

**SESSION LAWS**  
**OF**  
**HAWAII**  
**PASSED BY THE**  
**FIFTEENTH STATE LEGISLATURE**

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**REGULAR SESSION**  
**1989**

Convened on Wednesday, January 18  
and  
Adjourned sine die on Wednesday, April 26

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Revisor of Statutes  
Honolulu, Hawaii

## **AUTHORITY**

**Section 23G-13, Hawaii Revised Statutes, provides as follows:**

**Publishing of session laws.** As soon as possible after the close of each session of the legislature, the revisor of statutes shall prepare for publication all laws duly enacted at such session, arranged in the order of their becoming law, together with a suitable index and tables showing what general statutes have been affected by such session laws.

## PREFACE

This volume contains all the laws of the Regular Session of 1989. The text of the laws as enacted is followed except for obvious typographical errors, which have been corrected; and the text is printed in full except for laws repealing existing statutes.

As authorized by HRS §23G-16.5, amendatory legislation contains brackets (designating matter deleted from statutes) or underscoring (designating new matter added). However, the text is edited to omit the bracketed matter for HRS sections repealed in their entirety and to delete the underscoring from new HRS sections.

Explanatory notes appear at the end of the corresponding laws. The notes clarify editorial changes and inconsistencies in text.

Samuel B. K. Chang  
Revisor of Statutes

Honolulu, Hawaii  
July 20, 1989

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**Session Laws of Hawaii  
Passed By The  
Fifteenth State Legislature  
Regular Session  
1989**

**ACT 1**

H.B. NO. 299

A Bill for an Act Making Appropriations to Provide for the Expenses of the Legislature, the Legislative Auditor, the Legislative Reference Bureau, and the Ombudsman.

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

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,288,116, or so much thereof as may be necessary, for defraying any and all session and nonsession expenses of the Senate up to and including June 30, 1990, including but not limited to the 1989 regular session, Fifteenth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 1989 and 1990 regular sessions.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$4,289,318, or so much thereof as may be necessary, for defraying any and all session and nonsession expenses of the House of Representatives up to and including June 30, 1990, including but not limited to the 1989 regular session, Fifteenth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 1989 and 1990 regular sessions.

SECTION 3. Payment of expenses of the Senate during the interim between the 1989 and 1990 regular sessions shall be made only with the approval of the President of the Senate, and payment of expenses of the House of Representatives during the interim between the 1989 and 1990 sessions shall be made only with the approval of the Speaker of the House of Representatives.

SECTION 4. Before January 17, 1990, the Senate and House of Representatives shall have their accounts audited and a full report of such audit shall be presented to the Senate and to the House of Representatives of the Legislature convening on January 17, 1990.

SECTION 5. The expenses of any member of the Legislature while traveling abroad on official business of the Legislature shall not be limited by the provisions of section 78-15, Hawaii Revised Statutes, or by any other general statute. Until

## **ACT 1**

otherwise prescribed by law, the expenses of such member shall be \$100 a day and authorized by the President of the Senate and the Speaker of the House of Representatives, respectively.

**SECTION 6.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,041,880, to the office of the legislative auditor for the following expenses: (a) the sum of \$1,592,000, or so much thereof as may be necessary, for defraying the expenses of the office of the legislative auditor during the fiscal year 1989-1990; (b) the sum of \$299,880, or so much thereof as may be necessary for defraying the expenses of the office of the state ethics commission during the fiscal year 1989-1990; (c) the sum of \$150,000, or so much thereof as may be necessary during the fiscal year 1989-1990, for (1) performing special studies, (2) improving capabilities for planning, programming and budgeting, (3) fulfilling other special requests made of the legislative auditor by the Legislature or jointly by the President of the Senate and the Speaker of the House of Representatives, (4) legislative studies and for contractual services for such studies, and (5) such other purposes as may be determined by the joint action of the President of the Senate and the Speaker of the House of Representatives.

**SECTION 7.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,575,957, or so much thereof as may be necessary, to the legislative reference bureau for defraying the expenses of the bureau during the fiscal year 1989-1990 including equipment relating to computer systems programming and operations.

**SECTION 8.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$451,200, or so much thereof as may be necessary, to the office of the ombudsman for defraying the expenses of the office during the fiscal year 1989-1990.

**SECTION 9.** There is appropriated out of the general revenues of the State of Hawaii the following sums, or so much thereof as may be necessary, for defraying the expenses of the legislative information system (known as "SHADOW") which is currently being installed: (a) \$418,497 to the Senate; and (b) \$544,407 to the House of Representatives. This appropriation shall be utilized to pay for hardware, software, consultant, installation, materials, supplies and other related costs associated with the legislative information system which have been or will be incurred. This appropriation shall take effect upon its approval and shall not lapse until June 30, 1990.

**SECTION 10.** As of the close of business on June 30, 1990, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

**SECTION 11.** Each section of this Act is declared to be severable from the remainder of this Act.

**SECTION 12.** This Act shall take effect upon its approval.

(Approved February 8, 1989.)

## ACT 2

S.B. NO. 1715

A Bill for an Act Relating to the Convention Centers.

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

SECTION 1. Section 206X-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) As a further condition and consideration of the right to develop the real property within the convention center district under the agreement, pursuant to this chapter, the private developer shall pay the sum of \$5,000,000 as contribution for the payment of costs relating to:

- (1) [the] The temporary or permanent relocation of existing licensees and lessees who are displaced because of the development within the convention center district pursuant to the convention center development plan by the private developer[.]; or
- (2) Settlement payments in lieu of payments provided under paragraph (1) to existing licensees and lessees who are displaced by the private developer because of the development within the convention center district pursuant to the convention center development plan;

provided that each displaced licensee or lessee shall have the option to select either relocation or a settlement payment.

Upon the approval by the authority of the relocation plan which shall be prepared and submitted by the private developer to the authority, the private developer shall deliver to the authority for deposit into the Waikiki convention center development revolving fund the [said] sum of \$5,000,000 in the form of a certified check, an irrevocable letter of credit, or surety bond. The sum of \$5,000,000 shall be used for the implementation of the relocation plan, provided that the sum and all interest accrued thereon shall be refunded to the private developer in the event this chapter expires and becomes null and void.

The relocation plan shall include agreement by the private developer to give every displaced licensee or lessee who does not elect to receive a settlement payment under paragraph (2) an un assignable right of first refusal of any license or lease of space within the convention center district developed and offered for such activities similar in size and nature [of] to the business conducted by the licensee or lessee at the time of displacement unless such right is waived by any licensee or lessee.

The authority shall cause to be established a task force to assist in the implementation of the relocation plan. The task force shall include persons[,] representing agencies [and], organizations, [representative of] government, and private interests."

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

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

(Approved April 3, 1989.)

## ACT 3

### ACT 3

S.B. NO. 1792

A Bill for an Act Relating to the Authorization of Special Purpose Revenue Bonds.

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

SECTION 1. The purpose of this Act is to make technical amendments to Act 200, Session Laws of Hawaii 1987, Section 2, relating to the authorization of special purpose revenue bonds.

SECTION 2. Act 200, Session Laws of Hawaii 1987, Section 2, is amended to read as follows:

“SECTION 2. The department of budget and finance is authorized to issue special purpose revenue bonds in the amount of \$40,000,000 to assist Kapiolani [Health Care System,] Medical Center for Women and Children, a not-for-profit corporation that provides health care facilities to the general public, to be used for the purpose of financing or refinancing, or both, of the following project: [For] for new construction and renovation and equipment purchase for Kapiolani Medical Center for Women and Children.

The certificate of need application relating to the project is being developed and issuance of the special purpose revenue bonds is contingent on the approval of the certificate of need[.] to the extent required by applicable law.”

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

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

(Approved April 7, 1989.)

### ACT 4

H.B. NO. 152

A Bill for an Act Relating to Costs of Court.

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

SECTION 1. Section 607-9, Hawaii Revised Statutes, is amended to read as follows:

“**§607-9 Cost charges exclusive; disbursements.** No other costs of court shall be charged in any court in addition to those prescribed in this chapter in any suit, action, or other proceeding, except as otherwise provided by law.

All actual disbursements, including but not limited to, intrastate travel expenses for witnesses and counsel, expenses for deposition transcript originals and copies, and other incidental expenses, including copying costs, intrastate long distance telephone charges, and postage, sworn to by an attorney or a party, and deemed reasonable by the court, may be allowed in taxation of costs. In determining whether and what costs should be taxed, the court may consider the equities of the situation.”

SECTION 2. This Act shall not apply to any costs incurred prior to its effective date.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 1989.

(Approved April 7, 1989.)

## ACT 5

H.B. NO. 1556

A Bill for an Act Relating to Ohana Zoning.

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

SECTION 1. The purpose of this Act is to clarify and correct Hawaii's ohana zoning laws.

Before 1981 section 205-5, Hawaii Revised Statutes, stated that the minimum lot size for construction of a dwelling house in rural districts was one-half acre except as provided in section 205-2. The pertinent part of section 205-2 allowed for construction of a dwelling house on a lot as small as 18,500 feet provided that density requirements were met.

In 1981 the legislature effectively repudiated the restrictions of sections 205-2 and 205-5 by legalizing "ohana zoning," which allowed more flexible use of Hawaii's land for residential purposes. It was believed that ohana zoning would increase the supply of available affordable housing and encourage maintenance of the extended family.

As originally promulgated, the ohana zoning law, section 46-4(c), stated in pertinent part that "Neither this section nor any other law, county ordinance, or rule shall prohibit the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted." The unequivocal language used in this section made it clear that it superseded all other laws that would otherwise prohibit ohana zoning, including sections 205-2 and 205-5.

Last session the legislature amended section 46-4(c) by replacing the ohana zoning provision quoted above with a new ohana zoning provision that states in pertinent part that "Each county shall adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted." This amendment was a response to the concerns of some home owners that ohana units were being built in areas where private covenants strictly prohibited such increased density. Aside from this one, rather narrow, exception, the intent of the legislature was that ohana zoning remain an option for Hawaii's people.

An unforeseen and undesired effect of the 1988 amendment, however, was that ohana zoning was arguably again prohibited by sections 205-2 and 205-5 in rural district lands. As the law now stands, even if any county were to adopt "reasonable standards" allowing ohana zoning as mandated by section 46-4(c), sections 205-2 and 205-5 would still supersede those standards and prohibit ohana zoning. This effect is manifestly contrary to legislative intent and is therefore corrected in this Act.

SECTION 2. Section 205-2, Hawaii Revised Statutes, is amended to read as follows:

**"§205-2 Districting and classification of lands.** (a) There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation. The land use commission shall group contiguous land areas suitable for inclusion in one of these four major districts. The commission shall set standards for determining the boundaries of each district, provided that:

## ACT 5

- (1) In the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included;
- (2) In the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included, except as herein provided;
- (3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and
- (4) In the establishment of the boundaries of conservation districts, the "forest and water reserve zones" provided in section 183-41 are renamed "conservation districts" and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to section 183-41, shall constitute the boundaries of the conservation districts; provided that thereafter the power to determine the boundaries of the conservation districts shall be in the commission.

In establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county.

(b) Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.

(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than 18,500 square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot, provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics.

(d) Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, aquaculture, game and fish propagation; aquaculture, which means the production of aquatic plant and animal life for food and fiber within ponds and other bodies of water; wind generated energy production for public, private and commercial use; services and uses accessory to the above activities including but not limited to living quarters or dwellings, mills, storage facilities, processing facilities, and roadside stands for the sale of products grown on the premises; wind machines and wind farms; agricultural parks; and open area recreational facilities, including golf courses and golf driving ranges, provided that they are not located within agricultural district lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B.

These districts may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

(e) Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park

## ACT 6

lands, wilderness, and beach reserves; conserving indigenous or endemic plants, fish, and wildlife, including those which are threatened or endangered; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; other related activities; and other permitted uses not detrimental to a multiple use conservation concept."

SECTION 3. New statutory material is underscored.

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

(Approved April 7, 1989.)

## ACT 6

S.B. NO. 677

A Bill for an Act Relating to the General Excise Tax Fees.

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

SECTION 1. Section 237-9, Hawaii Revised Statutes, is amended to read as follows:

**“§237-9 Licenses; penalty.** (a) Any person who shall have a gross income or gross proceeds of sales or value of products upon which a privilege tax is imposed by this chapter, as a condition precedent to engaging or continuing in such business, shall in writing apply for and obtain from the department of taxation, upon a one-time payment of the sum of [\$2.50 (except when a \$1 fee is prescribed by section 237-10),] \$20, a license to engage in and to conduct such business [for the current tax year], upon condition that the person shall pay the taxes accruing to the State under this chapter, and the person shall thereby be duly licensed to engage in and conduct the business. [The license shall expire on December 31 next succeeding the date of its issuance.] Any person licensed or holding a license under this chapter before January 1, 1990, shall pay a one-time license renewal fee of \$20 on or before January 31, 1990, as a condition precedent to engaging or continuing in business. The license shall not be transferable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The license may be inspected and examined, and shall at all times be conspicuously displayed at the place for which it is issued.

(b) Licenses and applications therefor shall be in such form as the department shall prescribe, except that where the licensee is engaged in two or more forms of business of different classification, the license shall so state on its face. The license provided for by this section shall be effective until canceled in writing. Any application for the reissuance of a previously canceled license identification number after December 31, 1989, shall be regarded as a new license application and subject to the payment of the one time license fee of \$20. The director may revoke or cancel any license issued under this chapter for cause as provided by rules adopted pursuant to chapter 91.

(c) If the license fee is paid, the department shall not refuse to issue a license or revoke or cancel a license for the exercise of a privilege protected by the first amendment of the Constitution of the United States, or for the carrying on of interstate or foreign commerce, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of

## ACT 6

nonpayment of taxes, nor shall section 237-46 be invoked to restrain the exercise of such a privilege, or the carrying on of such commerce.

(d) Any person who may lawfully be required by the State, and who is required by this chapter, to secure a license as a condition precedent to engaging or continuing in any business subject to taxation under this chapter, who engages or continues in the business without securing a license in conformity with this chapter, shall be guilty of a misdemeanor. Any director, president, secretary, or treasurer of a corporation who permits, aids, or abets such corporation to engage or continue in business without securing a license in conformity with this chapter, shall likewise be guilty of a misdemeanor. The penalty for the misdemeanors shall be that prescribed by section 237-48 for individuals, corporations, or officers of corporations, as the case may be, for violation of that section."

SECTION 2. Section 237-12, Hawaii Revised Statutes, is amended to read as follows:

**"§237-12 Tax cumulative; extent of license.** (a) The tax imposed by this chapter shall be in addition to the license fee imposed under section 237-9 and all other [licenses and] taxes levied by law as a condition precedent to engaging in any business, trade, or calling. A person exercising a privilege taxable under this chapter, subject to the payment of [all licenses and charges] the license fee imposed under section 237-9, which [are conditions] is a condition precedent to exercising the privilege tax, may exercise the privilege [for the current tax year] upon the condition that the person shall pay the tax accruing under this chapter.

(b) In the case of any person entitled to the protection of section [237-10(1),] 237-9(c), the tax shall be collected only through ordinary means."

SECTION 3. Section 237-16, Hawaii Revised Statutes, is amended to read as follows:

**"§237-16 Tax on certain retailing.** (a) This section relates to certain retailing in the State as follows:

- (1) This section relates to the sale of tangible personal property, for consumption or use by the purchaser and not for resale, the renting of tangible personal property, and the rendering of services by one engaged in a service business or calling, as defined, to a person who is not purchasing the services for resale, but does not relate to the sale or rental of tangible personal property or the rendering of services to the State, its political subdivisions, or agencies or instrumentalities of the State or a political subdivision, or to the United States or its agencies or instrumentalities (other than national banks), or to a corporation, organization, or other person designated in section 237-23 who is not subject to the tax imposed by this chapter, or to a person licensed under this chapter in connection with the person's business.
- (2) This section relates to the business of a contractor, as defined, but does not relate to contracting with, or any gross income or proceeds of a subcontractor if the principal contract is with the State, its political subdivisions, or agencies or instrumentalities of the State or a political subdivision, or with the United States or its agencies or instrumentalities (other than national banks), or with a person designated in section 237-23 who is not subject to the tax imposed by this chapter, or with a person licensed under this chapter in connection with the person's business.

(3) This section relates to furnishing of transient accommodations in a hotel, apartment hotel, or other place in which lodgings are regularly furnished to transients for a consideration which includes the rendering of services.

(b) There is hereby levied, and shall be assessed and collected annually, a privilege tax against persons engaging or continuing within the State in the retailing to which this section relates, on account of such retailing activities, as set forth in subsection (a), equal to four per cent of the gross proceeds of sale or gross income received or derived from such retailing. Persons on whom a tax is imposed by this section hereinafter are called "retailers".

[(c) Every person upon whom a tax is levied by this section shall inform the department of taxation, at the time of obtaining the person's license, or at the time of renewal thereof, that the person is engaged in a retailing activity to which this section relates, and the same shall be noted upon the license. If a taxpayer, after obtaining the taxpayer's license, or a renewal thereof, engages in a retailing activity to which this section relates, the taxpayer having been previously not engaged in any such activity, the taxpayer thereupon shall submit the taxpayer's license to the department for the making of an appropriate notation thereon. In addition to the fees prescribed by section 237-9, except as otherwise provided by section 237-10, there shall be paid by the retailer, at the time that the notation upon the retailer's license hereby required is made, a fee of 50 cents. Any person who by this subsection is required to have noted on the person's license that the person is engaged in a retailing activity to which this section relates and who fails to do so, shall be subject to section 237-46 the same as if the person had no license.]

(d) [c] No retailer shall advertise or hold out to the public in any manner, directly or indirectly, that the tax imposed by this section is not considered as an element in the price to the consumer. Any person violating this subsection shall be fined not more than \$50 for each offense.

[(e)] (d) This section shall not cause the tax upon a taxpayer, with respect to any item of the taxpayer's gross income, to exceed four per cent."

SECTION 4. Section 237-23, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The exemptions enumerated in subsection (a)(5) to (8) shall apply only:

(1) To those persons who shall have registered with the department of taxation [on or before January 31 of each calendar year, or within one month after the commencement of business,] by filing a written application for registration in such form as the department shall prescribe, [and] shall have paid [for] the registration [an annual] fee of [\$1,] \$20, and shall have had the exemption allowed by the department or by a court or tribunal of competent jurisdiction upon appeal from any assessment resulting from disallowance of the exemption by the department; and

(2) To activities from which no profit inures to the benefit of any private stockholder or individual, except for death or other benefits to the members of fraternal societies; and

(3) To the fraternal, religious, charitable, scientific, educational, communal, or social welfare activities of such persons, or to the activities of such hospitals, infirmaries, and sanitaria as such, and not to any activity the primary purpose of which is to produce income even though the income is to be used for or in furtherance of the exempt activities of such persons.

(c) In order to obtain allowance of an exemption an application for exemption shall be filed in the form of an affidavit or affidavits setting forth in general all

## **ACT 7**

facts affecting the right to the exemption and such particular facts as the department may require, to which shall be attached such records, papers, and other information as the department may prescribe. [Such] The application for exemption shall be filed on or before March 31 of the first year of registration or within three months after the commencement of business. In the event of allowance of the exemption no further application therefor need be filed unless there [be] is a material change in the facts[, but such person nevertheless shall register annually]. In the event of disallowance of the exemption, a license may be obtained upon payment of the required fee as provided by section 237-9, less the [\$1] \$20 already paid under this section, which shall be credited thereon. In the event the registrant has a license under this chapter no further fee shall be required for registration under this section."

SECTION 5. Section 237-46, Hawaii Revised Statutes, is amended to read as follows:

"**§237-46 Collection by suit; injunction.** The department of taxation may collect taxes due and unpaid under this chapter, together with all accrued penalties, by action in assumpsit or other appropriate proceedings in the circuit court of the judicial circuit in which the privilege taxed has been exercised. After delinquency shall have continued for sixty days, or if any person lawfully required so to do under this chapter shall fail to apply for and secure a license as provided by this chapter for a period of sixty days after the first date when the person was required under this chapter to secure the same, [or if any person lawfully required so to do under this chapter shall fail to apply for and secure, on or before April 1, or shall fail to maintain in effect, a renewal of a license as provided by this chapter,] the department may proceed in the circuit court of the judicial circuit in which the privilege taxed or taxable has been exercised, to obtain an injunction restraining the further exercise of the privilege until full payment shall have been made of all taxes and penalties and interest due under this chapter, or until such license is secured, or both, as the circumstances of the case may require."

SECTION 6. Section 237-10, Hawaii Revised Statutes, is repealed.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect on January 1, 1990; except that sections 2, 5, and 6 of the Act shall take effect on July 1, 1990.

(Approved April 11, 1989.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 7**

S.B. NO. 679

A Bill for an Act Relating to the Capital Goods Excise Tax Credit.

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

SECTION 1. Section 235-110.7, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

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

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

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

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for eligible depreciable tangible personal property which is placed in service by the entity. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined by rules.

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

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

2. By amending subsection (e) to read:

"(e) As used in this section, the definition of section 38 property (with respect to investment in depreciable tangible personal property) as defined by section 48(a)(1)(A), (a)(1)(B), (a)(3), (a)(4), (a)(7), (a)(8), (a)(10)(A), (b), (c), (f), (l), (m), and (s) of the Internal Revenue Code of 1954, as amended as of December 31, 1984, is operative for the purposes of this section only.

As used in this section:

"Cost" means (1) the actual invoice price of the tangible personal property, or (2) the basis from which depreciation is taken under section 167 (with respect to depreciation) or from which a deduction may be taken under section 168 (with respect to accelerated cost recovery system) of the Internal Revenue Code of 1954, as amended, whichever is less.

"Eligible depreciable tangible personal property" is section 38 property as defined by the operative provisions of section 48 and having a depreciable life under section 167 or for which a deduction may be taken under section 168 of the federal Internal Revenue Code of 1954, as amended.

[ "Purchased and placed in service" means the date the property was acquired, or available or ready for use, whichever is earlier. Property purchased and placed in service does not include property which was owned or used at any time during 1987 by the taxpayer or related person, or property acquired in a transaction in which the user of such property does not change.]

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"Placed in service" means the earliest of the following taxable years:

- (1) The taxable year in which, under the:
  - (A) Taxpayer's depreciation practice, the period for depreciation; or
  - (B) Accelerated cost recovery system, a claim for recovery allowances;  
with respect to such property begins; or
- (2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

"Purchase" means an acquisition of property.

"Tangible personal property" means tangible personal property which is [purchased and] placed in service within Hawaii after December 31, 1987, and the purchase or importation of which resulted in a transaction which was subject to the imposition and payment of tax at the rate of four per cent under chapter 237 or 238. "Tangible personal property" does not include tangible personal property which is an integral part of a building or structure or tangible personal property used in a foreign trade zone, as defined under chapter 212."

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

SECTION 3. This Act, upon its approval, shall be effective for taxable years beginning after December 31, 1988.

(Approved April 11, 1989.)

## ACT 8

S.B. NO. 686

A Bill for an Act Relating to the General Excise Tax.

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

SECTION 1. Section 237-24, Hawaii Revised Statutes, is amended to read as follows:

**"§237-24 Amounts not taxable.** This chapter shall not apply to the following amounts:

- (1) Amounts received under life insurance policies and contracts paid by reason of the death of the insured;
- (2) Amounts received (other than amounts paid by reason of death of the insured) under life insurance, endowment, or annuity contracts, either during the term or at maturity or upon surrender of the contract;
- (3) Amounts received under any accident insurance or health insurance policy or contract or under workers' compensation acts or employers' liability acts, as compensation for personal injuries, death, or sickness, including also the amount of any damages or other compensation received, whether as a result of action or by private agreement between the parties on account of the personal injuries, death, or sickness;
- (4) The value of all property of every kind and sort acquired by gift, bequest, or devise, and the value of all property acquired by descent or inheritance;
- (5) Amounts received by any person as compensatory damages for any tort injury to the person, or to the person's character reputation, or received as compensatory damages for any tort injury to or destruction of property, whether as the result of action or by private agreement

between the parties (provided that amounts received as punitive damages for tort injury or breach of contract injury shall be included in gross income);

- (6) Amounts received as salaries or wages for services rendered by an employee to an employer;
- (7) Amounts received as alimony and other similar payments and settlements;
- (8) Amounts collected by distributors as fuel taxes on "liquid fuel" imposed by chapter 243, and the amounts collected by such distributors as a fuel tax imposed by any act of the Congress of the United States;
- (9) Taxes on liquor imposed by chapter 244D on dealers holding permits under that chapter;
- (10) The amounts of taxes on tobacco products imposed by chapter 245 on wholesalers or dealers holding licenses under that chapter and selling the products at wholesale, and the amounts of taxes on tobacco products collected from a wholesaler by another where the wholesaler makes separate charges for the amounts so collected from the wholesaler and collects the same from those purchasing from the wholesaler as provided by chapter 245;
- (11) Federal excise taxes imposed on articles sold at retail and collected from the purchasers thereof and paid to the federal government by the retailer;
- (12) The amounts of federal taxes under chapter 37 of the Internal Revenue Code, or similar federal taxes, imposed on sugar manufactured in the State, paid by the manufacturer to the federal government;
- (13) An amount up to, but not in excess of, \$2,000 a year of gross income received by any blind, deaf, or totally disabled person engaging, or continuing, in any business, trade, activity, occupation, or calling within the State;
- (14) Amounts received by a producer of sugarcane from the manufacturer to whom the producer sells the sugarcane, where (A) the producer is an independent cane farmer, so classed by the secretary of agriculture under the Sugar Act of 1948 (61 Stat. 922, Chapter 519) as the Act may be amended or supplemented, and (B) the value of the sugar, and other products manufactured from the sugarcane, is included in the measure of the tax levied on the manufacturer under section 237-13(1), and (C) the producer's gross proceeds of sales are dependent upon the actual value of the products manufactured therefrom or the average value of all similar products manufactured by the manufacturer, and (D) the producer's gross proceeds of sales are reduced by reason of the tax on the value of the manufactured products;
- (15) Money paid by the State or eleemosynary child-placing organizations to foster parents for their care of children in foster homes;
- (16) Amounts received by a cooperative housing corporation from its shareholders in reimbursement of funds paid by such corporation for lease rental, real property taxes, and other expenses of operating and maintaining the cooperative land and improvements, provided that such a cooperative corporation is a corporation:
  - (A) Having one and only one class of stock outstanding;
  - (B) Each of the stockholders of which is entitled solely by reason of the stockholder's ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building owned or leased by the corporation;

## ACT 8

- (C) No stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except in a complete or partial liquidation of the corporation;
- (17) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of this State. The terms "agricultural commodity", "producer", and "produce dealer" shall be defined in the same manner as they are defined in section 147-1; provided that agricultural commodities need not have been produced in the State;
- (18) Amounts received from the sales of (A) intoxicating liquor as defined in chapter 244D, (B) tobacco products as defined in chapter 245, and (C) agricultural, meat, or fish products grown, raised, or caught in Hawaii, when such sales are made to any person or common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state by such person, crew, or passengers on such shipper's vessels or airplanes;
- (19) Amounts received by the manager or board of directors of an association of apartment owners of a condominium property regime established in accordance with chapter 514A in reimbursement of sums paid for common expenses;
- (20) Amounts received or accrued from:
  - (A) The loading or unloading of cargo from ships, barges, vessels, or aircraft, whether or not the ships, barges, vessels, or aircraft travel between the State and other states or countries or between the islands of the State;
  - (B) Tugboat services including pilotage fees where such services are performed within the State, and the towage of ships, barges, or vessels in and out of state harbors, or from one pier to another; and
  - (C) The transportation of pilots or governmental officials to ships, barges, or vessels offshore; rigging gear; checking freight and similar services; standby charges; and use of moorings and running mooring lines;
- (21) Amounts received by an employee benefit plan by way of contributions, dividends, interest, and other income; and amounts received by a nonprofit organization or office, as payments for costs and expenses incurred for the administration of an employee benefit plan. For the purposes of this paragraph, "employee benefit plan" means any plan as defined in section 1002(3) of title 29 of the United States Code, as amended;
- (22) Amounts received for purchases made with United States Department of Agriculture food coupons under the federal food stamp program, and amounts received for purchases made with the United States Department of Agriculture food vouchers under the Special Supplemental Food Program for Women, Infants and Children;
- (23) Amounts received by a hospital, infirmary, medical clinic, health care facility, pharmacy, or a practitioner licensed to administer the drug to an individual for selling prescription drugs or prosthetic devices to an individual. This paragraph shall not apply to any amounts received for services provided in selling prescription drugs or prosthetic devices. As used in this section:

"Prescription drugs" are those drugs defined under section 328-1(4) and dispensed by filling or refilling a written or oral prescription by a practitioner licensed under law to administer the drug and sold by a licensed pharmacist under section 328-16 or practitioners licensed to administer drugs.

"Prosthetic device" means any artificial device or appliance, instrument, apparatus, or contrivance, including their components, parts, accessories, and replacements thereof, used to replace a missing or surgically removed part of the human body which is prescribed by a licensed practitioner of medicine, osteopathy, or podiatry and which is sold by such practitioner or which is dispensed and sold by a dealer of prosthetic devices; provided that "prosthetic device" shall not mean any auditory, ophthalmic, dental, or ocular device or appliance, instrument, apparatus, or contrivance;

- (24) Taxes on transient accommodations imposed by chapter 237D and passed on and collected by operators holding certificates of registration under that chapter; and
- (25) Amounts received as dues by an unincorporated merchants association from its membership for advertising media, promotional, and advertising costs for the promotion of the association for the benefit of its members as a whole and not for the benefit of an individual member or group of members less than the entire membership."

SECTION 2. Section 237-25, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Millers or processors of sugar, and canners of pineapple and pineapple juice, whether milling, processing, or canning in the State or not, shall be exempt from tax only when the products are sold, as provided in subsection (a), for use and consumption in the State. The manufacturers, claiming tax exemption for such products, shall furnish the department of taxation certificates of the purchasers, in the form prescribed by the department, certifying that such products have been purchased for use and consumption in the State. As to sugar, pineapple, and pineapple juice, milled, processed, or canned in the State and sold as provided in subsection (a) but not for use and consumption in the State, the miller, processor, or canner shall be exempt from tax as provided in section 237-29.5."

SECTION 3. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 1989.

(Approved April 11, 1989.)

**Note**

- 1. No bracketed material.

**ACT 9**

S.B. NO. 1568

A Bill for an Act Relating to Agriculture.

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

SECTION 1. The legislature finds that Act 86, Session Laws of Hawaii 1988, repealed parts VII and VIII of chapter 322, Hawaii Revised Statutes, relating

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to the regulation of pigeons and aviary game birds, respectively. Based on the belief that there existed no reason for the department of health to continue the regulation of pigeon and aviary game bird raising on the basis of public health, and that the paperwork involved in the issuance of state permits was therefore unnecessary, Act 86 eliminated all departmental involvement in the regulation of these activities. Without the department's oversight in pigeon and aviary game bird raising, county zoning regulations took precedence.

In the case of the city and county of Honolulu, zoning regulations equate the raising pigeons and aviary game birds to the raising of livestock--which is strictly limited in areas zoned residential. Consequently, permittees under the city and county's zoning regulations are allowed to raise a maximum of two birds each within a residential zone. Because of the fact that certain hobbyists raise and maintain hundreds of pigeons for competition or exhibition, the present situation has seriously jeopardized the viability of this sport in Hawaii.

The legislature finds that uniform and reasonable regulation of pigeon and aviary game bird raising is necessary throughout the State. The purpose of this Act is to designate the department of agriculture as the agency responsible for the regulation of pigeon and aviary game bird raising.

SECTION 2. Chapter 142, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### **"PART . PIGEONS**

**§142- Definitions.** As used in this part, unless the context otherwise provides:

"Carrier pigeon" means homing and racing pigeons which are banded on the leg with an identification leg band.

"Department" means the department of agriculture.

"Identification leg band" means the band placed around the pigeon's leg identifying the owner by name or initials or containing numbers or letters or a combination thereof.

"Pigeon" includes all carrier and show birds but does not pertain to birds raised for food or for similar commercial purposes.

"Racing pigeon" means any pigeon whose leg band identification is registered with any county, state, national, or international pigeon racing organization.

"Show pigeon" means any pigeon intended for show purposes which bears an identification leg band.

**§142- Pigeon permits.** The department shall issue a pigeon ownership permit to any person who raises pigeons and shall adopt rules pursuant to chapter 91 to effectuate this part.

**§142- Exercise, training, and racing.** Any owner of carrier pigeons, to whom the department has issued a pigeon permit, or person acting for the owner, having in the owner's or person's control or possession and under restraint not more than twenty-five pairs of carrier pigeons in an area zoned for residential or for hotel and apartment uses shall be allowed to fly the pigeons for necessary exercise, training, and racing. Any owner or person maintaining the carrier pigeons in areas zoned for other land uses shall fly not more than two hundred birds for necessary exercise, training, and racing. Show pigeons which are not allowed to fly free are not within the foregoing control on carrier pigeons."

SECTION 3. Chapter 142, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

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### "PART . AVIARY GAME BIRDS

**§142- Definitions.** As used in this part, unless the context otherwise requires:

"Aviary game bird" includes the various species of pheasant which are of rare nature and are generally propagated and raised for its ornamental and aesthetic purposes, but does not pertain to birds raised for food, fighting, baiting, or for similar commercial purposes.

"Department" means the department of agriculture.

**§142- Aviary game bird permits.** The department shall issue an aviary game bird permit to any person who raises aviary game birds and shall adopt rules pursuant to chapter 91 to effectuate this part."

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

(Approved April 11, 1989.)

## ACT 10

S.B. NO. 1815

A Bill for an Act Relating to Hawaii Public Broadcasting Authority Contracts.

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

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

**"§103- Hawaii public broadcasting authority; exception.** Any other provision to the contrary notwithstanding, purchases by the Hawaii public broadcasting authority which must be made on an expedited basis and which are essential to maintaining transmission or production services shall be exempt from the public bidding requirements of this chapter with the approval of the governor."

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

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

(Approved April 11, 1989.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 11

S.B. NO. 1844

A Bill for an Act Relating to the Income Taxation of Certain Income.

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

SECTION 1. Section 235-5, Hawaii Revised Statutes, is amended to read as follows:

**"§235-5 Allocation of income of persons not taxable upon entire income.**  
(a) [Subject to part II of this chapter, this section applies to persons who are not

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required to include in their returns their entire income from every source whether within or without the State.] This section applies to income not subject to part II of this chapter, including nonbusiness income and certain section 235-22 income.

(b) Income (including gains), also losses, from property owned in the State and from any other source in the State shall be determined by an allocation and separate accounting so far as practicable. Losses from property owned outside the State and from other sources outside the State shall not be deducted.

(c) Deductions connected with income taxable under this chapter shall be allowed, but deductions connected with income not taxable under this chapter shall not be allowed. Deductions from adjusted gross income that are not connected with particular property or income, such as medical expenses, shall be allowed only to the extent of the ratio of the adjusted gross income attributed to this State to the entire adjusted gross income computed without regard to source in the State.

Deductions by individual taxpayers from gross income for alimony and separate maintenance payments under section 215 of the Internal Revenue Code shall be allowed only to the extent of the ratio of gross income attributed to this State to the entire gross income computed without regard to source in this State; provided that as used in this sentence "gross income" means gross income as defined in the Internal Revenue Code, minus the deductions allowed by section 62 of the Internal Revenue Code, other than the deductions for alimony and separate maintenance payments under section 215 of the Internal Revenue Code.

Deductions by individual taxpayers from gross income for pension, profit-sharing, stock bonus plans, and other plans qualified under sections 401 to 409 of the Internal Revenue Code, as such sections are operative for the purposes of this chapter, shall be allowed only to the extent that such deductions are attributed to compensation earned in this State.

- [d] (1) Income or loss from a trade or business carried on in the State shall be attributed to the State. Every person shall be deemed to be carrying on a trade or business in the State if the person's income therefrom is subject to the taxing jurisdiction of this State by reason of the person's engaging in activities in this State, or causing transactions to be conducted in this State, with the object of gain, profit, or economic benefit, whether or not such activities or transactions are in or connected with interstate or foreign commerce.
- (2) Where a person's trade or business is carried on both within and without the State, the portion of the income attributable to the State shall, so far as practicable, be determined by an allocation and separate accounting, whenever the person's trade or business within the State is not an integral part of a unitary business conducted within and without the State; provided that the department of taxation may permit an allocation and separate accounting whenever it is satisfied that the use of such method will properly reflect the income taxable by this State.
- (3) In all cases in which, as to all or a part of a person's income, allocation and separate accounting is not permissible, such income shall be apportioned to this State on the basis of the ratio obtained by taking the arithmetical average of the ratios prescribed in subsection (e).
- (e) (1) If a person's principal business in this State is producing or manufacturing tangible personal property, including without limitation the business of fishing, or raising or producing agricultural, animal, poultry, or natural resource products, or canning, packing, milling, preserving, and other forms of compounding, processing, or preparing commodities for sale or use, the ratios used shall be:

- (A) The ratio of the value of the tangible property (real, personal, and mixed, inclusive of leasehold interests) owned by the person in this State on the last day of the taxable year in connection with the trade or business, exclusive of property the income of which is separately allocated, to the total of the property everywhere (hereinafter called the property ratio); and
  - (B) The ratio of the wages, salaries, commissions, and other compensation of the person's employees for services performed in this State, exclusive of services in connection with business the income of which is separately allocated, to the total of such compensation for employees' services everywhere (hereinafter called the payroll ratio).
- (2) If paragraph (1) does not apply and a person's principal business in this State is selling tangible personal property, the ratios used shall be the property ratio, the payroll ratio, and the ratio of gross sales attributable to this State to the total of gross sales everywhere. There shall be attributed to this State all sales of such tangible personal property (A) delivered to a purchaser at a point within this State, or (B) shipped to a purchaser at a point within this State, or (C) delivered to a purchaser at a point outside this State or shipped to a purchaser at a point outside this State, if such point is located in a state, territory, or similar taxing jurisdiction in which the person is not doing business, and the sale was made on an order secured or received by an office or branch in this State or a representative residing or stationed in this State.
- (3) In all other cases the ratios used shall be the property ratio, the payroll ratio, and the ratio of the person's gross receipts in the State from such trade or business to the person's gross receipts everywhere from such trade or business. As used in this paragraph "gross receipts in the State" shall include all receipts received or derived from persons and other sources within the State, wherever paid, and all receipts from sales attributed to this State in accordance with paragraph (2).

(f) ~~(d)~~ If in the opinion of the department the [methods of allocation and apportionment] allocations hereinabove provided do not clearly and accurately reflect the actual amount of the adjusted gross income and taxable income received or derived from all property owned [and every trade or business carried on] and any and every other source in the State, or if any person shows that the [methods of allocation and apportionment] allocations hereinabove provided result in adjusted gross income or taxable income being attributed to the State in a larger amount than is just and equitable, then the same shall be determined, allocated, and apportioned under such rules [and regulations], processes, and formulas as the department prescribes as being just and equitable."

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

SECTION 3. This Act, upon its approval, shall apply to taxable years beginning, or parts of taxable years occurring, after December 31, 1988.

(Approved April 11, 1989.)

## **ACT 12**

## **ACT 12**

S.B. NO. 1875

A Bill for an Act Relating to Program Requirements of the General Assistance Program.

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

SECTION 1. Section 346-71, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A disabled person between eighteen and sixty-five years of age shall be eligible for general assistance, if the person:

- (1) Is determined to be needy in accordance with standards established by this chapter and the rules [and regulations] of the department;
- (2) Is unable to meet the requirements established by the Federal Supplemental Security Income Program or its successor agency; and
- (3) (A) Is unable to engage in any substantial gainful employment because of a determined and certified physical or mental impairment. A determination and certification of physical impairment shall only be made by a licensed physician. A determination and certification of mental impairment shall be made by a licensed physician whose specialty is in psychiatry or by a licensed psychologist. The department may require that such determination and certification be by a psychiatrist or a psychologist designated and paid by the department. The department shall accept applications from psychiatrists and psychologists to conduct the examination for mental impairment. Psychiatrists and psychologists shall be assigned cases on a rotating basis.  
(B) When a determination of mental impairment is made, the person shall enter into out-patient treatment with the psychiatrist, psychologist, or mental health clinic of the person's choice[; provided that the]. The professional who made the determination of mental impairment shall be ineligible to provide the treatment or care. In exceptional situations where professionals are in short supply, such as in rural areas, the professional shall be allowed to determine, certify, and provide on-going treatment or care. The out-patient treatment shall include a medical evaluation to eliminate the possibility that the mental impairment is due to a physical illness.  
(C) Any person, to continue to be certified as mentally impaired, shall be reevaluated annually as provided by this section and more frequently as required by the department.

