment in civil service pursuant to law shall constitute the membership of the civil service, but no employee shall be entitled to membership in civil service unless the employee has been appointed in accordance with law and has satisfied all requirements for employment, including those prescribed by [sections 78-1 and 103-57.] section 78-1.”

SECTION 6. Section 103-11, Hawaii Revised Statutes, is amended to read as follows:

“**§103-11 Rules of comptroller [regulating expenditures; violations, penalty].** [Subject to chapter 91 the] The comptroller [may] shall adopt rules[, not inconsistent with law, further controlling and regulating the expenditure of state moneys. The rules shall have the force of law.] pursuant to chapter 91 as necessary, for the purposes of this chapter. Any violation of the rules shall be subject to the penalties prescribed in section 103-9.”

SECTION 7. Section 103-32.1, Hawaii Revised Statutes, is amended to read as follows:

“**§103-32.1 Contract provision for retainage.** Any public contract [issued under this chapter] may include a provision for the retainage of a portion of the amount due under the contract to the contractor to insure the proper performance of the contract; provided that [the]:

- (1) The sum withheld by the [contracting] procurement officer from the contractor shall not exceed five per cent of the amount due the contractor and that after fifty per cent of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the contracting officer may continue to withhold as retainage, sums not exceeding five per cent of the amount due the contractor[.]; and
- (2) The retainage shall not include sums deducted as liquidated damages from moneys due or that may become due the contractor under the contract.”

SECTION 8. Section 103-32.2, Hawaii Revised Statutes, is amended to read as follows:

“**[§103-32.2] Substitution of retainage.** Any other law to the contrary notwithstanding, any public contract [issued under this chapter] may provide that the [contracting] procurement officer may enter into an agreement with the contractor which will allow the contractor to withdraw from time to time the whole or any portion of the sum retained under section 103-32.1 upon depositing with the [contracting] procurement officer any general obligation bond of the State or its political subdivisions with a market value not less than the sum to be withdrawn; provided that the [contracting] procurement officer may require that the total market value of such bond be greater than the sum to be withdrawn.”

SECTION 9. Section 103-39.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§103-39.5] Construction, renovation, or repair of school facilities; county permit exemption.** Any [contracts under this chapter] contract for the construction, renovation, or repair of public school facilities shall be exempt from any requirement of a county that related off-site improvements be made by the contracting government agency as a condition to the issuance of any permit.”

SECTION 10. Section 103-55, Hawaii Revised Statutes, is amended to read as follows:

“**§103-55 Wages, hours, and working conditions of employees of contractors [supplying] performing services.** (a) Before any [prospective bidder is entitled to submit any bid for the performance of any] offeror enters into a contract to [supply] perform services in excess of [\$5,000 to] \$25,000 for any governmental

agency, the [bidder] offeror shall certify that the services to be performed will be performed under the following conditions:

Wages. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.

Compliance with labor laws. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

(b) No contract to perform services for any governmental contracting agency in excess of [\$5,000] \$25,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of contract to perform services shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the [contracting] procurement officer. [Payment in the final settlement] Final payment of a contract or release of bonds or both shall not be made unless the [contracting] procurement officer has determined that the noncompliance has been corrected.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of [\$5,000] \$25,000 to enforce this section.

(c) This section shall apply to all contracts to perform services in excess of [\$5,000,] \$25,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (15) of section 76-16[.], paragraphs (7), (8), and (9) of section 46-33, and paragraphs (7), (8), and (12) of section 76-77.
- (5) Contracts for professional services.
- [(5)] (6) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- [(6)] (7) Contracts with nonprofit institutions."

SECTION 11. Section 103-72, Hawaii Revised Statutes, is amended to read as follows:

"[[§103-72]] Transcription of instructional materials. Contracts for the procurement of instructional materials shall include a provision whereby the State has the right to transcribe and reproduce the material in braille, large print, recordings, or other media for the use of [handicapped] physically-disabled students, including the visually [handicapped,] impaired, unable to use the material in conventional print and form. Such right shall include the right to make those corrections, revisions, and other modifications as may be necessary."