“Substantial” as the term is used herein means at least thirty hours of work per week. “Disabled” as the term is used herein means disability which extends for a period of over thirty days.

Any person determined to be eligible under this subsection may be referred to any appropriate state agency for vocational rehabilitation services and shall be required to accept the services as a further condition of eligibility for the receipt of general assistance under this section. An assistance unit shall be determined ineligible for general assistance if any adult member of the assistance unit fails to cooperate with any appropriate state agency for vocational rehabilitation services after being referred for services. Any person found eligible under this subsection may also be required to seek employment, and participate in public work projects as described in section 346-31, and in public employment projects as described in section 346-102.”

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

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

(Approved April 11, 1989.)

## ACT 13

S.B. NO. 1899

A Bill for an Act Relating to Conformity to the Internal Revenue Code.

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

SECTION 1. Section 235-2.3, Hawaii Revised Statutes, is amended to read as follows:

**“§235-2.3 Conformance to the federal Internal Revenue Code; general application.** (a) For all taxable years beginning after December 31, [1987,] 1988, as used in this chapter “Internal Revenue Code” means subtitle A, chapter 1 of the federal Internal Revenue Code of 1954 as amended as of December 31, [1987,] 1988, as it applies to the determination of gross income, adjusted gross income, ordinary income and loss, and taxable income except those provisions of the Internal Revenue Code and federal Public Law which pursuant to this chapter, this section, and sections 235-2.4 and 235-2.5 do not apply or are otherwise limited in application; provided that section 1202 (with respect to deductions for capital gains) of the Internal Revenue Code of 1954 as amended as of December 31, 1986, shall be operative for the purposes of this chapter until March 31, 1987, and shall apply to any capital gains properly taken before April 1, 1987, except that the deduction provided in section 1202(a) shall be fifty-five per cent of the net capital gain.

Sections 235-2, 235-2.1, and 235-2.2 shall continue to be used to determine (1) the basis of property, if a taxpayer first determined the basis of property in a taxable year to which such sections apply, and if such determination was made before January 1, 1978, and (2) gross income, adjusted gross income, ordinary income and loss, and taxable income for a taxable year to which such sections apply where such taxable year begins before January 1, 1978.

(b) The following Internal Revenue Code subchapters, parts of subchapters, sections, subsections, and parts of subsections shall not be operative for the purposes of this chapter, unless otherwise provided:

- (1) Subchapter A (sections 1 to [59]) 59A (with respect to determination of tax liability), except section 42 (with respect to the low-income housing credit) and except sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property). For treatment, see sections 235-110.7 and 235-110.8.
- (2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit).
- (3) Section 86 (with respect to social security and tier 1 railroad retirement benefits).
- (4) Section 103 (with respect to interest on state and local bonds). For treatment, see section 235-7(b).
- (5) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see sections 235-2.4 and 235-7(a)(9) to (11).

## ACT 13

- (6) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3).
- (7) Section 135 (with respect to income from United States saving bonds used to pay higher education tuition and fees). For treatment, see section 235-7(a)(1).
- [(7)] (8) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds).
- [(8)] (9) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54.
- [(9)] (10) Section 196 (with respect to deduction for certain unused investment credits).
- [(10)] (11) Subchapter B, part VIII (sections 241 to 250) (with respect to special deductions for corporations), except sections 248 (with respect to organizational expenditures) and 249 (with respect to limitation on deduction of bond premium on repurchase). For treatment, see section 235-7(c).
- [(11)] (12) Section 269A (with respect to personal service corporations formed or availed of to avoid or evade income tax).
- [(12)] (13) Section 280C (with respect to certain expenses for which credits are allowable).
- [(13)] (14) Section 280D (with respect to portion of chapter 45 taxes for which credit or refund is allowable under section 6429).
- [(14)] (15) Section 291 (with respect to special rules relating to corporate preference items).
- [(15)] (16) Section 367 (with respect to foreign corporations).
- [(16)] (17) Section 501(c)(12), (15), (16) (with respect to exempt organizations).
- [(17)] (18) Section 515 (with respect to taxes of foreign countries and possessions of the United States).
- [(18)] (19) Section 521 (with respect to exemption of farmers cooperatives from tax). For treatment, see section 421-23.
- [(19)] (20) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders).
- [(20)] (21) Subchapter H (sections 581 to [596] 597) (with respect to banking institutions). For treatment, see chapter 241.
- [(21)] (22) Section 642(a), (b), and (d) (with respect to special rules for credits and deductions).
- [(22)] (23) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts).
- [(23)] (24) Subchapter L (sections 801 to [846] 847) (with respect to insurance companies). For treatment, see sections [431-318 and 431-320.] 431:7-202 and 431:7-204.
- [(24)] (25) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55.
- [(25)] (26) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except part IV (sections 991 to 997) (with respect to domestic international sales corporations). For treatment, see sections 235-4, 235-5, and 235-7(b).
- [(26)] (27) Section 1055 (with respect to redeemable ground rents).
- [(27)] (28) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange).
- [(28)] (29) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations).

- [29] (30) Subchapter T (sections 1381 to 1388) (with respect to cooperatives and their patrons). For treatment, see chapter 421."

SECTION 2. Section 235-2.4, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read as follows:

"(a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the standard deduction amount in section 63(c) of the Internal Revenue Code shall instead mean:

- (1) \$1,700 in the case of:
  - (A) A joint return as provided by section 235-93, or
  - (B) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code),
- (2) \$1,500 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code),
- (3) \$1,000 in the case of an individual who is not married and who is not a surviving spouse or head of household, or
- (4) \$850 in the case of a married individual filing a separate return.

Section 63(c)(4) shall not be operative in this State. Section 63(c)(5) shall be operative, except that the limitation on basic standard deduction in the case of certain dependents shall be the greater of \$500 or such individual's earned income. Section 63(f) shall not be operative in this State."

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

"(n) Subchapter S (sections 1361 to 1379) (with respect to tax treatment of S corporations and their shareholders) of chapter 1 of the Internal Revenue Code shall be operative for the purposes of this chapter subject to the following:

- (1) The term S corporation as defined in section 1361 of the Internal Revenue Code means a corporation which does not have a resident who is an individual who has taken up residence in the State after attaining the age of sixty-five years and before July 1, 1976, and who is taxed under this chapter only on the basis of income received or derived from property owned, personal services performed, trade or business carried on, and any and every other source in the State; unless the individual resident shall have waived the benefit of section 3, Act 60, Session Laws of Hawaii 1976, as to income includable in the individual's gross income under this chapter and as to such gross income shall have consented to the taxation thereof in the same manner as if the individual had taken up residence in the State after June 30, 1976.
- (2) An election under section 1362 of the Internal Revenue Code shall not be effective for any taxable year of the corporation unless there is also in effect for such taxable year an election for federal income tax purposes under subchapter S of chapter 1 of the Internal Revenue Code.
- (3) The tax imposed by section 1374 of the Internal Revenue Code is hereby imposed by this chapter at an amount equal to 6.4 per cent of the net recognized built-in gain.
- (4) The tax imposed by section 1375(a) of the Internal Revenue Code is hereby imposed by this chapter at an amount equal to 6.4 per cent of the amount of the excess net passive income for the taxable year."

SECTION 3. Section 235-2.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

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"(a) Reference in provisions of subtitle A, chapter 1, of the Internal Revenue Code which are operative in this State to provisions in the Internal Revenue Code which are not operative in this State shall be considered inoperative for the purposes of determining gross income, adjusted gross income, ordinary income and loss, and taxable income; provided that references to time limits and other administrative provisions in subtitle F (sections 6001 to [7852]) 7873) of the Internal Revenue Code contained in operative sections of subtitle A, chapter 1, of the Internal Revenue Code shall be deemed references to applicable provisions of this chapter or chapter 231 or 232, and in the absence of applicable provisions in this chapter or chapter 231 or 232, then to rules adopted by the director of taxation under subsection (b). If inoperative provisions of subtitle A, chapter 1, of the Internal Revenue Code have been codified in this chapter such references shall be deemed references to the codified provisions in this chapter. Transitory and savings provisions in federal Public Laws amending sections of the Internal Revenue Code operative in this chapter shall be operative for the purposes of this chapter. Provisions in this chapter or chapter 231 or 232 in conflict with the Internal Revenue Code or transitory or savings provisions in federal Public Law shall control.

Retroactive provisions in federal Public Laws amending sections of the federal Internal Revenue Code operative in this chapter affecting taxable years beginning or ending before the December 31 date in section 235-2.3 shall be operative for the purposes of this chapter; provided that the effective dates in Public Law 96-471 placing it in effect for the taxable year 1980 shall be operative for the purposes of this chapter.

(b) The director of taxation may adopt by rule under chapter 91 the rules and regulations promulgated by the United States Secretary of Treasury or a delegate of the Secretary relating to the provisions of subtitle A, chapter 1 or 6, of the Internal Revenue Code operative in this chapter and any administrative provisions of the Internal Revenue Code (subtitle F, sections 6001 to [7872]) 7873) not in conflict with or similar to provisions contained in this chapter or chapter 231 or 232 either by reference or by setting them forth in full."

SECTION 4. Section 235-7.5, Hawaii Revised Statutes, is amended to read as follows:

**"[§]235-7.5[] Certain unearned income of minor children taxed as if parent's income.** (a) In the case of any child to whom this section applies, the tax imposed by this chapter shall be equal to the greater of:

- (1) The tax imposed by section 235-51 without regard to this section, or
  - (2) The sum of:
    - (A) The tax which would be imposed by section 235-51 if the taxable income of such child for the taxable year were reduced by the net unearned income of such child, plus
    - (B) Such child's share of allocable parental tax.
- (b) This section shall apply to any child for any taxable year if:
- (1) Such child has not attained age fourteen before the close of the taxable year, and
  - (2) Either parent of such child is alive at the close of the taxable year.
- (c) For the purpose of this section:
- (1) The term "allocable parental tax" means the excess of:
    - (A) The tax which would be imposed by section 235-51 on the parent's taxable income if such income included the net unearned income of all children of the parent to whom this section applies, over,

- (B) The tax imposed by section 235-51 on the parent without regard to this section.

For purposes of subparagraph (A), net unearned income of all children of the parent shall not be taken into account in computing any exclusion, deduction, or credit of the parent.

- (2) A child's share of any allocable parental tax of a parent shall be equal to an amount which bears the same ratio to the total allocable parental tax as the child's net unearned income bears to the aggregate net unearned income of all children of such parent to whom this section applies.
- (3) If tax is imposed under section 644(a)(1) (with respect to special rule for gain on property transferred to trust at less than fair market value) of the Internal Revenue Code with respect to the sale or exchange of any property of which the parent was the transferor, for purposes of applying paragraph (1) to the taxable year of the parent in which such sale or exchange occurs:

- (A) Taxable income of the parent shall be increased by the amount treated as included in gross income under section 644(a)(2)(A)(i) of the Internal Revenue Code, and
- (B) The amount described in paragraph (1)(B) shall be increased by the amount of the excess referred to in section 644(a)(2)(A) of the Internal Revenue Code.

Section 644 (with respect to special rule for gain on property transferred to trust at less than fair market value) of the Internal Revenue Code shall be operative for this section as provided in section 235-2.4.

- (4) Except as provided in rules, if the parent does not have the same taxable year as the child, the allocable parental tax shall be determined on the basis of the taxable year of the parent ending in the child's taxable year.

- (d) For purposes of this section:

- (1) The term "net unearned income" means the excess of:
- (A) The portion of the adjusted gross income for the taxable year which is not attributable to earned income as defined in the Internal Revenue Code, over,
- (B) The sum of:
- (i) The amount in effect for the taxable year under section 63(c)(5)(A) (relating to the limitation on standard deduction in the case of certain dependents) of the Internal Revenue Code as operative under section 235-2.4(a), plus
- (ii) The greater of the amount described in clause (i) or, if the child itemizes the child's deductions for the taxable year, the amount of the itemized deductions allowed by this chapter for the taxable year which are directly connected with the production of the portion of adjusted gross income referred to in subparagraph (A).
- (2) The amount of the net unearned income for any taxable year shall not exceed the individual's taxable income for such taxable year.

- (e) For purposes of this section, the parent whose taxable income shall be taken into account shall be:

- (1) In the case of parents who are not married (within the meaning of section 235-93), the custodial parent (within the meaning of section 152(e) (with respect to the support test in case of child of divorced parents, etc.) of the Internal Revenue Code) of the child, and

## ACT 13

(2) In the case of married individuals filing separately, the individual with the greater taxable income.

(f) The parent of any child to whom this section applies for any taxable year shall provide the social security number of such parent to such child and such child shall include such parent's social security number on the child's return of tax imposed by this section for such taxable year.

(g) Election to claim certain unearned income of child on parent's return.

(1) If:

(A) Any child to whom this section applies has gross income for the taxable year only from interest and dividends (including Alaska Permanent Fund dividends).

(B) Such gross income is more than \$500 and less than \$5,000.

(C) No estimated tax payments for such year are made in the name and social security number of such child, and no amount has been deducted and withheld under section 3406 (with respect to backup withholding) of the Internal Revenue Code, and

(D) The parent of such child (as determined under subsection (e) elects the application of paragraph (2), such child shall be treated as having no gross income for such year and shall not be required to file a return under this chapter.

(2) In the case of a parent making the election under this subsection:

(A) The gross income of each child to whom such election applies (to the extent the gross income of such child exceeds \$1,000) shall be included in such parent's gross income for the taxable year.

(B) The tax imposed by this section for such year with respect to such parent shall be the amount equal to the sum of:  
(i) The amount determined under section 235-51 after the application of subparagraph (A) plus  
(ii) For each such child, the lesser of \$75 or fifteen per cent of the excess of the gross income of such child over \$500.

(3) The director shall prescribe such rules as may be necessary or appropriate to carry out the purposes of this subsection.

SECTION 5. Section 235-55.6, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) and (c) to read as follows:

"(b) Definitions of qualifying individual and employment-related expenses.

For purposes of this section:

(1) Qualifying individual. The term "qualifying individual" means:

(A) A dependent of the taxpayer who is under the age of [fifteen] thirteen and with respect to whom the taxpayer is entitled to a deduction under section 235-54(a),

(B) A dependent of the taxpayer who is physically or mentally incapable of caring for oneself, or

(C) The spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for oneself.

(2) Employment-related expenses.

(A) In general. The term "employment-related expenses" means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed for any period for which there are one or more qualifying individuals with respect to the taxpayer:

- (i) Expenses for household services, and
  - (ii) Expenses for the care of a qualifying individual.
- Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight.
- (B) Exception. Employment-related expenses described in subparagraph (A) which are incurred for services outside the taxpayer's household shall be taken into account only if incurred for the care of:
    - (i) A qualifying individual described in paragraph (1)(A), or
    - (ii) A qualifying individual (not described in paragraph (1)(A)) who regularly spends at least eight hours each day in the taxpayer's household.
  - (C) Dependent care centers. Employment-related expenses described in subparagraph (A) which are incurred for services provided outside the taxpayer's household by a dependent care center (as defined in subparagraph (D)) shall be taken into account only if:
    - (i) Such center complies with all applicable laws, rules, and regulations of this State, and
    - (ii) The requirements of subparagraph (B) are met.
  - (D) Dependent care center defined. For purposes of this paragraph, the term "dependent care center" means any facility which:
    - (i) Provides care for more than six individuals (other than individuals who reside at the facility), and
    - (ii) Receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit).

(c) Dollar limit on amount creditable. The amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed:

- (1) \$2,400 if there is one qualifying individual with respect to the taxpayer for such taxable year, or
- (2) \$4,800 if there are two or more qualifying individuals with respect to the taxpayer for such taxable year.

The amount determined under paragraph (1) or (2) (whichever is applicable) shall be reduced by the aggregate amount excludable from gross income under section 129 (with respect to dependent care assistance programs) of the Internal Revenue Code for the taxable year."

2. 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 period is furnished by such individual (or, if such individual is married during such period, is furnished by such 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.

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- (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 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 household during the taxable year, and
  - (B) During the last six months of such taxable year such individual's spouse is not a member of such household, such 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, as amended, applies to any child with respect to any calendar year; and
  - (B) Such child is under age [fifteen] thirteen or is physically or mentally incompetent of caring for the child's self, in the case of any taxable year beginning in such calendar year, such 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, 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, 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, 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, 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 person are included on the return claiming the credit, or
  - (B) If such 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 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 6. Section 235-110.8, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) The state housing credit ceiling under section 42(h) shall be zero for [any] the calendar year [after 1989,] immediately following the expiration of the federal low income housing tax credit program and for any calendar year thereafter, except for the carryover of [the 1989 limit] any credit ceiling amount for certain projects in progress which, at the time of the federal expiration, meet the requirements of section 42[(n)]."

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1988.

(Approved April 11, 1989.)

**ACT 14**

S.B. NO. 1900

A Bill for an Act Relating to the Administration of Taxes.

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

SECTION 1. Chapter 231, Hawaii Revised Statutes, is amended as follows:

1. By adding a new grouping to be appropriately designated and to read as follows:

**"LIENS, FORECLOSURE**

**§231- Tax liens; co-owners' rights.** (a) If a cotenancy exists and within the period of a tax lien, all of the taxes, interest, penalties, and other additions to the tax, due and delinquent at the time of payment, are paid by a cotenant, the cotenant shall have a lien in an amount equal to the amount paid by the cotenant on the interest of any noncontributing cotenant upon recording in the bureau of conveyances, within ninety days after the cotenant's payment, a sworn notice setting forth the amount claimed, a brief description of the land affected by tax key or otherwise, sufficient to identify the land, the taxes paid and the name of the cotenant upon whose interest the lien is asserted. When a notice of the tax lien is recorded by a cotenant, the registrar shall cause the tax lien to be indexed in the general indexes of the bureau of conveyances. If the land affected is registered in the land court the notice shall also contain a reference to the number of the certificate of title of the land and shall be filed and registered in the office of the assistant registrar of the land court, and the registrar, in the registrar's capacity as assistant registrar of the land court, shall make a notation of the filing thereof on each land court certificate of title so specified.

The cotenant's lien shall have the same priority as the lien or liens of the State for the taxes paid by the cotenant, and may be enforced by an action in the nature of a suit in equity. The lien shall continue for three years after recording or registering, or until termination of the proceedings for enforcement thereof if such proceedings are begun and notice of the pendency thereof is recorded or filed and registered as provided by law, within the period.

(b) The director or the director's subordinate, in case of a state tax lien, and the creditor cotenant, in case of a cotenant's lien, at the expense of the debtor,

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upon payment of the amount of the lien, shall execute and deliver to the debtor a sworn satisfaction thereof, including a reference to the name of the person assessed or cotenant affected as shown in the original notice, the date of filing of the original notice, a description of the land involved, and the number of the certificate of title of the land if registered in the land court. When recorded in the bureau of conveyances or filed and registered in the office of the assistant registrar of the land court, in the case of a cotenant's lien, which contains the reference to the book and page of the original lien, the sworn satisfaction shall be entered in the general indexes of the bureau of conveyances, and if a notation of the original notice was made on any land court certificate of title the filing of the satisfaction shall also be noted on the certificate.

This section as to cotenancy shall apply, as well, in any case of ownership by more than one assessable person.

**§231- Tax liens; foreclosure; property.** (a) Upon enforcement or foreclosure by the State, in any manner whatsoever, of any state tax lien on real property, all state taxes of whatsoever nature and howsoever accruing and due at the time of the foreclosure sale from the taxpayer against whose property the tax lien is so enforced or foreclosed shall be satisfied as far as possible out of the proceeds of the sale remaining after payment of (1) the costs and expenses of the enforcement and foreclosure including a title search, if any, (2) the amount of subsisting state tax liens on real property, and (3) the amount of any recorded liens against the property, in the order of their priority.

(b) The liens may be enforced by action of the state tax collector in the circuit court of the judicial circuit in which the property is situated. Jurisdiction is conferred upon the circuit courts to hear and determine all proceedings brought or instituted to enforce and foreclose such state tax liens, and the proceedings had before the circuit courts shall be conducted in the same manner and form as ordinary foreclosure proceedings.

(c) If the owners or claimants of the property against which a state tax lien is sought to be foreclosed are at the time without the State or cannot be served within the State, or if the owners are unknown, and the fact shall be made to appear by affidavit to the satisfaction of the court, and it shall in like manner appear prima facie that a cause of action exists against such owners or claimants or against the property described in the complaint or that such owners or claimants are necessary or proper parties to the action, the court may grant an order that the service may be made in the manner provided by sections 634-23 to 634-27. In any such case it shall not be necessary to obtain judgment and have execution issued and returned unsatisfied, before proceeding to foreclose the lien for taxes in the manner provided.

**§231- Tax liens; foreclosure without suit, notice.** All real property on which a lien for state taxes exists may be sold by way of foreclosure without suit by the state tax collector, and in case any lien, or any part thereof, has existed thereon for three years, shall be sold by the state tax collector at public auction to the highest bidder, for cash, to satisfy the lien, together with all interest, penalties, costs, and expenses due or incurred on account of the tax, lien, and sale, the surplus, if any, to be rendered to the person thereto entitled. The sale shall be held at any public place proper for sales on execution, after notice published at least once a week for at least four successive weeks immediately prior thereto in any newspaper with a general circulation of at least sixty thousand published in the State and any newspaper of general circulation published and distributed in the taxation district wherein the property to be sold is situated, if there is a newspaper published in the taxation district.

If the address of the owner is known or can be ascertained by due diligence, including an abstract of title or title search, the state tax collector shall send to each

owner notice of the proposed sale by registered mail, with request for return receipt. If the address of the owner is unknown, the state tax collector shall send a notice to the owner at the owner's last known address as shown on the records of the department of taxation. The notice shall be deposited in the mail at least forty-five days prior to the date set for the sale. The notice shall also be posted for a like period in at least three conspicuous public places within such taxation district, and if the land is improved one of the three postings shall be on the land.

**§231- Tax liens; registered land.** If the land has been registered in the land court, the state tax collector shall also send by registered mail a notice of the proposed sale to any person holding a mortgage or other lien registered in the office of the assistant registrar of the land court. The notice shall be sent to any such person at the person's last address as shown by the records in the office of the registrar, and shall be deposited in the mail at least forty-five days prior to the date set for the sale.

**§231- Tax liens; notice, form of.** The notice of sale shall contain the names of the persons assessed, the names of the present owners (so far as shown by the records of the tax office and the records, if any, in the office of the assistant registrar of the land court), the character and amount of the tax, and the tax year or years, with interest, penalties, costs, expenses, and charges accrued or to accrue to the date appointed for the sale, a brief description of the property to be sold, and the time and place of sale, and shall warn the persons assessed, and all persons having or claiming to have any mortgage or other lien thereon or any legal or equitable right, title, or other interest in the property, that unless the tax, with all interest, penalties, costs, expenses, and charges accrued to the date of payment, is paid before the time of sale appointed, the property advertised for sale will be sold as advertised. The state tax collector may include in one advertisement of notice of sale notice of foreclosure upon more than one parcel of real property, whether or not owned by the same person and whether or not the liens are for the same tax year or years.

**§231- Tax liens; postponement of sale, etc.** If at the time appointed for the sale the state tax collector deems it expedient and for the interest of all persons concerned therein to postpone the sale of any property or properties for want of purchasers, or for other sufficient cause, the state tax collector may postpone the sale from time to time, until the sale is completed, giving notice of every adjournment by a public declaration thereof at the time and place last appointed for the sale; provided that the sale of any property may be abandoned at the time first appointed or any adjourned date, if no proper bid is received sufficient to satisfy the lien, together with all interest, penalties, costs, expenses, and charges.

**§231- Tax liens; tax deed; redemption.** The state tax collector or the state tax collector's assistant, on payment of the purchase price, shall make, execute, and deliver all proper conveyances necessary in the premises and the delivery of the conveyances shall vest in the purchaser the title to the property sold; provided that the deed to the premises shall be recorded within sixty days after the sale; provided further that the taxpayer may redeem the property sold by payment to the purchaser at the sale, within one year from the date thereof, or if the deed shall not have been recorded within sixty days after the sale, then within one year from the date of recording of the deed, of the amount paid by the purchaser, together with all costs and expenses which the purchaser was required to pay, including the fee for recording the deed, and in addition thereto, interest on such amount at the rate of twelve per cent a year, but in a case of redemption more than one year after

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the date of sale by reason of extension of the redemption period on account of late recording of the tax deed, interest shall not be added for the extended redemption period.

**§231- Tax liens; costs.** The director of taxation by rule may prescribe a schedule of costs, expenses, and charges and the manner in which they shall be apportioned between the various properties offered for sale and the time at which each cost, expense, or charge is deemed to accrue. The costs, expenses, and charges shall be added to and become a part of the tax lien on the property for the last year involved in the sale or proposed sale, the tax for which is delinquent. The costs, expenses, and charges may include provision for the making of and the securing of certificates of searches of any records to furnish information to be used in or in connection with the notice of sale or tax deed, or in any case where the director deems it advisable; provided that the state tax collector shall not be required to make such searches or to cause them to be made except as provided by section 231- with respect to mortgages or other liens registered in the office of the assistant registrar of the land court.

**§231- Tax deed as evidence.** The tax deed referred to in section 231- is prima facie evidence that:

- (1) The property described by the deed on the date of the sale was subject to a lien or liens for state taxes, penalties, and interest in the amount stated in the deed, for the tax years therein stated, and that the state taxes, penalties, and interest were due and unpaid on the date of sale;
- (2) Costs, expenses, and charges due or incurred on account of the state taxes, liens, and sale had accrued at the date of the sale in the amount stated in the deed;
- (3) The person who executed the deed was the proper officer;
- (4) At a proper time and place the property was sold at public auction as prescribed by law, and by the proper officer;
- (5) The sale was made upon full compliance with sections 231- to 231- and all laws relating thereto, and after giving notice as required by law; and
- (6) The grantee named in the deed was the person entitled to receive the conveyance.

**§231- Disposition of surplus moneys.** (a) The officer charged with the duty of distributing the surplus arising from a tax sale under sections 231- to 231- shall pay from the surplus all state taxes, including interest and penalties, of whatsoever nature and howsoever accruing, as provided in section 231-, and the officer may pay from the surplus the cost of a search of any records where such search is deemed advisable by the officer to ascertain the person or persons entitled to the surplus; provided that nothing in this section shall be construed to require the state tax collector to make or cause any such search to be made. If the officer is in doubt as to the person or persons entitled to the balance of the fund the officer may refuse to distribute the surplus and any claimant may sue the officer or the officer's successor in office in the circuit court in the circuit within which the property sold was situated. The officer may require the claimants to interplead, in which event the officer shall state the names of all claimants known to the officer, and shall cause them to be made parties to the action. If in the officer's opinion there may be other claimants who are unknown, the officer may apply for an order or orders joining all persons unknown having or claiming to have any legal or equitable right, title, or interest in the moneys or any part thereof or any lien or other claim with respect thereto.

(b) Any orders of the court or summons in the matter may be served as provided by law or the rules of court, and all persons having any interest in the moneys who are known, including the guardians of such of them as are under legal age or under any other legal disability (and if any one or more of them is under legal age or under other legal disability and without a guardian the court shall appoint a guardian ad litem to represent them therein) shall have notice of the action by personal service upon them. All persons having any interest in the moneys whose names are unknown or who if known do not reside within the State, or for any reason cannot be served with process within the State shall have notice of the action as provided by sections 634-23 to 634-27, except that any publication of summons shall be in at least one newspaper published in the State and having a general circulation in the circuit within which the property sold was situated, and the form of notice to be published shall provide a brief description of the property which was sold.

(c) All expenses incurred by the officer shall be met out of the surplus moneys realized from the sale."

2. By adding a new section to be appropriately designated and to read as follows:

**"§231- Assessment of additional taxes of corporations or partnerships.** Additional taxes of a corporation or partnership shall be assessed to it under its corporate or firm name."

3. By adding a new section to be appropriately designated and to read as follows:

**"§231- Fiduciaries, liability.** Every personal representative, trustee, guardian, or other fiduciary shall be answerable as such for the performance of all acts, matters, or things as are required to be done in respect to the assessment of the taxes for which the fiduciary is responsible in a fiduciary capacity. The fiduciary shall be liable for the payment of those taxes up to the amount of the available property held by the fiduciary, but shall not be personally liable. The fiduciary may retain so much property as may be necessary to pay the taxes due. The fiduciary may recover the amount of taxes paid from the beneficiary to whom the property shall have been distributed."

4. By adding a new section to be appropriately designated and to read as follows:

**"§231- Returns of corporations or partnerships.** The returns, statements, or answers required by chapter 234, 235, 236D, 237, 237D, 238 to 243, 244D, 245, or 247, in the case of a corporation, shall be made by any officer of the corporation, or in the case of a partnership; by any one of the partners."

5. By adding a new section to be appropriately designated and to read as follows:

**"§231- Returns by fiduciaries.** The returns, statements, or answers required by chapter 234, 235, 236D, 237, 237D, 238 to 243, 244D, 245, or 247 shall be made by the personal representative, trustee, guardian, or other fiduciary in such capacity in any taxation district in which returns are required."

6. By adding a new section to be appropriately designated and to read as follows:

**"§231- Informalities not to invalidate assessments, mistakes in names or notices, etc.** No assessment or act relating to the assessment or collection of taxes shall be illegal nor shall such assessment, levy, or collection be invalid on account of mere informality or mistakes in names, notices, etc."

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7. By adding a new section to be appropriately designated and to read as follows:

**“§231- Tax bills.** Each state tax collector shall mail, postage prepaid, or deliver to all known persons assessed taxes in the state tax collector’s district, tax bills demanding payment of taxes due from each of them, but no person shall be excused from the payment of any tax or delinquent penalties thereon by reason of failure on the person’s part to receive such bill. The bill, if mailed, shall be addressed to the person concerned at the person’s last known address or place of residence.”

SECTION 2. Section 111-8.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If the owner of real property from which persons are forced to move because of code enforcement is the person responsible for the code violation, and the owner fails to pay the state agency within sixty days after written demand, the state agency may claim a lien against the real property from which persons are displaced. This lien shall be in addition to any other remedy the state agency may have. Such lien may be foreclosed in the same manner as liens for [real property] state taxes and in accordance with sections [246-55 to 246-61.] 231- to 231-.”

SECTION 3. Section 174-19, Hawaii Revised Statutes, is amended to read as follows:

**“§174-19 Administration of project; acreage assessments; liens.** All projects established pursuant to this chapter shall be administered by the board of land and natural resources. In making the final determination to establish a project, the board shall determine the proportion of acreage assessments to be borne by the land within the project. The board shall determine and certify to the director of taxation on or before March 31 of each year (1) the amount of acreage assessments necessary in that calendar year for acquisition, construction, and maintenance of facilities for each project, and (2) the acreage of each land occupier within the project.

Upon the certification the director of taxation or the director’s properly authorized deputies or other assistants, shall determine the acreage assessment to be levied against the property of each land occupier by determining the amount of acreage assessments to be borne by the land within the project according to the proportion previously certified to the director by the board. The acreage assessments shall be [in addition to any real property taxes, and shall be] collected by the director of taxation in the same manner as [the taxes.] state taxes. Except in the case of public lands and lands designated as “available lands” under the Hawaiian Homes Commission Act, 1920, acreage assessments shall be a paramount lien against the entire tract, including improvements, of the land occupier of which the assessed land, or both, of the land occupier included within the projects forms a part. The lien may be foreclosed in the same manner as liens for [real property] state taxes and in accordance with sections [246-55 to 246-61.] 231- to 231-. In case of the foreclosure of any homestead land pursuant to such sections the foreclosure sale shall be subject to chapter 171. In the case of public lands and lands designated as “available lands” under the Hawaiian Homes Commission Act, 1920, acreage assessments shall not constitute a lien on the property involved and notice of any delinquent acreage assessment shall be served upon the board of land and natural resources or the Hawaiian homes commission, as the case may be, for payment.

Acreage assessments shall be deemed revenues within the meaning of part III of chapter 39 and shall be used for the payment of the principal and interest of any revenue bonds issued hereunder.

Water tolls fixed by the board for each project under this chapter shall be collected by the board under such reasonable rules and procedures as it may establish and may modify from time to time.

All water tolls, acreage assessments, and receipts from properties sold by way of foreclosure for failure to pay acreage assessments shall be realizations of the board."

#### SECTION 4. Chapter 231, Hawaii Revised Statutes, is amended as follows:

1. Section 231-1 is amended by amending the definition of "property" or "real property" to read as follows:

"Property" or "real property" has the meaning defined [by section 246-1,] herein, and, to the extent required by provisions making applicable to other chapters, this chapter, or chapters 232, 233, 235 to 239, 241 to [246,] 245, 236D, 237D, and 244D, also means and includes other subjects or measures of tax. "Real property" includes all land and appurtenances thereof and the buildings, structures, fences, and improvements erected on or affixed to the land, and any fixture which is erected on or affixed to such land, buildings, structures, fences, and improvements, including all machinery and other mechanical or other allied equipment and the foundations thereof, whose use thereof is necessary to the utility of such land, buildings, structures, fences, and improvements, or whose removal therefrom cannot be accomplished without substantial damage to such land, buildings, structures, fences, and improvements, excluding, however, any growing crops."

2. Section 231-3 is amended to read as follows:

**"§231-3 Department, general duties and powers.** The department of taxation shall have the following duties and powers, in addition to any others prescribed or granted by this chapter:

- (1) Assessment: To [assess, pursuant to law, all real property for taxation and to] make any [other] assessment by law required to be made by the department;
- (2) Collections: To be responsible for the collection of all taxes imposed by chapters 231 to 249, 236D, 244D, and 237D, except those which by law are to be collected by county treasurers, and for such other duties as are provided by law;
- (3) Construction of revenue laws: To construe the tax and revenue laws, the administration of which is within the scope of the department's duties, whenever requested by any officer acting under such laws, or by an interested person;
- (4) Enforcement of penalties: To see that penalties are enforced when prescribed by any tax or revenue law of the State (the administration of which is within the scope of the department's duties) for disobedience or evading of its provisions, and to see that complaint is made against persons violating any such law; in the execution of these powers and duties the department may call upon the attorney general or any of the attorney general's deputies, including the county attorneys or public prosecutors, whose duties it shall be to assist in the institution and conduct of all proceedings or prosecutions for penalties and forfeitures, liabilities, and punishments for violation of the laws [in respect to the assessment and taxation of property;] administered by the department;
- (5) Forms: To prescribe forms to be used in or in connection with such assessment, including forms to be used in the making of returns by taxpayers or in any other proceedings connected with the assessment, and to change the same from time to time as deemed necessary;

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- (6) Inspection, examination of records: To inspect and examine the records of all public officers without charge, and to examine the books and papers of account of any person for the purpose of enabling the department to obtain all information that could in any manner aid the department in discharging its duties under any tax law;
- (7) Recommendations for legislation: To recommend to the governor such amendments, changes, or modifications of the laws as may seem proper or necessary to remedy injustice or irregularity in taxation or to facilitate the assessment of [property for taxation or any other assessment of or for] taxes;
- (8) Report to governor: To report to the governor annually, and at such other times and in such manner as the governor may require, concerning the acts and doings and the administration of the department, and such other matters of information concerning taxation as may be deemed of general interest;
- (9) Rules and regulations: To make such rules and regulations as the department may deem proper effectually to carry out the purposes for which the department is constituted and to regulate matters of procedure by or before the department;
- (10) Compromises: With the approval of the governor, to compromise any claim arising under any tax law the administration of which is within the scope of the department's duties; and in any such case there shall be placed on file in the department's office a statement of (A) the amount of tax assessed, or proposed to be assessed, (B) the amount of penalties and interest imposed or which could have been imposed by law with respect to the preceding item, as computed by the department, (C) the total amount of liability as determined by the terms of the compromise, and the actual payments made thereon with the dates thereof, and (D) the reasons for the compromise;
- (11) Retroactivity of rulings: To prescribe the extent, if any, to which any ruling, regulation, or construction of the tax laws, of general application, shall be applied without retroactive effect;
- (12) Remission of delinquency penalties and interest: Except in cases of fraud or wilful violation of the laws or wilful refusal to make a return setting forth the information required by law (but inclusion in a return of a claim of nonliability for the tax shall not be deemed a refusal to make a return), the department may remit any amount of penalties or interest added, under any law administered by the department, to any tax that is delinquent for not more than ninety days, in a case of excusable failure to file a return or pay a tax within the time required by law, or in a case of uncollectibility of the whole amount due; and in any such case there shall be placed on file in the department's office a statement showing the name of the person receiving such remission, the principal amount of the tax, and the year or period involved;
- (13) Closing agreements: To enter into an agreement in writing with any taxpayer or other person relating to the liability of such taxpayer or other person, under any law the administration of which is within the scope of the department's duties, in respect of any taxable period, or in respect of one or more separate items affecting the liability for any taxable period; such agreement, signed by or on behalf of the taxpayer or other person concerned, and by or on behalf of the department, shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, (A) the matters agreed upon shall not be reopened, and the agreement shall not be modified,

by any officer or employee of the State, and (B) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded;

- (14) Other powers and duties: In addition to the powers and duties contained in this chapter, the powers and duties contained in [chapter 246] chapters 235, 237 to 239, 243 to 245, 236D, 244D, and 237D, for levying, assessing, collecting, receiving, and enforcing payments of the tax imposed thereunder, and otherwise relating thereto, shall be severally and respectively conferred, granted, practiced, and exercised for levying, assessing, collecting, [and] receiving, and enforcing payment of the taxes imposed under the authority of those chapters [235, 237 to 239, 243 to 245, 236D, 244D, and 237D,] as far as the provisions [of chapter 246 are not superseded by and] are consistent with the express provisions of those chapters, as fully and effectually to all intents and purposes as if the same powers and authorities were repeated in those chapters, with reference to those taxes, and all of the provisions [and regulations prescribed under chapter 246, except as aforesaid,] shall be applied, construed, deemed, and taken to refer to the taxes imposed under the authority of those chapters, in like manner."

3. Section 231-4 is amended to read as follows:

**"§231-4 Assessing officers eligible to appointment as collecting officers and vice versa.** Appointees to offices or positions in the department of taxation for the assessing of [property] taxes shall be eligible [to] for appointment to offices or positions in the department for the collection of taxes, and vice versa."

4. Section 231-23 is amended to read as follows:

**"§231-23 Adjustments and refunds.** [(a) This subsection shall apply to taxes assessed and collected under chapter 246.

- (1) In the event of adjustments on account of duplicate assessments and clerical errors, such as transposition in figures, typographical errors, and errors in calculations, the adjustments may be entered upon the records although the full amount appearing on the records prior to such adjustment has been paid.
  - (2) There may be refunded in the manner provided in subsection (d) of this section any amount collected in excess of the amount appearing on the records as adjusted, or any amount constituting a duplication of payment in whole or in part.
  - (3) Whenever any real property is deemed by the director of taxation to be exempt from taxation under section 246-39, if there shall have been paid prior to the effective date of the exemption any real property taxes applicable to the period following the effective date of the exemption, there shall be refunded to the nonprofit or limited distribution mortgagor owning the property in the manner provided in section 231-23(d) all amounts representing the real property taxes which have been paid on account of the property and attributable to the period following the effective date of the exemption.
  - (4) No such adjustment shall be entered on the records nor refund made except within two years after the end of the tax year in which the amount to be refunded was due and payable, unless a written application for the adjustment or refund has been filed within such period.
- (b)] (a) This subsection shall apply to all taxes except those collected under [chapters 246 and] chapter 247 and those collected under a chapter containing a

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provision for credit and refund of the amount of tax paid in excess of the tax imposed by such chapter. As to all tax payments for which a refund or credit is not authorized by this subsection (including without prejudice to the generality of the cases of unconstitutionality hereinafter mentioned in (1)(C)) the remedies provided by appeal or under section 40-35 are exclusive.

- (1) If the amount already paid exceeds that which should have been paid under the chapter imposing a particular tax, or if the amount already paid results in duplication of payment in whole or in part, the excess so paid shall be refunded in the manner provided in subsection [(d) of this section,] (c) subject however to the following limitations:
  - (A) No refund shall be made unless an application for the refund shall have been made within five years after the amount to be refunded was paid;
  - (B) No recourse may be had except under section 40-35 or by appeal for refunds of taxes paid pursuant to an assessment by the director of taxation, provided that if the assessment by the director shall contain clerical errors, transposition of figures, typographical errors, and errors in calculation or if there shall be an illegal or erroneous assessment, the usual refund procedures shall apply[.]; or
  - (C) No refund or overpayment credit shall be made unless the original payment of the tax was due to the law having been interpreted or applied in respect of the taxpayer concerned differently than in respect of taxpayers generally.
- (2) In any case where a taxpayer is entitled to a refund, the taxpayer [may], at the taxpayer's election, may apply the amount of the refund as an overpayment credit to taxes subsequently accruing under the same chapter as that under which the refundable amount was collected.  
[(c)] (b) This subsection shall apply to the taxes collected under chapter

247.