SECTION 12. Section 103D-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

- (1) Solicited or entered into before July 1, 1994, unless the parties agree to its application to a contract solicited or entered into prior to July 1, 1994;
- (2) To disburse funds, irrespective of their source:

- (A) For grants[,] or subsidies[, or purchases of services] as those terms are defined in section [42D-1,] 42F-101, made by the State in accordance with standards provided by law as required by article VII, section 4, of the State Constitution; or by the counties pursuant to their respective charters or ordinances;
 - (B) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, or reimbursements;
 - (C) To satisfy obligations that the State is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as trustee, custodian, or bailee;
 - (D) For entitlement programs, including public assistance, unemployment, and workers' compensation programs, established by state or federal law;
 - (E) For dues and fees of organizations of which the State or its officers and employees are members, including the National Association of Governors, the National Association of State and County Governments, and the Multi-State Tax Commission;
 - (F) For deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping;
 - (G) To governmental bodies of the State; [and]
 - (H) As loans, under loan programs administered by a governmental body; and
 - (I) For contracts awarded in accordance with the provisions of chapter 103F;
- (3) To procure goods, services, or construction from a governmental body other than the University of Hawaii bookstores, from the federal government, or from another state or its political subdivision; [provided that University of Hawaii departments and programs, without regard to this chapter, may procure goods and services from the University of Hawaii bookstores that are routinely stocked and marketed and not specially ordered;
 - (4) To procure goods or services for the office of intercollegiate athletics of the University of Hawaii at Manoa with moneys from the University of Hawaii at Manoa intercollegiate athletics revolving fund;
 - (5) (4) To procure the following goods or services[, including the following:] which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State:
 - (A) Services of expert witnesses for potential and actual litigation of legal matters involving the State, its agencies, and its officers and employees, including administrative quasi-judicial proceedings;
 - (B) Works of art for museum or public display;
 - (C) Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form;
 - (D) Meats and foodstuffs for the Kalaupapa settlement;
 - (E) Opponents for athletic contests;
 - (F) Utility services whose rates or prices are fixed by regulatory processes or agencies;
 - (G) Performances, including entertainment, speeches, and cultural and artistic presentations;
 - (H) Goods and services for commercial resale by the State;

- (I) Services of printers, rating agencies, support facilities, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds; [and
 - (J) Travel arrangements purchased by the University of Hawaii for its intercollegiate athletic programs;
which the policy board determines by rule or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State; and]
 - (J) Services of attorneys employed or retained to advise, represent, or provide any other legal service to the State or any of its agencies, on matters arising under laws of another state or foreign country, or in an action brought in another state, federal, or foreign jurisdiction, when substantially all legal services are expected to be performed outside this State; and
 - (K) Any other goods or services which the policy board determines by rules or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State; and
- [(6)] (5) Which are specific procurements expressly exempt from any or all of the requirements of this chapter by:
- (A) References in state or federal law to provisions of this chapter or a section of this chapter, or references to a particular requirement of this chapter; and
 - (B) Trade agreements, including the Uruguay Round General Agreement on Tariffs and Trade (GATT) which require certain non-construction and non-software development procurements by the comptroller to be conducted in accordance with its terms."

SECTION 13. Section 103D-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The policy board shall consist of seven members. Notwithstanding the limitations of section 78-5, the members of the board shall include:

- (1) The comptroller;
- (2) A county employee with significant high-level procurement experience; and
- (3) Five persons who shall not otherwise be full-time employees of[, or contractors with,] the State or any county; provided that at least one member shall be a certified professional in the field of procurement, at least one member shall have significant high-level, federal procurement experience, and at least two members shall have significant experience in the field of health and human services.

Each appointed member shall have demonstrated sufficient business or professional experience to discharge the functions of the policy board. The initial and subsequent members of the policy board, other than the comptroller, shall be appointed by the governor from a list of three individuals for each vacant position, submitted by a nominating committee composed of four individuals chosen as follows: two persons appointed by the governor; one person appointed by the president of the senate; and one person appointed by the speaker of the house. Except as provided in this section, the selection and terms of the policy board members shall be subject to the requirements of section 26-34. No member of the policy board shall act concurrently as a chief procurement officer. The members of the policy board shall devote such time to their duties as may be necessary for the proper discharge thereof."

SECTION 14. Section 103D-203, Hawaii Revised Statutes, is amended to read as follows:

“§103D-203 Chief procurement officers. (a) The chief procurement officer for each of the following state entities shall be:

- (1) The judiciary—the administrative director of the courts;
 - (2) The senate—the president of the senate;
 - (3) The house of representatives—the speaker of the house of representatives;
 - (4) The office of Hawaiian affairs—the chairperson of the board;
 - (5) The University of Hawaii—the president of the University of Hawaii;
 - (6) (5) The department of education, excluding the Hawaii public library system—the superintendent of education; and
 - (7) (6) The remaining departments of the executive branch of the State and all governmental bodies administratively attached to them—the administrator of the state procurement office of the department of accounting and general services.
- (b) The chief procurement officers for each of the several counties shall be:
- (1) The executive branch—the respective finance directors of the several counties; and], except as provided in paragraphs (3) and (4);
 - (2) The legislative branch—the respective chairpersons of the councils of the several counties;
 - (3) The Honolulu, Kauai, and Maui boards or departments of water supply—the managers and chief engineers of the respective boards or departments of water supply as designated by county charter; and
 - (4) The Hawaii board of water supply—the manager of the board of water supply as designated by county charter;

provided that the chief procurement officers designated under paragraphs (1) [and], (2), (3), and (4) shall not exercise their powers or duties over contracting in a manner contrary to the respective county’s charter, ordinances, or rules adopted in accordance with chapter 91.

(c) For purposes of applying this chapter to the judiciary, houses of the legislature, office of Hawaiian affairs, department of education, [University of Hawaii,] remaining departments of the executive branch and all governmental bodies administratively attached to them, and the several counties, unless otherwise expressly provided, “State” shall mean “judiciary,” “state senate,” “state house of representatives,” “office of Hawaiian affairs,” “department of education,” [“University of Hawaii,”] “executive branch,” [and] “county,” and “board of water supply,” or “department of water supply,” respectively.”

SECTION 15. Section 103D-309, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [No contract] Contracts awarded pursuant to section 103D-302, 103D-303, or 103D-306, shall neither be binding [or of] nor have any force and effect of law unless the comptroller, the director of finance of a county, or the respective chief financial officers of [the University of Hawaii,] the department of education, the judiciary, or the legislative branches of the State or county, as the case may be, endorses thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract; provided that if the contract is a multi-term contract, the comptroller, director of finance, or chief financial officer shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts, that is sufficient to cover the amount required to be paid under the contract during the fiscal year or remaining portion of the fiscal

year of each term of the multi-year contract; provided further that [this] the administrator of the state procurement office shall attest in writing to any recommendation or solicitations. This section shall not apply to any contract under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded, or to any contract for which consideration is in kind or forbearance[.], or to any contract awarded pursuant to section 103D-306 that is a one-time payment through a purchase order.”

SECTION 16. Section 103D-321, Hawaii Revised Statutes, is amended to read as follows:

“**§103D-321 Record of procurement actions.** (a) The chief procurement officer shall maintain a record of all procurements for goods, services, or construction of \$25,000 or more made under sections [103D-102(b)(5)],¹ 103D-102(b)(4), 103D-304, 103D-306, and 103D-307 for a minimum of five years. The record shall contain:

- (1) Each contractor’s name;
- (2) The amount and type of each contract; and
- (3) A listing of the goods, services, or construction procured under each contract.