There may be refunded in the manner provided in subsection [(d) of this section] (c) such conveyance tax as has been erroneously or unjustly paid.

- [(d)] (c) This subsection shall apply to all taxes.
- (1) All refunds shall be paid only upon a form to be known as a "refund voucher" prepared by the collector. The refund vouchers shall set forth all the details of each transaction, shall be approved by the director, and shall be forwarded to the comptroller from time to time. The comptroller shall issue a warrant, in the form prescribed by section 40-52, for the payment of any such refund out of the tax reserve fund hereinafter created; provided that if the person entitled to the refund is delinquent in the payment of any tax, the comptroller, upon demand of the collector and after notice to the delinquent taxpayer, shall withhold the amount of the delinquent taxes, together with penalties and interest thereon, from the amount of the refund and pay the same to the collector.
  - (2) There is hereby appropriated, from the general revenues of the State not otherwise appropriated, the sum of \$25,000 which shall be set aside as a special fund to be known as the tax reserve fund. All refunds of taxes collected under chapters 235 to 239, 241, 243 to [246,] 245, 236D, 244D, and 237D, heretofore made out of the reserve funds in chapters 235 and 237 or from the general fund<sup>1</sup> shall be made out of the tax reserve fund. The director of taxation [may], from time to time, may deposit taxes collected under the chapters enumerated in the immediately preceding sentence in the state treasury to the credit of the

tax reserve fund so that there may be maintained at all times a fund not exceeding \$25,000. The amounts deposited shall be made from the taxes with respect to which a particular refund is made[, but in the case of a real property tax refund, from the next collection of real property taxes of the taxation division in which the property which was the subject of the refund is situated].

[(e)] [(d)] This subsection shall apply to a refund for an overpayment of a tax.

- (1) If the tax return as filed by a taxpayer shows the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax due, and the taxpayer requests a refund of the overpayment, the amount of overpayment together with interest, if any, shall be refunded in the manner provided in subsection [(d).] [(c)]. The interest shall be allowed and paid at the rate of two-thirds of one per cent for each calendar month or fraction thereof, beginning with the first month after the due date of the return and continuing until the date that the director approves the refund voucher. If the director approves the refund voucher within ninety days from the due date or the date the return is received, whichever is later, and the comptroller of the State sends the taxpayer a refund warrant within forty-five days from the date of the director's approval, no interest on the overpayment will be allowed or paid. However, if either the director or the comptroller exceeds the time allowed herein, interest will be computed from the due date of the return until the date that the comptroller sends the refund warrant to the taxpayer.
- (2) If any overpayment of taxes results or arises from (A) the taxpayer filing an amended return, or from (B) a determination made by the director and such overpayment is not shown on the original return as filed by the taxpayer, interest on the overpayment shall be allowed and paid from the first month after the due date of the original return to the date that the director signs the refund voucher. If the comptroller does not send the refund warrant to the taxpayer within forty-five days after the director's approval, interest will continue until the date that the comptroller sends the refund warrant to the taxpayer.
- (3) For purposes of a net income tax return, if any overpayment of any taxes results from a carryback of a net operating loss, the overpayment shall be deemed not to have been made prior to the close of the taxable year in which the net operating loss arises. To the extent that the carryback of net operating loss results in reducing the amount of underpayment of taxes for prior taxable year or years, interest which would be chargeable because of the underpayment shall not be applicable with respect to that amount or amounts which are carried back.
- (4) In the case of credit, interest shall be allowed and paid from the due date of the return or the date of payment, whichever is later, to the date the credit is taken; provided that the director may make a refund of any credit to a taxpayer where the taxpayer has no underpayment against which to apply the credit."

SECTION 5. Section 232-4, Hawaii Revised Statutes, is amended to read as follows:

**“§232-4 Second appeal.** In every case in which a taxpayer appeals a real property tax assessment to [a board of review or to] a tax appeal court and there is pending an appeal of the assessment, the taxpayer shall not be required to file a

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notice of the second appeal; provided the first appeal has not been decided prior to April 9 preceding the tax year of the second appeal; and provided further the assessor gives notice that the tax assessment has not been changed from the assessment which is the subject of the appeal."

SECTION 6. Section 232-7, Hawaii Revised Statutes, is amended to read as follows:

**"§232-7 Boards of review; duties, powers, procedure before.** (a) The board of review for each district shall hear informally all disputes between the assessor and any taxpayer [or county] in all cases in which appeals have been duly taken and the fact that a notice of appeal has been duly filed by a taxpayer [or county] shall be conclusive evidence of the existence of a dispute; provided that this provision shall not be construed to permit a taxpayer to dispute an assessment to the extent that it is in accordance with the taxpayer's return.

(b) Each board shall hold public meetings at some central location in its taxation district, commencing not later than April 9 of each year and shall hear, as speedily as possible, all appeals presented for each year. Each board shall have the power and authority to decide all questions of fact and all questions of law, excepting questions involving the Constitution or laws of the United States, necessary to the determination of the objections raised by the taxpayer [or the county] in the notice of appeal; provided that no board shall have power to determine or declare an assessment illegal or void. Without prejudice to the generality of the foregoing, each board shall have power to allow or disallow exemptions pursuant to law whether or not previously allowed or disallowed by the assessor and to increase or lower any assessment.

(c) The board shall base its decision on the evidence before it, and, as provided in section 231-20, the assessment made by the assessor shall be deemed *prima facie* correct. [Assessments for the same year upon other similar property situated in the State shall be received in evidence upon the hearing. In increasing or lowering any real property assessment the board shall be governed by chapter 246 and section 232-3.] The board shall file with the assessor concerned its decision in writing on each appeal decided by it, and a certified copy [thereof] of the decision shall be furnished by the assessor [forthwith] to the taxpayer concerned by delivery [thereof to the taxpayer,] or by mailing the copy addressed to the taxpayer's last known place of residence. [In the case of a real property tax appeal taken by a county, a certified copy of the decision of the board shall be furnished by the assessor forthwith to the county by delivery to the county clerk.

(d) Upon completion of its review of the property tax appeals for the current year, the board shall compile and submit to the governor, and shall file with the assessor for the use of the public, a copy of a report covering such features of its work as, in the opinion of the board, will be useful in attaining the objectives set forth in chapter 246. In this report the board shall additionally note instances in which, in the opinion of the board, the assessor, in the application of the methods selected by the assessor, erred as to a particular property or particular properties not brought before the board by any appeal, whether the error is deemed to have been by way of underassessment or overassessment. Before commencing this phase of its work the board shall publish, during the first week of September a notice specifying a period of at least ten days within which complaints may be filed by any taxpayer or county. Each complaint shall be in writing, shall identify the particular property involved, shall state the valuation claimed by the taxpayer or county and the grounds of objection to the assessment, and shall be filed with the assessor who shall transmit the same to the board. Not earlier than one week after the close of the period allowed for filing complaints the board shall hear the same,

after first giving reasonable notice of the hearing to all interested taxpayers, the county, and the assessor. Like notice and hearing shall be given in order for the board to include in its report any other property not brought before it by an appeal. The board may proceed by districts designated by their tax map designation, and may from time to time publish the notice above provided for as the work proceeds by districts.

(e) The assessor, in the making of assessments for the succeeding year, shall give due consideration to the report of the board made pursuant to subsection (d).

(f) [d] Each board and each member thereof in addition to all other powers shall also have the power to subpoena witnesses, administer oaths, examine books and records, and hear and take evidence in relation to any subject pending before the board. The tax appeal court shall have the power, upon request of the boards, to enforce by proper proceedings the attendance of witnesses and the giving of testimony by them, and the production of books, records, and papers at the hearings of the boards."

SECTION 7. Section 232-13, Hawaii Revised Statutes, is amended to read as follows:

**"§232-13 Hearing de novo; bill of particulars.** The hearing before the tax appeal court shall be a hearing de novo. Irrespective of which party prevails in [the] proceedings before a state board of review, or any equivalent administrative body established by county ordinance, the assessment as made by the assessor, or if increased by the board, or equivalent county administrative body, the assessment as so increased, shall be deemed *prima facie* correct. Each party shall have the right to introduce, or the tax appeal court, of its own motion, may require the taking of such evidence in relation to the subject pending as in the court's discretion may be deemed proper. The court, in the manner provided in section 232-16, shall determine all questions of fact and all questions of law, including constitutional questions, involved in the appeal.

The jurisdiction of the tax appeal court is limited to the amount of valuation or taxes, as the case may be, in dispute as shown on the one hand by the amount claimed by the taxpayer or county and on the other hand by the amount of the assessment, or if increased by the board, or equivalent county administrative body, the assessment as so increased.

Assessments for the same year upon other similar property situated in the State shall be receivable in evidence upon the hearing.

Upon the application of either the taxpayer, the county, or the assessor, the judge of the tax appeal court, upon notice, may allow and direct a bill of particulars of the claim of either the taxpayer, the county, or the assessor to be delivered to the other, and in case of default the judge shall preclude the person so defaulting from giving evidence of the part or parts of the person's affirmative claim of which particulars have not been delivered."

SECTION 8. Section 232-15, Hawaii Revised Statutes, is amended to read as follows:

**"§232-15 Appeal to board of review.** [In case the assessment is one upon real property then the appeal to a board of review shall be to the board of review for the district in which the property is located. In all other cases the] The appeal to a board of review may be either to the board of review for the district in which the taxpayer has the taxpayer's principal place of business or to the board of review for the district in which the taxpayer resides or has the taxpayer's principal office or to the board of review of the first district. The notice of appeal must be lodged

## ACT 14

with the assessor on or before the date fixed by law for the taking of the appeal. An appeal to the board of review shall be deemed to have been taken in time if the notice thereof shall have been deposited in the mail, postage prepaid, properly addressed to the assessor, on or before such date.

The notice of appeal must be in writing and any such notice, however informal it may be, identifying the assessment involved in the appeal[ ], stating the valuation claimed by the taxpayer or county] and stating the grounds of objection to the assessment shall be sufficient. Upon the necessary information being furnished by the taxpayer [or county] to the assessor, the assessor shall prepare the notice of appeal upon request of the taxpayer [or county] and any notice so prepared by the assessor shall be deemed sufficient as to its form. [If an appeal is taken by a county, the notice of appeal shall be served upon the taxpayer or taxpayers concerned.]

The appeal shall be considered and treated for all purposes as a general appeal and shall bring up for determination all questions of fact and all questions of law, excepting questions involving the Constitution or laws of the United States, necessary to the determination of the objections raised by the taxpayer [or county] in the notice of appeal. Any objection involving the Constitution or laws of the United States may be included by the taxpayer [or county] in the notice of appeal and in such case the objections may be heard and determined by the tax appeal court on appeal from a decision of the board of review; but this provision shall not be construed to confer upon the board of review the power to hear or determine such objections. Any notice of appeal may be amended at any time prior to the board's decision; provided the amendment does not substantially change the dispute [or lower the valuation claimed]."

SECTION 9. Section 232-16, Hawaii Revised Statutes, is amended to read as follows:

**"§232-16 Appeal to tax appeal court.** A taxpayer or county [may], in all cases, may appeal directly to the tax appeal court without appealing to [the] a state board of review, or any equivalent administrative body established by county ordinance, by filing, on or before the date fixed by law for the taking of the appeal, a written notice of appeal in the office of the tax appeal court. An appealing taxpayer shall pay the costs in the amount fixed by section 232-22. The taxpayer or county shall also file a copy of the notice of appeal in the assessor's office or mail a copy to the assessor not later than the date fixed by law for the taking of the appeal.

The notice of appeal to the tax appeal court shall be sufficient if it meets the requirements prescribed for a notice of appeal to the board of review and may be amended at any time; provided that it sets forth the following additional information, to wit:

A brief description of the property involved in sufficient detail to identify the same and the valuation placed thereon by the assessor.

The notice of appeal shall be accompanied by a copy of the taxpayer's return, if any has been filed.

An appeal to the tax appeal court shall be deemed to have been taken in time if the notice thereof and costs and the copy of the notice shall have been deposited in the mail, postage prepaid, properly addressed to the tax appeal court and the assessor and to the taxpayer or taxpayers in the case of an appeal taken by a county, respectively, on or before the date fixed by law for the taking of the appeal.

An appeal to the tax appeal court shall bring up for review all questions of fact and all questions of law, including constitutional questions, necessary to the determination of the objections raised by the taxpayer or county in the notice of appeal."

SECTION 10. Section 232-17, Hawaii Revised Statutes, is amended to read as follows:

**“§232-17 Appeals from boards of review to tax appeal court.** An appeal shall lie to the tax appeal court from the decision of a state board of review, or equivalent administrative body established by county ordinance, by the filing, by the taxpayer, the county, or the tax assessor, of a written notice of appeal in the office of the tax appeal court within thirty days after the filing of the decision of the state board of review, or equivalent administrative body, and, in the case of any appealing taxpayer, the payment of the costs of court in the amount fixed by section 232-22. The taxpayer shall also file a copy of the notice of appeal in the assessor’s office and, in case of an appeal from a decision involving a county as a party, with the county clerk. If an appeal is taken by a county, a copy of the notice of appeal shall be filed in the assessor’s office and a copy shall be served upon the taxpayer or taxpayers concerned. A notice of appeal shall be sufficient if it states that the taxpayer, county, or assessor appeals from the decision of the state board of review, or equivalent administrative body, to the tax appeal court and may be amended at any time. The appeal shall bring up for determination all questions of fact and all questions of law, including constitutional questions involved in the appeal.

In case of an appeal by the assessor, a copy of the notice of appeal shall be forthwith delivered or mailed to the taxpayer concerned or to the clerk of the county concerned in the manner provided in section 232-7 for giving notice of decisions.

An appeal shall be deemed to have been taken in time if the notice thereof and costs, if any, and the copy or copies of the notice shall have been deposited in the mail, postage prepaid, properly addressed to the tax appeal court, tax assessor, taxpayer or taxpayers, and county, respectively, within the period [hereinabove] provided[.] by this section.”

SECTION 11. Section 232-18, Hawaii Revised Statutes, is amended to read as follows:

**“§232-18 Certificate of appeal to tax appeal court.** Upon the perfecting of an appeal to the tax appeal court, the tax assessor of the district from which the appeal is taken shall immediately send up to the tax appeal court a certificate in which there shall be set forth the information required by section 232-16 to be set forth in the notice of appeal where an appeal is taken direct from the assessment to the tax appeal court.

The certificate shall be accompanied by the taxpayer’s return, if any has been filed, a copy of the notice of appeal to the state board of review, or equivalent administrative body established by county ordinance, and any amendments thereto, and the decision or action, if any, of the state board of review[.] or equivalent administrative body. Failure of the assessor to comply herewith shall not prejudice or affect the taxpayer’s, county’s, or assessor’s appeal and the certificate of appeal may be amended at any time up to the final determination of the appeal.”

SECTION 12. Section 232-20, Hawaii Revised Statutes, is amended to read as follows:

**“§232-20 Certificate of appeal.** Upon the perfection of an appeal to the supreme court the judge of the tax appeal court shall send up to the supreme court a certificate in which there shall be set forth, among other things:

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- (1) A brief description of the assessment and the property involved in the appeal, if any, in sufficient detail to identify the same together with the valuation placed on the property by the assessor.
- (2) The valuation claimed by the taxpayer or county.
- (3) The taxpayer's or county's grounds of objection to the assessment.
- (4) The valuation, if any, placed thereon by [the] an administrative body established by county ordinance equivalent to a state board of review.
- (5) The valuation placed thereon by the tax appeal court.

The certificate shall be accompanied by the taxpayer's return, if any, a copy of the notice of appeal from the assessment and any amendments thereof, the decision, if any, of the state board of review[,] or equivalent county administrative body, a copy of the notice of appeal from the decision of the state board of review[,] or equivalent county administrative body, if any, and any amendments thereof, and a transcript or statement of the evidence before and the decision of the tax appeal court, and all exhibits, motions, orders, or other documents specified by either the taxpayer, the county, or the assessor. Failure of the judge of the tax appeal court to send up or properly prepare the certificate or the accompanying documents shall not prejudice, limit, or in any manner affect the taxpayer's, county's, or assessor's appeal, and the certificate of appeal may be amended at any time up to the final determination of the appeal."

SECTION 13. Section 232-22, Hawaii Revised Statutes, is amended to read as follows:

**"§232-22 Costs; deposit for an appeal.** [The costs to be deposited by the taxpayer on appeal to the board of review shall be \$3 for each real property tax appeal.] No costs shall be charged on appeal to the state board of review [in other cases].

The costs to be deposited by the taxpayer on any appeal to the tax appeal court shall be five per cent of the amount of taxes in dispute but not more than \$100 nor less than \$5 in any one case.

On appeal to the supreme court, the deposit for costs, and costs chargeable, shall be the same as in appeals to the supreme court from decisions of circuit courts, as provided by sections 607-5 and 607-6. If the decision of the supreme court is in favor of the taxpayer, the taxpayer shall pay no costs for the appeal and any payment or deposit therefor shall be returned to the taxpayer. If the decision is only partly in favor of the taxpayer, the costs shall be prorated in the manner provided by section 232-23. No costs shall be payable by, and no deposit shall be required from, the assessor or the county in any case."

SECTION 14. Section 232-23, Hawaii Revised Statutes, is amended to read as follows:

**"§232-23 Costs, taxation.** (a) In the event of an appeal by a taxpayer to the state board of review, if the appeal is compromised, or is sustained as to fifty per cent or more of the [valuation] amount in dispute, the costs deposited shall be returned to the appellant. Otherwise the entire amount of costs deposited shall be retained.

(b) In the event of an appeal by a taxpayer to the tax appeal court, if the appeal or objection is sustained in whole, the costs deposited shall be returned to the appellant. If the appeal or objection is sustained in part only, or if an agreement or compromise is made between the appellant and the tax assessor or other proper officer, whereby a reduction is made in the total amount of the valuation assessed (in cases of real property tax appeals) or the tax assessed (in other cases), then a

part of the costs proportionate to the amount for which the appellant shall obtain judgment or proportionate to the amount of the reduction, as the case may be, shall be returned to the appellant. In the event of dismissal of the appeal without hearing upon the merits the costs deposited in excess of the \$5 minimum shall be returned to the appellant.

In the event of a final determination of an appeal by a county to [a board of review,] the tax appeal court[,] or the supreme court, that a higher assessment should be made of the property involved, the additional tax due shall be collected in the same manner as the tax based upon the original assessment.”

SECTION 15. Section 237-27.5, Hawaii Revised Statutes, is amended to read as follows:

**“[§237-27.5[]] Air pollution control facility.** (a) As used in this section, “air pollution control facility” shall mean a new identifiable treatment facility, equipment, device, or the like, which is used to abate or control atmospheric pollution or contamination by removing, reducing, or rendering less noxious air contaminants emitted into the atmosphere from a point immediately preceding the point of such removal, reduction, or rendering to the point of discharge of air, meeting emission standards as established by the department of health, excluding air conditioner, fan, or other similar facility for the comfort of persons at a place of business.

(b) Any provision of law to the contrary notwithstanding, and upon receipt of the certification required by subsection (c), there shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter [237], all of the gross proceeds arising from, and all of the amount of tangible personal property furnished in conjunction with, the construction, reconstruction, erection, operation, use, or maintenance of an air pollution control facility[; provided that application for exemption shall first be made with the director of health and the director of taxation in the manner prescribed by section 246-34.5].

(c) Application for the exemption provided by this section shall first be made with the director of health who, if satisfied that the facility meets the pollution emission criteria established by the department of health, shall certify to that fact. A new certificate shall be obtained from the director of health and filed with the director of taxation every five years certifying that the pollution control facility complies with the pollutant emission criteria established by the department of health.”

SECTION 16. Section 421H-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The membership shares and cooperative fees are interests in real property for purposes of:

- (1) Cooperative housing corporations under section 216 of the federal Internal Revenue Code of 1954, as amended; and
- (2) Exemption from state general excise tax under section 237-24(16)[; and]
- (3) Exemption from real property tax under sections 246-26 and 246-27(3)].”

SECTION 17. Section 501-82, Hawaii Revised Statutes, is amended to read as follows:

**“§501-82 Tenure of holder of certificate of title.** Every applicant receiving a certificate of title in pursuance of a decree of registration, and every subsequent

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purchaser of registered land who takes a certificate of title for value and in good faith, hold the same free from all encumbrances except those noted on the certificate in the order of priority of recordation, and any of the following encumbrances which may be subsisting, namely:

- (1) Liens, claims, or rights arising or existing under the laws or Constitution of the United States, which the statutes of this State cannot require to appear of record in the registry; provided that notices of liens for internal revenue taxes payable to the United States, and certificates affecting such liens, shall be deemed to fall within this subsection only if the same are recorded in the bureau of conveyances as provided by chapter 505.
- (2) Unpaid real property taxes assessed against the land and improvements covered by the certificate of title, with interest, penalties, and other additions to the tax, which, unless a notice is filed and registered as provided by [section 246-55.] county real property tax ordinance, shall be for the period of three years from and after the date on which the lien attached, and if proceedings for the enforcement or foreclosure of the tax lien are brought within the period, until the termination of the proceedings or the completion of the tax sale.
- (3) Any public highway, or any private way laid out under the provisions of law, when the certificate of title does not state that the boundary of such way has been determined.
- (4) Any lease, coupled with occupancy, for a term not exceeding one year; provided that the priority of the unrecorded lease shall attach only at the date of the commencement of the unrecorded lease and expire one year from the date or sooner if so expressed.
- (5) Any liability to assessments for betterments, or statutory liability which may attach to land as a lien prior to or independent of, the recording or registering of any paper of the possibility of a lien for labor or material furnished in the improvement of the land; provided that the priority of any such liability and the lien therefor (other than for labor and material furnished in the improvement of the land which shall be governed by section 507-43) shall cease and terminate three years after the liability first accrues unless notice thereof, signed by the officer charged with collection of such assessments or liability, setting forth the amount claimed, the date of accrual, and the land affected, is registered and noted on the certificate of title within such three year period; provided further that if there are easements or other rights, appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure, and shall be held to pass with the land until cut off or extinguished by the registration of the servient estate, or in any other manner.
- (6) The possibility of reversal or vacation of the decree of registration upon appeal."

**SECTION 18.** Section 92-22, Hawaii Revised Statutes, is repealed.

**SECTION 19.** Section 92-23, Hawaii Revised Statutes, is repealed.

**SECTION 20.** Section 231-19, Hawaii Revised Statutes, is repealed.

**SECTION 21.** Section 231-22, Hawaii Revised Statutes, is repealed.

**SECTION 22.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

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

(Approved April 11, 1989.)

**Notes**

1. Prior to amendment “,” appeared here.
2. Edited pursuant to HRS §23G-16.5.

**ACT 15**

S.B. NO. 1861

A Bill for an Act Relating to State Bonds.

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

SECTION 1. The purpose of this Act is to provide for technical corrections to chapter 39, Hawaii Revised Statutes.

SECTION 2. Section 39-4, Hawaii Revised Statutes, is amended to read as follows:

**“§39-4 Details of bonds.** (a) All bonds issued pursuant to this part shall bear interest at such rate or rates, payable at such time or times[, at a stated rate or rates;] as determined in accordance with this part; shall mature and be payable at such time or times from the date of the issue thereof as will comply with the provisions of the Constitution of the State; may be made payable as to both principal and interest at a place or places within or without the State; may be issued in coupon form without privilege of registration or registrable as to principal only or as to both principal and interest or in fully registrable form without coupons; may be made registrable at a place or places within or without the State; may be subject to redemption, to tenders for purchase or to purchase prior to their stated maturity at the option of the State, or the holder, or both.

(b) The director of finance shall determine the date, denomination or denominations, interest payment dates, maturity date or dates, place or places and manner of payment, registration privileges and place or places of registration, redemption price or prices and time or times and terms and conditions and method of redemption, the right of the holder to tender for purchase and the price or prices and time or times and terms and conditions upon which the right might be exercised, the right to purchase and the price or prices and the time or times and terms and conditions upon which the right may be exercised and the purchase may be made, and all other details of bonds issued under this part.

The principal of and interest and premium, if any, on all bonds issued under this part shall be payable in any coin or currency of the United States of America, which at the time of payment is legal tender for public and private debts.”

SECTION 3. Section 39-62, Hawaii Revised Statutes, is amended to read as follows:

**“§39-62 Use of revenue and user taxes of undertaking or loan program.** Whenever any revenue bonds have been issued pursuant to this part for an undertaking or a loan program, the revenue, or the user taxes, or combination of both, of the undertaking or loan program from which the revenue bonds are payable and by which they are secured shall be deposited in a special fund and shall be appropriated, applied, or expended[, and the department shall have the right to appropriate, apply, or expend the same,] in the amount necessary therefor for the following

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purposes and in the order of priority as the department shall provide in the resolution or certificate authorizing the issuance of revenue bonds pursuant to this part:

- (1) To pay when due all revenue bonds and interest thereon issued for the undertaking or loan program, for the payment of which the revenue, or user taxes, or combination of both, is or shall have been pledged, charged, or otherwise encumbered, including reserves therefor;
- (2) To pay or provide for the payment of the cost of operation, maintenance, and repair of the undertaking, or to pay or provide for the payment of administering, operating, and maintaining the loan program, including reserves therefor;
- (3) For such purposes, within the jurisdiction, powers, duties, and functions of the department, including the creation and maintenance of reserves, as shall have been covenanted in any resolution or resolutions or certificate or certificates of the department providing for the issuance of revenue bonds;
- (4) To reimburse the general fund of the State for all bond requirements for general obligation bonds which are or shall have been issued for the undertaking or loan program, or to refund any general obligation bonds, except insofar as the obligation of reimbursement has been or shall be canceled by the legislature, the bond requirements being the interest on term and serial bonds, sinking fund for term bonds, and principal of serial bonds maturing the following year;
- (5) To provide for betterments and improvements to the undertaking or expansion of the loan program, including reserves therefor; and
- (6) To provide special reserve funds and other special funds as are or may be created by law.

The appropriation, application, or expenditure of amounts deposited in the special fund pursuant to this section shall be accounted for on a fiscal year basis. Unless and until adequate provision has been made for the foregoing purposes, the State shall not have the right to transfer to its general fund or any special fund or to apply to any other purposes any part of the revenue or user taxes pledged to the payment of revenue bonds of the undertaking or loan program.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved April 12, 1989.)

## ACT 16

S.B. NO. 1854

A Bill for an Act Relating to Termination of Contract by Contracting Agency.

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

SECTION 1. Section 103-33, Hawaii Revised Statutes, is amended to read as follows:

**“§103-33 Termination of contract by contracting agency.** The contracting officer for any contract executed in accordance with this chapter may terminate the contract at any time or bar the contractor from bidding on any project let to bid pursuant to this chapter, for a period not to exceed one year when, in the opinion of the contracting officer, the contractor has made unjustifiable and substantive

changes from the condition set forth in the contractor's original itemized bid; provided that the changes which are [directly] due directly to the failure, refusal, or inability of a subcontractor named in the contractor's original itemized bid in accordance with section 103-29 to enter into the subcontract or because of the subcontractor's insolvency, inability to furnish a reasonable performance bond, suspension or revocation of the subcontractor's license, or failure or inability to comply with other requirements of the law applicable to contractors, subcontractors, and public works projects shall not be deemed to be unjustifiable and substantive changes warranting termination of the contract by the contracting officer[.] or for barring the contractor from bidding on future projects. Upon termination, the contracting officer shall limit payment to the contractor to that part of the contract satisfactorily completed at the time of termination. In the case of barring contractors from bidding on future contracts, each contracting officer taking that action shall notify other contracting agencies of the action.”

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

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

(Approved April 17, 1989.)

**ACT 17**

H.B. NO. 875

A Bill for an Act Relating to the Department of Land and Natural Resources:  
Making a Supplementary Appropriation Out of General Revenues to Cover  
Certain Deficiencies for the Fiscal Year Ending June 30, 1989.

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

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

SECTION 2. The Molokai irrigation project, currently managed by the department of land and natural resources, was constructed in the early 1960's under a federal loan obtained through the provisions of the Small Reclamation Projects Act (P.L. 84-984) administered by the United States Bureau of Reclamation. The original loan amount of \$4,513,727 has been reduced by installment payments to \$2,933,922, as of June 17, 1988.

As a means to raise revenues to comply with the fiscal year 1988 federal budget and to reduce future administrative costs of the loan program, Congress enacted the Budget Reconciliation Act of 1987 which authorized the Bureau of Reclamation, under Section 5301, to undertake a loan portfolio sales program. Through this program the Bureau extended an attractive discount prepayment offer to loan borrowers, which included the Hawaii department of land and natural resources. In the case of the Molokai irrigation project loan, the offer translated into a repurchase of the current loan balance of \$2,933,922 for a reduced sum of \$1,199,194.

Under the advice of the department of budget and finance and the consent of the governor, the department of land and natural resources accepted the federal prepayment offer and subsequently remitted the full repurchase amount of \$1,199,194. The department remittance included \$390,721 of fiscal year 1988 and 1989 loan repayments already budgeted for; the balance of \$808,473 consisted of departmental

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extractions which if not restored will severely constrain the implementation of several ongoing programs previously approved by the legislature for fiscal year 1988-1989.

The prepayment action taken by the department of land and natural resources resulted in a substantial savings to the State of Hawaii. As of July 1988, the federal loan portfolio sales program resulted in letters of intent from borrowers of loans representing 99.5 per cent of the \$566,000,000 in outstanding loan obligations.

To prevent the reduction of vital services deriving from the impacted departmental program, it is urgent that restorative appropriations be made by the legislature. The governor and director of finance concur that a deficiency exists and recommend this bill for immediate passage.

**SECTION 3.** In addition to the appropriations made for the same program by any other act, the following sums, or so much thereof as may be necessary, are hereby appropriated from the state general fund to the department of land and natural resources for fiscal year 1988-1989 for the following programs:

LNR 141	\$199,473
LNR 404	\$470,000
LNR 906	\$139,000

**SECTION 4.** Any unexpended and unencumbered balance of the appropriations made by this Act as of the close of business on June 30, 1989, shall lapse into the general fund of the State.

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

(Approved April 17, 1989.)

## **ACT 18**

H.B. NO. 416

A Bill for an Act Relating to Income Tax Extensions.

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

**SECTION 1.** Section 235-101, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) It shall be the duty of every person who is required by section 235-92 to make a return, to report to the department, as to any taxable year governed by [the income tax law of 1957,] this chapter, if (1) the amount of taxable income as returned to the United States is changed, corrected, or adjusted by an officer of the United States or other competent authority, or (2) a change in taxable income results from a renegotiation of a contract with the United States or a subcontract thereunder, or (3) a recomputation of the income tax imposed by the United States under the Internal Revenue Code results from any cause, or (4) an amended income tax return is made to the United States. The report shall be made within ninety days after the change, correction, adjustment, or recomputation is finally determined or the amended return is filed, as the case may be, but in any event, even if such change, correction, adjustment, or recomputation has not been finally determined or the ninety days have not elapsed, such person shall make a report thereof to the department at the time of filing the person’s next return under this chapter. The statutory period for the assessment of any deficiency or the determination of any refund attributable to this report shall not expire before the expiration of one year from the date the

department is notified by the taxpayer or the Internal Revenue Service, whichever is earlier, of such a report in writing. Before the expiration of this one-year period, the department and the taxpayer may agree in writing to the extension of this period. The period so agreed upon may be further extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

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

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

(Approved April 21, 1989.)

## ACT 19

H.B. NO. 417

A Bill for an Act Relating to the Allocation of Income for Income Tax Purposes.

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

SECTION 1. Section 235-26, Hawaii Revised Statutes, is amended to read as follows:

**“§235-26 Allocation of capital gains and losses.** (a) Capital gains and losses from sales of real property located in this State are allocable to this State.

(b) Capital gains and losses from sales of tangible personal property are allocable to this State if:

- (1) The property had a situs in this State at the time of the sale; or
- (2) The taxpayer's commercial domicile is in this State and the taxpayer is not taxable in the state in which the property had a situs.

(c) [Capital] Except in the case of the sale of a partnership interest, capital gains and losses from sales of intangible personal property are allocable to this State if the taxpayer's commercial domicile is in this State.

(d) Gain or loss from the sale of a partnership interest is allocable to this State in the ratio of the original cost of partnership tangible property in the State to the original cost of partnership tangible property everywhere, determined at the time of the sale. If more than fifty per cent of the value of a partnership's assets consists of intangibles, gain or loss from the sale of the partnership interest shall be allocated to this State in accordance with the sales factor of the partnership for its first full tax period immediately preceding its tax period during which the partnership interest was sold.”

SECTION 2. Section 255-1, Hawaii Revised Statutes, is amended by amending article IV to read as follows:

### “Article IV. Division of Income.

1. As used in this Article, unless the context otherwise requires:

(a) “Business income” means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) “Commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) “Compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

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(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this Article.

(h) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any Territory or Possession of the United States, and any foreign country or political subdivision thereof.

(i) "This State" means the State in which the relevant tax return is filed or, in the case of application of this Article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this State, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion [his] the taxpayer's net income as provided in this Article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of [his] the taxpayer's income from activities subject to this Article, the taxpayer may elect to allocate and apportion [his] the taxpayer's entire net income as provided in this Article.

3. For purposes of allocation and apportionment of income under this Article, a taxpayer is taxable in another State if (1) in that State [he] the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that State has jurisdiction to subject the taxpayer to a net income tax regardless of whether in fact, the State does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patents or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this Article.

5. (a) Net rents and royalties from real property located in this State are allocable to this State.

(b) Net rents and royalties from tangible personal property are allocable to this State: (1) if and to the extent that the property is utilized in this State, or (2) in their entirety if the taxpayer's commercial domicile is in this State and the taxpayer is not organized under the laws of or taxable in the State in which the property is utilized.

(c) The extent of utilization of tangible personal property in a State is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the State during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the State in which the property was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this State are allocable to this State.

(b) Capital gains and losses from sales of tangible personal property are allocable to this State if (1) the property had a situs in this State at the time of the sale, or (2) the taxpayer's commercial domicile is in this State and the taxpayer is not taxable in the State in which the property had a situs.

(c) [Capital] Except in the case of the sale of a partnership interest, capital gains and losses from sales of intangible personal property are allocable to this State if the taxpayer's commercial domicile is in this State.

(d) Gain or loss from the sale of a partnership interest is allocable to this State in the ratio of the original cost of partnership tangible property in the State to the original cost of partnership tangible property everywhere, determined at the time of the sale. If more than fifty per cent of the value of a partnership's assets consists of intangibles, gain or loss from the sale of the partnership interest shall be allocated to this State in accordance with the sales factor of the partnership for its first full tax period immediately preceding its tax period during which the partnership interest was sold.

7. Interest and dividends are allocable to this State if the taxpayer's commercial domicile is in this State.

8. (a) Patent and copyright royalties are allocable to this State: (1) if and to the extent that the patent or copyright is utilized by the payer in this State, or (2) if and to the extent that the patent copyright is utilized by the payer in a State in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.

(b) A patent is utilized in a State to the extent that it is employed in production, fabrication, manufacturing, or other processing in the State or to the extent that a patented product is produced in the State. If the basis of receipts from patent royalties does not permit allocation to States or if the accounting procedures do not reflect States of utilization, the patent is utilized in the State in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a State to the extent that printing or other publication originates in the State. If the basis of receipts from copyright royalties does not permit allocation to States or if the accounting procedures do not reflect States of utilization, the copyright is utilized in the State in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this State during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll is a fraction, the numerator of which is the total amount paid in the State during the tax period by the taxpayer for compensation and the

## ACT 20

denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this State if:

(a) the individual's service is performed entirely within the State;

(b) the individual's service is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State; or

(c) some of the service is performed in the State and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the State, or (2) the base of operations or the place from which the service is directed or controlled is not in any State in which some part of the service is performed, but the individual's residence is in this State.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this State during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this State if:

(a) the property is delivered or shipped to a purchaser, other than the United States Government, within this State regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this State and (1) the purchaser is the United States Government or (2) the taxpayer is not taxable in the State of the purchaser.

17. Sales, other than sales of tangible personal property, are in this State if:

(a) the income-producing activity is performed in this State; or

(b) the income-producing activity is performed both in and outside this State and a greater proportion of the income-producing activity is performed in this State than in any other State, based on costs of performance.

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income."

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

SECTION 4. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1988.

(Approved April 21, 1989.)

## ACT 20

H.B. NO. 418

A Bill for an Act Relating to Tax Administration.

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

SECTION 1. Section 231-33, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The department may record in the bureau of conveyances at Honolulu, or in respect of a lien on a motor vehicle, file with the county director of finance, a certificate setting forth the amount of taxes due and unpaid, which have been returned, assessed, or as to which a notice of proposed assessment has issued. The certificate shall identify the taxpayer, the taxpayer's last known address, and the tax or taxes involved. [The certificate shall include such further information, if any, as may be required by chapter 501 to procure a lien on registered land.] The recording or filing of the certificate has the effect set forth in this section, but nothing in this section shall be deemed to require that a certificate recorded or filed by the department must include the amount of any penalty or interest, in order to protect the lien therefor. The certificate, if recorded or filed with the county director of finance, shall be entered of record as provided by law[, and if recorded or filed in the bureau of conveyances at Honolulu shall be recorded in the office of the registrar of conveyances]. Recordation of the certificate in the bureau of conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in the land court under chapter 501. Any cost incurred in the filing of the certificate shall be a part of the lien for the tax therein set forth.”

SECTION 2. Section 501-82, Hawaii Revised Statutes, is amended to read as follows:

**“§501-82 Tenure of holder of certificate of title.** Every applicant receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value and in good faith, hold the same free from all encumbrances except those noted on a<sup>1</sup> certificate in the order of priority of recordation, and any of the following encumbrances which may be subsisting, namely:

- (1) Liens, claims, or rights arising or existing under the laws or Constitution of the United States, which the statutes of this State cannot require to appear of record in the registry; provided that notices of liens for internal revenue taxes payable to the United States, and certificates affecting such liens, shall be deemed to fall within this [subsection] paragraph only if the same are recorded in the bureau of conveyances as provided by chapter 505.
- (2) Unpaid real property taxes assessed against the land and improvements covered by the certificate of title, with interest, penalties, and other additions to the tax, which, unless a notice is filed and registered as provided by section 246-55, shall be for the period of three years from and after the date on which the lien attached, and if proceedings for the enforcement or foreclosure of the tax lien are brought within the period, until the termination of the proceedings or the completion of the tax sale.
- (3) State tax liens, if the same are recorded in the bureau of conveyances as provided by section 231-33.
- [ (3) ] (4) Any public highway, or any private way laid out under the provisions of law, when the certificate of title does not state that the boundary of such way has been determined.
- [ (4) ] (5) Any lease, coupled with occupancy, for a term not exceeding one year; provided that the priority of the unrecorded lease shall attach only at the date of the commencement of the unrecorded lease and expire one year from the date or sooner if so expressed.

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- [5)] (6) Any liability to assessments for betterments, or statutory liability which may attach to land as a lien prior to or independent of, the recording or registering of any paper of the possibility of a lien for labor or material furnished in the improvement of the land; provided that the priority of any such liability and the lien therefor (other than for labor and material furnished in the improvement of the land which shall be governed by section 507-43) shall cease and terminate three years after the liability first accrues unless notice thereof, signed by the officer charged with collection of such assessments or liability, setting forth the amount claimed, the date of accrual, and the land affected, is registered and noted on the certificate of title within such three year period; provided further that if there are easements or other rights, appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure, and shall be held to pass with the land until cut off or extinguished by the registration of the servient estate, or in any other manner.
- [6)] (7) The possibility of reversal or vacation of the decree of registration upon appeal.”

SECTION 3. Section 501-102, Hawaii Revised Statutes, is amended to read as follows:

**“§501-102 Filing liens, etc., notice.** Every conveyance, lien, attachment, order, decree, instrument, or entry affecting registered land, which would under existing laws, if recorded, filed, or entered in the bureau of conveyances, affect the real estate to which it relates, shall, if registered, filed or recorded, or entered in the office of the assistant registrar in the bureau of conveyances, be notice to all persons from the time of such registering, filing, recording, or entering. This section shall not be construed to relate to state or federal tax liens, [and] the recording of which shall be as provided by [chapter] chapters 231 and 505[.], respectively.”