(b) A copy of the record shall be submitted to the legislature on an annual basis. The record shall be available for public inspection.”

SECTION 17. Section 103D-703.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§103D-703.5] Settlement [on performance bonds.] of default by contractor.** Upon default of a contractor, the purchasing agency may accept moneys in satisfaction of the contractor’s obligation on a contract whether the moneys are realized from the performance surety’s obligation on its bond[.], an insurer’s obligation on the contractor’s policy, or any other source of moneys paid to satisfy a contractor’s default. Such moneys shall be deemed to be trust moneys and shall be deposited into a trust account with and under the control of the purchasing agency. These moneys and the interest earned thereon shall be used for the completion of such contract. Upon completion of the contract, any excess moneys shall be deposited in the general fund unless otherwise restricted.”

SECTION 18. Section 103D-1001.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§103D-1001.5] Application of this part.** The preferences in this part shall apply, when applicable, to procurements made pursuant to [sections] section 103D-302 [and], or 103D-303[.], or both.”

SECTION 19. Section 103D-1003, Hawaii Revised Statutes, is amended to read as follows:

“**§103D-1003 Printing, binding, and stationery work.** (a) All bids [or proposals] submitted for a printing, binding, or stationery section 103D-302 contract in which all work will be performed in-state, including all preparatory work, presswork, bindery work, and any other production-related work, to include storage and shipping costs, shall receive a fifteen per cent preference for purposes of bid [or proposal] evaluation.

(b) Where bids [or proposals] are for work performed in-state and out-of-state, then for the purpose of selecting the lowest bid [or evaluating proposals] submitted only, the amount bid [or proposed] for work performed out-of-state shall be increased by fifteen per cent. The lowest total [offer,] bid, taking the preference into consideration, shall be awarded the contract unless the solicitation provides for additional award criteria. The contract amount awarded, however, shall be the amount of the price offered, exclusive of the preference.”

SECTION 20. Section 103D-1007, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) In any section 103D-302 or 103D-303 contract for a public works project, a state agency shall award the contract to [a bidder] an offeror who has filed all state tax returns due to the State and paid all amounts owing on such returns for two successive years prior to submitting the [bid;] offer; provided that the amount of that [bid] offer is not more than seven per cent higher than the amount [bid] offered by any competing contractor who has not filed or paid all applicable state taxes, and the amount of the [bid] offer by the state tax paying [bidder] offeror is \$5,000,000 or less.

(d) In any section 103D-302 or 103D-303 contract for a public works project, a state agency shall award the contract to [a bidder] an offeror who has filed all state tax returns due to the State and paid all amounts owing on such returns for four successive years prior to submitting the [bid;] offer; provided that the amount of that [bid] offer is not more than seven per cent higher than the amount [bid] offered by any competing contractor who has not filed or paid all applicable state taxes, and the amount of the [bid] offer by the state tax paying [bidder] offeror is more than \$5,000,000.”

SECTION 21. Section 103D-1206, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§103D-1206]]~~ **Annual inventory reporting by state officers.** The chief procurement officers for their respective jurisdictions, the administrative heads of the executive departments, and all other persons, offices, and boards of a public character which are not by law under the control and direction of any of the officers specifically named in this section, before September 16 of each year, shall prepare and file with the administrator of the state procurement office an annual inventory return of [all] state property in the possession, custody, control, or use of the officer making the return, or of the department or office of the government over which the officer presides. Any officer, agent, or employee serving in a department or under a returning officer shall file an annual inventory return to the department head or the returning officer. The officer making the return shall similarly file a copy with the administrator of the state procurement office. The annual inventory return shall contain the following:

- (1) A summary and list by detailed item description and carrying value of all nonexpendable state property on hand as of July 1 of the year for which the return is made;
- (2) A summary and list by detailed item description and carrying value of all nonexpendable state property acquired and disposed of during the year elapsed since the return made as of the preceding July 1; and
- [(3) Summary dollar values of expendable property on hand as of July 1 of the year for which the return is made; and
- (4)] (3) A sworn statement certifying the information on the return, property listings, and carrying values provided with the return to be full, true,

and correct to the best knowledge, information, and belief of the officer making the return.”

SECTION 22. Section 103D-1207, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§103D-1207]]~~ **Annual inventory reporting by county mayors to administrator of the state procurement office.** Each county mayor, before September 16 of each year, shall prepare and file with the administrator of the state procurement office an annual inventory return of all nonexpendable state property in the use, custody, or possession for the time being of the county or any of its officers. The annual inventory return shall contain the following:

- (1) A summary and list by detailed item description and carrying value of all nonexpendable state property on hand as of July 1 of the year for which the return is made;
- (2) A summary and list by detailed item description and carrying value of all nonexpendable state property disposed of during the year elapsed since the return made as of the preceding July 1; and
- (3) A sworn statement certifying the information on the return, property listings, and carrying values provided with the return to be full, true, and correct to the best knowledge, information, and belief of the officer making the return.”

SECTION 23. Section 103D-1208, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§103D-1208]]~~ **Annual inventory reporting by county officers to council.** Every officer, head of department, agent, employee, and other person in the employ of the county, having in their custody or under their control or using property belonging to the county, each year within forty-five days following the close of the county’s fiscal year, shall prepare and file with the council of the county an annual inventory return of all nonexpendable county property in the possession, custody, control, or use of the officer, head of department, agent, employee, or other person making the annual inventory return, or of the offices or departments over which the officer presides. The annual inventory return shall contain the following:

- (1) A summary and list by detailed item description and carrying value of all nonexpendable county property on hand as of the close of the county’s fiscal year for which the return is made;
- (2) A summary and list by detailed item description and carrying value of all nonexpendable county property acquired and disposed of during the year elapsed since the return made as of the preceding close of the fiscal year; and
- (3) A sworn statement certifying the information on the return, property listings, and carrying values provided with the return to be full, true, and correct to the best knowledge, information, and belief of the officer making the return.”

SECTION 24. Section 128-10, Hawaii Revised Statutes, is amended to read as follows:

“**§128-10 Other powers.** The governor further, irrespective of the existence of a civil defense emergency period, may:

- (1) Cooperate with the President and the heads of the armed forces, and the civil defense agency of the United States, and with the officers and

agencies of other states in matters pertaining to the civil defense of the State and nation and the incidents thereof, and take any measures which the governor may consider proper to carry into effect any request of the President or the appropriate federal officers and agencies, for any action looking to civil defense;

- (2) Lease, lend, or otherwise furnish, on such terms and conditions as the governor may consider necessary to promote the public welfare and protect the interest of the State, any real or personal property of the state government or its political subdivisions, to the President, the heads of the armed forces, or to the civil defense agency of the United States;
- (3) On behalf of the State enter into mutual aid agreements or compacts with the federal government and with other states. The agreements or compacts shall be limited to civil defense. It may be provided in an interstate compact, and the governor with the advice and consent of the political subdivisions included within the scope of the compact, may agree on behalf of the State that:
 - (A) Each party state shall extend to the civil defense forces of any other party state, while operating within its state limits under the terms and conditions of the compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, privileges, and immunities as if they were performing their duties in the state in which normally employed or rendering services;
 - (B) Whenever any person holds a license, certificate, or other permit issued by any state evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving this skill in any party state to meet an emergency or disaster and the state shall give due recognition to such license, certificate, or other permit as if issued in the state in which aid is rendered;
 - (C) No party state or its officers or employees rendering aid in another state pursuant to the compact shall be liable on account of any act or omission on the part of the forces while so engaged, or on account of the maintenance or use of any materials, equipment, goods, or facilities in connection therewith;
 - (D) As an alternative to paragraph (C), such other or modified form of immunity as the governor may find acceptable;
 - (E) Each party state shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that state and the representatives of deceased members of the forces in case the members sustain injuries or are killed while rendering aid pursuant to the compact, in the same manner and on the same terms as if the injury or death were sustained within the state;
 - (F) Any party state rendering aid in another state pursuant to the compact shall be reimbursed by the party state receiving aid, or by the United States government under plans approved by it, for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for all costs incurred in connection with requests for aid; provided that this paragraph shall not be deemed to preclude the State, if it is the aiding state, from assuming in whole or in part the loss, damage, expense, or