SECTION 4. Section 501-136, Hawaii Revised Statutes, is amended to read as follows:

**“§501-136 Attachment and other liens; filing or recording of.** In every case where a writing of any description or a copy of any writ is required by law to be filed or recorded in the bureau of conveyances in order to create or preserve any lien, right, or attachment upon unregistered land, such writing or copy, when intended to affect registered land shall be filed or recorded and registered with the assistant registrar[.] of the land court. In addition to any particulars required in such papers for recording with records of deeds, it shall also contain a reference to the number of the certificate of title of the land to be affected and also, if the attachment, right, or lien is not claimed on all the land in any certificate of title, a description sufficiently accurate for identification of the land intended to be affected. This section and section 501-138 do not apply to liens for internal revenue taxes payable to the United States[.] or to liens for state taxes payable to the state department of taxation.”

SECTION 5. Section 667-5, Hawaii Revised Statutes, is amended to read as follows:

**“§667-5 Foreclosure under power of sale; notice; affidavit after sale.** When a power of sale is contained in a mortgage, the mortgagee, or the mortgagee’s

successor in interest, or any person authorized by the power to act in the premises, may, upon a breach of the condition, give notice of the mortgagee's, successor's, or person's intention to foreclose the mortgage and of the sale of the mortgaged property, by publication of the notice once in each of three successive weeks (three publications), the last publication to be not less than fourteen days before the day of sale, in a newspaper having a general circulation in the county in which the mortgaged property lies; and also give such notices and do all such acts as are authorized or required by the power contained in the mortgage. [A copy] Copies of the notice shall be filed with the state director of taxation and shall be posted on the premises not less than twenty-one days before the day of sale.

Any sale, of which notice has been given as aforesaid, may be postponed from time to time by public announcement made by the mortgagee or by some person acting on the mortgagee's behalf. The mortgagee shall, within thirty days after selling the property in pursuance of the power, file a copy of the notice of sale and the mortgagee's affidavit, setting forth the mortgagee's acts in the premises fully and particularly, in the bureau of conveyances.

The affidavit and copy of the notice shall be recorded and indexed by the registrar, in the manner provided in chapter 501 or 502, as the case may be.

This section is inapplicable if the mortgagee is foreclosing as to personal property only."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved April 21, 1989.)

**Note**

1. So in original.

**ACT 21**

H.B. NO. 420

A Bill for an Act Relating to the Tax Review Commission.

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

SECTION 1. Section 232E-2, Hawaii Revised Statutes, is amended to read as follows:

**"§232E-2 Term.** A commission shall be appointed on or before July 1, 1980, and a new commission shall be appointed on or before July 1 every five years thereafter; provided that if any vacancy occurs in the membership of a commission prior to the completion of its duties or dissolution, the governor shall appoint a replacement member in accordance with sections 232E-1 and 26-34. The commission shall meet from time to time as necessary to execute its duties. [Upon completion of its duties, the] The commission shall dissolve[.] upon the adjournment sine die of the legislature to which it submits the evaluation and recommendations required by section 232E-3."

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

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

(Approved April 21, 1989.)

## ACT 22

H.B. NO. 811

A Bill for an Act Relating to the Aquarium and Marine Laboratory.

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

SECTION 1. Section 304-31, Hawaii Revised Statutes, is amended to read as follows:

**“§304-31 Aquarium and marine laboratory; site.** All those certain pieces or parcels of land situated at Waikiki, city and county of Honolulu, used as an aquarium and more fully described in [registered map No. 1079 as lots 127 and 128,] copy survey furnished number 11528 as all of lots 114 to 118 inclusive and portions of lots 113 and 119 of the Kapiolani park lots as described in Executive Order No. 1817, are set aside for public purposes, to-wit: for the purposes of an aquarium and marine biological laboratory under the direction of the board of regents of the University of Hawaii. The board shall establish and at all times maintain upon such lands an aquarium for the exhibition to the public of fishes and other forms of marine life. It shall also establish and at all times maintain there a marine biological laboratory.”

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

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

(Approved April 21, 1989.)

## ACT 23

H.B. NO. 1001

A Bill for an Act Relating to Public Lands.

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

SECTION 1. Act 5, Session Laws of Hawaii 1987, is amended by amending section 3 to read as follows:

“SECTION 3. In exchange for the State’s long-term leases, all qualified persons shall agree to be an essential part of the interpretive programs in Kahana Valley State Park as directed by the department of land and natural resources. All qualified persons so agreeing shall provide services in interpretive program activities pursuant to this Act as volunteers and not as employees of the State. The department of land and natural resources is required to establish a monitoring system and enforcement mechanism to insure compliance with these agreements.”

SECTION 2. New statutory material is underscored.

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

(Approved April 21, 1989.)

## ACT 24

H.B. NO. 1819

A Bill for an Act Relating to Workers' Compensation.

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

SECTION 1. Section 386-10, Hawaii Revised Statutes, is amended to read as follows:

**"[§386-10] Out of state employers.** Any employer whose principal place of business is outside the State shall, prior to the commencement of employment within the State, register with the director the employer's name, approximate total wages to be paid, and the dates of employment activity within the State. The employer shall file with the director, in the form prescribed by the director, a notice of insurance [together with a copy of the contract or policy of insurance which has been countersigned by a person licensed under chapter 431.] as required by section 386-122."

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

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

(Approved April 21, 1989.)

## ACT 25

H.B. NO. 1832

A Bill for an Act Relating to the Use of the Special Land and Development Fund.

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

SECTION 1. Section 171-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is created in the department [of land and natural resources] a special fund to be designated as the "special land and development fund". Subject to the provisions contained in the Hawaiian Homes Commission Act of 1920, as amended, and in section 5(f) of the Admission Act of 1959, and except as provided under section 171-138 for the industrial park special fund, all proceeds of sale of public lands, including interest on deferred payments, and all rents from leases, licenses, and permits derived from public lands shall be set apart in the fund and shall be used only as authorized by the legislature, except that, without [such] prior legislative authority, the board [of land and natural resources] may use the fund for the following purposes:

- (1) To reimburse the general fund of the State for [advancements heretofore or hereafter made therefrom,] advances made which are required to be reimbursed from the proceeds [of] derived from sales, leases, licenses, or permits [derived from] of public lands;
- (2) For the [incidental] maintenance of all lands under the control and management of the board, including repairs or improvements, thereon[, not to exceed \$200,000]; provided that the department shall not expend in excess of \$500,000 in any fiscal year[;] without the prior approval of the governor;

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- (3) To repurchase any land, including improvements [thereon], in the exercise by the board of any right of repurchase specifically reserved in any patent, deed, lease, or other documents or as provided by law;
- (4) For the payment of all appraisal fees; provided that all [such reimbursable] fees [collected by] reimbursed to the board shall be deposited in the fund;
- (5) For the payment of publication notices as required under this chapter; provided that all or a portion of the expenditures may be charged to the purchaser or lessee of public lands or any interest therein under rules adopted by the board;
- (6) For the planning and construction of roads and trails along state rights-of-way not to exceed \$5,000 in any fiscal year; and
- (7) For the payment to private land [developer or] developers who have contracted with the board for development of public lands under section 171-60.”

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

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

(Approved April 21, 1989.)

## ACT 26

H.B. NO. 1862

A Bill for an Act Relating to Housing Finance and Development Corporation.

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

SECTION 1. Section 26-8, Hawaii Revised Statutes, is amended to read as follows:

**“§26-8 Department of budget and finance.** The department of budget and finance shall be headed by a single executive to be known as the director of finance.

The department shall undertake the preparation and execution of the executive budget of the state government; conduct a systematic and continuous review of the finances, organization, and methods of each department of the State to assist each department in achieving the most effective expenditure of all public funds and to determine that such expenditures are in accordance with the budget laws and controls in force; have custody of state funds and be responsible for the safekeeping, management, investment, and disbursement thereof; and administer state debts.

The department of budget and finance shall develop and operate an information network in conjunction with its overall plans for establishing a communication backbone for state government. The state communication system shall be established to facilitate implementation of the State's distributed information processing and information resource management plans; improve data, voice, and video communications in state government; provide a means for connectivity among the state, university, and county computer systems; and provide a long-term means for public access to public information.

The functions and authority heretofore exercised by the bureau of the budget (except for insurance management, surplus property management, and central purchasing transferred to the department of accounting and general services) and the funds custody, cash management, debt management, and administering of veterans loan functions of the treasurer as heretofore constituted are transferred to the department of budget and finance established by this chapter.

The employees retirement system as constituted by chapter 88 is placed within the department of budget and finance for administrative purposes. The functions, duties, and powers, subject to the administrative control of the director of finance, and the composition of the board of trustees of the employees retirement system shall be as heretofore provided by law.

The public utilities commission is placed within the department of budget and finance for administrative purposes only.

The housing finance and development corporation is placed within the department of budget and finance for administrative purposes only."

SECTION 2. Section 26-18, Hawaii Revised Statutes, is amended to read as follows:

**"§26-18 Department of business and economic development.** (a) The department of business and economic development shall be headed by a single executive to be known as the director of business and economic development.

The department shall undertake statewide business and economic development activities, undertake energy development and management, provide economic research and analysis, plan for the use of Hawaii's ocean resources, and encourage the development and promotion of industry and international commerce through programs established by law.

(b) The following are placed in the department of business and economic development for administrative purposes as defined by section 26-35: Aloha Tower development corporation, Hawaii community development authority, high technology development corporation, land use commission, natural energy laboratory of Hawaii, [housing finance and development corporation,] and any other boards and commissions as shall be provided by law.

The department of business and economic development shall be empowered to establish, modify, or abolish statistical boundaries for cities, towns, or villages in the State and shall publish, as expeditiously as possible, an up-to-date list of cities, towns, and villages after changes to statistical boundaries have been made."

SECTION 3. Section 201E-3, Hawaii Revised Statutes, is amended to read as follows:

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

(b) The corporation shall be headed by a board of directors which consists of [eight] nine members, of whom six shall be public members appointed by the governor as provided in section 26-34. Two public members shall be appointed at large; the remaining public members shall be appointed from each of the counties of Honolulu, Hawaii, Maui, and Kauai. The director of finance, the director of business and economic development, or [a] their designated [representative,] representatives, and the special assistant for housing shall be ex officio voting members.

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

(d) [Four] Five members shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the corporation. The members shall receive no compensation for services, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the performance of their duties.

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(e) The corporation shall employ, not subject to chapters 76 and 77 and section 26-35(4), an executive director. Effective July 1, 1988, the salary of the executive director shall be \$61,560 a year. The corporation may employ, subject to chapters 76 and 77, technical experts and officers, agents, and employees, permanent and temporary, as required. The corporation may also employ persons on a contractual basis not subject to chapters 76, 77, and 78 when in the determination of the corporation the services to be performed are unique and essential to the execution of the functions of the corporation; provided that no individual contract shall be for a period longer than two years per term. The corporation may call upon the attorney general for such legal services as it may require, or it may employ its own counsel and legal staff. The corporation may delegate to one or more of its agents or employees such powers and duties as it deems proper."

**SECTION 4.** (a) All officers and employees whose functions are transferred to or conferred upon the housing finance and development corporation by this Act shall be transferred with their current functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act. No officer or employee of the State shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act.

In the event that an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department of personnel services or the governor.

(b) All appropriate records, equipment, files, supplies, contracts, books, papers, documents, maps, authorizations, and other property heretofore made, used, acquired, or held in conjunction with functions transferred by this Act shall be transferred with the functions, programs, or segments to which they relate.

(c) All funds appropriated for the 1989-1991 fiscal biennium, directly or indirectly, relating to the functions, programs, or organizational segments transferred under this Act shall be appropriately transferred to the department of budget and finance with the functions, programs, or segments to which they relate.

(d) It is the intent of this Act to neither jeopardize the receipt of any federal aid nor impair the obligation of the State or any agency thereof to persons with which it has existing contracts or to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

**SECTION 5.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 6.** This Act shall take effect on July 1, 1989.

(Approved April 21, 1989.)

## ACT 27

H.B. NO. 1867

A Bill for an Act Relating to Agricultural Loans.

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

SECTION 1. Section 155-4, Hawaii Revised Statutes, is amended to read as follows:

**"§155-4 Powers and duties of the department.** The department of agriculture shall have the following powers:

- (1) Employ a secretary, who may be exempt from chapters 76 and 77, and such other full-time and part-time employees, subject to chapters 76 and 77, as are necessary to effectuate the purposes of this chapter, subject further to the limitation of funds in the agricultural loan reserve fund.
- (2) Designate such agents throughout the State as may be necessary for property appraisal, the consideration of loan applications, and the supervision of farming operations of borrowers. The agents may be compensated for their services at such rates as the department in its discretion may fix.
- (3) Initiate and carry on a continuing research and education program, utilizing and coordinating the services and facilities of other government agencies and private lenders to the maximum, to inform qualified farmers concerning procedures for obtaining loans and to inform private lenders concerning the advantages of making loans to qualified farmers.
- (4) Cooperate with private and federal government farm loan sources to increase the amount of loan funds available to qualified farmers in the State.
- (5) Assist individual qualified farmers in obtaining loans from other sources. Insofar as available funds and staff permit, counsel and assist individual farmers in establishing and maintaining proper records to prove their farming ability for loan purposes.
- (6) Insure loans made to qualified farmers by private lenders under section 155-5.
- (7) Participate in loans made to qualified farmers by private lenders under section 155-6.
- (8) Make loans to qualified farmers under the insured loan program of the Farmers Home Administration, subject to section 155-7.
- (9) Make direct loans to qualified farmers under section 155-8.
- (10) Borrow money for loan purposes.
- (11) Assign and sell mortgages.
- (12) Hold title to, maintain, use, manage, operate, sell, lease, or otherwise dispose of personal and real property acquired by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned.
- [(12)] (13) Sue and be sued in the name of the "State of Hawaii".
- [(13)] (14) Exercise such incidental powers as are deemed necessary or requisite to fulfill its duty in carrying out the purposes of this chapter.
- [(14)] Permit the board of agriculture to delegate] (15) Delegate authority to its chairperson to approve loans, where the requested amount plus any principal balance on existing loans to the applicant, does not exceed \$25,000 of state funds.
- [(15)] Promulgate] (16) Adopt rules [as it may deem necessary in accordance with chapter 91 having the force and effect of law.] necessary for the purpose of this chapter."

## ACT 28

SECTION 2. Section 171-2, Hawaii Revised Statutes, is amended to read as follows:

**“§171-2 Definition of public lands.** “Public lands” means all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including submerged lands, and lands beneath tidal waters which are suitable for reclamation, together with reclaimed lands which have been given the status of public lands under this chapter, except:

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;
- (2) Lands set aside pursuant to law for the use of the United States;
- (3) Lands being used for roads and streets;
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the State Constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- (5) Lands to which the University of Hawaii holds title;
- (6) Lands to which the Hawaii housing authority in its corporate capacity holds title;
- (7) Lands to which the Hawaii community development authority in its corporate capacity holds title; [and]
- (8) Lands to which the housing finance and development corporation in its corporate capacity holds title[.]; and
- (9) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned.”

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

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

(Approved April 21, 1989.)

## ACT 28

H.B. NO. 1904

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

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

SECTION 1. Section 214, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (b) to read as follows:

“(b) In addition the department may:

- (1) Use moneys in the Hawaiian home operating fund, with the prior approval of the governor, to match federal, state, or county funds available for the same purposes and to that end, enter into such undertaking, agree to such conditions, transfer funds therein available

- for such expenditure, and do and perform such other acts and things, as may be necessary or required, as a condition to securing matching funds for such projects or works;
- (2) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof[, up to a maximum of \$50,000] to lessees in accordance with section 215;
  - (3) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof to a cooperative association in accordance with section 215;
  - (4) Permit and approve loans made to lessees by government agencies or private lending institutions, where the department assures the payment of such loans; provided that upon receipt of notice of default in the payment of such assured loans, the department may, upon failure of the lessee to cure the default within sixty days, cancel the lease and pay the outstanding balance in full or may permit the new lessee to assume the outstanding debt; and provided further that the department shall reserve the following rights: the right of succession to the lessee's interest and assumption of the contract of loan; the right to require that written notice be given to the department immediately upon default or delinquency of the lessee; and any other rights enumerated at the time of assurance necessary to protect the monetary and other interests of the department;
  - (5) Secure, pledge, or otherwise guarantee the repayment of moneys borrowed by the department from government agencies or private lending institutions and pay the interim interest or advances required for loans; provided that the State's liability, contingent or otherwise, either on moneys borrowed by the department or on departmental guarantees of loans made to lessees under this paragraph and paragraphs (2), (3), and (4) of this subsection, shall at no time exceed \$21,000,000; the department's guarantee of repayment shall be adequate security for a loan under any state law prescribing the nature, amount, or form of security or requiring security upon which loans may be made;
  - (6) Use available loan fund moneys or other funds specifically available for such purposes as cash guarantees when required by lending agencies;
  - (7) Exercise the functions and reserved rights of a lender of money or mortgagee of residential property in all direct loans made by government agencies or by private lending institutions to lessees the repayment of which is assured by the department. The functions and reserved rights shall include but not be limited to, the purchasing, repurchasing, servicing, selling, foreclosing, buying upon foreclosure, guaranteeing the repayment, or otherwise underwriting, of any loan, the protecting of security interest, and after foreclosures, the repairing, renovating, or modernization and sale of property covered by the loan and mortgage;
  - (8) Pledge receivables of loan accounts outstanding as collateral to secure loans made by government agencies or private lending institutions to the department, the proceeds of which shall be used by the department to make new loans to lessees or to finance the development of available lands for purposes permitted by this Act; provided that any loan agreement entered into under this paragraph by the department shall include a provision that the money borrowed by the department is not secured directly or indirectly by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than the

- receivables specifically pledged to repay the loan; provided further that in making loans or developing available lands out of money borrowed under this paragraph, the department may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient, to assure repayment of the funds borrowed, and the fees, premiums, and charges shall be deposited into the Hawaiian home trust fund; and provided further that no moneys of the Hawaiian home loan fund may be pledged as security under this paragraph; and
- (9) Notwithstanding any other provisions of this Act to the contrary, transfer into the Hawaiian home trust fund any available and unpledged moneys from any loan funds, the Hawaiian loan guarantee fund, or any fund or account succeeding thereto, except the Hawaiian home loan fund, for use as cash guarantees or reserves when required by a federal agency authorized to insure or guarantee loans to lessees."

SECTION 2. Section 215, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

**"§215. Conditions of loans.** Except as otherwise provided in section [213(a)(5)]  
213(a)(2), each contract of loan with the lessee or any successor or successors to [his] the lessee's interest in the tract or with any agricultural, mercantile, or aquacultural cooperative association composed entirely of lessees shall be held subject to the following conditions whether or not stipulated in the contract loan:

- (1) At any one time, the outstanding amount of loans made to any lessee, or successor or successors in interest, for the repair, maintenance, purchase, and erection of a dwelling and related permanent improvements shall not exceed [\$50,000,] fifty per cent of the maximum single residence loan amount allowed in Hawaii by the United States Department of Housing and Urban Development's Federal Housing Administration (FHA), for the development and operation of a farm, ranch, or aquaculture operation shall not exceed \$50,000, except that when loans are made to an agricultural or aquacultural cooperative association for the purposes stated in section 214(a)(4), the loan limit shall be determined by the department on the basis of the proposed operations and the available security of the association, and for the development and operation of a mercantile establishment shall not exceed the loan limit determined by the department on the basis of the proposed operations and the available security of the lessee or of the organization formed and controlled by lessees; provided that upon the death of a lessee leaving no relative qualified to be a lessee of Hawaiian home lands, or the cancellation of a lease by the department, or the surrender of a lease by the lessee, the department shall make the payment provided for by section 209(a), the amount of any such payment [made to the legal representative of the deceased lessee, or to the previous lessee, as the case may be,] shall be considered as part or all, as the case may be, of any such loan to the successor or successors, without limitation as to the above maximum amounts; provided further that in case of death of a lessee, or cancellation of a lease by the department, or the surrender of a lease by the lessee, the successor or successors to the tract shall assume any outstanding loan or loans thereon, if any, without limitation as to the above maximum amounts but subject to paragraph (3).

- (2) The loans shall be repaid in periodic installments, such installments to be monthly, quarterly, semiannual, or annual as may be determined by the department in each case. The term of any loan shall not exceed thirty years. Payments of any sum in addition to the required installments, or payment of the entire amount of the loan, may be made at any time within the term of the loan. All unpaid balances of principal shall bear interest at the rate of two and one-half per cent a year for loans made directly from the Hawaiian home loan fund, or at the rate of two and one-half per cent or higher as established by law for other loans, payable periodically or upon demand by the department, as the department may determine. The payment of any installment due shall be postponed in whole or in part by the department for such reasons as it deems good and sufficient and until such later date as it deems advisable. Such postponed payments shall continue to bear interest on the unpaid principal at the rate established for the loan.
- (3) In the case of the death of a lessee the department shall, in any case, permit the successor or successors to the tract to assume the contract of loan subject to paragraph (1). In case of the cancellation of a lease by the department or the surrender of a lease by the lessee, the department may, at its option declare all installments upon the loan immediately due and payable, or permit the successor or successors to the tract to assume the contract of loan subject to paragraph (1). The department may, in such cases where the successor or successors to the tract assume the contract of loan, waive the payment, wholly or in part, of interest already due and delinquent upon the loan, or postpone the payment of any installment thereon, wholly or in part, until such later dates as it deems advisable. Such postponed payments shall, however, continue to bear interest on the unpaid principal at the rate established for the loan. Further, the department may, if it deems it advisable and for the best interests of the lessees, write off and cancel, wholly or in part, the contract of loan of the deceased lessee, or previous lessee, as the case may be, where such loans are delinquent and deemed uncollectible. Such write off and cancellation shall be made only after an appraisal of all improvements and growing crops or improvements and aquaculture stock, as the case may be, on the tract involved, such appraisal to be made in the manner and as provided for by section [210.5] 209(a). In every case, the amount of such appraisal, or any part thereof, shall be considered as part or all, as the case may be, of any loan to such successor or successors, subject to paragraph (1).
- (4) No part of the moneys loaned shall be devoted to any purpose other than those for which the loan is made.
- (5) The borrower or the successor to his interest shall comply with such other conditions, not in conflict with any provision of this Act, as the department may stipulate in the contract of loan.
- (6) The borrower or the successor to his interest shall comply with the conditions enumerated in section 208, and with section 209 of this Act in respect to the lease of any tract.
- (7) Whenever the department shall determine that a borrower is delinquent in the payment of any indebtedness to the department, it may require such borrower to execute an assignment to it, not to exceed, however, the amount of the total indebtedness of such borrower, including the indebtedness to others the payment of which has been assured by the department of all moneys due or to become due to such borrower by

## **ACT 29**

reason of any agreement or contract, collective or otherwise, to which the borrower is a party. Failure to execute such an assignment when requested by the department shall be sufficient ground for cancellation of the borrower's lease or interest therein."

**SECTION 3.** The provisions of this amendment are declared to be severable, and if any section, sentence, clause or phrase, or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect then, that portion only shall take effect upon the granting of consent by the United States and the effectiveness of the remainder of this amendment or the application thereof shall not be affected.

**SECTION 4.** Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved April 21, 1989.)

## **ACT 29**

H.B. NO. 106

A Bill for an Act Relating to Carpool Lanes.

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

**SECTION 1.** The legislature finds that carpool lanes, established to reduce traffic volume on our roadways, are currently underutilized. The purpose of this Act is to encourage motorists to utilize existing carpool lanes by reducing the minimum vehicle occupancy requirement from three persons to two persons.

**SECTION 2.** Section 291C-53, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"§291C-53 Restrictions on use of controlled-access roadway or highway.<sup>1</sup>** (a) The director of transportation by order, and the counties by ordinance, may regulate or prohibit the use of any controlled-access roadway or highway within their respective jurisdictions by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic. Persons operating motorcycles which are otherwise permitted on a controlled-access roadway or highway shall be permitted to use any carpool lane designated on such roadway or highway. For the purposes of this subsection, "carpool lane" means a designated lane of a laned roadway where the use of such designated lane is restricted to vehicles carrying at least [three] two persons and to other vehicles enumerated by order or ordinance."

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

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

(Approved April 24, 1989.)

**Note**

1. So in original.

**ACT 30**

H.B. NO. 118

A Bill for an Act Relating to Child Passenger Restraints.

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

SECTION 1. Section 291-11.5, Hawaii Revised Statutes, is amended to read as follows:

**"[§291-11.5] Child passenger restraints.** (a) Except as otherwise provided in this section, no person operating a motor vehicle on a public highway in the State shall transport a child under four years of age except under the following circumstances:

- (1) If the child is under three years of age, the person operating the motor vehicle shall ensure that the child is properly restrained in a child passenger restraint system approved by the United States Department of Transportation at the time of its manufacture; or
- (2) If the child is three years of age or older but less than four years of age, the person operating the motor vehicle must either ensure that the child is properly restrained in a child passenger restraint system approved by the United States Department of Transportation at the time of its manufacture or ensure that the child is restrained by a seat belt assembly.

(b) Operators of the following motor vehicles shall be exempt from the requirements of this section: emergency, commercial, [for hire,] and mass transit vehicles [and type I school buses.] Further exemptions from this section may be established by the department of transportation pursuant to rules adopted under chapter 91.

(c) This section shall not apply if the number of persons in a vehicle exceeds the greater of the following:

- (1) The number of seat belt assemblies available in the vehicle; or
- (2) The number of seat belt assemblies originally installed in the vehicle; provided that all available seat belt assemblies are being used to restrain a passenger, and those children not restrained by an approved child passenger restraint system or a seat belt assembly are in the back seat of the motor vehicle.

(d) In no event shall failure of a child under the age of four years to be restrained or failure to restrain such a child in a child passenger restraint system or a seat belt assembly be considered as contributory negligence, comparative negligence, or negligence per se.

(e) Any person violating this section shall be guilty of a violation and subject to the penalties of section 291C-161(b).

(f) As used in this section, "emergency vehicle", "mass transit vehicle", and "seat belt assembly" shall have the same meaning as provided in section 291-11.6.

As used in this section, "commercial vehicle" shall be defined as any motor vehicle that is being used for the transportation of persons for hire, compensation, or profit."

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

## ACT 31

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

(Approved April 24, 1989.)

## ACT 31

H.B. NO. 127

A Bill for an Act Relating to Transportation.

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

SECTION 1. The Legislature finds that:

- (1) The majority of the State's citizens commute daily by private automobile.
- (2) The growth and development of major urban, suburban, and residential centers throughout the State impacts each island's transportation system by placing increasing numbers of vehicles on the major arterials which connect these important centers on each island.
- (3) At the present rate of growth and development, the State's transportation needs will soon exceed the capabilities of its existing highways system.
- (4) Creating new roadways and expanding existing roadways, traditional methods used in the past to address the State's transportation needs, are no longer viable alternatives due to the current high cost of construction, the scarcity of available land, and other significant social, economic, and environmental concerns.
- (5) Transportation systems management programs consisting of ridesharing arrangements and the development, promotion, and coordination of ridesharing programs are attractive since they can be implemented with minimal lead times at relatively low costs to the State.

The purpose of this Act is to effectuate the establishment of a transportation systems management program which shall include, but not be limited to:

- (1) Planning, developing, promoting, and coordinating ridesharing programs consisting of feasible varieties of ridesharing arrangements as defined under section 279G-1, and assisting public employers, private employers, schools, and other organizations in the planning, development, promotion, and coordination of ridesharing programs;
- (2) Assisting in the formulation of ridesharing arrangements;
- (3) Promoting the use of high occupancy vehicle lanes and carpool lanes;
- (4) Promoting programs to discourage commuting by private vehicles, except through ridesharing arrangements or by common carrier;
- (5) Promoting and coordinating with public employers, private employers, and schools the alteration of work and school hours for employers and students; and
- (6) Planning, developing, promoting, and coordinating programs to encourage bicycling as a mode of transportation and recreation.

SECTION 2. Section 26-19, Hawaii Revised Statutes, is amended to read as follows:

**“§26-19 Department of transportation.** The department of transportation shall be headed by a single executive to be known as the director of transportation.

The department shall establish, maintain, and operate transportation facilities of the State, including highways, airports, harbors, and such other transportation facilities and activities as may be authorized by law.

The department shall plan, develop, promote, and coordinate various transportation systems management programs that shall include, but not be limited to, alternate work and school hours programs, bicycling programs, and ridesharing programs.

The department shall develop and promote ridesharing programs which shall include but not be limited to, carpool and vanpool programs, and may assist organizations interested in promoting similar programs, [and] arrange for contracts with private organizations to manage and operate these programs[.], and assist in the formulation of ridesharing arrangements. Ridesharing programs include informal arrangements in which three or more persons ride together in a motor vehicle for four or more days a week to or from work or school.

The functions and authority heretofore exercised by the department of public works with respect to highways are transferred to the department of transportation established by this chapter.

On July 1, 1961, the Hawaii aeronautics commission, the board of harbor commissioners and the highway commission shall be abolished and their remaining functions, duties, and powers shall be transferred to the department of transportation.

Upon the abolishment of the Hawaii aeronautics commission, the board of harbor commissioners, and the highway commission, there shall be established within the department of transportation a commission to be known as the commission on transportation which shall sit in an advisory capacity to the director of transportation on matters within the jurisdiction of the department of transportation. The commission on transportation shall consist of not more than eleven members, with the number of members from each county insofar as practicable being approximately proportional to the population of the respective counties to the population of the State; provided that each of the four counties shall be [represented] represented by at least one member."

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

SECTION 4. This Act shall take effect on July 1, 1989.

(Approved April 24, 1989.)

ACT 32

H.B. NO. 132

A Bill for an Act Relating to Wages and Other Compensation.

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

SECTION 1. Section 388-2, Hawaii Revised Statutes, is amended to read as follows:

**"§388-2 Semimonthly payday.** (a) Every employer shall pay all wages due to the employer's employees at least twice during each calendar month, on regular paydays designated in advance by the employer, in lawful money of the United States or with checks convertible into cash on demand at full face value thereof; provided that when a majority of an employer's employees or a majority of the employees in a collective bargaining unit recognized by an employer or established by law elect, in a secret ballot election under procedures approved by the director of labor and industrial relations, to be paid once a month on a regularly scheduled basis, the employees shall be paid on such monthly basis. The elections shall not be held more frequently than once in every two years[.] and each election shall be valid for a period of two years.

## **ACT 33**

- (b) The earned wages of all employees shall be due and payable within seven days after the end of each pay period.
- (c) The director may, upon application showing good and sufficient reasons, permit an employer to:
- (1) Establish regular paydays less frequently than semimonthly provided that the employee shall be paid in full at least once each calendar month on a regularly established schedule;
  - (2) Pay earned wages within fifteen days after the end of each pay period."

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

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

(Approved April 24, 1989.)

## **ACT 33**

H.B. NO. 133

A Bill for an Act Relating to Campaign Spending.

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

**SECTION 1.** Section 11-212, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall file a preliminary report with the commission or appropriate county clerk's office, on forms provided by the commission no later than 4:30 p.m. on the tenth [working] calendar day prior to each election. The report shall be certified pursuant to section 11-195 and shall contain the following information which is current through the fifteenth calendar day prior to the election:

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

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

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

(Approved April 24, 1989.)

## ACT 34

H.B. NO. 227

A Bill for an Act Relating to Parentage.

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

SECTION 1. Section 584-11, Hawaii Revised Statutes, is amended to read as follows:

**“[[§584-11]] [Blood] Genetic tests.** (a) The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to genetic tests, including blood tests. The tests shall be performed by an expert qualified as an examiner of [blood types,] genetic markers, appointed by the court.

(b) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of [blood types.] genetic markers.

(c) In all cases, the court shall determine the number and qualifications of the experts.

(d) “Genetic test” means the testing of inherited or genetic characteristics (genetic markers) and includes blood testing for paternity purposes.”

SECTION 2. Section 584-12, Hawaii Revised Statutes, is amended to read as follows:

**“[[§584-12]] Evidence relating to paternity.** Evidence relating to paternity may include:

- (1) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;
- (2) An expert’s opinion concerning the statistical probability of the alleged father’s paternity based upon the duration of the mother’s pregnancy;
- (3) [Blood] Genetic test results, including blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father’s paternity;
- (4) Medical or anthropological evidence relating to the alleged father’s paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and
- (5) All other evidence relevant to the issue of paternity of the child.”

SECTION 3. Section 584-13, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If a party refuses to accept a recommendation made under subsection (a) and genetic tests, including blood tests have not been taken, the court shall require the parties to submit to [blood] genetic tests, if practicable. Thereafter the judge shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.”

SECTION 4. Section 584-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of

## ACT 35

the child shall be admissible in evidence only if he has undergone and made available to the court genetic tests, including blood tests the results of which do not exclude the possibility of his paternity of the child.”

SECTION 5. Section 584-16, Hawaii Revised Statutes, is amended to read as follows:

**“[§584-16] Costs.** The court may order reasonable fees of counsel, experts, and the child’s guardian ad litem, and other costs of the action and pre-trial proceedings, including [blood] genetic tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the State, or such person as the court shall direct.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved April 24, 1989.)

## ACT 35

H.B. NO. 232

A Bill for an Act Relating to Marriage.

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

SECTION 1. Section 572-6, Hawaii Revised Statutes, is amended to read as follows:

**“§572-6 Application; license; limitations.** [In order to] To secure a license to marry, the persons applying [therefor] for the license shall appear personally before an agent authorized to grant marriage licenses and shall file with the agent an application in writing. The application shall be accompanied by a statement signed and sworn to by each of the persons, setting forth: the person’s full name, [age] date of birth, [race,] residence[, occupation, if any]; their relationship, if any; the full names of parents[, and whether living or dead; whether previously married and the manner of the dissolution of the prior marriage or marriages; any]; and that all prior marriages, if any, have been dissolved by death or dissolution. If all prior marriages have been dissolved by death or dissolution, the statement shall also set forth the date of death of the last prior spouse or the date and jurisdiction in which the last decree of dissolution was entered. Any other [items required by] information consistent with the standard marriage certificate as recommended by the [public health service, national center for health statistics,] Public Health Service, National Center for Health Statistics, may be requested for statistical or other purposes, subject to approval of and modification by the department of health[.]; provided that the information shall be provided at the option of the applicant and no applicant shall be denied a license for failure to provide the information. The agent shall indorse on the application, over the agent’s signature, the date of the filing thereof and shall issue a license which shall bear on its face the date of issuance. Every license shall be of full force and effect for thirty days commencing from and including the date of issuance. After the thirty-day period, the license shall become void and no marriage ceremony shall be performed thereon.

It shall be the duty of every person, legally authorized to grant licenses to marry, to immediately report the issuance of every marriage license to the agent

of the department of health in the district in which the license is issued, setting forth all facts required to be stated in such manner and on such form as the department may prescribe."

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

SECTION 3. This Act shall take effect on July 1, 1989.

(Approved April 24, 1989.)

## ACT 36

H.B. NO. 301

A Bill for an Act Relating to Boundaries.

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

SECTION 1. The purpose of this Act is to improve the delivery of judicial and law enforcement services in leeward Oahu by transferring the residential subdivisions of Waikakalua, Waipio Acres, and Mililani Town from the Ewa district to the Wahiawa district. In terms of judicial service purposes, the Ewa district court is located in Pearl City, and the Wahiawa district court is located in Wahiawa.

Twenty years ago, these subdivisions consisted primarily of pineapple fields. Today, 30,000 residents live in these subdivisions, and this figure is expected to expand to 50,000 in the near future. Over the years, many of these residents, including members of the Mililani neighborhood board, have questioned the rationale why they must travel the longer distance to Pearl City instead of utilizing the Wahiawa district court.

This Act provides several advantages. First of all, residents will not only have a shorter drive to the Wahiawa district court, but they will be avoiding the heavy Honolulu-bound traffic as well. Secondly, judicial workload would be better distributed since the Ewa district court currently has a heavier workload than the Wahiawa district court. And thirdly, because this boundary change would conform to the geographic division set up by the Honolulu police department, it should alleviate the jurisdictional concerns that have constantly plagued that department. This would also facilitate court appearances by police officers assigned to the Wahiawa police station.

SECTION 2. Section 4-1, Hawaii Revised Statutes, is amended to read as follows:

**“§4-1 Districts, generally.** For election, taxation, education, city, county, and all other purposes, the State shall be divided into the following districts:

(1) The island and county of Hawaii shall be divided into nine districts as follows:

- (A) Puna, to be styled the Puna district;
- (B) From the Hakalau stream to the boundary of South Hilo and Puna, to be styled the South Hilo district;
- (C) From the boundary of Hamakua and North Hilo to the Hakalau stream, to be styled the North Hilo district;
- (D) Hamakua, to be styled the Hamakua district;

- (E) North Kohala, to be styled the North Kohala district;
  - (F) South Kohala, to be styled the South Kohala district;
  - (G) North Kona, to be styled the North Kona district;
  - (H) South Kona, to be styled the South Kona district;
  - (I) Kau, to be styled the Kau district.
- (2) The islands of Maui, Molokai, Lanai, and Kahoolawe and counties of Maui and Kalawao shall be divided into seven districts as follows:
- (A) Kahikinui, Kaupo, Kipahulu, Hana, and Koolau, to be styled the Hana district;
  - (B) Hamakualoa, Hamakuapoko, portion of Kula, and Honuaula, the western boundary being a line starting from the sea at Kapukaulua on the boundary between the ahupuaas of Haliimaile and Wailuku, thence running inland following the boundary to the mauka side of the Lowrie ditch, thence following the mauka side of the ditch and its projected extension to the Waiakoa gulch which is the boundary between the ahupuaas of Pulehunui and Waiakoa, thence down along the boundary to the mauka boundary of the Waiakoa Homesteads (makai section), thence along the boundary to the ahupuaa of Kaonolulu, thence across the ahupuaa of Kaonolulu to the mauka boundary of the Waiohuli-Keokea Beach Homesteads, thence along the boundary to the mauka boundary of the Kamaole Homesteads, thence along the boundary and the extension thereof to the north boundary of the ahupuaa of Paehau, thence along the boundary to the sea, and including the island of Kahoolawe, to be styled the Makawao district;
  - (C) All that portion of central Maui lying east of a line along the boundary of the ahupuaas of Kahakuloa and Honokohau to the peak of Eke crater, thence along the ridge of mountains and down the bottom of Manawainui gulch to the sea, and west of the boundary of Makawao district, to be styled Wailuku district;
  - (D) All that portion of Maui lying west of Wailuku district, to be styled the Lahaina district;
  - (E) The island of Molokai, except that portion of the island known as Kalaupapa, Kalawao, and Waikolu and commonly known or designated as the Settlement for Hansen's disease sufferers, to be styled the Molokai district;
  - (F) All that portion of the island of Molokai known as Kalaupapa, Kalawao, and Waikolu forming the county of Kalawao, to be styled the Kalawao district;
  - (G) The island of Lanai, to be styled the Lanai district.
- (3) The island of Oahu shall be divided into seven districts as follows:
- (A) From Makapuu Head in Maunalua to Moanalua inclusive, and the islands not included in any other district, to be styled the Honolulu district;
  - (B) Ewa, excluding Waikakalaua, Waipio Acres, and Mililani Town, to be styled the Ewa district;
  - (C) Waianae excluding Waianae Uka, to be styled the Waianae district;
  - (D) From Kaena point to and including the ahupuaa of Waimea excluding Wahiawa, hereinafter described, to be styled the Waialua district;
  - (E) From Waimea to Lae o ka Oio, to be styled the Koolauloa district;

- (F) From Lae o ka Oio to Makapuu Head in Waimanalo, to be styled the Koolaupoko district;
- (G) Wahiawa and Waianae Uka, including Waikakalaua, Waipio Acres, and Mililani Town, lying between Ewa and Waialua districts and more particularly described in the following manner: Beginning at Puu Kaumakua in the Koolau range and running to and along the south boundary of Waianae Uka (which is also the south boundary of Schofield Barracks Military Reservation) to and including Waikakalaua, Waipio Acres, and Mililani Town, thence to Puu Hapapa in the Waianae range; thence continuing along Schofield Barracks Military Reservation northerly along the Waianae range to Puu Kaala, easterly along Mokuleia down ridge to Puu Pane, continuing to Maili Trig. station, and down ridge to Haleauau stream and down Haleauau stream to Kaukonahua gulch, and easterly along the gulch to the west boundary of the ahupuaa of Wahiawa; thence leaving Schofield Barracks Military Reservation and following up and along the west and north boundaries of the ahupuaa of Wahiawa to the Koolau range; thence along the Koolau range to the beginning; to be styled the Wahiawa district.
- (4) The islands of Kauai, Niihau, Kaula, and county of Kauai, shall be divided into five districts as follows:
  - (A) From Puanaaiea Point to the ili of Eleele, including the islands of Niihau and Kaula, to be styled the Waimea district;
  - (B) From and including the ili of Eleele to and including Mahaulepu, to be styled the Koloa district;
  - (C) From and including Kipu to the northerly bank of the north fork and the main Wailua river, to be styled the Lihue district;
  - (D) From the northerly bank of the north fork and the main Wailua river to Kealaakaiole, to be styled the Kawaihau district;
  - (E) From and including Kealaakaiole to Puanaaiea Point, to be styled the Hanalei district."