- other cost, or from loaning the equipment or donating the services to the receiving party state without charge or cost;
- (G) Any party state receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for the evacuees, for expenditures for transportation, food, clothing, medicines, and medical care, and like items; the expenditures shall be reimbursed by the party state of which the evacuees are residents, or by the United States government under plans approved by it; and
- (H) In the event of an evacuation, the party state of which the evacuees are residents shall, after the termination of the emergency or disaster, assume the responsibility for the ultimate support or repatriation of the evacuees;
- (4) Sponsor and develop mutual aid plans and agreements for civil defense between the political subdivisions of the State and between one or more political subdivisions and other public or private agencies, for the furnishing or exchange of food, clothing, medicine, and other materials; engineering services, emergency housing; police services; health, medical, and related services; fire fighting, rescue, transportation, and construction services and facilities; personnel necessary to provide or conduct these services; and such other materials, facilities, personnel, and services as may be needed. The mutual aid plans and agreements may be made with or without provisions for reimbursement of costs and expenses, and on such terms and conditions as are deemed necessary;
- (5) Order and direct government agencies, officers, and employees, state or local, to take such action and employ such measures for law enforcement, medical, health, fire fighting, traffic control, warnings, and signals, engineering, rescue, construction, emergency housing, and other welfare, hospitalization, transportation, water supply, public information, training, and other civil defense and emergency functions as may be necessary, and utilize the services, materials, and facilities of the agencies and officers. All such agencies and officers shall cooperate with and extend their services, materials, and facilities to the governor as the governor may request;
- (6) Take possession of, use, manage, control, and reallocate any public property, state or county, real or personal, required by the governor for the purposes of this chapter, including, without limitation, airports, parks, playgrounds, and schools, and other public buildings. Whenever the property is so taken the governor shall have power to make such provision for the temporary accommodation of the government service affected thereby as the governor may deem advisable. Like provisions may be made at any time whenever it is necessary to relocate any government service because of any emergency condition;
- (7) Utilize all services, materials, and facilities of nongovernmental agencies, relief organizations, community associations, and other civil groups and private agencies that may be made available;
- (8) Receive, expend, or use contributions or grants in money, property, or services, or loans of property, or special contributions or grants in money, property, or services, or loans of property, for special purposes provided for by this chapter; establish funds in the treasury for the deposit and expenditure of the moneys; procure federal aid as the same may be available, and apply the provisions of chapter 29 in cases of federal aid even though not in the form of money. The contributions or

- grants are appropriated for the purposes of this chapter, or for the special purposes;
- (9) Provide for the repair and maintenance of public property, whenever adequate provision therefor is not otherwise made; insure the property against any war risk, including without limitation damage or loss resulting from or arising out of an attack or action in resisting or combating an attack or apparent attack; provide for the restoration, renovation, replacement, or reconstruction of insured property in the event of damage or loss, and make temporary restoration of public utilities and other vital facilities in the event of an attack or other disaster;
 - (10) Purchase, make, produce, construct, rent, lease, or procure by condemnation or otherwise, transport, store, install, maintain, and insure, repair, renovate, restore, replace, or reconstruct, and distribute, furnish, or otherwise dispose of, with or without charges therefor, materials and facilities for civil defense and other emergency functions; procure federal aid therefor whenever feasible; and take any measures which may, in the governor's opinion, secure, stimulate, or increase similar activities by private or public persons or organizations. Chapter 103D, sections [103-49,] 103-50, 103-50.5, 103-53 [through 103-57], 103-55, 105-1 to 105-10, and 464-4 shall not apply to any civil defense or other emergency functions if and to the extent that the governor finds that the provisions, in whole or in part, impede or tend to impede the expeditious discharge of the functions, or that compliance therewith is impracticable due to existing conditions. In cases of extreme urgency during a civil defense emergency period the governor may suspend the penal provisions of sections 46-45 and 103-9, except those provisions that concern falsification;
 - (11) Appoint, employ, train, equip, and maintain, with compensation, or on a volunteer basis without compensation and without regard to chapters 76, 77, and 79, part II of chapter 88 and section 78-1, such agencies, officers, and other persons as the governor deems necessary to carry out this chapter; determine to what extent any law prohibiting the holding of more than one office or employment applies to the agencies, officers, and other persons; and subject to section 128-15, provide for and effect the interchange of personnel, by detail, transfer, or otherwise, between the State and any political subdivision, or among any agencies or departments of the State;
 - (12) Make charges in such cases and in such amounts as the governor deems advisable, for any property sold, work performed, services rendered, or accommodations or facilities furnished by the government under this chapter; and make charges for licenses or permits to cover administrative expense connected therewith;
 - (13) Make such contracts as may be necessary to carry out this chapter;
 - (14) Establish special accounting forms and practices whenever necessary; and
 - (15) Take any and all steps necessary or appropriate to carry out the purposes of this chapter and to provide for civil defense and other emergency functions.

The powers and authority conferred upon the governor by this chapter are in addition to any other powers or authority conferred upon the governor by the laws of the United States and of the State for the same or a like purpose, and shall not be construed as abrogating, limiting, or modifying any such powers, or authority."

SECTION 25. Section 128-13, Hawaii Revised Statutes, is amended to read as follows:

“§128-13 Power and authority of local organizations. Each political subdivision shall have the power and authority:

- (1) Deputy director’s staff. To provide, for the deputy director of such political subdivision, an assistant or assistants whose appointment shall be approved by the director of civil defense, and such technical, clerical, stenographic, and other personnel, office space, furniture, equipment, supplies, and funds as may be necessary to carry out the purposes of this chapter. Chapter 76 shall apply to the full-time deputy director or the deputy director’s first assistant.
- (2) Appropriations, etc. To make appropriations and authorize expenditures for the purposes of this chapter, including the power to place under the control of the governor, for expenditure as matching funds for federal aid, or for any purpose within the powers of the governor, moneys appropriated by it; to make appropriations and authorize expenditures for the purposes of this chapter out of the normal revenues or fund balances or surpluses of the political subdivision, notwithstanding any legal restrictions upon the purposes for which the funds may be expended, except[,] that pension and retirement funds, funds set aside for the redemption of bonds or the payment of interest thereon, trust funds, loan funds, and funds received from the federal government or from any person for specific purposes shall not be affected.
- (3) Procurement, etc. To purchase, make, produce, construct, rent, lease, or procure by condemnation, or otherwise, transport, store, install, maintain, and insure, repair, renovate, restore, replace or reconstruct, and distribute, furnish or otherwise dispose of, with or without charges, materials and facilities for civil defense; and to procure federal aid therefor whenever feasible. Chapter 103D, sections [103-41 to 103-57,] 103-50, 103-50.5, 103-53, 103-55, 105-1 to 105-10, and 464-4 shall not apply to any civil defense functions of and to the extent that the mayor finds that the provisions, in whole or in part, impede or tend to impede the expeditious discharge of the functions, or that compliance therewith is impracticable due to existing conditions.
- (4) Personnel. To provide for the appointment, employment, training, equipping, and maintaining, with compensation, or on a volunteer basis without compensation and without regard to chapters 76, 77, 79, and 88 and section 78-1, of such agencies, officers, and other persons as it deems necessary to carry out this chapter; to determine to what extent any law prohibiting the holding of more than one office or employment applies to the agencies, officers, and other persons; and subject to section 128-15, to provide for the interchange of personnel, by detail, transfer or otherwise, between agencies or departments of the political subdivision, or between political subdivisions.
- (5) Contributions. To receive, expend, or use contributions or grants in money, property, or services, or loans of property, or special contributions or grants in money, property, or services, or loans of property, for special purposes provided for by this chapter.
- (6) Charges. To make charges in such cases and in such amounts as it deems advisable, for any property sold, work performed, services rendered, or accommodations or facilities furnished by the political subdivision under this chapter.