**SECTION 3.** New statutory material is underscored.

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

(Approved April 24, 1989.)

## ACT 37

H.B. NO. 335

A Bill for an Act Relating to Jury Trials.

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

**SECTION 1.** The purpose of this Act is to conform existing statutory law to the constitutional amendment which raised the limit on jury trials to controversies in excess of \$5,000.

**SECTION 2.** Section 604-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The district courts shall try and determine all actions without a jury, subject to appeal according to law. Whenever a civil matter is triable of right by a jury and trial by jury is demanded in the manner and within the time provided

## ACT 38

by the rules of court, the case shall be transferred to the circuit court. If the demand is made in the complaint and the matter is triable of right by a jury, the action may be commenced in the circuit court if the amount in controversy exceeds [\$1,000.] \$5,000."

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

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

(Approved April 24, 1989.)

## ACT 38

H.B. NO. 336

A Bill for an Act Relating to Probate.

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

**SECTION 1. Purpose.** The current probate code, section 560:2-803, Hawaii Revised Statutes, prohibits a beneficiary who feloniously and intentionally or knowingly kills a person in violation of sections 707-701 (murder) and 707-702(1)(b) (manslaughter) from inheriting any property of the decedent. Since the time this section was enacted, the crime of murder, formerly contained in section 707-701, has been expanded to include two degrees. The first degree remains defined under section 707-701, but the second degree is now defined under 707-701.5. This bill makes a technical amendment by specifically including the crime of second degree murder in the probate statute, so that the original intent of the legislature that murderers are not to profit by their victims' deaths is not unintentionally limited to a narrower range of homicide.

This bill makes an additional technical amendment by changing the violation from "707-701 and 707-702(1)(b)" to "707-701 or 707-702(1)(b)", to clarify that the killer should be prohibited from profiting by either murder or manslaughter and is not required to accomplish both.

SECTION 2. Section 560:2-803, Hawaii Revised Statutes, is amended by amending subsections (a), (b), (c) to read as follows:

"(a) A surviving spouse, heir or devisee who feloniously and intentionally or knowingly kills the decedent in violation of [sections] section 707-701 [and], 707-701.5, or 707-702(1)(b) is not entitled to any benefits under the will or under this Article, and the estate of decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.

(b) Any joint tenant who feloniously and intentionally or knowingly kills another joint tenant in violation of [sections] section 707-701 [and], 707-701.5, or 707-702(1)(b) thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's property and the killer has no rights by survivorship. This provision applies to joint tenancies and tenancies by the entirety in real and personal property, joint accounts in banks, savings and loan associations, credit unions and other institutions, and any other form of coownership with survivorship incidents.

(c) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally or knowingly kills the principal

obligee or the person upon whose life the policy is issued in violation of [sections] section 707-701 [and], 707-701.5, or 707-702(1)(b) is not entitled to any benefit under the bond, policy or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent."

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

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

(Approved April 24, 1989.)

**ACT 39**

H.B. NO. 361

A Bill for an Act Relating to Personal Care Services.

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

SECTION 1. Section 346-64, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) As used in this section:

"Nonmedicaid recipient" means an individual whose income is at least [two] one hundred per cent of and not more than [four] three hundred per cent of the current medical assistance community income limit; and whose personal reserve is [at least one hundred per cent of and] not more than four hundred per cent of the current medical assistance limit for personal reserve retention.

"Personal care services" mean services to assist in bathing, dressing, and feeding; performance of toilet and personal hygiene functions; assistance with medications which are ordinarily self-administered; assistance with mobility and transfer activities; and other household tasks which are related to a medical need."

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

SECTION 3. This Act shall take effect on July 1, 1989.

(Approved April 24, 1989.)

**ACT 40**

H.B. NO. 402

A Bill for an Act Relating to Juvenile Justice Interagency Board.

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

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

**“§571D-1 Juvenile justice interagency board.** There is established within the department of the attorney general for administrative purposes the juvenile justice interagency board, consisting of eleven voting members which shall include a police chief of one of the counties, the prosecuting attorney of a county, a representative from a private social service agency, and two additional members, all appointed

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by the governor as provided in section 26-34, and the superintendent of education, the public defender, the director of corrections, the director of health, the director of human services, and the senior judge of the first circuit family court as ex officio members. The composition of the board shall include a resident member from each county in the State.

The board shall annually elect from among its members a chairperson who shall preside at meetings of the board.

The attorney general shall designate the executive secretary of the board."

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

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

(Approved April 24, 1989.)

### **Note**

1. No bracketed material.

## **ACT 41**

H.B. NO. 410

A Bill for an Act Relating to Department of Corrections.

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

SECTION 1. Section 353-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The facility shall:

- (1) Provide extensive control and correctional programs for categories of persons who cannot be held or treated in other correctional facilities including, but not limited to:
  - (A) Individuals committed because of serious predatory or violent crimes against the person;
  - (B) Intractable recidivists;
  - (C) Persons characterized by varying degrees of personality disorders;
  - (D) Recidivists identified with organized crime; and
  - (E) Violent and dangerously deviant persons; [and
  - (F) Persons in need of major medical, psychiatric, or specialized care;]
- (2) Provide correctional services including, but not limited to, psychiatric and psychological evaluation, social inventory, correctional programming, and medical and dental services; and
- (3) Provide recreational, educational, occupational training, and social adjustment programs."

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

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

(Approved April 24, 1989.)

## ACT 42

H.B. NO. 411

A Bill for an Act Relating to Transfer of Inmates.

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

SECTION 1. Chapter 353, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§353- Transfer of inmates to out-of-state institutions.** (a) The director, with the approval of the governor, may effect the transfer of a committed felon to any out-of-state correctional institution located in a state which is not a member of the Western Interstate Corrections Compact if it is in the interest of the security or good management of the state correctional facility where the inmate is presently placed or in the interest of the inmate.

(b) Terms and conditions of the transfer and any reimbursement for expenses shall be agreed upon between the department and the out-of-state correctional institution prior to transfer.”

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

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

(Approved April 24, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 43

H.B. NO. 558

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. Section 560:5-309, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In a proceeding for the appointment or removal of a guardian of the person of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of the time and place of hearing shall be given by the petitioner to each of the following:

- (1) The ward or the person concerning whom the proceeding has been commenced and the ward’s or person’s spouse, legal parents, and adult children;
- (2) Any person who is serving as the guardian of the ward’s or person’s estate or who has care and custody of the ward or person; [and]
- (3) In case no other person is notified under paragraph (1), at least one of the ward’s or person’s closest adult relatives, if any can be found[.]; and
- (4) The office of the public guardian where the public guardian is being nominated as guardian of the person of an incapacitated person.”

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

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

(Approved April 24, 1989.)

## ACT 44

H.B. NO. 560

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. Section 607-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All proceedings in the courts of appeal shall be filed in the supreme court. Upon the filing of any appeal, or the institution of any original suit, action, or other proceeding in the supreme court, there shall be paid to the clerk of the supreme court by the person filing such appeal, or instituting the suit, action, or other proceeding, as costs of court, the sum of [\$50.] \$75.”

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

SECTION 3. This Act shall take effect July 1, 1989.

(Approved April 24, 1989.)

## ACT 45

H.B. NO. 564

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. Section 706-625, Hawaii Revised Statutes, is amended to read as follows:

**“§706-625 Revocation, modification of probation conditions.** (a) The court, on application of a probation officer, the prosecuting attorney, the defendant, or on its own motion, after a hearing, may revoke probation, reduce or enlarge the conditions of a sentence of probation, pursuant to the provisions applicable to the initial setting of the conditions and the provisions of section 706-627.

(b) The prosecuting attorney, the defendant's probation officer, and the defendant shall be notified by the movant in writing of the time, place, and date of any such hearing, and of the grounds upon which action under this section is proposed. The prosecuting attorney, the defendant's probation officer, and the defendant may appear in the hearing to oppose or support the application, and may submit evidence for the court's consideration. The defendant shall have the right to be represented by counsel. For purposes of this section the court shall not be bound by the Hawaii Rules of Evidence, except for the rules pertaining to privileges.

(c) The court shall revoke probation if the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the order or has been convicted of a felony. The court may revoke the suspension of sentence or probation if the defendant has been convicted of another crime other than a felony.

(d) The court may modify the requirements imposed on the defendant or impose further requirements, if it finds that such action will assist the defendant in leading a law-abiding life.

(e) When the court revokes probation, it may impose on the defendant any sentence that might have been imposed originally for the crime of which he was convicted.

(f) As used in this section, "conviction" means that a judgment has been pronounced upon the verdict."

SECTION 2. New statutory material is underscored.

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

(Approved April 24, 1989.)

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H.B. NO. 569

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. Section 560:5-307, Hawaii Revised Statutes, is amended to read as follows:

**"§560:5-307 Removal or resignation of guardian of the person; termination of incapacity.** (a) On petition of the ward or any person interested in the ward's welfare, the family court may remove a guardian of the person and appoint a successor if in the best interests of the ward. On petition of the guardian of the person, the family court may accept the guardian's resignation and make any other order which may be appropriate.

(b) An order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the ward or any person interested in the ward's welfare may petition for an order that the ward is no longer incapacitated, and for removal or resignation of the guardian of the person. A request for this order may be made by informal letter to the family court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

(c) Before removing a guardian of the person, accepting the resignation of a guardian of the person, or ordering that a ward's incapacity has terminated, the family court, shall follow the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian of the person under section 560:5-303.

(d) Notwithstanding subsection (c) and section 560:1-401, the court may, without a hearing, remove or accept the resignation of a guardian of the person and appoint the public guardian under chapter 551A as a temporary or successor guardian of the person upon the filing of a petition with notice by regular mail to the last known address of those persons entitled to notice in section 560:5-309 and upon such other instructions as the court deems necessary."

SECTION 2. New statutory material is underscored.

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

(Approved April 24, 1989.)

A Bill for an Act Relating to the Bureau of Conveyances.

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

**SECTION 1.** Chapter 502, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§502- Reference in other sections.** Any reference throughout the Hawaii Revised Statutes to book and page after December 31, 1989, shall also refer to book and page or document number.”

**SECTION 2.** Section 246-55, Hawaii Revised Statutes, is amended to read as follows:

**“§246-55 Tax liens; co-owners’ rights; foreclosure; limitation.** (a) Every tax due upon real property, as defined by section 246-1, shall be a paramount lien upon the property assessed, which lien shall attach as of July 1 in each tax year and shall continue for six years. If proceedings for the enforcement or foreclosure of the lien are brought within the applicable period hereinabove designated, the lien shall continue until the termination of the proceedings or the completion of the foreclosure sale.

(b) In case of cotenancy, if one cotenant pays, within the period of the aforesaid government lien, all of the real property taxes, interest, penalties, and other additions to the tax, due and delinquent at the time of payment, the cotenant shall have, pro tanto, a lien on the interest of any noncontributing cotenant upon recording in the bureau of conveyances, within ninety days after the payment so made by the cotenant, a sworn notice setting forth the amount claimed, a brief description of the land affected by tax key or otherwise, sufficient to identify it, the tax year or years, and the name of the cotenant upon whose interest such lien is asserted. When a notice of such tax lien is recorded by a cotenant, the registrar shall forthwith cause the same to be indexed in the general indexes of the bureau of conveyances. In case the land affected is registered in the land court the notice shall also contain a reference to the number of the certificate of title of such land and shall be filed and registered in the office of the assistant registrar of the land court, and the registrar, in the registrar’s capacity as assistant registrar of the land court, shall make a notation of the filing thereof on each land court certificate of title so specified.

The cotenant’s lien shall have the same priority as the lien or liens of the government for the taxes paid by the cotenant, and may be enforced by an action in the nature of a suit in equity. The lien shall continue for three years after recording or registering, or until termination of the proceedings for enforcement thereof if such proceedings are begun and notice of the pendency thereof is recorded or filed and registered as provided by law, within the period.

(c) The director or the director’s subordinate, in case of a government lien, and the creditor cotenant, in case of a cotenant’s lien, at the expense of the debtor, upon payment of the amount of the lien, shall execute and deliver to the debtor a sworn satisfaction thereof, including a reference to the name of the person assessed or cotenant affected as shown in the original notice, the date of filing of the original notice, a description of the land involved, and the number of the certificate of title

of such land if registered in the land court, which, when recorded in the bureau of conveyances or filed and registered in the office of the assistant registrar of the land court, in the case of a cotenant's lien, which contains the reference to the book and page or document number of the original lien, shall be entered in the general indexes of the bureau of conveyances, and if a notation of the original notice was made on any land court certificate of title the filing of such satisfaction shall also be noted on the certificate.

This section as to cotenancy shall apply, as well, in any case of ownership by more than one assessable person.

(d) Upon enforcement or foreclosure by the government, in any manner whatsoever, of any such real property tax lien, all taxes of whatsoever nature and howsoever accruing due at the time of the foreclosure sale from the taxpayer against whose property such tax lien is so enforced or foreclosed shall be satisfied as far as possible out of the proceeds of the sale remaining after payment of (1) the costs and expenses of the enforcement and foreclosure including a title search, if any, (2) the amount of subsisting real property tax liens, and (3) the amount of any recorded liens against the property, in the order of their priority.

The liens may be enforced by action of the tax collector in the circuit court of the judicial circuit in which the property is situate, and jurisdiction is conferred upon the circuit courts to hear and determine all proceedings brought or instituted to enforce and foreclose such tax liens, and the proceedings had before the circuit courts shall be conducted in the same manner and form as ordinary foreclosure proceedings. If the owners or claimants of the property against which a lien is sought to be foreclosed are at the time without the State or cannot be served within the State, or if the owners are unknown, and the fact shall be made to appear by affidavit to the satisfaction of the court, and it shall in like manner appear prima facie that a cause of action exists against such owners or claimants or against the property described in the complaint or that such owners or claimants are necessary or proper parties to the action, the court may grant an order that the service may be made in the manner provided by sections 634-23 to 634-27.

In any such case it shall not be necessary to obtain judgment and have execution issued and returned unsatisfied, before proceeding to foreclose the lien for taxes in the manner herein provided."

SECTION 3. Section 490:9-403, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (3) to read:

"(3) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by book and page or document number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2), of section 490:9-405, including payment of the required fee. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if [he] the filing officer has retained a microfilm or other photographic record, or in

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other cases after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if [he] the filing officer physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained."

2. By amending subsection (5) to read as follows:

"(5) [The] Unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91, the fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be [\$2 per page.] \$10."

SECTION 4. Section 490:9-404, Hawaii Revised Statutes, is amended to read as follows:

**"§490:9-404 Termination statement.** (1) If a financing statement covering consumer goods is filed on or after July 1, 1978, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that [he] the secured party no longer claims a security interest under the financing statement, which shall be identified by book and page or document number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that [he] the secured party no longer claims a security interest under the financing statement, which shall be identified by book and page or document number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with [subsection (2) of] section [490:9-405,] 490:9-405(2), including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor [he] the affected secured party shall be liable to the debtor for [one hundred dollars,] \$100, and in addition for any loss caused to the debtor by such failure.

(2) The filing officer, on presentation of such a termination statement, must record and index it in the manner provided in chapter 502.

(3) [The] Unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91, the fee for filing and indexing a termination statement shall be [\$2 per page.] \$10."

SECTION 5. Section 490:9-405, Hawaii Revised Statutes, is amended to read as follows:

**"§490:9-405 Assignment of security interest; duties of filing officer; fees.**

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such financing statement the filing officer shall process the same as provided in section 490:9-403(4). [The] Unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91, the fee for filing,

indexing and furnishing filing data for a financing statement so indicating an assignment shall be [\$2 per page.] \$10.

(2) A secured party may assign of record all or a part of [his] the secured party's rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record. Such statement shall set forth the name of the secured party of record and the debtor, the name and address of the assignee, the date of filing of the financing statement and the book and page or document number and shall contain a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. The filing officer, upon presentation of such a separate statement, shall record and index such separate statement in the manner provided in chapter 502. [The] Unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91, the fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be [\$2 per page.] \$10.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.”

**SECTION 6.** Section 490:9-406, Hawaii Revised Statutes, is amended to read as follows:

**“§490:9-406 Release of collateral; duties of filing officer; fees.** A secured party of record may by [his] the secured party's signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the book and page or document number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of section 490:9-405, including payment of the required fee. The filing officer, upon representation of such statement of release shall record and index such statement in the manner provided in chapter 502. [The] Unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91, the fee for filing and noting such a statement of release shall be [\$2 per page.] \$10.”

**SECTION 7.** Section 490:9-407, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) If the person filing any financing statement, termination statement, statement of assignments, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the book and page or document number and date and hour of the filing of the original and deliver or send the copy to such person.”

**SECTION 8.** Section 502-25, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**“(a) [The] Unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91, the** registrar is entitled to demand and receive the following fees:

(1) For the registry of any instrument required by law to be recorded, or presented for record, except that no fee shall be required of any county presenting a document for record, wherein the county is the grantee,

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- [\$2 for the first page or portion thereof plus \$1 for each additional page or portion thereof;] \$10;
- (2) For taking any [acknowledgement] acknowledgment preparatory to registry, \$1 for each party signing;
  - (3) For every copy of any instrument recorded in the registrar's office, authenticated by the registrar's seal of office, or for a copy of any instrument or portion thereof not authenticated by the registrar's seal of office, \$1 per page;
  - (4) For searching the records, and giving the certificate required by law, \$10 for each year searched and also \$1 for each page in the certificate;
  - (5) For copy of plan of land, authenticated by the registrar's seal of office, \$1 for the first square foot and additional 10 cents for each additional square foot or fraction thereof in the size of the plan;
  - (6) For photographing instruments, etc., for any federal, state, or county agency, the cost of the materials used therein, such fees to be used by the registrar for the purchase of necessary materials used in such photographing process[.];
  - (7) For a daily copy of the magnetic tapes containing the computerized daily entry record, \$100 per month."

SECTION 9. Section 502-31, Hawaii Revised Statutes, is amended to read as follows:

**"§502-31 Recording, method.** The registrar shall make or cause to be made an entire literal copy of all instruments required to be recorded in the registrar's office, and the registrar, the registrar's deputy, or clerk shall certify its correspondence with the original, after which the registrar, the registrar's deputy, or clerk shall certify upon the exterior, or indorse upon the recorded instrument, the date of its registry[, the book in the registrar's office in which, and the page of the book at which it was recorded.] and the document number.

The registrar, for purposes of the general indexes of the bureau of conveyances, shall use the names of the parties as they first appear in the recorded instrument. All names of individual signatories shall be typewritten, stamped or printed beneath all signatures.

The registrar or the registrar's deputy may refuse to accept for record any document of a size larger than eight and one-half inches by [thirteen] fourteen inches, or which contains a schedule or inventory sheet in excess of such size.

This paragraph shall apply to all instruments presented for recording in the bureau of conveyances, unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91.

On all [documents] instruments to be recorded the top [two] three and one-half inches of space of the first page shall be reserved for recording information[.] for the assistant registrar on the left half of such space, and for the registrar of conveyances on the right half of such space. The [left-hand three and one-half inches] following one inch of [such] space shall be reserved for information [to the public to show the person requesting recordation and] showing to whom the document should be returned. If an instrument consists of more than one page, it shall be stapled once in the upper left corner. The registrar may refuse to accept all instruments, papers, or notices presented for recordation that will not reproduce legibly under photographic or electrostatic methods."

SECTION 10. Section 502-32, Hawaii Revised Statutes, is amended to read as follows:

**"§502-32 Instrument recorded as of time of delivery; office hours.** Every instrument entitled by law to be recorded, shall be recorded in the order and as of

the time when the same is delivered to the registrar for that purpose, and shall be considered as recorded from the time of such delivery; provided that it shall not be lawful for the registrar to accept or enter for record and record any instrument or other paper on any Sunday or legal holiday, or on any Saturday that the registrar's office remains closed pursuant to law, or on any other day except between the hours of 8:00 a.m. and 3:30 p.m. It is further provided that it shall be lawful for the registrar to enter into a written agreement with any person or association, which agreement authorizes an instrument to be recorded at 8:01 a.m. on a day subsequent to its delivery to the registrar."

SECTION 11. Section 502-33, Hawaii Revised Statutes, is amended to read as follows:

**"§502-33 Identification of assignments, etc., of mortgages and leases by reference to registration of original.** The registrar shall not record any assignment, extension, or release of mortgage of real property, or an affidavit of foreclosure under a power contained in a mortgage, or a writ, order, or judgment, for possession of the premises covered by any mortgage, or an assignment, extension, or cancellation of lease, unless the same contains a reference to the book and page or document number of the registration of the original mortgage or lease, as the case may be. No amendment, continuation statement, termination statement, statement of assignment, or statement of release relating to security interests in goods which are or are to become fixtures shall be filed unless it complies with the requirements of the Uniform Commercial Code, section 490:9-408. This section does not apply to any document mentioned herein executed prior to April 13, 1915; and this section does not apply to any document mentioned herein which refers to an unrecorded mortgage or lease, if such fact be recited therein."

SECTION 12. Section 502-34, Hawaii Revised Statutes, is amended to read as follows:

**"§502-34 Grantee's address in deed.** The registrar shall not record any deed unless it contains or has endorsed upon it the [place of residence and post office] address of the grantee. This section does not apply to any deed executed prior to July 1, 1951."

SECTION 13. Section 505-3, Hawaii Revised Statutes, is amended to read as follows:

**"§505-3 Certificates of release.** Certificates of release or of partial discharges of any tax lien containing a reference to the book and page or document number of the registration of the original tax lien issued by the collector of internal revenue or other proper officer are entitled to be recorded in the bureau of conveyances. The registrar shall forthwith cause the same to be indexed in the general indexes in like manner as the original lien."

SECTION 14. Section 505-4, Hawaii Revised Statutes, is amended to read as follows:

**"§505-4 Fees.** [The] Unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91, the fees payable under this chapter are as follows:

For each notice of federal tax lien in the bureau of conveyances, [\$1.50;]  
\$10;

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For each certificate of release, partial release, or discharge of a federal tax lien in the bureau of conveyances, [25 cents.] \$10.

[The foregoing fees apply when the notice of federal tax lien, or the certificate of release, partial release, or discharge names but a single taxpayer. If the notice or certificate names more than one taxpayer, the fee shall be multiplied by the number of taxpayers named.]”

SECTION 15. Section 506-3, Hawaii Revised Statutes, is amended to read as follows:

**“§506-3 After-acquired real property and fixtures.** The mortgage shall operate only as a contract between the parties with respect to, and shall not create a lien upon real property or fixtures acquired in any manner by the mortgagor subsequent to the execution of the mortgage, if there are not described therein such real property, such fixtures and the real property to which such fixtures are or will be affixed, unless and until the mortgagor or the mortgagee, at the time of or subsequent to the acquisition, executes and duly records in the bureau of conveyances an instrument or affidavit containing a reference to the book and page or document number where the mortgage is recorded and also a description of such real property, such fixtures and the real property to which such fixtures are or will be affixed sufficient to identify and locate the same, which description of real property may be made by describing the deed or other instrument of conveyance by which the real property was acquired or by describing the land by metes and bounds.”

SECTION 16. Section 636-3, Hawaii Revised Statutes, is amended to read as follows:

**“§636-3 Judgment, lien when.** Any money judgment or decree of a state court or the United States District Court for the District of Hawaii shall be a lien upon real property when a copy thereof, certified as correct by a clerk of the court where it is entered, is recorded in the bureau of conveyances. No such lien shall continue beyond ten years after the date of the judgment. When any such judgment is fully paid, the creditor or the creditor's attorney of record in the action shall, at the expense of the debtor, execute, acknowledge, and deliver to the debtor a satisfaction thereof, which may be recorded in the bureau. Every satisfaction or assignment of judgment shall contain a reference to the book and page or document number of the registration of the original judgment. The recording fees for a judgment and for each assignment or satisfaction of judgment shall be as provided by section 502-25.

In the case of registered land, section 501-102 shall govern.”

SECTION 17. This Act shall not affect the recording of any instrument executed prior to January 1, 1990 which would be recordable but for the provisions of this Act.

SECTION 18. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 19. This Act shall take effect January 1, 1990.

(Approved April 24, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 48**

H.B. NO. 666

A Bill for an Act Relating to Restitution.

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

SECTION 1. Section 706-624, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Discretionary conditions. The court may provide, as further conditions of a sentence of probation, to the extent that [such] the conditions are reasonably related to the factors set forth in section 706-606 and to the extent that [such] the conditions involve only [such] deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 706-606(2), that the defendant:

- (a) Serve a term of imprisonment not exceeding one year in felony cases, and not exceeding six months in misdemeanor cases; provided that notwithstanding any other provision of law, any order of imprisonment under this subsection that provides for prison work release shall require the defendant to pay thirty per cent of the defendant's gross pay earned during the prison work release period to satisfy any restitution order. The payment shall be handled by the adult probation division and shall be paid to the victim on a monthly basis;
- (b) Perform a specified number of hours of services to the community as described in section 706-605(1)(e);
- (c) Support the defendant's dependents and meet other family responsibilities;
- (d) Pay a fine imposed pursuant to section 706-605(1)(b);
- (e) Make restitution as specified in section 706-605(1)(d);
- (f) Work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip the defendant for suitable employment;
- (g) Refrain from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the crime[,] or engage in [such a] the specified occupation, business, or profession only to a stated degree or under stated circumstances;
- (h) Refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons, including but not limited to[,] the victim of the crime, any witnesses, regardless of whether they actually testified in the prosecution, law enforcement officers, co-defendants, or other individuals with whom contact may adversely affect the rehabilitation or reformation of the person convicted;
- (i) Refrain from use of alcohol or any use of narcotic drugs or controlled substances without a prescription;
- (j) Refrain from possessing a firearm, destructive device, or other dangerous weapon;
- (k) Undergo available medical, psychiatric, or psychological treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

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- (l) Reside in a specified place or area[,] or refrain from residing in a specified place or area;
- (m) Submit to periodic urinalysis or other similar testing procedure;
- (n) Satisfy [such] other reasonable conditions as the court may impose;
- (o) Refrain from entering specified geographical areas without the court's permission; or
- (p) Refrain from leaving the person's dwelling place except to go to and from the person's place of employment, the office of the person's physician or dentist, the probation office[,] or as may be granted by the person's probation officer pursuant to court order. As used in this paragraph, "dwelling place" includes the person's yard[,] or, in the case of condominiums, the common elements."

SECTION 2. This Act shall apply to any person sentenced after its effective date.

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

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

(Approved April 24, 1989.)

## ACT 49

H.B. NO. 691

A Bill for an Act Relating to Acquisition of Real Property; General.

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

SECTION 1. Section 171-30, Hawaii Revised Statutes, is amended to read as follows:

**"§171-30 Acquisition of real property; general.** (a) The board of land and natural resources shall have the exclusive responsibility, except as provided herein, of acquiring, including by way of dedications:

- (1) All real property or any interest therein and the improvements thereon, if any, required by the State for public purposes, including real property together with improvements, if any, in excess of that needed for such public use in cases where small remnants would otherwise be left or where other justifiable cause necessitates the acquisition to protect and preserve the contemplated improvements, or public policy demands the acquisition in connection with such improvements.
- (2) Encumbrances, in the form of leases, licenses, or otherwise on public lands, needed by any state department or agency for public purposes or for the disposition for houselots or for economic development.

The board shall upon the request of and with the funds from the state department or agency, effectuate all acquisitions as provided under this section.

(b) Except as provided in subsection (c), the department of accounting and general services shall be responsible for the acquisition of any office space in a nonstate owned building for use by a state department or agency.

(c) A state department or agency may directly acquire such real property for its purposes whenever the acquisition by the department or agency is required to conform to mandatory requirements of the United States in the case where federal funds are furnished to the department or agency.

(d) Property which may be acquired under this section includes all real property together with all structures and improvements thereon, franchises or appurtenances thereunto belonging, water, water rights, easements, and interests in land of every nature."

**SECTION 2.** New statutory material is underscored.

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

(Approved April 24, 1989.)

## ACT 50

H.B. NO. 723

A Bill for an Act Relating to Tree Farms.

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

**SECTION 1.** Section 186-2, Hawaii Revised Statutes, is amended to read as follows:

**"§186-2 Eligibility.** (a) Any property of not less than [thirty] ten acres; (1) Included within the agricultural district pursuant to section 205-2; or (2) Included within the conservation district and zoned for commercial forest use;

is eligible for classification as tree farm property if it is suited for the raising of [trees of] commercial tree species and other forest products in quantity sufficient to establish a business in the sale thereof [and not suited for some higher and better use].

(b) Property on which the owner is already growing trees of commercial species and other forest products [(in quantity sufficient to establish a business in the sale thereof)] under good forestry management practices and which the owner agrees to manage in accordance with [rules and regulations prescribed] a management plan approved by the board [of land and natural resources may also be classified] is eligible for classification as tree farm property. Additional noncontiguous property of [fifteen] five acres or more, under the same ownership and in the same vicinity, [may be] is also eligible for classification along with the main acreage sought to be [so] classified. No real property [held by an owner] under a lease having an unexpired term of less than [thirty] twenty years [shall be] is eligible for classification as tree farm property."

**SECTION 2.** Section 186-3, Hawaii Revised Statutes, is amended to read as follows:

**"§186-3 Applications[.]; management plans.** (a) The owner of any property which complies with the requirements specified in section 186-2 may apply to the board [of land and natural resources] for classification of the owner's property as tree farm property. The application shall include [a]:

- (1) A description of the property;
- (2) A management plan, which plan shall provide specific information regarding the development by seeding, planting of seedlings, or other approved reforestation techniques, maintenance, and harvesting of trees and other forest products while exercising conservation techniques to prevent the erosion of soils; and [such]

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(3) Any additional information [as may be] required by the board. The application shall [state that] be signed by all persons having [any] an interest in or holding any encumbrance upon the property [have joined in making the application] and shall state that all of them will comply with the [laws and regulations relating to the use, development, and protection of the trees and the property and those relating to the harvesting and removal of forest products.] management plan upon its approval.

(b) All public hearings required by statute or rules of the department shall be held before any management plan is approved. The plan shall be reviewed periodically by the board or its employees or authorized agents at intervals of no more than every five years. The review shall determine whether the owner has met the objectives in the management plan. The board may approve alteration of the management plan to adapt to current conditions."

SECTION 3. Section 186-4, Hawaii Revised Statutes, is amended to read as follows:

**"§186-4 Classification[.]; rules.** (a) If the board [of land and natural resources] finds that the property identified in the application is [suitable] suited for the raising of [trees of] commercial tree species[,] and other forest products in quantity sufficient to establish a business in the sale thereof, [the board shall notify the department of taxation, in writing and by September 1, of its finding. Then the department of taxation shall, by November 15, make a finding of fact as to the highest and best use of the property and shall inform the board of its findings in writing. The determination as to the highest and best use of the property shall be based upon all available information on soils, climate, land use trends, watershed values, present use of surrounding similar lands, and other criteria as may be appropriate.

If the department of taxation finds that the highest and best use of the property is for the raising of trees of commercial species in quantity sufficient to establish a business in the sale thereof,] and that the use will not convert a native forest ecosystem into a monoculture, the property shall be classified by the board [and the department of taxation] as tree farm property. [If the department of taxation does not find that the highest and best use of the property is for the raising of trees in such quantity, the application shall be disapproved.

The applicant may appeal any disapproved applications as in the case of an appeal from an assessment.

Lands classified as tree farm property shall be administered by the board. The board may from time to time, make rules and regulations for their administration.]

(b) The board shall adopt rules pursuant to chapter 91 necessary for the purposes of this chapter to include procedures, conditions, and fees for establishing tree farms."

SECTION 4. Section 186-5, Hawaii Revised Statutes, is amended to read as follows:

**"§186-5 Agreement with owner.** Upon classification, the board [of land and natural resources] shall be responsible for preparing, executing, and administering an agreement with the applicant and others having an interest in or encumbrance upon the tree farm property. The agreement shall be for a period of not less than [thirty] twenty years but shall contain, inter alia, the following conditions:

- (1) The agreement shall be canceled and terminated and the tree farm property shall thereby be declassified [and become subject to the conditions specified in section 186-8] if, upon investigation [by the department of land and natural resources], the board determines that the owner of the property is not complying with this chapter or the [agreement;] management plan;
- (2) Any owner of tree farm property desiring to withdraw all or part of the property from the operations of this chapter may at any time make written application to the board [and the application shall be approved subject to the conditions specified in section 186-8];
- (3) The owner shall develop and maintain trees of commercial species[, as determined by the department, either through planting or reproduction and in accordance with rules and regulations of the department.] and other forest products as specified in the management plan.

The agreement shall also contain [such] other terms and conditions [as] deemed advisable by the board."

SECTION 5. Section 186-6, Hawaii Revised Statutes, is amended to read as follows:

**"§186-6 Development and maintenance of tree farm property.** [Within one year following the agreement described in section 186-5, the applicant shall have established trees of the species designated in the agreement on not less than one-fortieth of the acreage in the entire tree farm property, or five acres, whichever is larger. On property adequately stocked with commercial trees at the time of classification, the owner shall, within one year of the classification apply such forestry measures as may be deemed necessary by the board of land and natural resources to not less than one-fortieth of the acreage, or five acres, whichever is larger. Each year subsequent to the first year, the owner must apply good forestry management practices, as prescribed by the board, on additional equivalent acreage until such time as all the property classified as tree farm property is under good forestry management practices.]

Following the cutting of forest products from tree farm property, a period of three years shall be allowed the owner to obtain adequate stocking or restocking of trees of commercial species on the property and if after a period of three years the owner has not established a stand of commercial timber thereon in accordance with the rules and regulations of the board.] The applicant shall implement the tree farm management plan according to the schedule set forth in the plan. If the board determines that a satisfactory crop has not been established within the schedule set forth in the management plan, the property shall be declassified from its status as tree farm property."

SECTION 6. Section 186-11, Hawaii Revised Statutes, is amended to read as follows:

**"§186-11 Additional lands.** An owner of land may at any time apply to the board [of land and natural resources] to have more acreage classified as tree farm property subject either to a new agreement or to the original agreement[; provided that if the land is in the same vicinity of the original tree farm property and the area is less than five hundred acres it shall become a part and parcel of the original tree farm property and shall be subject to the terms of the original agreement]."

SECTION 7. Section 186-7, Hawaii Revised Statutes, is repealed.

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SECTION 8. Section 186-8, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 186-9, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 186-10, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 186-12, Hawaii Revised Statutes, is repealed.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 13. This Act shall take effect on November 7, 1989.

(Approved April 24, 1989.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 51

H.B. NO. 725

A Bill for an Act Relating to Land Court Registration.

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

SECTION 1. Section 501-105, Hawaii Revised Statutes, is amended to read as follows:

**“§501-105 Grantee’s residence, etc., to be stated.** Every deed or other voluntary instrument presented for registration shall contain or have indorsed upon it the full name or names, if more than one, [place of residence, or post office] and the address of the grantee or other person acquiring or claiming an interest under the instrument and every deed shall also contain or have indorsed upon it a statement that the grantee is married or unmarried, and if married, the statement shall give the name in full of the husband or wife. [Any change in the residence or post office address of such person shall be indorsed by the assistant registrar on the original document, on receiving a sworn statement of the change.] All names and addresses shall also be entered on all certificates. Notices and processes issued in relation to registered land in pursuance of this chapter may be served upon any person in interest by mailing the same to the address so given, and shall be binding whether such person resides within or without the State.”

SECTION 2. Section 501-108, Hawaii Revised Statutes, is amended to read as follows:

**“§501-108 Conveyance of fee; procedure.** An owner desiring to convey in fee registered land or any portion thereof shall execute a deed of conveyance, which the grantor or the grantee may present to the assistant registrar in the bureau of conveyances; provided that the assistant registrar shall not accept for registration any deed, mortgage, lease, or other voluntary instrument, unless a reference to the number of the certificate of title of the land affected by such instrument is incorporated in the body of the instrument tendered for registration.

The assistant registrar shall note upon all [documents] instruments filed or recorded concurrently with the recorded instrument the document number and the certificate of title number in the spaces provided therefor wherever required.

The assistant registrar shall thereupon, in accordance with the rules and instructions of the court, make out in the registration book a new certificate of title to the grantee. The assistant registrar shall note upon the original certificate the date of transfer, and a reference by number to the last prior certificate. The original certificate shall be stamped "canceled." The deed of conveyance shall be filed or recorded and indorsed with the number and place of registration of the certificate of title of the land conveyed.

On all instruments to be filed or recorded, the top three and one-half inches of space of the first page shall be reserved for recording information for the assistant registrar on the left half of that space, and for the registrar of conveyances on the right half of that space. The following one inch of space shall be reserved for information showing to whom the document should be returned. Each instrument shall be stapled once in the upper left corner and shall not have a cover or backer attached.

All names in the instrument shall be typewritten, stamped, or printed beneath all signatures. No discrepancy in any name shall exist between the printed name, as it appears either in the body of the instrument, beneath the signature, or in the notary's certificate of acknowledgment. The provisions of this paragraph shall not apply to any deed or conveyance instrument executed prior to July 1, 1989.

The assistant registrar shall refuse to file or record any instrument that will not reproduce legibly under photographic or electrostatic methods, or that is of a size larger than eight and one-half inches by fourteen inches, or that contains a schedule, inventory sheet, or map in excess of that size."

SECTION 3. Section 501-218, Hawaii Revised Statutes, is amended to read as follows:

**"§501-218 Schedule of fees.** Except where otherwise provided by the supreme court of the State of Hawaii which shall be empowered to amend or add to the schedule from time to time, the fees payable under this chapter are as follows:

- (1) For every application filed pursuant to this chapter, including indexing and recording the same, and transmitting to registrar, when filed with assistant registrar, \$3.
- (2) For every plan filed, \$1.
- (3) For indexing any instrument recorded while application for registration is pending, 25 cents.
- (4) For examining title, \$10 and two-tenths of one per cent of the assessed value of the land and improvements on the basis of the last assessment for taxation, or the value of the same as determined under section 501-211 when the land was not separately assessed.
- (5) For verifying and checking map on the ground, for lots of one acre or less, \$25; an addition of \$1 an acre or fraction thereof for all area over one acre and up to one hundred acres; an addition of 50 cents an acre or fraction thereof for all area over one hundred acres and up to five hundred acres; an addition of 50 cents an acre or fraction thereof for all area over five hundred acres and up to one thousand acres; an addition of 25 cents an acre or fraction thereof for all area over one thousand acres.
- (6) For checking survey and map as to form and mathematical correctness but not on the ground, \$3 an hour.
- (7) For approving subdivision of registered land, and for checking same as to form and mathematical correctness but not on the ground, \$3 an hour.

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- (8) For all services by a sheriff or other police officer under this chapter, the same fees as are now provided by law for like services.
- (9) For each instrument affecting a title not reported in applicant's filed abstract of title, \$2.
- (10) For filing an amended application, \$1.
- (11) For each notice by publication, 25 cents.
- (12) For entering any general default, \$1.
- (13) For filing any answer, \$1, to be paid by the party filing the same.
- (14) For every subpoena, \$1.
- (15) For swearing each witness, 10 cents.
- (16) For entering any discontinuance, \$1.
- (17) For filing notice of appeal, \$30.
- (18) For entry of order dismissing application, or decree of registration, and sending memorandum to assistant registrar, \$1.
- (19) For copy of decree of registration, \$1.
- (20) For entry of original certificate of title, or for making and entering a new certificate of title, \$25 if contained within four pages. For each additional page or fraction thereof, \$1.
- (21) For a certified copy of any certificate of title, \$2 if contained within one page. For each additional page or fraction thereof, \$1.
- (22) For the registration of every instrument, including entering, indexing, filing or recording, attesting registration, and making and attesting memorandum on certificates not in excess of four, \$10, except where herein otherwise provided, and \$1 for each additional memorandum on certificates in excess of four required by any one instrument.
- (23) For [the certification of] a copy of any instrument, [the same fees as are provided by section 502-25.] authenticated by the assistant registrar's seal of office, or for a copy of any instrument, or a portion of any instrument not authenticated by the assistant registrar's seal of office, \$1 per page or fraction thereof.
- (24) For filing or recording and registering an adverse claim, \$3.
- (25) For registration of an order for a suggestion of death, fact of marriage, divorce, subdivision, or notice of issue of an order in bankruptcy, \$10.
- (26) For filing or recording any petition after original registration, \$1.
- (27) For filing or recording any order after original registration, \$1.
- (28) In all cases not expressly provided for by law the fees of all public officers for any official duty or service under this chapter shall be at a rate established by the court.
- (29) For any application made by or in the name of the State, or any political subdivision thereof, any proceedings had upon such application or any dealing with registered land by the State, or any political subdivision thereof, as owner, no fees shall be charged.
- (30) For a daily copy of the magnetic tapes containing computerized data of the daily entry record, \$100 per month.
- (31) For inquiring into computerized data of the land court automated title system, \$100 per month."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 1989.

(Approved April 24, 1989.)

## ACT 52

H.B. NO. 731

A Bill for an Act Relating to Land Acquisition Policies for Federally Assisted Programs.

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

SECTION 1. Section 113-5, Hawaii Revised Statutes, is amended to read as follows:

**"[§113-5] Policy provisions.** In acquiring real property for any project or program in which federal or federal-aid funds are used, the State shall comply with the following policies:

- (1) Every reasonable effort shall be made to acquire expeditiously real property by negotiation.
- (2) Real property shall be appraised before the initiation of negotiations, and the owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property[.]; provided that the State may proceed without an appraisal in cases involving the donation of property or the voluntary conveyance of property for nominal value or where the property has fair market value of \$2,500 or less.
- (3) Before the initiation of negotiations for real property, an amount shall be established which is reasonably believed to be just compensation therefor and such amount shall be offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of such property.
- (4) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or before there is deposited with the state court, in accordance with applicable law, for the benefit of the owner an amount not less than the approved appraisal of the fair market value of such property, or the amount of the judgment in the condemnation proceeding involving the property.
- (5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move the person's business or farm operation without at least ninety days' written notice from the date by which such move is required.
- (6) If an owner or tenant is permitted, on a rental basis, to occupy the real property acquired for a short term or for a period subject to termination by the State on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.
- (7) In no event shall the time of condemnation be advanced, on negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.
- (8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The State shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real property.
- (9) [If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the entire property shall be made.] If the acquisition would leave the owner with an

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uneconomic remnant, the State shall offer to acquire that remnant. For the purposes of this section, an “uneconomic remnant” is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner’s property and which the State has determined to have little or no value or utility to the owner.

- (10) All buildings, structures, or other improvements which must be removed or which are adversely affected by the use to which the real property acquired will be put, shall be acquired.
- (11) Notwithstanding the obligation of a tenant or lessee, as owner, to remove a building, structure or other improvement at the expiration of the tenant’s or lessee’s term, just compensation shall be paid to the owner for the taking of such building, structure or other improvement, just compensation being the value which such building, structure or other improvement contributes to the fair market value of the real property, or the fair market value of such building, structure, or improvement alone, whichever is the greater; provided that payment for such buildings, structures or other improvements shall not result in duplication of payments unless otherwise authorized by state law; and provided further that no such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. Nothing herein shall be construed to deprive the tenant of the tenant’s right to reject the proffered payment and to seek compensation for the tenant’s property interest through other laws of the State.
- (12) After the owner is fully informed of the owner’s right to receive just compensation for property being acquired under this chapter, the owner may donate such property, any part thereof, any interest therein, or any compensation to be paid therefor to the State.
- (13) The term “State”, as used in this chapter, means the State of Hawaii and any department, agency, or instrumentality of the State, or a political subdivision of the State.
- (14) The term “appraisal” means a written statement, independently and impartially prepared by a qualified appraiser who meets qualification criteria established by the State, setting forth an opinion of the fair market value of adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.”

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

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

(Approved April 24, 1989.)

## ACT 53

H.B. NO. 754

A Bill for an Act Relating to Recovery of Funds for Funeral Payments.

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

SECTION 1. Section 560:3-1201, Hawaii Revised Statutes, is amended to read as follows:

**“§560:3-1201 Collection of personal property by affidavit.** Any person indebted to the decedent or having possession of tangible personal property or an

instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent or to the department of human services where the department has paid for the decedent's burial services pursuant to section 346-15, upon being presented a death certificate for the decedent and an affidavit made by or on behalf of the successor or the department of human services stating that:

- (1) The net value of the decedent's estate in this State does not exceed \$5,000;
- (2) No application or petition for the appointment of a personal representative is pending or has been granted in this State; and
- (3)
  - (a) The claiming successor is entitled to payment or delivery of the property and explaining the relationship of the claiming successor to the decedent[.]; or
  - (b) The department of human services has paid for the decedent's burial.

The affidavit of the department of human services shall have priority over any other claim filed pursuant to this section.”

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

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

(Approved April 24, 1989.)

## ACT 54

H.B. NO. 1222

A Bill for an Act Relating to Motor Vehicles.

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

SECTION 1. Chapter<sup>1</sup> 291-21.5, Hawaii Revised Statutes, is amended to read as follows:

**“§291-21.5 Regulation of motor vehicle sun screening devices; penalty.**

(a) No person shall operate, permit the operation of, cause to be operated, or park any motor vehicle on a public highway if the glazing material of the motor vehicle:

- (1) Does not meet the requirements of FMVSS 205 in effect at the time of its manufacture; or
- (2) Is used in conjunction with sun screening devices not exempted from this section by subsection (d) hereof.

(b) No person shall install, mount, adhere, affix, or use any sun screening device or combination of devices in conjunction with the glazing material of a motor vehicle which does not meet the requirements of FMVSS 205 in effect at the time of the glazing material's manufacture except as provided in this section. Any person who violates this section shall be liable for the removal of any sun screening device applied contrary to this section.

(c) A safety inspection required under section 286-25 shall include a test to ensure that the glazing material and any sun screening devices meet the requirements specified in this section.

- (d) This section shall not apply to:

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- (1) Rearview mirrors;
  - (2) Adjustable nontransparent sun visors which are mounted forward of the side windows and are not attached to the glazing material;
  - (3) Signs, stickers, or other materials which are displayed in a seven-inch square in the lower corner of the windshield farthest removed from the driver or signs, stickers, or other materials which are displayed in a five-inch square in the lower corner of the windshield nearest the driver;
  - (4) Rear trunk lid handle or hinges;
  - (5) Window wipers and window wiper motors;
  - (6) Transparent sun screening film materials which are installed, affixed, or applied along the top edge of the windshield so long as such materials do not encroach upon the AS-1 portion of the windshield as provided by FMVSS 205 [and FMVSS 128;] or no lower than four inches below the top of the windshield, when measured from the middle point of the bottom edge of the top windshield moulding if no AS-1 markings can be found in the left or right upper margin of the windshield;
  - (7) Sun screening devices for front side wing vents and windows which, when used in conjunction with the glazing material have a light transmittance of no less than thirty-five per cent plus or minus [three] six per cent;
  - (8) Sun screening devices for side windows necessary for driving visibility which are to the rear of the driver and for rear windows necessary for driving visibility which, when used in conjunction with the glazing material, have a light transmittance of no less than thirty-five per cent plus or minus [three] six per cent;
  - (9) Side windows which are to the rear of the driver and rear windows on vans, minivans, trucks, or buses; provided that the vehicles are equipped with rearview mirrors on both sides;
  - (10) Privacy drapes, curtains, or blinds, or any combination, installed on the interior of motor homes.
- (e) Any person who violates this section shall be fined not less than \$50 nor more than \$250 for each separate offense."

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

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

(Approved April 24, 1989.)

### Note

1. So in original.

## ACT 55

H.B. NO. 1259

A Bill for an Act Relating to Eggs.

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

SECTION 1. Chapter<sup>1</sup> 147-75, Hawaii Revised Statutes, is amended to read as follows:

**"§147-75 Notice of grade and size; designation of origin of imported eggs.** It shall be unlawful for any person to sell, or offer to sell, or expose for sale to a consumer, any eggs, other than those of the person's own production at the place of production, intended for human consumption, without notifying, by suitable

sign or label, the person purchasing or intending to purchase the same whether the same are imported from the mainland United States or foreign countries or of island production, and the exact grade or quality and the size or weight of the eggs, according to the standards prescribed by the department of agriculture.

The word "island" shall be used to designate the geographic origin of eggs produced in this State.

Eggs imported from the mainland United States or foreign countries shall be individually marked as to origin. Imported eggs shall not be removed from any dock or landing without permission of the department of agriculture and shall not be processed, sold, or offered for sale until the consignee thereof has been furnished with a certificate from the department of agriculture certifying that the eggs contained in the shipment in which the eggs arrived are marked as provided in this section and rules of the department of agriculture; provided that eggs which are intended for hatching or sale as balut and eggs which are preserved with an outer covering of ashes and salt need not be marked as herein provided."

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

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

(Approved April 24, 1989.)

**Note**

1. So in original.

**ACT 56**

H.B. NO. 1506

A Bill for an Act Relating to Podiatrists.

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

**SECTION 1.** Section 386-1, Hawaii Revised Statutes, is amended by amending the definition of "medical care", "medical services", or "medical supplies", to read:

" "Medical care", "medical services", or "medical supplies", means every type of care, treatment, surgery, hospitalization, attendance, service, and supplies as the nature of the work injury requires, and includes such care, services and supplies rendered or furnished by a licensed or certified physician, dispensing optician, [podiatrist,] physical therapist, nurse, or masseur."

**SECTION 2.** Section 386-1, Hawaii Revised Statutes, is amended by amending the definition of "physician" to read:

" "Physician" includes a doctor of medicine, a dentist, a chiropractor, an osteopath, a naturopath, a psychologist, [and] an optometrist[.], and a podiatrist."

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

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

(Approved April 24, 1989.)

## ACT 57

H.B. NO. 1828

A Bill for an Act Relating to Traffic Violations.

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

SECTION 1. Section 291-37, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person guilty of omitting any of the required acts, or committing any of the prohibited acts of this chapter, or the rules adopted shall be guilty of a violation of this chapter and may be fined not less than \$25 nor more than [\$500. Any] \$1,800; provided that any person guilty of omitting any of the required acts, or committing any of the prohibited acts of sections 291-34, [to] 291-35, or 291-36 may be fined not more than [\$500 for each offense] \$600 and not less than the fine which is set forth in the following tables:

If the excess weight is:	The minimum fine for a first violation shall be:
--------------------------	--

100 to 1,500 pounds	[ <u>\$25</u> ] <u>\$125</u>
1,501 to 2,000 pounds	[30] <u>130</u>
2,001 to 2,500 pounds	[40] <u>140</u>
2,501 to 3,000 pounds	[60] <u>160</u>
3,001 to 3,500 pounds	[80] <u>180</u>
3,501 to 4,000 pounds	[100] <u>200</u>
4,001 to 4,500 pounds	[125] <u>225</u>
4,501 to 5,000 pounds	[150] <u>250</u>
5,001 to 5,500 pounds	[175] <u>275</u>
5,501 to 6,000 pounds	[200] <u>300</u>
6,001 to 6,500 pounds	[230] <u>330</u>
6,501 to 7,000 pounds	[260] <u>360</u>
7,001 to 7,500 pounds	[290] <u>390</u>
7,501 to 8,000 pounds	[320] <u>420</u>
8,001 to 8,500 pounds	[355] <u>455</u>
8,501 to 9,000 pounds	[390] <u>490</u>
9,001 to 9,500 pounds	[425] <u>525</u>
9,501 to 10,000 pounds	[460] <u>560</u>
10,001 pounds and over	[480] <u>580</u>

If the excess dimension is:	The minimum fine shall be:
Up to 5 feet	\$ 25
Over 5 feet and up to 10 feet	50
Over 10 feet and up to 15 feet	75
Over 15 feet	100

For the purpose of the imposition of a fine or penalty herein, evidence of prior offenses shall be admissible.

For a second violation within one year of the first, the fine for excess weight shall be not less than twice the fine listed in the excess weight table above and not more than \$1,200. For a third or subsequent violation for excess weight previously cited under this section within one year, the fine shall not be less than triple the fine listed in the excess weight table above and not more than \$1,800.

For the purposes of this section "person" means the driver of the vehicle unless the driver is an employee in the scope and course of employment, in which case "person" means the employer of the driver.

All penalties imposed and collected [under] for violations of sections 291-33 to 291-36 shall be paid into the state highway fund.

The department of transportation is authorized to institute a system where the minimum fine, based on the tables in this subsection, may be mailed in when the citation or penalty is not to be contested. This system shall include an ability for the owner of the vehicle or combination of vehicles to request the operator be held harmless and the citation be transferred to that owner of the vehicle or combination of vehicles."

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

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

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

(Approved April 24, 1989.)

## ACT 58

H.B. NO. 1830

A Bill for an Act Relating to Kona Airport.

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

SECTION 1. Section 261-25, Hawaii Revised Statutes, is repealed.

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

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

(Approved April 24, 1989.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 59

H.B. NO. 1839

A Bill for an Act Relating to General Lyman Field.

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

SECTION 1. Section 261-22, Hawaii Revised Statutes, is amended to read as follows:

**"§261-22 [General Lyman Field.] Hilo International Airport.** The official name of the [Hilo] airport situated at Waiakea, Hilo, Hawaii, shall be [General Lyman Field.] Hilo International Airport. The main passenger terminal at Hilo International Airport shall be designated "General Lyman Terminal" in memory of Brigadier General Albert Lyman, the first person of Hawaiian ancestry to attain such rank in the United States Army."

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

SECTION 3. This Act shall take effect on July 1, 1989.

(Approved April 24, 1989.)

A Bill for an Act Relating to State-Funded Medical Assistance.

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

SECTION 1. Section 346-29, Hawaii Revised Statutes, is amended to read as follows:

**“§346-29 Applications for public assistance; manner, form, conditions.”**  
Applications for public assistance under this chapter shall be made by the applicant, or by someone acting in the applicant's behalf, in the manner, place, and form prescribed by the department.

No applicant shall be entitled to public assistance under this chapter who has sufficient income or other resources to provide a standard above that provided in this chapter, or who is an inmate of any public institution as long as the Social Security Act precludes the use of federal funds to provide public assistance to an inmate of such an institution, [but an] except that any inmate of a public institution who is otherwise eligible for medical assistance and who has been determined by the medical director of the institution as having a major illness or medical condition requiring the provision of medical care outside of the institution may receive assistance under this chapter. An inmate of [such] an institution mentioned in this section may apply for assistance to begin after the inmate's discharge from the institution. In determining the needs of an applicant or recipient for public assistance by the department, the department:

- (1) Shall disregard such amounts of earned or unearned income and resources as required by the Social Security Act or other federal acts, to receive federal matching funds and may disregard such additional amounts as these acts permit, now or in the future, to be disregarded.
- (2) Shall consider as net income in all cases such income as the Social Security Act or other federal acts may require the department to consider for receipt of federal matching funds and may consider such additional income and resources as these acts may permit, now or in the future, to be considered.
- (3) Shall disregard a total of \$1,000 in assets in determining the needs of persons for financial assistance; provided that the amount to be disregarded, shall not exceed standards under federally funded financial assistance programs. This provision shall not apply to persons eligible for Federal Supplemental Security Income benefits. In determining the needs of such persons, the department shall apply the resource retention requirements under the Federal Supplemental Security Income Program.
- (4) Shall apply the resource retention requirements under the Federal Supplemental Security Income Program in determining the needs of a single person for medical assistance only.
- (5) Shall apply the resource retention requirements under the Federal Supplemental Security Income Program in determining the needs of a family of two persons for medical assistance only and an additional \$250 for each additional person included in an application for medical assistance only.

- (6) Shall disregard amounts of emergency assistance granted under section 346-65.
- (7) Shall not consider as income or resources any payment for services to or on behalf of, or any benefit received by, a participant under the workfare program of part IX, other than wages. Wages earned by a participant while participating in the workfare program shall be considered income of the participant, unless the wages are excluded or disregarded under any other law.

In determining eligibility for medical assistance, the department shall require from all applicants and recipients the assignment of any benefits due to a third party liability. Any rights or amounts so assigned shall be applied against the cost of medical care paid under this chapter.

The director shall adopt rules pursuant to chapter 91 defining assets and to determine eligibility for medical assistance; provided that the cash surrender value of life insurance policies owned by persons included in an application shall be treated as assets."

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

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

(Approved April 24, 1989.)

**ACT 61**

H.B. NO. 1868

A Bill for an Act Relating to the Administrative Process to Establish and Enforce Child Support Obligations.

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

**SECTION 1.** 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, 709-904, 709-905, 709-906, or 298-12, 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 a domestic abuse protective 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) of this section the court may, in its discretion, waive its jurisdiction over the offense charged.

- (3) In all proceedings under chapter 580, and in all proceedings under chapter 584.

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- (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[, and in all proceedings to appoint a guardian of the person of an adult].
- (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.

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

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

**"[§576E-2] Attorney general; powers.** Notwithstanding any other law to the contrary, the attorney general, through the child support enforcement agency, shall have concurrent jurisdiction with the court in all proceedings in which a support obligation is established, modified, or enforced, including, but not limited to, proceedings under chapters 571, 580, 584, and 576, the Uniform Reciprocal Enforcement of Support Act. The attorney general, through the child support enforcement agency, may establish, modify, and enforce child support obligations using the administrative process provided in this chapter on all cases for which the department has a responsibility under Title IV-D of the Social Security Act, including but not limited to welfare and non-welfare cases in which the responsible parent is subject to the department's jurisdiction, regardless of the residence of the children for whom support is sought. These powers shall include, but not be limited to, the power to:

- (1) Conduct investigations into the ability of responsible parents to pay support and into nonpayment of support;
- (2) Administer oaths, issue subpoenas, and require production of books, accounts, documents, and evidence;
- (3) Establish, modify, or enforce a support order;
- (4) Determine that a responsible parent has not complied with a court order;
- (5) Establish arrearage;
- (6) Establish a public assistance debt under section 346-37.1;
- (7) Order and enforce assignment of future income under section 576E-16, and chapter 571[,]; and[;]
- (8) Exercise the powers and authority described in this section, notwithstanding the existence of a prior court order issued by another state or foreign jurisdiction, except as modified or limited by this chapter."

SECTION 3. Section 576E-10, Hawaii Revised Statutes, is amended to read as follows:

**"[§576E-10] Hearings officers.** The attorney general shall appoint and commission, [pursuant] without regard to chapters 76 and 77, such hearings officers

as may be necessary to carry out the purposes of this chapter. Hearings officers shall exercise all of the powers granted to the attorney general under this chapter, but shall not be considered deputy attorneys general and shall not exercise the powers or discharge the duties conferred upon the attorney general or the attorney general's deputies by chapter 28. In exercising the powers conferred upon the attorney general in section 576E-2, the hearings officers shall have the authority to:

- (1) Enter a default order against a responsible parent who fails to appear at the time and place of the hearing, upon a showing of proper notice to that parent;
- (2) Accept a voluntary acknowledgment of support liability or stipulated agreement setting the amount of support to be paid after consideration of the guidelines established under section 576D-7;
- (3) Receive testimony from the parties to the hearing and establish a record; and
- (4) Evaluate the testimony and other evidence received at the hearing and make specific findings of fact and conclusions of law."

SECTION 4. Section 576E-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A true copy of the agency's order, along with a true copy of the return of service, shall be filed by the agency in the office of the clerk of the [family] circuit court in the [first] circuit[.] where the order was issued. Upon filing, the order shall have all the force and effect of a final order or decree of the circuit court."

SECTION 5. Section 576E-13, Hawaii Revised Statutes, is amended to read as follows:

**"[§576E-13[]] Appeal to the family court.** Any responsible parent aggrieved by a final order entered by the agency pursuant to this chapter may obtain judicial review under chapter 91 by filing a notice of appeal to the senior family court judge or senior judge in the circuit in which the person resides within thirty days of the filing of the order. The senior family court judge or senior judge may assign the hearing and disposition of such appeals to any district judge of the family court who shall exercise all of the powers conferred upon a circuit court by section 91-14. The filing of a notice of appeal does not stay enforcement of the agency order."

SECTION 6. Section 576E-16, Hawaii Revised Statutes, is amended to read as follows:

**"[§576E-16[]] Income withholding.** (a) Whenever any order is entered by the agency establishing, modifying, or enforcing support, establishing an arrearage that has accrued under a previous judicial or administrative order for support, or establishing a public assistance debt, the agency shall concurrently issue an order which shall operate as an assignment to the agency for the benefit of the child of such amounts at such times as may be specified in the order, from the responsible parent's income due or to become due in the future from the responsible parent's employer, or successor employers, until further order of the agency. A copy of the income withholding order shall be filed in the office of the clerk of the circuit court in the circuit where the order was issued along with the copy of the support order as provided in section 576E-12.

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(b) The income withholding order shall be effective immediately after service upon an employer of a true copy of the order, which service may be effected by certified or registered mail or by personal delivery. Thereafter, the employer shall for each pay period, withhold from the income due to the responsible parent from the employer, and not required to be withheld by any other provision of federal or state law, and transmit to the agency, as much as may remain payable to the responsible parent for such pay period up to the amount specified in the order as being payable during the same period. The employer shall immediately inform the agency of any change that would affect the income withholding order or the disbursement thereof.

(c) Compliance by an employer with the income withholding order shall operate as a discharge of the employer's liability to the responsible parent for that portion of the responsible parent's earnings withheld and transmitted to the agency, whether or not the employer has withheld the correct amount. For each payment made pursuant to an income withholding order, the employer may deduct and retain as an administrative fee an additional amount of \$2 from the income owed to the responsible parent. Any income withholding order shall have priority as against any garnishment, attachment, execution, or other income withholding order, or any other order, unless otherwise ordered by the agency, and shall not be subject to the exemptions or restrictions contained in part III of chapter 651 and in chapters 652 and 653. An employer who fails to comply with an order entered by the agency under this section shall be liable to the obligee or the agency[,] for the full amount of all sums ordered to be withheld and transmitted. An employer receiving an income withholding order shall transmit amounts withheld to the agency within ten days after the responsible parent is paid. The employer shall begin withholding no later than the first pay period commencing within fourteen days [after receipt of the order by] following the date a copy is mailed to the employer. An employer who is required to withhold amounts from the [earnings or] income of more than one employee may remit to the agency a sum total of all such amounts in one check with a listing of the amounts applicable to each employee.

(d) An income withholding order shall remain in effect until terminated when appropriate by the agency. Payment by the responsible parent of any delinquency shall not in and of itself warrant termination of the income withholding order. The agency shall promptly refund any amount withheld in error to the responsible parent.

(e) It shall be unlawful for any employer to refuse to hire a prospective employee, to discharge an employee, or to take any other disciplinary action against an employee, based in whole or in part upon an order authorized by this section. Any employer violating this section shall be guilty of a misdemeanor and shall be punished under section 710-1077(1)(g).

(f) Notwithstanding any other provision of law, for the purposes of this section, the term "income" shall include, without limitation, salaries, wages, earnings, workers' compensation, disability benefits, commissions, independent contractor income, and any other entitlement to money including moneys payable as a pension or as an annuity or retirement or disability or death or other benefit, or as a return of contributions and interest thereon from the United States government, or from the State or political subdivision thereof, or from any retirement, disability, or annuity system established by any of them pursuant to statute.

(g) Any responsible parent may request withholding of the parent's income prior to entry of an order by the agency. The employer shall comply with that request as if so ordered by the agency under this section.

(h) The agency may allocate amounts withheld from the income of one responsible parent among more than one obligee. If concurrent assignment orders would cause the amounts withheld from the responsible parent's income to exceed

applicable wage withholding limitations, the current support obligation of the first served order shall be satisfied first, and then current obligations of subsequently served orders shall be satisfied in the order of service. Thereafter, arrearages due under the income withholding orders shall be satisfied in the order of service, up to the applicable limitation.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved April 26, 1989.)

**ACT 62**

H.B. NO. 553

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. Section 641-11, Hawaii Revised Statutes is amended to read as follows:

**“§641-11 From circuit courts.** Any party deeming oneself aggrieved by the judgment of a circuit court in a criminal matter, may appeal to the supreme court, subject to chapter 602 in the manner and within the time provided by the [Hawaii Rules of Criminal Procedure.] Hawaii Rules of Appellate Procedure. The sentence of the court in a criminal case shall be the judgment. All appeals, whether heard by the intermediate appellate court or the supreme court, shall be filed with the clerk of the supreme court and shall be subject to one filing fee.”

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

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

(Approved April 26, 1989.)

**ACT 63**

S.B. NO. 1863

A Bill for an Act Relating to Benefits for Public Officers and Employees.

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

SECTION 1. The legislature finds that it is in the best interest of officers and employees of the State and the various counties for the State and the counties to establish cafeteria plans within the meaning of section 125 of the Internal Revenue Code of 1986, as amended. Eligible cafeteria plans will allow public sector officers and employees to elect to reduce their cash compensation in return for payment by the employer of expenses of eligible benefits.

SECTION 2. Chapter 78, Hawaii Revised Statutes, is amended to add a new part to read as follows:

## ACT 63

### “PART . CAFETERIA PLANS

**§78- Establishment.** The employees of the State shall be afforded the opportunity to participate in a wage and salary reduction benefit program which qualifies as a cafeteria plan within the meaning of section 125 of the Internal Revenue Code of 1986, as amended. The cafeteria plan shall allow eligible employees to elect to reduce their pretax compensation in return for payment by the State of the expenses of eligible benefits. As used in this part, “employee” shall be as defined in section 87-1.

**§78- Responsible agency; rules.** The governor shall assign the responsibility for the implementation and operation of the cafeteria plan to the appropriate department or agency, and the department or agency shall adopt rules pursuant to chapter 91 necessary to implement this part. The rules shall specify eligible employees, eligible expenses, effective dates, and other matters necessary to implement this part.”

SECTION 3. Chapter 78, Hawaii Revised Statutes, is amended by amending the title to read as follows:

### “CHAPTER 78 [GENERAL PROVISIONS ON] PUBLIC SERVICE”

SECTION 4. Sections 78-1 to 78-51, Hawaii Revised Statutes, are designated as “Part . General Provisions” of chapter 78, Hawaii Revised Statutes.

SECTION 5. Section 87-3, Hawaii Revised Statutes, is amended to read as follows:

**“§87-3 Purpose of the fund.** The fund shall be used for the purpose of providing employee-beneficiaries and dependent-beneficiaries with a health benefits plan, provided that the fund may be used for other expenses necessary to effectuate the purpose and provided further that any rate credit or reimbursement from any carrier or any earning or interest derived therefrom shall be used in addition to such purposes to (1) finance state and county contributions for the dental benefits plan for children under the age of nineteen, as described in section 87-4; and (2) finance the employee’s portion of the monthly contribution of a health benefits plan for a retired employee, as described in section 87-1(5)(A)(ix), or upon the retired employee’s death the retired employee’s beneficiary as described in section 87-1(6).

To the extent that contributions are provided for group life insurance benefits in section 87-4, the fund shall also be used for the purpose of providing group life insurance benefits to employees.

The fund may assist the State and the counties to implement and administer cafeteria plans authorized under section 125 of the Internal Revenue Code of 1986, as amended, and under part of chapter 78.”

SECTION 6. Section 87-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The State through the department of budget and finance and the several counties through their respective departments of finance shall pay to the fund a monthly contribution equal to the amount established under chapter 89C or specified in the applicable public sector collective bargaining agreement, whichever is appropriate, for each of their respective employee-beneficiaries and employee-bene-

ficiaries with dependent-beneficiaries, [such contributions to], which shall be used [towards] toward the payment of costs of a health benefits plan; provided that the monthly contribution shall not exceed the actual cost of a health benefits plan. If both husband and wife are employee-beneficiaries, the total contribution by the State or the appropriate county shall not exceed the monthly contribution of a family plan for both of them. If, however, the State or any of the several counties establish cafeteria plans in accordance with section 125 of the Internal Revenue Code of 1986, as amended, and part of chapter 78, the monthly contribution to the fund for those employee-beneficiaries who participate in a cafeteria plan shall be made through the cafeteria plan. In this event, the payments made by the State or the counties shall include the State's and the counties' respective contributions to the fund and the employee-beneficiary's share of the cost of the health benefits plan selected and authorized by the employee-beneficiary through the cafeteria plan."

SECTION 7. Section 87-6, Hawaii Revised Statutes, is amended to read as follows:

**"§87-6 Contributions by an employee-beneficiary.** (a) Each employee-beneficiary shall make a monthly contribution to the fund amounting to the difference between the monthly charge of the health benefits plan selected by the employee-beneficiary and the State's and county's contribution to the fund. Nothing in this section shall prohibit any employee-beneficiary from participating in a cafeteria plan authorized under section 125 of the Internal Revenue Code of 1986, as amended, and part of chapter 78.

(b) During the period the health benefits plan selected by an employee-beneficiary is in effect, the employee-beneficiary shall authorize, if allowed under present laws, that [his] the employee-beneficiary's contribution be withheld and transmitted to the fund monthly by the comptroller or finance officer [from whom he receives his] who disburses the employee-beneficiary's compensation, pension, or retirement pay. If, however, an employee-beneficiary's contribution to the fund is not withheld and transmitted to the fund, the employee-beneficiary shall pay [his] the monthly contribution (1) directly to the fund by the tenth day of each month, in the case of an employee-beneficiary who normally receives [his] the employee-beneficiary's compensation from the comptroller of the State, or (2) in the case of all other employee-beneficiaries, to the respective finance officer from whom [he] the employee-beneficiary normally receives [his] compensation for transmittal to the fund by the tenth day of each month.

(c) Notwithstanding any other law to the contrary, the beneficiary of an employee who is killed in the performance of [his] duty, an employee-beneficiary who retired before July 1, 1984, an employee-beneficiary who retired after June 30, 1984, and who had ten years or more of credited service, excluding sick leave, or upon [his] death [his] their beneficiary, including employees who retired prior to the establishing of the fund and their beneficiaries, or the beneficiary of any employee-beneficiary, as described in section 87-1(6) shall not be required to make any contribution to the fund. The monthly contribution of the persons identified in this subsection shall be financed by the State through the department of budget and finance and the several counties through their respective departments of finance for each of their respective employee-beneficiaries.

(d) Subsection (a) notwithstanding, an employee-beneficiary's monthly contribution to the fund, amounting to the difference between the monthly cost of the health benefits plan selected by the employee-beneficiary and the State's or appropriate county's contribution to the fund, shall be deemed to include the amount which would have been the employee-beneficiary's contribution if the employee-beneficiary had not elected to participate in the cafeteria plan."

## **ACT 64**

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 1989.

(Approved May 3, 1989.)

## **ACT 64**

H.B. NO. 404

A Bill for an Act Relating to Administrative Rules.

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

SECTION 1. Findings and purpose. The legislature finds that interpretations made by the Supreme Court of Hawaii of the public hearing notice provisions of section 91-3, Hawaii Revised Statutes, have resulted in great uncertainty about the validity of many of the adopted administrative rules. In order to avoid case-by-case challenges to the validity of administrative rules on the grounds of faulty public hearing notices, the counties or the agencies of the State of Hawaii as defined in section 91-1, Hawaii Revised Statutes, will have to re-adopt their administrative rules and will have to incur as much as \$10,000,000 in publication and travel costs in order to have public hearing notices that contain a sufficient amount of information about the rules to satisfy the interpretation of section 91-3 made by the Supreme Court of Hawaii. Furthermore, at least one state agency that attempted to comply with the interpretation of section 91-3 made by the Supreme Court of Hawaii has been criticized for including too much detail about its proposed administrative rules in the public hearing notices.

Section 91-3(a)(1), Hawaii Revised Statutes, provides that the notice of the public hearing on the proposed adoption of an administrative rule "shall include a statement of the substance of the proposed rule." In Costa v. Sunn, 64 Haw. 389 (1982), the Supreme Court of Hawaii invalidated certain amendments made to the administrative rules of the Department of Social Services and Housing and stated that "substance" within the meaning of that phrase "means not merely the subject of it, but an intelligible abstract or synopsis of its material and substantial elements"; that the notices involved in that case "stated little more than the headings of the new rules and did not provide interested persons with sufficient information to 'direct their comments toward concrete proposals"'; and that "the notice should fairly apprise interested parties of what is being proposed so they can formulate and present rational responses to the proposal". As a consequence of the Supreme Court's decision, the Department of Social Services and Housing was forced to republish rule amendment notices at a cost of over \$30,000 and to devote considerable staff time and effort to recalculate public assistance benefits under the old unamended rules and then again under the amended rules after the amendments were readopted.

In State v. Rowley, No. 12580 (Nov. 18, 1988), the Supreme Court of Hawaii invalidated an administrative rule of the Department of Land and Natural Resources that prohibited nudity in state parks. The Supreme Court invalidated the rule on the basis that the notice of public hearing published in 1971 did not meet the requirements of section 91-3 as interpreted in 1982 in Costa v. Sunn, even though the 1971 rules were repealed and reformatted in 1981, the rule prohibiting nudity in state parks had been a public record for over ten years, and the public hearing notice published in 1981 expressly stated that "Copies of the proposed Administrative Rules and of the regulations to be repealed are available for public

inspection" and stated where the rules were available for inspection. As pointed out in the dissenting opinion in State v. Rowley, the opinion of the Supreme Court "effectively invalidates all the rules governing the State Park System on a questionable ground that rules repealed in 1981 were not validly adopted in 1971." Furthermore, the administrative rules of all other agencies that were primarily just reformatted about 1981 in total without detailed explanation of the substance of the rules that had previously been in force and effect are also in danger of being invalidated. A considerable expense of staff time and effort will be required to review all public hearing notices published pursuant to the Hawaii Administrative Procedure Act since its original enactment took effect on January 2, 1962, or to republish detailed notices of public hearings and re-adopt all existing administrative rules.

Consequently, the purposes of this Act are to:

- (1) Expressly ratify and validate all administrative rules and rule amendments and repeals that were filed pursuant to section 91-4, Hawaii Revised Statutes, before the close of business on December 31, 1986, to the extent that those administrative rules and rule amendments and repeals shall be considered to be free from any noncompliance with the statutory procedural requirements for the adoption, amendment, or repeal of administrative rules;
- (2) Provide clarifying statutory wording that will expressly enable agencies to publish notices that generally describe the subjects involved and the purposes to be achieved by a proposed rule, together with a description of where and how free copies of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed may be requested, instead of including in the notice only a statement of the substance of the proposed rule; and
- (3) Impose a three-year limitations period on challenges to the validity of any adopted administrative rule adoption, amendment, or repeal on the basis of noncompliance with the procedural requirements for rule adoption, amendment, or repeal.

SECTION 2. Section 91-3, Hawaii Revised Statutes, is amended to read as follows:

**"§91-3 Procedure for adoption, amendment or repeal of rules.** (a) Prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the adopting agency shall:

- (1) Give at least [twenty] thirty days' notice for a public hearing. [Such] The notice shall include [a]:
  - (A) Either:
    - (i) A statement of the substance of the proposed rule[, and of the] adoption, amendment, or repeal; or
    - (ii) A general description of the subjects involved and the purposes to be achieved by the proposed rule adoption, amendment, or repeal; and
  - (B) A statement that a copy of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed will be mailed at no cost to any interested person who requests a copy, together with a description of where and how the requests may be made; and
  - (C) The date, time, and place where the public hearing will be held and where interested persons may be heard [thereon.] on the proposed rule adoption, amendment, or repeal.

The notice shall be mailed to all persons who have made a timely written request of the agency for advance notice of its [rulemaking] rule-making proceedings, and published at least once in a newspaper of general circulation in the State for state agencies and in the county for county agencies.

- (2) Afford all interested persons opportunity to submit data, views, or arguments, orally or in writing. The agency shall fully consider all written and oral submissions respecting the proposed rule. The agency may make its decision at the public hearing or announce then the date as to when it intends to make its decision. Upon adoption, amendment, or repeal of a rule, the agency shall, if requested to do so by an interested person, issue a concise statement of the principal reasons for and against its determination.

(b) Notwithstanding the foregoing, if an agency finds that an imminent peril to the public health, safety, or morals or to livestock and poultry health requires adoption, amendment, or repeal of a rule upon less than [twenty] thirty days' notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal.

(c) The adoption, amendment, or repeal of any rule by any state agency shall be subject to the approval of the governor. The adoption, amendment, or repeal of any rule by any county agency shall be subject to the approval of the mayor of the county. The provisions of this subsection shall not apply to the adoption, amendment, and repeal of the rules and regulations of the county boards of water supply.

(d) The requirements of subsection (a) may be waived by the governor in the case of the State, or by the mayor in the case of a county, whenever a state or county agency is required by federal provisions to promulgate rules as a condition to receiving federal funds and such agency is allowed no discretion in interpreting such federal provisions as to the rules required to be promulgated; provided that the agency shall make such adoption, amendment, or repeal known to the public by publishing a statement of the substance of the proposed rule at least once in a newspaper of general circulation in the State prior to the waiver of the governor or the mayor.

(e) No adoption, amendment, or repeal of any rule shall be invalidated solely because of the inadvertent failure to mail an advance notice of rule-making proceedings or the inadvertent failure to mail or the nonreceipt of requested copies of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed. Any challenge to the validity of the adoption, amendment, or repeal of an administrative rule on the ground of noncompliance with statutory procedural requirements shall be forever barred unless the challenge is made in a proceeding or action, including an action pursuant to section 91-7, that is begun within three years after the effective date of the adoption, amendment, or repeal of the rule."

SECTION 3. The legislature hereby declares that all administrative rules and rule amendments and repeals that were filed pursuant to section 91-4, Hawaii Revised Statutes, before the close of business on December 31, 1986, shall be considered to be validly adopted, amended, or repealed and free from any non-compliance with statutory procedural requirements for the adoption, amendment, or repeal of administrative rules. An administrative rule or rule amendment or repeal filed pursuant to section 91-4 before the close of business on December 31, 1986, shall not be invalidated by a court on the ground of noncompliance with the statutory

procedural requirements for the adoption, amendment, or repeal of administrative rules.

**SECTION 4.** The validity of any administrative rule adoption, amendment, or repeal filed pursuant to section 91-4, Hawaii Revised Statutes, after December 31, 1986, and before the effective date of this Act may be challenged on the grounds of noncompliance with statutory procedural requirements for the adoption, amendment, or repeal of administrative rules, subject to the three-year limitations period applicable pursuant to section 91-3(e), Hawaii Revised Statutes, as set forth in this Act. For the purposes of determining the three-year limitations period for administrative rule adoptions, amendments, or repeals filed after December 31, 1986, but before the effective date of this Act, the three-year limitations period shall be deemed to commence on the effective date of the rule adoption, amendment, or repeal or the effective date of this Act, whichever date is later.

**SECTION 5.** Notwithstanding sections 3 and 4 of this Act, this Act does not affect challenges made to the validity of any administrative rule in proceedings that were begun before the effective date of this Act.

**SECTION 6.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 7.** This Act shall take effect upon its approval, except that to the extent that this Act applies to the adoption, amendment, or repeal of administrative rules that occurred before the enactment of this Act, this Act is intended to have retrospective effect and operation.

(Approved May 3, 1989.)

**ACT 65**

S.B. NO. 658

A Bill for an Act Relating to Premarital Examination for Rubella.

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

**SECTION 1.** Section 572-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided in this section, no application for a marriage license shall be accepted by a marriage license agent unless the female provides a physician’s statement signed by a licensed physician or by a commissioned medical officer of the United States Air Force, Army, Navy or Public Health Service verifying that the female has been given a serological test for immunity against rubella and has been informed of the adverse effects of rubella on the fetus; provided that no examination for immunity to rubella is required of the female who provides proof of immunization with live rubella virus vaccine, laboratory evidence of rubella immunity, or who, by reason of age or other medically determined condition is not and will never be physically able to conceive a child.”

**SECTION 2.** Act 143, Session Laws of Hawaii 1979, is amended by amending section 5, as amended by Act 76, Session Laws of Hawaii 1984, to read as follows:

“**SECTION 5.** This Act shall take effect on July 1, 1979[, and the provision for mandatory premarital rubella screening shall remain in effect until June 30, 1989].”

## **ACT 66**

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

SECTION 4. This Act shall take effect on June 29, 1989.