- (7) Contracts. To make or authorize such contracts as may be necessary to carry out this chapter.
- (8) Mutual aid plans. To participate in and carry out mutual aid plans and agreements or compacts, sponsored or developed by the state civil defense agency.
- (9) Continuity of government. To insure continuity of government during a civil defense emergency period, the legislative body of a county may by ordinance, unless otherwise provided by law, provide the procedure for the appointment and designation of stand-by officers for the legislative body and the elected chief executive of the county for the emergency period, who shall serve in the event of the unavailability of the officers for whom they stand by.”

SECTION 26. Section 382-3, Hawaii Revised Statutes, is amended to read as follows:

“**§382-3 Government operations.** After the issuance of a proclamation pursuant to section 382-2 and during the emergency thereby proclaimed, the governor may seize and take possession of and operate the entire plant and facilities, including related facilities, of any stevedoring company whose operations are suspended or substantially reduced, or so much thereof, or such interest therein, as the governor may deem necessary in order to carry out the purposes of this chapter.

Such government operations may be conducted by the governor through such department or agency of the State as the governor may designate and the governor may delegate to such agency such of the governor’s powers as are necessary to conduct the operations.

The governor shall have such power and authority as shall be reasonably necessary to conduct such government operations in a manner consistent with the public health, safety, and welfare, including, without limitation upon the generality of the foregoing, the power to make such contracts and arrangements with ship owners, charterers, agents, and operators, wharf and pier owners and operators, stevedoring companies, trucking operators, warehouse workers and other persons as may be required in order to provide stevedoring services and related services. The governor may make contracts without regard to chapter 103D and sections [103-41 to 103-57] 103-50, 103-50.5, 103-53, and 103-55 and, specifically, the certificate of the comptroller as to the availability of an unexpended appropriation or balance of an appropriation to cover the amount required by any such contract shall not be required.”

SECTION 27. Section 103-15, Hawaii Revised Statutes, is repealed.

SECTION 28. Section 103-21, Hawaii Revised Statutes, is repealed.

SECTION 29. Section 103-22.1, Hawaii Revised Statutes, is repealed.

SECTION 30. Section 103-24.6, Hawaii Revised Statutes, is repealed.

SECTION 31. Section 103-49, Hawaii Revised Statutes, is repealed.

SECTION 32. Section 103-53.5, Hawaii Revised Statutes, is repealed.

SECTION 33. Section 103-54, Hawaii Revised Statutes, is repealed.

SECTION 34. Section 103-56, Hawaii Revised Statutes, is repealed.

SECTION 35. Section 103-57, Hawaii Revised Statutes, is repealed.

SECTION 36. Section 103-58, Hawaii Revised Statutes, is repealed.

SECTION 37. Section 103-59, Hawaii Revised Statutes, is repealed.

SECTION 38. Section 103-60, Hawaii Revised Statutes, is repealed.

SECTION 39. Section 103-71, Hawaii Revised Statutes, is repealed.

SECTION 40. Parts III and V of chapter 103, Hawaii Revised Statutes, are repealed.

SECTION 41. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 42. This Act shall take effect on July 1, 1999.

(Approved June 28, 1999.)

Notes

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