(Approved May 4, 1989.)

## **ACT 66**

S.B. NO. 660

A Bill for an Act Relating to Hansen's Disease.

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

SECTION 1. Section 326-22, Hawaii Revised Statutes, is amended to read as follows:

**“§326-22 Compensation of patient employees.** The compensation for patients employed under section 326-21 shall be set by the department of health; provided that in no case shall the compensation be less than the minimum wage as established by section 387-2.

Each patient employee of the department shall be entitled to and granted sick leave with pay and a vacation with pay each calendar year, each calculated at the following rate:

For patients working six hours a day, one and one-half days for each month of service;

For patients working five hours a day, one and one-quarter days for each month of service;

For patients working four hours a day, one day for each month of service.

A month of service is defined as eighty or more hours of work which may be accumulated over any period of time to total eighty hours. No more than twelve months of service may be earned and credited in any calendar year, even if the total number of hours worked should exceed nine hundred sixty hours.”

SECTION 2. New statutory material is underscored.

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

(Approved May 4, 1989.)

## **ACT 67**

S.B. NO. 663

A Bill for an Act Relating to Communicable Diseases.

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

SECTION 1. Chapter 325, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§325- Purpose.** The purpose of this chapter is to address prevention, control, and treatment of, and advancement of knowledge about, communicable diseases in the State.”

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

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

(Approved May 4, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 68**

S.B. NO. 1253

A Bill for an Act Relating to Public Lands.

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

**SECTION 1.** Act 362, Session Laws of Hawaii 1987, is amended by amending Section 1 to read as follows:

“**SECTION 1.** The legislature finds the authority granted to the department of land and natural resources to negotiate and enter into long-term residential leases with persons who were displaced by, or who are the descendants of, the refugees of the 1926 Hoopuloa lava flow has expired. The legislature further finds that all parcels meeting the criteria enumerated in Act 62, Session Laws of Hawaii 1982, have not been awarded.

The purpose of this Act is to re-authorize the negotiation of long-term residential leases between the department of land and natural resources and the displaced Milolii-Hoopuloa residents. Act 62, Session Laws of Hawaii 1982, as amended by Act 83, Session Laws of Hawaii 1984[,] and Act 362, Session Laws of Hawaii 1987, having expired on January 1, [1987,] 1989, it is necessary to reenact its provisions and apply them retroactively to January 1, [1987,] 1989, before an extension is possible.”

**SECTION 2.** Act 362, Session Laws of Hawaii 1987, is amended by amending Section 5 to read as follows:

“**SECTION 5.** Any other law to the contrary notwithstanding, including chapter 171, Hawaii Revised Statutes, the department of land and natural resources is authorized to negotiate and enter into lease agreements, upon consideration of the Milolii-Hoopuloa Community Development Plan, in accordance with the provisions and limitations of this Act; provided that the authority granted by this Act shall expire (1) when leases have been negotiated and recorded in the bureau of conveyances for all parcels meeting the criteria in Section 2 and Section 3, or (2) on January 1, [1989,] 1991, whichever occurs first.”

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

**SECTION 4.** This Act shall take effect upon its approval; provided that the provisions of this Act shall apply retroactively to January 1, 1989.

(Approved May 4, 1989.)

**ACT 69**

S.B. NO. 1806

A Bill for an Act Relating to Housing Programs.

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

SECTION 1. Chapter 201E, Hawaii Revised Statutes, is amended by adding a new section, to be appropriately designated and to read as follows:

**“§201E- Administration of federal programs.** (a) The corporation is authorized to carry out federal programs designated to be carried out by a housing finance or housing development entity.

(b) The corporation shall adopt necessary rules in accordance with chapter 91, including the establishment and collection of reasonable fees for administering the program, to carry out any federal program in subsection (a).

(c) All fees collected for administering the program may be deposited into an appropriate special fund of the corporation, and may be used to cover the administrative expenses of the corporation.”

SECTION 2. Section 46-15.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any law to the contrary notwithstanding, any county shall have and may exercise the same powers, subject to applicable limitations, as those granted the housing finance and development corporation pursuant to chapter 201E insofar as such powers may be reasonably construed to be exercisable by a county for the purpose of developing, constructing, and providing low and moderate income housing; provided that no county shall be empowered to cause the State to issue general obligation bonds to finance a project pursuant to this section; provided further that county projects shall be granted an exemption from general excise or receipts taxes in the same manner as projects of the housing finance and development corporation, pursuant to section 201E-205[.]; and provided further that the provisions of section 201E- shall not apply to this section unless federal guidelines specifically provide local governments with that authorization and the authorization does not conflict with any state laws. [Such] The powers shall include the power, subject to applicable limitations, to:

- (1) Develop and construct dwelling units, alone or in partnership with developers;
- (2) Acquire necessary land by lease, purchase, exchange, or eminent domain;
- (3) Provide assistance and aid to a public agency or person in developing and constructing new housing and rehabilitating old housing for the elderly of low and moderate income, other persons of low and moderate income, and persons displaced by any governmental action, by making long-term mortgage or interim construction loans available;
- (4) Contract with any eligible bidders to provide for construction of urgently needed housing for persons of low and moderate income;
- (5) Guarantee the top twenty-five per cent of the principal balance of real property mortgage loans, plus interest thereon, made to qualified borrowers by qualified lenders;
- (6) Enter into mortgage guarantee agreements with appropriate officials of any agency or instrumentality of the United States in order to induce [such] those officials to commit to insure or insure mortgages under the provisions of the National Housing Act, as amended;

- (7) Make a direct loan to any qualified buyer for the downpayment required by a private lender to be made by the borrower as a condition of obtaining a loan from the private lender in the purchase of residential property;
- (8) Provide funds for a share, not to exceed fifty per cent of the principal amount of a loan made to a qualified borrower by a private lender who is unable otherwise to lend the borrower sufficient funds at reasonable rates in the purchase of residential property; and
- (9) Sell or lease completed dwelling units.

For purposes of this section, a limitation is applicable to the extent that it may reasonably be construed to apply to a county.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved May 4, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 70**

S.B. NO. 1808

A Bill for an Act Relating to Rental Housing Projects.

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

SECTION 1. Section 201E-134, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) When an eligible project is not owned by the corporation, the corporation shall be entitled to share in [any] the appreciation in value of units maintained for eligible tenants within an eligible project realized at the time of refinancing or prepayment of the eligible project loan. The corporation’s share shall be calculated by multiplying the appreciation [of the eligible project] in value of units maintained for eligible tenants realized upon refinancing or prepayment by the ratio of the owner’s equity to the discounted value of the aggregate rental assistance payments. The discount rate shall be established by rules adopted by the corporation.”

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

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

(Approved May 4, 1989.)

**ACT 71**

S.B. NO. 1811

A Bill for an Act Relating to Housing.

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

SECTION 1. Section 201E-21, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

## **ACT 72**

“(c) The government of any county in which a housing project is located or is about to be located may make donations or advances to the [authority] corporation in such sums as the county in its discretion may determine. The advances or donations shall be made for the purpose of aiding or cooperating in the construction and operation of the housing project. The corporation, when it has money available therefor, shall reimburse the county for all advances made by way of a loan to it.”

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

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

(Approved May 4, 1989.)

## **ACT 72**

S.B. NO. 1880

A Bill for an Act Relating to Tolerance for Pesticides in Food or Raw Agricultural Commodities.

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

**SECTION 1.** Section 328-8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The director may establish rules as necessary for the enforcement of this part. The rules shall be adopted pursuant to chapter 91; except that the director may, without regard to chapter 91, establish tolerance levels and regulatory or action levels by reference to the provisions of the regulations or guidelines of the United States established in [21 CFR Part 193, 40 CFR Part 180] 40 CFR Parts 180 and 185 or the United States Food and Drug Administration Compliance Policy Guides as the regulations or guidelines become effective at any time or from time to time.”

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

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

(Approved May 4, 1989.)

## **ACT 73**

H.B. NO. 462

A Bill for an Act Relating to State Bonds.

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

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

**SECTION 2.** The purpose of this Act is to authorize and appropriate general obligation bond funds for the acquisition of approximately sixty-seven acres of the

Kapalama Military Reservation during fiscal year 1988-89 and the fiscal biennium 1990-1991.

SECTION 3. There is appropriated a sum not to exceed \$90,000,000 out of the general obligation bond funds of the State of Hawaii or so much thereof as may be necessary for the period March 1, 1989, to February 28, 1991, for the purposes of this Act. Any funds remaining unexpended or unencumbered as of February 28, 1992, shall lapse as of such date.

SECTION 4. When it is deemed in the public interest of the State, the governor, in the governor's discretion, is authorized to use general fund savings or balances determined to be available from authorized general fund program appropriations to finance capital improvements projects authorized in this Act, where the method of financing is designated to be the general obligation bond fund; provided that if the governor uses general funds, the governor shall report that fact to the legislature twenty days prior to the convening of the regular session of 1990 for funds used in fiscal year 1989-1990, and twenty days prior to the convening of the regular session of 1991 for funds used in fiscal year 1990-1991.

SECTION 5. The sum appropriated shall be expended by the department of transportation for the purposes of this Act by submitting bids, by negotiating, and, if appropriate, by condemnation.

SECTION 6. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in Article VII, section 13, of the State Constitution which states: "Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance", the legislature finds and declares as follows:

- (1) Limitation on general obligation bond debt. The debt limit of the State is set forth in Article VII, section 13, of the State Constitution, which states in part: "General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance." Article VII, section 13, also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including "Reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year."
- (2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 1988-1989 and estimated for each fiscal year from 1989-1990 to 1991-1992, is as follows:

## ACT 73

Fiscal Year	Net General Fund Revenues	Debt Limit
1985-86	1,569,777,922	
1986-87	1,759,104,963	
1987-88	2,135,842,312	
1988-89	2,284,006,000	336,991,387
1989-90	2,502,024,000	381,035,452
1990-91	2,711,913,000	426,848,793
1991-92	(Not Applicable)	462,373,152

For fiscal years 1988-89, 1989-90, 1990-91, and 1991-92, respectively, the debt limit is derived by multiplying the average of the net general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 1985-86, 1986-87, and 1987-88 are actual, as certified by the director of finance in the Statement of the Debt Limit of the State of Hawaii as of July 1, 1988, dated November 16, 1988. The net general fund revenues for fiscal years 1988-89 to 1990-91 are estimates, based on general fund revenue estimates made as of March 15, 1989, by the council on revenues, the body assigned by Article VII, section 7, of the State Constitution to make such estimates, and based on estimates made by the department of budget and finance of those receipts which cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

- (3) Principal and interest on outstanding bonds applicable to the debt limit. According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds for determining the power of the State to issue general obligation bonds within the debt limit, as of March 1, 1989, is as follows for fiscal year 1989-90 to fiscal year 1995-96:

Fiscal Year	Principal and Interest
1989-90	226,675,960
1990-91	224,642,651
1991-92	214,148,100
1992-93	201,466,964
1993-94	199,219,568
1994-95	185,616,247
1995-96	174,779,498

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit continues to decline each year from fiscal year 1996-97 to fiscal year 2011-12 when the final installment of \$15,347 shall be due and payable.

- (4) Amount of authorized and unissued general obligation bonds and bonds authorized by this Act. As calculated from the state comptroller's bond fund report as of December 31, 1988, and adjusted for the issuance of \$65,000,954.43 general obligation bonds Series BL and \$45,000,000 general obligation bonds Series BM, both dated December 6, 1988, the total amount of authorized but unissued general obligation bonds is \$462,981,554. The total amount of general obligation bonds authorized by this Act is \$90,000,000. The total amount of general

- obligation bonds previously authorized and unissued and the general obligation bonds authorized by this Act is \$552,981,554.
- (5) Proposed general obligation bond issuance. As reported by the department of budget and finance for fiscal years 1988-89, 1989-90, 1990-91, 1991-92, and 1992-93, the State proposes to issue two series of \$80,000,000 each during the remainder of fiscal year 1988-89 and \$80,000,000 semi-annually in each of fiscal years 1989-90, 1990-91, 1991-92, and 1992-93. The State proposes to issue a total of \$560,000,000 during the period of March 1, 1989 to February 29, 1992. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the third year, the bonds maturing in substantially equal installments of principal, and interest payments commencing six months from the date of issuance and being paid semi-annually thereafter. It is assumed that this practice will continue to be applied to the bonds which are proposed to be issued.
- (6) Sufficiency of proposed general obligation bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. As reported in paragraph (5), the total amount of general obligation bonds which the State proposes to issue prior to February 29, 1992 is \$560,000,000. The total amount of \$560,000,000 which is proposed to be issued prior to February 29, 1992 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, and the bonds authorized by this Act, the total amount of which is \$552,981,554, as reported in paragraph (4).
- (7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds. General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds which are excludable from the amount of each proposed bond issued because:
- (A) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in this Act will be implemented and will require the application of proceeds from a particular bond issue; and
- (B) While at the present time, all of the special funds which are required to make reimbursements to the general fund on bonds issued are in a condition to qualify all of the reimbursable bonds for exclusion, it cannot be stated with certainty that such a condition will continue. However, the legislature notes that with respect to the principal and interest on outstanding general obligation bonds, according to the department of budget and finance, the average proportion of principal and interest which is excludable each year from calculation against the debt limit, as of March 1, 1989, is 11.69 per cent for the ten years from fiscal year 1989-90 to fiscal year 1998-99. For the purpose of this declaration, the assumption is made that ten per cent of each bond issue will be excludable from debt limit, an assumption which the legislature finds to be reasonable and conservative.
- (8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at an interest rate of 8.0 per cent through June 30, 1989, and 8.5 per cent for the fiscal years following thereafter, the maximum allowable by law, it can be

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determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, and the bonds authorized by this Act, will not cause the debt limit to be exceeded at the time of each bond issuance:

Time of Issuance and Amount to be Counted Against Debt Limit	Debt Limit at Time of Issuance	Greatest Amount and Year of Highest Principal and Interest
2nd half FY 1988-89	\$336,991,387	\$232,435,961 (FY 1989-90)
1st issue \$72,000,000		
2nd half FY 1988-89	\$336,991,387	\$238,195,961 (FY 1989-90)
2nd issue \$72,000,000		
1st half FY 1989-90 \$72,000,000	\$381,035,452	\$242,282,651 (FY 1990-91)
2nd half FY 1989-90 \$72,000,000	\$381,035,452	\$248,402,651 (FY 1990-91)
1st half FY 1990-91 \$72,000,000	\$426,848,793	\$252,029,100 (FY 1991-92)
2nd half FY 1990-91 \$72,000,000	\$426,848,793	\$258,149,100 (FY 1991-92)
1st half FY 1991-92 \$72,000,000	\$462,373,152	\$263,042,280 (FY 1993-94)

- (9) Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance.

SECTION 7. The legislature finds the basis for the declaration of findings set forth in this Act are reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 8. Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized by this Act provided that the sum total of the general obligations so issued shall not exceed \$90,000,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with section 39-16, Hawaii Revised Statutes, in such principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

SECTION 9. The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

SECTION 10. This Act shall take effect upon its approval.

(Approved May 8, 1989.)

## ACT 74

S.B. NO. 647

A Bill for an Act Relating to Correctional Employment.

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

SECTION 1. Chapter 353, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§353- Criminal history record checks.** The department shall develop standards to assure the reputable and responsible characters of staff members of its correctional facilities which shall include but not be limited to criminal history record checks. For the purposes of this section, “staff member” means any employee of the department of corrections who is directly involved with the treatment and care of persons committed to a facility, and “prospective staff member” means any applicant for a job in the department of corrections that is directly involved with the treatment and care of persons committed to a facility.

Every staff member and prospective staff member shall submit a statement under penalty of perjury indicating whether the staff member or prospective staff member was ever convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and providing consent to the department to conduct a criminal history record check and to obtain other criminal history record information for verification. The staff member shall be fingerprinted for the purpose of complying with the criminal history record check. The prospective staff member shall be fingerprinted and the criminal history record check shall be completed prior to beginning employment.

The department shall obtain criminal history record information through the Hawaii criminal justice data center on all staff and prospective staff members of the department of corrections. The Hawaii criminal justice data center may assess prospective staff members a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained, and shall be subject to such federal laws and federal regulations as may be now or hereafter adopted.

The department may deny employment to a prospective staff member who was convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and if the department finds from the prospective staff member's criminal history record that the prospective staff member poses a risk to the health, safety, security, or well-being of inmates under supervision and confinement or other staff.

Staff members shall not be subject to termination based on findings in their criminal records except for those whose conviction of a crime occurred after the effective date of this Act, or under circumstances in which a staff member is a fugitive from justice. The convictions of staff members subject to termination must be for crimes other than a minor traffic violation involving a fine of fifty dollars or less, and the staff member must pose a risk to the health, safety, security, or well-being of inmates under supervision and confinement or other staff.”

SECTION 2. Section 831-3.1, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) This section shall prevail over any other law which purports to govern the denial or issuance of any permit, license, registration, or certificate by the State or any of its political subdivisions or agencies; provided that this section shall not apply to:

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- (1) Denials by the department of human services of any certificate of approval, license, or permit to any organization, institution, home, or facility subject to licensure under chapter 346;
- (2) Denials of employment as a staff member of a youth correctional facility operated under chapter 352; [and]
- (3) Denials of employment as an employee of a detention or shelter facility established or designated pursuant to section 571-33[.]; and
- (4) Denials of employment as a staff member of a correctional facility operated under chapter 353.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved May 8, 1989.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 75

H.B. NO. 523

A Bill for an Act Relating to Names.

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

SECTION 1. The purpose of this Act is to amend section 574-2 and 574-3 of, the Hawaii Revised Statutes, since a former provision in subsection 2 was found unconstitutional by the Federal District Court to the extent it prohibited parents from giving their child any surname they chose. (466 F. Supp. 714).

SECTION 2. Section 574-2, Hawaii Revised Statutes, is amended to read as follows:

**“§574-2 Legitimate children.** The registrar of births shall register any child born in wedlock as having [the child’s father’s name as its family name, and shall also register a given name for the child.] both a family name and a given name chosen by the child’s parents. The registrar shall register any child legitimated, as provided in section 338-21, as having [either the child’s father’s name or its mother’s name as a family name, and shall also register a given name for the child.] both a family name and a given name chosen by the child’s parents, or, if the parents do not agree on the name or names, the name or names specified by a court of competent jurisdiction to be in the best interests of the child.”

SECTION 3. Section 574-3, Hawaii Revised Statutes, is amended to read as follows:

**“§574-3 Illegitimate children.** The registrar of births shall register any illegitimate child as having [the child’s mother’s name as a family name, and shall also register a given name for the child.] both a family name and given name chosen by the mother.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved May 8, 1989.)

## ACT 76

H.B. NO. 1656

A Bill for an Act Relating to the Uniform Custodial Trust Act.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### **“CHAPTER UNIFORM CUSTODIAL TRUST ACT**

**§ -1 Definitions.** As used in this chapter:

“Adult” means an individual who has attained the age of 18 years.

“Beneficiary” means an individual for whom property has been delivered to a custodial trustee for the individual’s use and benefit under this chapter.

“Guardian of the property” means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions.

“Court” means the circuit court of the State.

“Custodial trust property” means an interest in property transferred to a custodial trustee under this chapter and the income from and proceeds of that interest.

“Custodial trustee” means a person designated as trustee of a custodial trust under this chapter and includes a substitute or successor custodial trustee.

“Guardian” means a person appointed or qualified by a court as a guardian of an individual and includes a limited guardian, but excludes a person who is merely a guardian ad litem.

“Incapacitated” means that an individual lacks the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority, or other cause. A beneficiary shall be treated as incapacitated for the purpose of this chapter if the transferor so directs in the instrument creating the custodial trust.

“Legal representative” means a personal representative or “guardian of the property”.

“Member of the beneficiary’s family” includes a beneficiary’s spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

“Person” means an individual, corporation, organization, or other legal entity.

“Personal representative” includes an executor, administrator, or special administrator of a decedent’s estate or a person legally authorized to perform substantially the same functions and includes a successor personal representative.

“State” means a state, commonwealth, territory, or possession of the United States, or the District of Columbia.

“Transferor” means a person who creates a custodial trust by transfer or declaration.

“Trust company” means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

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**§ -2 Custodial trust; general.** (a) A person may create a custodial trust of property by transfer evidenced by registration or other written instrument of transfer to another in any manner consistent with law, naming an individual, who may be the transferor or another, as beneficiary, in which the transferee is designated, in substance, as custodial trustee under the Hawaii Uniform Custodial Trust Act.

(b) A person may create a custodial trust of property by declaration evidenced by registration or other written instrument of declaration in any manner consistent with law, naming an individual other than the declarant as beneficiary, in which the declarant as titleholder is designated, in substance, as custodial trustee under the Hawaii Uniform Custodial Trust Act. A trust registration or other declaration for the sole benefit of the declarant is not a custodial trust under this chapter.

(c) Title to custodial trust property is in the custodial trustee, and the beneficial interest in custodial trust property is in the beneficiary, subject to the provisions of this chapter.

(d) Except as provided in subsection (e), a custodial trust may not be terminated by the transferor.

(e) A custodial trust may be terminated by the beneficiary if not incapacitated, or by the guardian of the property of an incapacitated beneficiary, upon delivering to the custodial trustee a writing signed by the beneficiary or guardian of the property declaring the termination. The exercise of a durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the distribution or management of the trust. If not previously terminated, the custodial trust terminates on the death of the beneficiary, and the custodial trust property must be distributed as provided in section -17.

(f) Additional property may be placed in an existing custodial trust pursuant to this chapter.

(g) A successor custodial trustee may be designated, or the designation authorized, by the custodial trust instrument.

(h) This chapter does not restrict other means of creating trusts. A trust whose terms do not conform to this chapter may be valid and enforceable according to its terms under other law.

**§ -3 Custodial trustee for future payment or transfer.** A custodial trust may be created upon the occurrence of a future event. The person having the right to designate the recipient of property payable or transferable upon a future event may designate in writing a custodial trustee to receive and hold the property for a beneficiary of a custodial trust to be effective upon the occurrence of the event by designating the recipient, followed in substance by the words: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the Hawaii Uniform Custodial Trust Act." Persons may be designated as substitute or successor custodial trustees to whom the property must be transferred in the order named if the first designated custodial trustee is unable or unwilling to serve. The designation may be made in a will, a trust, a deed, a multiple party account, an insurance policy, an instrument exercising a power of appointment, or other writing designating a beneficiary of contractual rights. The designation must be registered with or delivered to the fiduciary, payor, issuer, or obligor of the future right.

**§ -4 Form and effect of receipt and acceptance by custodial trustee, jurisdiction.** (a) The obligations of a custodial trustee, including the obligation to follow directions of the beneficiary pursuant to section -7, arise under this chapter upon the custodial trustee's acceptance, express or implied, of the custodial trust property.

(b) The custodial trustee's acceptance may be evidenced by a writing stating in substance:

## CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

I, \_\_\_\_\_ (name of custodial trustee) acknowledge receipt of the custodial trust property described below or in the attached instrument and accept the custodial trust as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the Hawaii Uniform Custodial Trust Act. I undertake to administer and distribute the custodial trust property pursuant to the Hawaii Uniform Custodial Trust Act. My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is, or becomes incapacitated. The custodial trust property consists of \_\_\_\_\_.

Dated: \_\_\_\_\_.

(Signature of Custodial Trustee)

(c) Upon acceptance of the custodial trust property, a person designated as custodial trustee under this chapter is subject to personal jurisdiction of the courts of this State with respect to any matter relating to the custodial trust.

**§ -5 Transfer to custodial trustee by fiduciary or obligor, facility of payment.** (a) Unless controlled by an instrument designating a custodial trustee under section -3, a person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a guardian of the property may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the benefit of the incapacitated individual. If the property or obligation exceeds \$20,000 in value, the transfer must be authorized by the court.

(b) The written acknowledgment of delivery signed by a custodial trustee constitutes a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this section.

**§ -6 Multiple beneficiaries, separate custodial trusts, survivorship.** (a) Beneficial interests in a custodial trust created for multiple beneficiaries are deemed to be separate custodial trusts of equal undivided interests for each beneficiary. Except in transfers for benefit of husband and wife, for whom survivorship is presumed, no right of survivorship exists unless the writing creating the custodial trust specifically provides for survivorship. (Or as is required as to community property.)

(b) Custodial trust property held under this chapter by the same custodial trustee for the benefit of the same beneficiary may be administered as a single custodial trust.

(c) A custodial trustee of property held for more than one beneficiary shall separately account to each beneficiary as provided in sections -7 and -15 for the administration of the custodial trust.

**§ -7 General management duties of custodial trustee.** (a) A custodial trustee shall register or record the instrument transferring title to custodial trust property if appropriate.

(b) In the management, control, investment, or retention of custodial trust property, a custodial trustee shall follow the directions of the beneficiary if the beneficiary is not incapacitated. In the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor. If a trust company or other

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custodial trustee has a special skill or expertise or is named custodial trustee on the basis of representation of a special skill or expertise, the custodial trustee shall use that skill or expertise.

(c) Subject to subsection (b), a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

(d) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has possession and control, separate and distinct from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property subject to recordation is so identified if it is recorded, and custodial trust property subject to registration is so identified if it is registered, or held in an account designated, in the name of the custodial trustee followed by words stating in substance: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the Hawaii Uniform Custodial Trust Act."

(e) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable intervals to the beneficiary or legal representative of the beneficiary.

(f) The exercise of a durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the distribution or management of the custodial trust.

**§ -8 General powers of custodial trustee.** (a) A custodial trustee, acting in a fiduciary capacity, has all the rights, powers, and authority over custodial trust property that an unmarried adult owner has over individually owned property, but a custodial trustee may exercise those rights, powers, and authority in a fiduciary capacity only.

(b) This section does not relieve a custodial trustee from liability for breach of section -7.

**§ -9 Use of custodial trust property.** (a) The custodial trustee shall pay to the beneficiary or expend for the beneficiary's benefit so much or all of the custodial trust property as the beneficiary while not incapacitated may direct from time to time.

(b) If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee determines advisable for the use and benefit of the beneficiary and individuals who were supported by the beneficiary at the time the beneficiary became incapacitated, or who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, at the time, and to the extent that the custodial trustee determines suitable and proper, without court order and without regard to other support, income, or property of the beneficiary.

(c) A custodial trustee may establish checking, savings, or other similar accounts of reasonable amounts under which either the custodial trustee or the beneficiary may withdraw funds from, or draw checks against, the accounts. Funds withdrawn from or checks written against the account by the beneficiary are treated as distributions of custodial trust property by the custodial trustee to the beneficiary.

**§ -10 Determination of incapacity, proceeding and effect.** (a) A beneficiary is incapacitated for the purposes of this chapter and the custodial trustee shall administer and distribute the custodial trust as one for an incapacitated beneficiary: (1) if the custodial trust is created under section -5; (2) if the transferor has so directed in the writing creating the custodial trust; or (3) if the custodial trustee has determined that the beneficiary has become incapacitated.

(b) A custodial trustee may determine that the beneficiary has become incapacitated in reliance upon: (1) prior direction or authority given by the beneficiary while not incapacitated, including direction or authority pursuant to a durable power of attorney; (2) the certificate of the beneficiary's physician; or (3) other reasonable evidence.

(c) If a custodial trustee for an incapacitated beneficiary reasonably concludes that the beneficiary's incapacity has ceased, or that circumstances concerning the beneficiary's ability to manage assets have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary, the custodial trustee may administer and distribute the custodial trust as one for a beneficiary who is not incapacitated.

(d) On petition of the beneficiary, the custodial trustee, or other person interested in the welfare of the beneficiary or custodial trust property, the court shall determine and declare whether or not the beneficiary is incapacitated.

(e) Absent determination of incapacity of the beneficiary under subsection (b) or (d), a custodial trustee who has reason to believe that the beneficiary has become incapacitated shall hold and administer the custodial property in accordance with the provisions of this chapter applicable to incapacitated beneficiaries.

(f) Incapacity of a beneficiary does not terminate the custodial trust, any designation of a successor custodial trustee, any powers or authority of the custodial trustee, or any immunities of third persons acting on direction of the custodial trustee.

**§ -11 Exemption of third person from liability.** A third person in good faith and without a court order may act on instructions of, or otherwise deal with, a person purporting to make a transfer as, or purporting to act in the capacity of, a custodial trustee, and, in the absence of knowledge to the contrary, is not responsible for determining:

- (1) The validity of the purported custodial trustee's designation;
- (2) The propriety of, or the authority under this chapter for, any action of the purported custodial trustee;
- (3) The validity or propriety under this chapter of any instrument or instruction executed or given either by the person purporting to make a transfer or by the purported custodial trustee; or
- (4) The propriety of the application of any property delivered to the purported custodial trustee.

**§ -12 Liability to third persons.** (a) A claim based on a contract entered into by a custodial trustee acting in a fiduciary capacity, an obligation arising from the ownership or control of custodial trust property, or a tort committed in the course of administering the custodial trust may be asserted against the custodial trust property by proceeding against the custodial trustee in the fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

(b) A custodial trustee is not personally liable:

- (1) On a contract properly entered into in a fiduciary capacity unless the custodial trustee fails to reveal that capacity and to identify the custodial trust in the contract; or
- (2) For an obligation arising from control of custodial trust property or for a tort committed in the course of the administration of the custodial trust unless the custodial trustee is personally at fault.

(c) A beneficiary is not personally liable for an obligation arising from ownership of custodial trust property or for a tort committed in the course of administration of the custodial trust unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

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(d) Neither subsection (b) or (c) precludes any proceeding to establish liability of the custodial trustee or beneficiary to the extent that either is protected as the insured by liability insurance.

**§ -13 Declination, resignation, incapacity, death, or removal of custodial trustee; designation of successor custodial trustee.** (a) A person designated as custodial trustee, before accepting the custodial trust property, may decline to serve by notifying the person who made the designation, the transferor, or the transferor's legal representative. If the event giving rise to a transfer has not occurred, the substitute custodial trustee designated under section -3 becomes the custodial trustee, and, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee under section -3. In other cases, the transferor or the transferor's legal representative may designate a substitute custodial trustee.

(b) A custodial trustee who has accepted the custodial trust property may resign by: (1) delivering written notice to the beneficiary and, if the beneficiary is incapacitated, to the beneficiary's guardian of the property, if any, and to the successor custodial trustee, if any, and (2) transferring, recording, or registering the custodial trust property in the name of and delivering the records to the successor custodial trustee identified under subsection (c).

(c) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated under section -2 or -3 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated, or fails to act within ninety days after the ineligibility, resignation, death, or incapacity of the custodial trustee, the beneficiary's guardian of the property becomes successor custodial trustee; and, if the beneficiary does not have a guardian of the property or the guardian of the property declines to act, the resigning custodial trustee may designate a successor custodial trustee.

(d) If a successor custodial trustee is not designated by the foregoing procedure, the transferor, the legal representative of the transferor or of the custodial trustee, an adult member of the beneficiary's family, the guardian of the beneficiary, a person interested in the custodial trust property or as appropriate, another person interested in the welfare of the beneficiary may petition the court to designate a successor custodial trustee.

(e) A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial trust property and records in the possession and control of the successor custodial trustee. A successor custodial trustee may enforce the obligation to deliver custodial trust property and records, and becomes responsible for each item as received.

(f) A beneficiary, the beneficiary's guardian of the property, an adult member of the beneficiary's family, a guardian of the person of the beneficiary, a person interested in the custodial trust property or as appropriate, another person interested in the welfare of the beneficiary, may petition the court to remove the custodial trustee for cause and designate a successor custodial trustee, to require the custodial trustee to give bond, or for other appropriate relief.

**§ -14 Expenses, compensation, and bond of custodial trustee.** Except as provided otherwise in the custodial trust instrument, in an agreement with the beneficiary, or by court order:

(1) A custodial trustee is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services;

- (2) A custodial trustee has a noncumulative election to be made no later than six months following the end of each calendar year to charge a reasonable compensation for fiduciary services performed during that year; and
- (3) A custodial trustee need not post a bond for faithful performance of the custodial trust.

**§ -15 Reporting and accounting by custodial trustee; determination of liability of custodial trustee.** (a) Upon the acceptance of the custodial trust property, a custodial trustee shall provide a written statement describing the custodial trust property and shall thereafter provide a written statement of the administration of the custodial trust property: (i) once each year, (ii) upon request at a reasonable time by the beneficiary or the beneficiary's legal representative, (iii) upon resignation or removal of the custodial trustee, and (iv) on termination of the custodial trust. These statements must be provided to the beneficiary or to the beneficiary's legal representative, if any. On termination of the beneficiary's interest, a current statement must be provided to the person to whom the custodial trust property is to be delivered.

(b) A beneficiary, the beneficiary's legal representative, an adult member of the beneficiary's family, or a person interested in the custodial trust property or as appropriate, another person interested in the welfare of the beneficiary may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative.

(c) A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee.

(d) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodial trustee or the custodial trustee's legal representative to account; or the custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.

(e) If a custodial trustee is removed, the court shall require an accounting and order delivery of the custodial trust property and records to the successor custodial trustee and the execution of all instruments required for transfer of the custodial trust property.

(f) On petition of the custodial trustee, or any person who could petition for an accounting, the court, after notice to interested persons, may issue instructions to the custodial trustee or review the propriety of the acts of a custodial trustee or the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

**§ -16 Limitations of action against custodial trustee.** (a) Except as provided in subsection (c), unless previously barred by adjudication, consent, or limitation, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom the custodial trust property is to be paid or delivered, or the legal representative of an incapacitated or deceased beneficiary or payee:

- (1) Who has received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within two years after receipt of the final account or statement; or
- (2) Who has not received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within three years after the termination of the custodial trust.

(b) Except as provided in subsection (c), a claim for relief to recover from a custodial trustee for fraud, misrepresentation, or concealment related to the final settlement of the custodial trust or concealment of the existence of the custodial

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trust is barred unless an action or proceeding to assert the claim is commenced within five years after the termination of the custodial trust.

- (c) A claim for relief is not barred by this section if the claimant:
  - (1) Is a minor, until the earlier of two years after (i) attaining majority or (ii) the claimant's death;
  - (2) Is an incapacitated adult, until the earliest of two years after (i) the appointment of a guardian of the property, (ii) the removal of the incapacity, or (iii) the death of the claimant; or
  - (3) Was an adult, now deceased, who was not incapacitated, until two years after death.

**§ -17 Termination and distribution.** (a) A custodial trust terminates on the custodial trustee's receipt of a signed written direction of the beneficiary, if not incapacitated within section -10, or of the beneficiary's guardian of the property, if any, or upon the beneficiary's death. Upon termination, the custodial trustee shall transfer the unexpended custodial trust property:

- (1) To the beneficiary, if not incapacitated;
- (2) To the guardian of the property or other court-designated recipient for an incapacitated beneficiary; or
- (3) Upon the beneficiary's death, in the following order:
  - (A) As last directed in a writing signed by the deceased beneficiary who was at the time not incapacitated and received by the custodial trustee during the life of the deceased beneficiary;
  - (B) To the survivor of multiple beneficiaries when survivorship is provided pursuant to section -6;
  - (C) As designated in the custodial trust instrument; or
  - (D) To the estate of the deceased beneficiary.

(b) If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is terminated by the distributee's guardian of the property.

(c) The death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

### **§ -18 Implementation, methods, and forms for creating custodial trusts.**

(a) If a transaction otherwise satisfies applicable law,

- (1) The execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form satisfies the requirements of section -2:

#### TRANSFER UNDER THE HAWAII UNIFORM CUSTODIAL TRUST ACT

I, \_\_\_\_\_ (name of transferor or name representative capacity if a fiduciary), transfer to \_\_\_\_\_ (name of trustee other than transferor), as custodial trustee for \_\_\_\_\_ (name of beneficiary) as beneficiary and \_\_\_\_\_ as distributee on termination of the trust in absence of direction by the beneficiary under the Hawaii Uniform Custodial Trust Act, the following: (insert a description of the custodial trust property sufficient to identify each asset).

Dated: \_\_\_\_\_

(Signature)

- (2) The execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form satisfies the requirements of section -2:

**DECLARATION OF TRUST UNDER THE HAWAII  
UNIFORM CUSTODIAL TRUST ACT**

I, \_\_\_\_\_ (name of owner or property), declare that henceforth I hold as custodial trustee for \_\_\_\_\_ (name of beneficiary other than transferor) as beneficiary and \_\_\_\_\_ as distributee on termination of the trust in absence of direction by the beneficiary under the Hawaii Uniform Custodial Trust Act, the following: (Insert a description of the custodial trust property sufficient to identify each asset).

Dated: \_\_\_\_\_

(Signature)

(b) Customary methods of transferring or evidencing ownership of assets may be used to create a custodial trust and include the following:

- (1) Registration of a security in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, followed in substance by the words "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the Hawaii Uniform Custodial Trust Act";
- (2) Delivery of a certificated security, or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in subsection (a)(1);
- (3) Payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, followed in substance by the words: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the Hawaii Uniform Custodial Trust Act";
- (4) Registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, followed in substance by the words: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the Hawaii Uniform Custodial Trust Act";
- (5) Delivery of a written assignment to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the Hawaii Uniform Custodial Trust Act";
- (6) Irrevocable exercise of a power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power, or the donee who holds the power if the beneficiary is other than the donee, whose name in the appointment is followed in substance by the words: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the Hawaii Uniform Custodial Trust Act";
- (7) Delivery of a written notification or assignment of a right to future payment under a contract to an obligor which transfers the right under the contract to a trust company, an adult other than the transferor, or

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- the transferor if the beneficiary is other than the transferor, whose name in the notification or assignment is followed in substance by the words: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the Hawaii Uniform Custodial Trust Act";
- (8) Execution, delivery, and recordation of a conveyance of an interest in real property in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, followed in substance by the words: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the Hawaii Uniform Custodial Trust Act";
- (9) Issuance of a certificate of title by an agency of a state or of the United States which evidences title to tangible personal property:
- (A) Issued in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, followed in substance by the words: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the Hawaii Uniform Custodial Trust Act"; or
- (B) Delivered to a trust company or an adult other than the transferor or endorsed by the transferor to that person, followed in substance by the words: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the Hawaii Uniform Custodial Trust Act"; or
- (10) Execution and delivery of an instrument of gift to a trust company or an adult other than the transferor, followed in substance by the words: "as custodial trustee for \_\_\_\_\_ (name of beneficiary) under the Hawaii Uniform Custodial Trust Act".

**§ -19 Applicable law.** (a) This chapter applies to a registration, transfer, or declaration that refers to this chapter as provided in section -2 if, at the time of the registration, transfer, or declaration, the transferor, beneficiary, or custodial trustee is a resident of this State or the custodial trust property is located in this State. The custodial trust remains subject to this chapter despite a subsequent change in residence of the transferor, beneficiary, or custodial trustee, or removal of the custodial trust property from this State.

(b) A transfer made under a substantially similar act of another state is governed by the law of that state and may be executed or enforced in this State.

**§ -20 Uniformity of application and construction.** This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

**§ -21 Short title.** This chapter may be cited as the "Hawaii Uniform Custodial Trust Act."

**§ -22 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

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

(Approved May 8, 1989.)

## ACT 77

S.B. NO. 1344

A Bill for an Act Relating to Ozone Depletion and Global Warming.

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

SECTION 1. The legislature finds that the adoption of strong legislation to protect the ozone layer of the atmosphere in order to protect and preserve the health of the people of the State and the State's economic well-being is a matter of compelling state interest. Chlorofluorocarbons (CFCs) and other chemicals deplete the ozone layer and contribute to the greenhouse effect, which causes global climatic changes. Negative effects of ozone depletion include: increases in skin cancers and cataracts; depression of human immune systems; damage to aquatic systems and crops; and projected losses of shoreline property because of rising ocean levels.

CFCs have atmospheric lifetimes of up to 380 years. Although substitutes for CFCs are being developed, they are not widely-tested or available. Meanwhile the ozone layer is being depleted steadily while atmospheric concentrations of CFCs continue to increase.

In the United States, air conditioners and refrigerators collectively account for forty per cent of all CFC emissions. In addition, American automobiles account for seventy-five per cent of all CFC emissions contributed by automobile air conditioners.

The legislature finds that the State of Hawaii cannot wait idly for CFC substitutes to be adopted by industry nor can it wait for international negotiations to attempt to resolve the problem.

The purpose of this Act is to take prompt, strong, local action to decrease the amount of CFCs escaping into the atmosphere by prohibiting over-the-counter sales of refrigerants, raising the standards of repair facilities, and promoting the recovery, recycling, and destruction of CFCs in this State.

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

## **“CHAPTER APPLIANCE REPAIR**

**§ -1 Definitions.** As used in this chapter, unless the context otherwise requires:

“CFC” means any of the chlorofluorocarbon chemicals CFC-11, CFC-12, CFC-112, CFC-113, CFC-114, CFC-115, and CFC-502.

“Mobile air conditioner” means an air conditioner designed for installation in a motor vehicle.

“Recycled CFCs” means CFCs that have been recovered from refrigerant recovery and recycling equipment, and purified for reuse.

“Refrigerant recovery and recycling equipment” means a device used to recover and to purify CFCs for later reuse.

**§ -2 Prohibited acts.** No person in this State shall:

- (1) Perform service on an air conditioner unit, including a mobile air conditioner, utilizing CFCs, without using refrigerant recovery and recycling equipment; or

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- (2) Wilfully cause or allow CFCs to be released into the air from any source.

**§ -3 Penalties.** Any person violating the provisions of section -2 shall be subject to those penalties provided under the rules adopted by the director of the office of consumer protection pursuant to section 487-5."

SECTION 3. Chapter 342, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### **"PART . OZONE LAYER PROTECTION**

**§342- Definitions.** As used in this part, unless the context otherwise requires:

"CFC" means any of the chlorofluorocarbon chemicals CFC-11, CFC-12, CFC-112, CFC-113, CFC-114, CFC-115, and CFC-502.

"Mobile air conditioner" means an air conditioner designed for installation in a motor vehicle.

**§342- Prohibited acts.** No person in this State shall:

- (1) Sell or offer for sale CFC coolant suitable for use in air conditioners or mobile air conditioners in containers smaller than fifteen pounds net; or
- (2) Wilfully cause or allow CFCs to be released into the air from any source.

**§342- Rules.** The department shall adopt rules necessary for the purposes of this part."

SECTION 4. Section 342-11, Hawaii Revised Statutes, is amended to read as follows:

**"§342-11 Penalties.** (a) Violation of the vehicular noise control and vehicular smoke emission rules adopted by the department pursuant to this chapter shall constitute a violation as defined in section 701-107 and shall be enforceable by police officers. The fine for this violation shall be not less than \$25 nor more than \$2,500 for each separate offense. Each day of violation shall constitute a separate offense.

(b) Violation of the open burning control rules adopted by the department pursuant to this chapter shall constitute a violation as defined in section 701-107 and shall be enforceable by police officers. The fine for this violation shall not exceed \$10,000 for each separate offense. Each day of violation shall constitute a separate offense.

(c) Any person who violates this chapter or any rule, other than vehicular noise control, vehicular smoke emission control, and open burning control rules, shall be fined not more than \$10,000 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection, other than the penalty imposed for violations of vehicular noise control, vehicular smoke emission, and open burning rules, shall be considered a civil action.

(d) Any person who knowingly:

- (1) Transports any hazardous waste to a storage, treatment, or disposal facility which does not have a permit under section 342-94 to treat, store, or dispose of that particular hazardous waste;

- (2) Treats, stores, or disposes of hazardous waste without first having a permit under section 342-94; or
- (3) Makes a false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used, for purposes of compliance with part VIII of this chapter, shall be subject to criminal penalties of not more than \$25,000 for each day of violation, or imprisonment, not to exceed one year, or both. If the conviction is for a violation committed after a first conviction, criminal punishment shall be by a fine of not more than \$50,000 for each day of violation, or by imprisonment for not more than two years, or both.

(e) Any person who wilfully or negligently violates part VII of this chapter or any rule adopted by the department pursuant to part VII shall be punished by a fine of not more than \$5,000 for each violation or imprisonment for not more than one year, or both. If the conviction is for a violation committed after a first conviction, the violator shall be subject to a fine of not more than \$10,000 for each violation, or by imprisonment for not more than two years, or both.

(f) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle which the officer or employee is authorized to enter and inspect shall be fined not more than \$500. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(g) Any person who violates the provisions of this chapter pertaining to ozone layer protection or any rule adopted by the department pursuant to that part shall be fined not more than \$100 for each separate offense. Each unit of CFC coolant sold or offered for sale, and each wilful release of CFCs into the air, shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.”

SECTION 5. Section 437B-1, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

“CFC” means any of the chlorofluorocarbon chemicals CFC-11, CFC-12, CFC-112, CFC-113, CFC-114, CFC-115, and CFC-502.

“Mobile air conditioner” means an air conditioner designed for installation in a motor vehicle.

“Refrigerant recovery and recycling equipment” means a device used to recover and to purify CFCs.”

SECTION 6. Section 437B-4, Hawaii Revised Statutes, is amended to read as follows:

**“§437B-4 Powers and duties of board.** In addition to other powers and duties established by this chapter, the board shall, in accordance with this chapter and chapter 91;

- (1) Establish such qualifications for the registration of motor vehicle repair dealers and motor vehicle mechanics as may be necessary for the welfare of the public and the motor vehicle repair industry, provided that no person shall be registered as a motor vehicle mechanic without first receiving certification as provided by this chapter.
- (2) Inquire into the practices and policies of the motor vehicle repair industry and make such rules with respect to such practices and policies as may be deemed important and necessary by the board for the welfare of the public and the motor vehicle repair industry.

- (3) Contract and cooperate with the University of Hawaii in developing and administering the certification program provided for in this chapter.
- (4) Make, amend, and repeal such rules not inconsistent with this chapter, as the board deems appropriate for effectuating the purpose of this chapter and to [insure] ensure the welfare of the public.
- (5) Adopt rules pursuant to chapter 91 necessary to implement the provisions of this chapter relating to CFCs.
- [(5)] (6) Enforce this chapter and rules adopted pursuant thereto."

SECTION 7. Section 437B-11, Hawaii Revised Statutes, is amended to read as follows:

**"§437B-11 Prohibited practices.** The following acts or omissions related to the repair of motor vehicles shall be grounds for invoking the enforcement procedures of section 437B-12:

- (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading;
- (2) Causing or allowing a customer to sign any work order which does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair;
- (3) Failing or refusing to give to a customer a copy of any document requiring the customer's signature, as soon as the customer signs such document;
- (4) Any other conduct which constitutes fraud;
- (5) Conduct constituting gross negligence;
- (6) Failure to comply with this chapter or regulations adopted pursuant to it;
- (7) Any wilful departure from or disregard of accepted practices or workmanship;
- (8) Making false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle;
- (9) Having repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair dealer, mechanic, or apprentice demonstrates that the customer could not reasonably have been notified;
- (10) Conducting the business of motor vehicle repair in a place other than stated on the registration except that mobile repair facilities may be permitted if the registration so indicates;
- (11) Rebuilding or restoring of rebuilt vehicles as defined in section 286-2 in such a manner that it does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year[.];
- (12) Servicing mobile air conditioners without using refrigerant recovery and recycling equipment, certified by Underwriter Laboratories, or otherwise wilfully causing or allowing CFCs to be released into the air from any source."

SECTION 8. Section 437B-12, Hawaii Revised Statutes, is amended to read as follows:

**"[§437B-12]] Enforcement.** (a) In accordance with the provisions of chapter 91, the board may fine, suspend, revoke, or refuse to renew the registration

of a motor vehicle repair dealer or mechanic for any violation of this chapter or rules adopted pursuant thereto. The board may also order restitution as provided in subsection (c).

(b) Any fine that is imposed shall be based on the following schedule:	
First offense .....	\$ 75
Second offense .....	\$150
Subsequent offenses .....	\$300 to \$1,000

(c) In lieu of or in addition to the fine imposed under this section, the board may require the motor vehicle repair dealer or mechanic to make restitution to the customer. Restitution may be imposed in lieu of a fine even though the amount may exceed the fine schedule set forth in subsection (b).

(d) If a motor vehicle repair dealer operates more than one motor vehicle repair facility in this State, the board pursuant to subsection (a) may only revoke, suspend, or refuse to renew the registration of the specific motor vehicle repair facility which has violated this chapter. Such violation, or such action by the board, shall not affect in any manner the right of such motor vehicle repair dealer to operate the dealer's other motor vehicle repair facilities; provided that the board may suspend, revoke, or refuse to renew the registration for all motor vehicle repair facilities operated in this State by a motor vehicle repair dealer upon a finding that such motor vehicle repair dealer has, or is, engaged in a course of repeated and wilful violations of this chapter, or rules adopted pursuant thereto.

(e) The expiration of a valid registration shall not deprive the board of jurisdiction to proceed with any investigation or disciplinary proceeding against a motor vehicle repair dealer or mechanic or to render a decision suspending, revoking, or refusing to renew a registration.

(f) Each mobile air conditioner serviced without using refrigerant recovery and recycling equipment, and each instance of wilfully causing or allowing CFCs to be released into the air from any source constitutes a separate offense for which fines may be imposed under subsection (b)."

SECTION 9. Section 444-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"“CFC” means any of the chlorofluorocarbon chemicals CFC-11, CFC-12, CFC-112, CFC-113, CFC-114, CFC-115, and CFC-502.

"Refrigerant recovery and recycling equipment" means a device used to recover and to purify CFCs from a device for later reuse."

SECTION 10. Section 444-4, Hawaii Revised Statutes, is amended to read as follows:

**"§444-4 Powers and duties of board.** In addition to any other duties and powers granted by this chapter the contractors license board shall:

- (1) Grant licenses to contractors pursuant to this chapter;
- (2) Make, amend, or repeal such rules as it may deem proper fully to effectuate this chapter and carry out the purpose thereof which purpose is the protection of the general public. All such rules shall be approved by the governor and the director of commerce and consumer affairs, and when adopted pursuant to chapter 91, shall have the force and effect of law. The rules may forbid acts or practices deemed by the board to be detrimental to the accomplishment of the purpose of this chapter. The rules may require contractors to make reports to the board containing such items of information as will better enable the board to enforce this chapter and rules, or as will better enable the board

from time to time to amend the rules more fully to effectuate the purposes of this chapter. The rules may require contractors to furnish reports to owners containing such matters of information as the board deems necessary to promote the purpose of this chapter. The enumeration of specific matters which may properly be made the subject of rules shall not be construed to limit the board's general power to make all rules necessary fully to effectuate the purpose of this chapter;

- (3) Adopt rules pursuant to chapter 91 necessary to implement the provisions of this chapter relating to CFCs, including, but not limited to, procedures for the disposal of air conditioning units utilizing CFCs that include mandatory recovery and recycling of CFCs;
- (4) Enforce this chapter and rules adopted pursuant thereto;
- [4] Suspend or revoke any license for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant any license for any cause which would be ground for revocation or suspension of a license;
- [5] Publish and distribute pamphlets and circulars containing such information as it deems proper to further the accomplishment of the purpose of this chapter; and
- [6] Contract for professional testing services to prepare, administer, and grade such examinations and tests for applicants as may be required for the purposes of this chapter. The board shall determine the scope and length of such examinations and tests, whether they shall be oral, written, or both, and the score that shall be deemed a passing score."

SECTION 11. Section 444-17, Hawaii Revised Statutes, is amended to read as follows:

**"§444-17 Revocation, suspension, and renewal of licenses.** The contractors license board may revoke any license issued hereunder, or suspend the right of the licensee to use such licenses, or refuse to renew any such license for any of the following causes:

- (1) [[Deleted. L 1974, c 205, §2(12)].]
- (2) Any dishonest or fraudulent or deceitful act as a contractor which causes a substantial damage to another;
- [3] (2) Engaging in any unfair or deceptive act or practice as prohibited by section 480-2;
- [4] (3) Abandonment of any construction project or operation without reasonable or legal excuse;
- [5] (4) Wilful diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and the use thereof for any other purpose;
- [6] (5) Wilful departure from, or wilful disregard of plans or specifications in any material respect without consent of the owner or the owner's duly authorized representative, which is prejudicial to a person entitled to have the construction project or operation completed in accordance with such plans and specifications;
- [7] (6) Wilful violation of any law of the State, or of any political subdivision thereof, relating to building, including any violation of any applicable rule or regulation of the department of health, or of any applicable safety or labor law;

- [(8)] (7) Failure to make and keep records showing all contracts, documents, records, receipts, and disbursements by a licensee of all the licensee's transactions as a contractor for a period of not less than three years after completion of any construction project or operation to which the records refer or to permit inspection of such records by the board;
- [(9)] (8) When the licensee being a copartnership or a joint venture permits any member or employee of such copartnership or joint venture who does not hold a license to have the direct management of the contracting business thereof;
- [(10)] (9) When the licensee being a corporation permits any officer or employee of such corporation who does not hold a license to have the direct management of the contracting business thereof;
- [(11)] (10) Misrepresentation of a material fact by an applicant in obtaining a license;
- [(12)] (11) Failure of a licensee to complete in a material respect any construction project or operation for the agreed price if such failure is without legal excuse;
- [(13)] (12) Wilful failure in any material respect to comply with this chapter or the rules and regulations promulgated pursuant thereto;
- [(14)] (13) Wilful failure or refusal to prosecute a project or operation to completion with reasonable diligence;
- [(15)] (14) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with the licensee's operations as a contractor when the licensee has the ability to pay or when the licensee has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- [(16)] (15) The false denial of any debt due or the validity of the claim therefor with intent to secure for licensee, the licensee's employer, or other person, any discount of such debt or with intent to hinder, delay, or defraud the person to whom such debt is due;
- [(17)] (16) Failure to secure or maintain workers' compensation insurance when not authorized to act as a self-insurer under chapter 386;
- [(18)] (17) Knowingly entering into a contract with an unlicensed contractor involving work or activity for the performance of which licensing is required under this chapter[.];
- (18) Servicing an air conditioning unit utilizing CFCs without using refrigerant recovery and recycling equipment;
- (19) Disposing of an air conditioning unit utilizing CFCs without first removing the CFCs with refrigerant recovery and recycling equipment;
- (20) Wilfully causing or allowing CFCs to be released into the air from any source.

No license shall be suspended for longer than two years and no person whose license is revoked shall be eligible to apply for a new license until the expiration of two years.”

SECTION 12. Section 444-23, Hawaii Revised Statutes, is amended to read as follows:

**“§444-23 Violation; penalties.** (a) Any licensee who violates section 444-9.3 or 444-17(18) shall be fined \$500 for the first offense, \$1,000 for the second offense, and not less than \$1,500 or more than \$2,000 for any subsequent offense.

(b) Except as provided in subsection (a), any person who violates or fails to comply with any of the provisions of this chapter shall be fined not less than \$100 and not more than \$5,000 for each violation.

(c) Any licensee who violates, or whose employee violates, sections 444-17(18), 444-17(19), or 444-17(20), shall be fined \$75 for the first offense, \$150 for the second offense, and \$300 to \$1000 for each subsequent offense, provided that each unit serviced in violation of section 444-17(18) or disposed of in violation of section 444-17(19) and each instance of releasing CFCs in violation of section 444-17(20) shall constitute a separate offense.”

SECTION 13. Section 487-5, Hawaii Revised Statutes, is amended to read as follows:

**“§487-5 General functions, powers, and duties.** The director of the office of consumer protection is designated the consumer counsel for the State and shall represent and protect the State, the respective counties, and the general public as consumers. The director of the office of consumer protection shall have the following functions, powers, and duties:

- (1) Coordinate the consumer protection activities of all departments, divisions, and branches of state government, and of branches of the county government concerned with consumer protection;
- (2) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of the consumer public;
- (3) Conduct investigations, research, studies, and analysis of matters and take appropriate action affecting the interests of consumers;
- (4) Study the operation of laws affecting consumers and recommend to the governor and the legislature, new laws and amendments of laws in the consumers' interest;
- (5) Adopt rules pursuant to chapter 91 interpreting section 480-2; provided that in adopting rules, due consideration shall be given to the rules, regulations, and decisions of the Federal Trade Commission and the federal courts in interpreting section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended;
- (6) Investigate reported or suspected violations of laws enacted and rules adopted for the purpose of consumer protection and shall enforce such laws and rules by bringing civil actions or proceedings;
- (7) Organize and hold conferences on problems affecting consumers; and undertake activities to encourage business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion, and sale of consumer goods and services;
- (8) Provide a central clearinghouse of information by collecting and compiling all consumer complaints and inquiries and making the collections and compilations available to the general public; provided that consumer complaints may not be made available to the general public if the office of consumer protection is conducting an investigation or review of the complaints, or if the complaints are being used in connection with civil actions or proceedings initiated by the office of consumer protection, or if the complaints have been referred to another state agency;
- (9) Appear before governmental commissions, departments, and agencies to represent and be heard on behalf of consumers' interest;
- (10) Contract with other county, state, or federal governmental agencies, with nonprofit social services societies, or with private nonprofit trade, professional, or business organizations for the performance of any of the functions of the office not involving the enforcement of rules for the purpose of consumer protection under this section, or the extension

- of any power or authority under section 487-11, within the budget limitations for any period not exceeding a budget year, provided that the purposes and policies of this chapter are in no way diluted, abridged, misdirected, or destroyed; [and]
- (11) Adopt rules pursuant to chapter 91 necessary to implement the provisions of chapter ; and
- (12) Perform such other acts as may be incidental to the exercise of the functions, powers, and duties set forth in this section, including but not limited to, compensation of witnesses in such amounts and for such purposes as shall be prescribed by rules."

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 15. This Act shall take effect on January 1, 1991.

(Approved May 11, 1989.)

## ACT 78

S.B. NO. 1117

A Bill for an Act Relating to Mental Health.

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

SECTION 1. The legislature finds that although there are more than 10,000 seriously mentally ill adults in Hawaii, only 900 are actively receiving services from the State's mental health system. Recent reports have ranked Hawaii last among the states in the provision of mental health services. Accordingly, it is time to make a significant commitment to building a complete system we can be proud of.

In previous years the legislature: (1) dramatically increased funding for private nonprofit organizations providing mental health services; (2) established a mental health "clubhouse" for consumers; and (3) required that mental health and substance abuse services be provided as part of regular health insurance. These measures, however, were only a beginning. The key still remains the reorganization of the department of health, the expansion of the case management system, the shift in focus from the state hospital to community-based services, and the development of alternative housing. Of primary concern in all of these tasks is the system's capacity to ensure that, through case managers and other mechanisms, each consumer is provided the best possible care, and to integrate consumers in the planning, monitoring, and evaluation of services.

The legislature further finds that in 1984, an agreement was signed between the United States Office of Civil Rights and the department of health outlining a number of actions which were required in order to conform with federal laws. Recent communications indicate that the department is in compliance with the agreement with one major exception: adolescent day treatment services. Specifically, the federal Age Discrimination Act of 1975 requires that services provided to adolescents be comparable to those offered to adults.

The purpose of this Act is to identify required funding to revitalize Hawaii's mental health system; to provide needed services for the bilingual immigrant and refugee populations; to provide funds to upgrade case management services; to establish a new, secured, short-term residential treatment facility for adolescents; to provide funds for adolescent day treatment services on the neighbor islands; to

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provide flexible funding for children's programs to prevent inappropriate hospitalization; to identify early childhood mental health problems; and to suggest budget provisions which represent agreements among the department of health, advocacy groups, consumers, and families.

**SECTION 2.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$3,102,388 or 0.13 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

### **PART I. ADULT MENTAL HEALTH SERVICES**

**SECTION 3.** Chapter 334, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§334- Bilingual mental health services.** (a) There is established in the mental health division of the department of health, a mental health unit which shall provide bilingual mental health services statewide.

(b) The mental health unit established in this section shall have the following functions and shall provide the following services:

- (1) Outreach;
- (2) Education;
- (3) Case finding;
- (4) Screening;
- (5) Referral and linkage;
- (6) Consultation;
- (7) Crisis stabilization;
- (8) Community support services;
- (9) System advocacy;
- (10) Client support and advocacy; and
- (11) Monitoring and follow-up.”<sup>1</sup>

**SECTION 4.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$200,000, or so much thereof as may be necessary for fiscal year 1990-1991, to the division of mental health of the department of health for the creation of a mental health unit, pursuant to section 3, which shall provide bilingual mental health services to immigrants and refugees on a statewide basis.

**SECTION 5.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$908,022, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$1,748,660, or so much thereof as may be necessary for fiscal year 1990-1991, to provide for positions and funds to upgrade case management services.

**SECTION 6.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$750,000, or so much thereof as may be necessary for fiscal year 1989-1990, for the plans, design, and construction of the Waipahu mental health center on Oahu, and the sum of \$750,000, or so much thereof as may be necessary for fiscal year 1989-1990, for the plans, design, and construction of the

Kalihi-Palama mental health center on Oahu. Both centers shall act as multi-use, drop-in mental health centers for seriously disabled mentally ill clients.

## **PART II. CHILDREN'S AND ADOLESCENT MENTAL HEALTH SERVICES**

**SECTION 7.** There is appropriated out of the general funds of the State of Hawaii the sum of \$333,366, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$333,366, or so much thereof as may be necessary for fiscal year 1990-1991, to establish a secured, short-term residential treatment facility for adolescents. The department of health shall work with the department of human services, the department of education, and the family court to develop a secured, short-term residential facility to house no more than five adolescents at any given time for a period of thirty days or less, unless otherwise mutually determined by the four agencies.

**SECTION 8.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$90,000, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$94,500, or so much thereof as may be necessary in fiscal year 1990-1991, to provide flexible funding for children's mental health teams to: (1) prevent out-of-home placement of children; (2) enable families to be supported in keeping and maintaining their children at home; and (3) reduce inappropriate hospitalization of children.

**SECTION 9.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$71,000, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$74,550, or so much thereof as may be necessary for fiscal year 1990-1991, to prevent serious emotional problems and to provide early intervention through the early childhood family education program.

## **PART III. BUDGET PROVISIONS**

**SECTION 10.** In expending the general funds appropriated for community-based services for mental health (HTH 401), the department of health shall expand community participation in the program and resource planning process by:

- (1) Including primary consumers, family members of consumers, and advocates for consumers on appropriate statewide-level planning and advisory councils;
- (2) Conducting a drive to fill mental health center board seats, conducting an orientation for all new board members, and requiring the attendance of the mental health center chiefs at all center board meetings;
- (3) Establishing a consumer's advisory group for each mental health center to consider the quality and scope of services, to review the departmental budget recommendations, to evaluate the extent of community input in mental health, to assist in the development of requests for proposals, and to evaluate new reforms of the mental health system. Community-based housing shall be reviewed for adequate operating funds; and
- (4) Making a concerted effort to hire knowledgeable consumers and family members as case managers.

The department of health shall submit a report to the legislature on the success of these efforts and suggestions for appropriate changes in funding or legislation. This report shall be submitted to the legislature twenty days prior to the convening of the 1990 regular session.

**SECTION 11.** Of the general fund appropriation for community-based services for mental health (HTH 401), the sum of \$150,000 in fiscal year 1989-1991

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shall be used to complete the required fee structure procedures and also to amend the state medicaid plan and to obtain additional medicaid funds for expanded mental health services.

**SECTION 12.** In expending the general funds appropriated for general administration of the department of health (HTH 907), for the department reorganization, the department shall:

- (1) Conduct public meetings and presentations which address, among other things, specific plans for mental health services covering: (1) children and adolescents; (2) adults; and (3) drug and alcohol abuse with special emphasis on the seriously disabled mentally ill; and
- (2) Invite primary consumer groups, family members, and advocates to suggest candidates for the position of deputy director for behavioral health. These suggestions shall be forwarded to the governor.

**SECTION 13.** In expending the general funds appropriated for community-based services for mental health (HTH 401), the department of health shall conclude specific written agreements with other departments on the governor's sub-cabinet task force to specify the roles and responsibilities of each department in mental health services program and resource planning. In developing requests for proposals for purchases of service, the department of health shall convene interagency committees to coordinate and to avoid duplications of effort. The department of health shall submit a report to the legislature detailing these agreements twenty days prior to the convening of the 1990 session.

**SECTION 14.** In expending the funds appropriated for community-based services for mental health (HTH 401), the department of health shall implement and make operational the single access system for mental health services, with primary emphasis on the decision making authority of the community mental health centers regarding management and treatment of clients, including hospital admission and discharge planning by the end of fiscal year 1990-1991. The department shall establish a cooperative process with consumer advocate organizations to monitor the implementation of the single access system. The department shall submit a report to the legislature on the status of this implementation twenty days prior to the convening of the 1990 regular session. A further report shall be submitted twenty days prior to the convening of the 1991 regular session.

**SECTION 15.** The sums appropriated shall be expended by the department of health for the purposes of this Act.

**SECTION 16.** This Act shall take effect on July 1, 1989.

(Approved May 11, 1989.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 79**

S.B. NO. 3

A Bill for an Act Relating to Access to Archival Records.

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

**SECTION 1.** Chapter 94, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§94- Access to restricted records in the state archives.** Historical records which are transferred to the state archives shall be retained for posterity and title shall vest in the state archives. All restrictions on access to public records which have been deposited in the state archives, whether confidential, classified, or private, shall be lifted and removed eighty years after the creation of the record."<sup>1</sup>

**SECTION 2.** This Act shall apply to all records in existence on its effective date or created thereafter.

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

(Approved May 12, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 80**

S.B. NO. 1001

A Bill for an Act Relating to the Issuance of Bonds by the Counties.

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

**SECTION 1.** Findings and purpose. The legislature hereby finds and determines that:

- (1) The various statutes governing the issuance and sale of general obligation bonds and revenue bonds by the counties were originally enacted prior to statehood and have been amended from time to time in order to facilitate particular objectives.
- (2) There have been many innovations in financing techniques since the original enactment of the various statutes governing the issuance and sale of general obligation bonds and revenue bonds by the counties; and
- (3) It is in the best interest of the counties and the residents thereof that the statutory provisions, governing the issuance and sale of general obligation bonds and revenue bonds by the counties, be amended to provide the counties with maximum flexibility in the issuance and sale of such bonds and further to adopt procedures to permit the policy with respect to the issuance and sale of such bonds by the counties to be more efficiently and effectively applied.

**SECTION 2.** The Hawaii Revised Statutes is amended by adding a new chapter 47 to read as follows:

**"CHAPTER 47  
COUNTY BONDS**

**PART I. GENERAL OBLIGATION BONDS**

**§47-1 Definitions.** As used in this chapter:

"Bonds" means bonds, notes, and other instruments of indebtedness.

"County" means the counties of Hawaii, Kauai, and Maui and the city and county of Honolulu.

"Director of finance" means the director of finance of each county.

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“Governing body” means the council of each county, or any other body exercising the legislative powers of the county.

**§47-2 Issuance authorized; limitation.** Each county in the State shall have the power and is hereby authorized to issue general obligation bonds of the county within the limitations, for the purposes, upon the terms and conditions, and in the manner, provided in this part. The total funded debt of the county that is outstanding and unpaid at any time shall not exceed the limitation prescribed by the Constitution of the State.

**§47-3 Purpose of issuance.** Bonds issued pursuant to this chapter shall be issued for public improvements of the county and such other purposes as may from time to time be authorized by other provisions of general law, including without limitation, special improvements the cost of which is assessed or assessable in whole or in part against properties benefitted or improved by such improvements; provided that the issuance of those bonds for those special improvements shall be limited to special improvements initiated by the county. The purpose or purposes of issuance need not be stated in any bond.

**§47-4 Bonds for revenue-producing undertakings.** General obligation bonds may be issued under this chapter for an undertaking or loan program as defined in section 49-1 or for any other undertaking or purpose for which the bonds are authorized to be issued by other provisions of general law. The bonds may be combined into, issued, and sold with other general obligation bonds of the county as a single issue of bonds. The governing body may require that the general fund of the county shall be reimbursed from the revenue of the undertaking, loan program, or other purpose for all of the principal of and interest on the bonds, or for such part hereof as the governing body may determine, and may further provide that the bonds shall be additionally secured by a pledge of the revenue of the undertaking, loan program, or other purpose, subject to the rights of the holders of any bonds then outstanding and the provisions of the ordinances or resolutions authorizing the outstanding bonds. Whenever the undertaking, loan program, or other enterprise shall be under the management and control of a department or board of the county and the department or board has the power and authority under chapter 49 to issue revenue bonds under that chapter, no bonds shall be authorized under this chapter for that undertaking by the governing body of the county unless the department or board shall have requested the issuance thereof by resolution and no pledge of the revenue of the undertaking shall be made to the payment and security of the bonds unless consented to by the department or board by resolution, and the pledge may be made by the department or board in the resolution requesting the issuance of the proposed bond issue and consenting to the pledge.

**§47-5 Use of proceeds.** The proceeds of the bonds issued under this chapter shall be exclusively devoted to the purposes for which the same are issued; provided, however, that:

- (1) By an affirmative vote of two-thirds of all of the members of the governing body, that part of the proceeds which is determined to be in excess of the amounts required for the purposes for which the bonds were initially issued, or which may not be applied to those purposes, or which the governing body deems should not be applied to those purposes, may be applied to those other public improvements or authorized purposes of the county as the governing body may determine, or may be applied to the redemption of retirement of bonds of the county issued pursuant to this chapter;

- (2) A determination by the governing body that the proceeds of a particular series or issue of bonds should not be applied to a particular purpose shall not prohibit the application of the proceeds of a subsequent series or issue of bonds to such purpose; and
- (3) The actual use and application of the proceeds of bonds issued pursuant to this chapter shall not in any way affect the validity or legality of those bonds.

**§47-6 Method of authorization.** All bonds of a county issued pursuant to this chapter must be authorized by the governing body of the county issuing same, and shall be authorized by an ordinance or resolution of the governing body, which ordinance or resolution may relate to more than one public improvement or purpose or combination thereof. It shall be a sufficient recital of purpose of issuance if the ordinance or resolution recites that the proceeds of the bonds authorized therein which are issued for public improvements are to be used to pay all or part of the cost of appropriations for public improvements made in a capital budget ordinance or resolution identified in the bond authorizing ordinance or resolution, or are to be used to establish, maintain, or replenish the special assessment revolving fund of the county, and neither the individual appropriations nor public improvements to which the proceeds are to be applied need be specified in the bond authorizing ordinance or resolution. The governing body of the county may authorize bonds to pay all or part of the cost of appropriations for public improvements made in a capital budget ordinance in such capital budget ordinance and, in that event, the capital budget ordinance shall constitute the authorizing ordinance under this chapter.

**§47-7 Details of bonds.** (a) The director of finance of the county, upon authorization of its governing body, may issue from time to time and in accordance with this chapter, bonds of the county authorized for issuance by the governing body thereof. All bonds issued under authority of this chapter:

- (1) Shall bear interest at a rate or rates not exceeding a rate or rates established by ordinance enacted by the governing body of the county payable at such time or times;
- (2) Shall mature and be payable at such time or times from the date of the issue thereof as will comply with the provisions of the Constitution of the State;
- (3) May be made payable as to both principal and interest at such place or places and in such manner within and without the State;
- (4) May be issued in coupon form without privilege of registration or registrable as to principal only or as to both principal and interest or in fully registrable form without coupons;
- (5) May be made registrable at such place or places within and without the State; and
- (6) May be subject to redemption, to being tendered for purchase or to being purchased prior to their stated maturity at the option of the county, the holder or either or both.

(b) Unless the governing body shall itself perform the actions, the director of finance shall:

- (1) Determine the date, denomination or denominations, interest payment dates, maturity date or dates, place or places of payment, registration privileges and place or places of registration, redemption price or prices and time or times and terms and conditions and method of redemption;

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- (2) The rights of the holder to tender for purchase and the price or prices and time or times and terms and conditions upon which those rights may be exercised;
- (3) The rights to purchase and price or prices and the time or times and terms and conditions upon which those rights may be exercised and the purchase may be made; and
- (4) All other details of bonds issued under this chapter.

The principal of and interest and premium, if any, on all bonds issued under this chapter shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts.

**§47-8 Sale of bonds.** (a) The director of finance may make such arrangements as may be necessary or proper for the sale of each issue of bonds or part thereof as are issued under this chapter, including, without limitation, arranging for the preparation and printing of the bonds, the official statement and any other documents or instruments deemed required for the issuance and sale of bonds and retaining those financial, accounting, and legal consultants, all upon such terms and conditions as the director of finance deems advisable and in the best interest of the county. The governing body may authorize the director of finance to offer the bonds at competitive sale or to negotiate the sale of the bonds to:

- (1) Any person or group of persons;
- (2) The United States of America, or any board, agency, instrumentality, or corporation thereof;
- (3) The employees retirement system of the State;
- (4) Any political subdivision of the State;
- (5) Any board, agency, instrumentality, public corporation, or other governmental organization of the State; or of any political subdivision of the State.

(b) Subject to any limitation imposed by the governing body by the ordinance or resolution authorizing the bonds, the sale of the bonds by the director of finance by negotiation shall be at such price or prices and upon such terms and conditions, and the bonds shall bear interest at such rate or rates or such varying rates determined from time to time in such manner, as the director of finance shall approve.

(c) Subject to any limitation imposed by the governing body by the ordinance or resolution authorizing the bonds, the sale of the bonds by the director of finance at competitive sale shall be at such price or prices and upon such terms and conditions, and the bonds shall bear interest at such rate or rates or such varying rates determined from time to time in the manner, as specified by the successful bidder, and the bonds shall be sold in accordance with this subsection. The bonds offered at competitive sale shall be sold only after published notice of sale advising prospective purchasers of the proposed sale. The bonds offered at competitive sale may be sold to the bidder offering to purchase the bonds at the lowest interest cost, the interest cost, for the purpose of this subsection, being determined on one of the following basis as selected by the director of finance:

- (1) The figure obtained by adding together the amounts of interest payable on the bonds from their date to their respective maturity dates at the rate or rates specified by the bidder and deducting from the sum obtained the amount of any premium offered by the bidder;
- (2) Where the interest on the bonds is payable annually, the annual interest rate (compounded annually), or, where the interest on the bonds is payable semiannually, the rate obtained by doubling the semiannual interest rate (compounded semiannually), necessary to discount the principal and interest payments on the bonds from the dates of payment thereof to the date of the bonds and to the price bid (the price bid for

the purpose of this paragraph shall not include the amount of interest accrued on the bonds from their date to the date of delivery and payment); or

- (3) Where the interest on the bonds is payable other than annually or semiannually or will vary from time to time, upon such basis as, in the opinion of the director of finance, shall result in the lowest cost to the county;

provided that in any case the right shall be reserved to reject any or all bids and waive any irregularity or informality in any bid.

(d) Bonds offered at competitive sale, without further action of the governing body, shall bear interest at the rate or rates specified by the successful bidder or varying rate or rates determined from time to time in the manner specified by the successful bidder with the consent of the director of finance. The notice of sale required by this section shall be published at least once and at least five days prior to the date of the sale in a newspaper circulating in the county and in a financial newspaper or newspapers published in any of the cities of New York, Chicago, or San Francisco, and shall be in such form and contain such terms and conditions as the director of finance shall determine. The notice of sale shall comply with the requirements of this section if it merely advises prospective purchasers of the proposed sale and makes reference to a detailed notice of sale which is available to the prospective purchasers and which sets forth the specific details of the bonds and terms and conditions upon which such bonds are to be offered. The notice of sale published and any detailed notice of sale may omit the date and time of sale, in which event the date and time shall be either published in the same newspapers in which the notice of sale has been published or transmitted via electronic communication systems deemed proper by the director of finance which is generally available to the financial community, in either case at least forty-eight hours prior to the time fixed for the sale.

**§47-9 Form and execution of bonds.** (a) All bonds issued under this chapter shall be lithographed or steel engraved, shall bear the manual signature of the director of finance or the deputy director of finance of the county, shall bear the manual or lithographed or engraved facsimile signature of the mayor of the county and shall be sealed with the seal or lithographed or engraved facsimile seal of the county. In addition, fully registered bonds may be authenticated with the manual signature of the registrar, if any, thereunto duly appointed by the governing body or the director of finance. Notwithstanding the preceding provisions of this section, the governing body or the director of finance may provide that bonds issued under this chapter may be typewritten, printed, or otherwise reproduced. Interest coupons shall bear a lithographed or engraved facsimile of the signature of the director of finance or the deputy director of finance of the county. Pending the preparation of the definitive bonds, interim receipts or certificates in such form and with such provisions as the director of finance may determine may be issued to the purchaser or purchasers of bonds sold pursuant to this chapter.

(b) When bonds of the county are prepared and signed by the director of finance or the deputy director of finance and by the mayor in office at the time of the signing or lithographing or engraving of a facsimile signature upon the bonds, the signatures of the director of finance or deputy director of finance and mayor shall be valid and sufficient for all purposes, and shall have the same effect as if the persons so officially signing the bonds or whose facsimile signature appears thereon had remained in office until the delivery of the same to the initial purchasers thereof, and in the case of fully registered bonds, upon any exchange or transfer between subsequent holders thereof, notwithstanding the term of office of the persons or either of them may have expired or they may otherwise have ceased to

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be the officers before delivery, exchange, or transfer. If the governing body or director of finance has designated a registrar for fully registered bonds, the governing body or director of finance may provide that no fully registered bond shall be valid or obligatory for any purpose unless certified or authenticated by the registrar. If the governing body or director of finance shall have designated a registrar as aforesaid, then notwithstanding subsection (a), all signatures of the officers of the county upon the fully registered bonds may be facsimiles of the signatures, and the fully registered bonds shall be valid and sufficient only if certified or authenticated as aforesaid by the manual signature of an authorized officer or signatory of the registrar. Any law to the contrary notwithstanding, if blanks of fully registered bonds are held by a registrar pending exchange or transfer for other fully registered bonds of the same series, then upon delivery of bonds in an exchange or transfer, the bonds shall be valid and sufficient for all purposes notwithstanding that the signature of the director of finance or the mayor appearing thereon shall be that of the person in office at the time of initial delivery of the series of bonds of which the bond is one or at the time of such exchange or transfer.

**§47-10 CUSIP numbers.** Unless the governing body shall otherwise direct, the director of finance of the county in the director's discretion, may provide that CUSIP identification numbers shall be imprinted on bonds issued under the authority of this chapter. In the event the numbers are imprinted on any bonds:

- (1) No number shall constitute a part of the contract evidenced by the particular bond upon which it is imprinted; and
- (2) No liability shall attach to the county or any officer or agent thereof, including any fiscal agent, paying agent, or registrar for the bonds, by reason of the numbers or any use made thereof, including any use thereof made by the county, any officer or any agent, or by reason of any inaccuracy, error or omission with respect thereto or in any use. Unless the governing body shall otherwise direct, the director of finance, in the director's discretion, may require that all cost of obtaining and imprinting the numbers shall be paid by the purchasers of the bonds. For the purposes of this section, the term "CUSIP identification numbers" means the numbering system adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association.

**§47-11 Support facility for variable rate bonds.** If bonds issued pursuant to this chapter are issued bearing interest at a rate or rates which vary from time to time or with a right of holders to tender the bonds for purchase, or both, the director of finance with the approval of the governing body, may contract for such support facility or facilities and remarketing arrangements as are required to market the bonds to the greatest advantage of the county upon such terms and conditions as the director of finance deems necessary and proper. The director of finance may select and enter into contracts or agreements with the entity or entities providing a support facility; provided that any contract or agreement shall provide, in essence, that any amount due and owing by the county under the contract or agreement on an annual basis shall be subject to annual appropriation by the governing body and any obligation issued or arising pursuant to the terms of the contract or agreement in the form of bonds, notes, or other evidences or indebtedness shall only arise at such time as either:

- (1) Moneys or securities have been irrevocably set aside for the full payment of a like principal amount of bonds issued pursuant to this part; or

- (2) A like principal amount of the issue or series of bonds to which the support facility relates are held in escrow by the entity or entities providing the support facility.

**§47-12 Pledge of full faith and credit, unlimited taxation to pay principal and interest; satisfaction of judgment.** The full faith and credit of the county shall be pledged to the payment of the principal of and interest on the bonds issued by the county under this chapter, whether or not the pledge is stated in the bonds. For the payment of the principal and interest, the governing body shall levy ad valorem taxes without limitation as to rate or amount on all the real property subject to taxation by the county.

Should any county default in the payment of any judgment secured against the county, upon an action at law for the collection of the principal or interest, or any part of either thereof, of any bond of the county, the director of finance of the county shall thereafter reserve from the general revenues of the county, as soon as received, money sufficient to pay the judgment.

**§47-13 Exemption from taxes; first charge on general fund.** All bonds heretofore or hereafter issued under the authority of this chapter and the income therefrom shall be exempt from any and all taxation by the State or any county or other political subdivision thereof, except inheritance, transfer, and estate taxes.

The interest and principal payments of bonds issued under this chapter shall be a first charge on the general fund of the county issuing same, and sufficient revenues shall be raised or provided from time to time by the county for the purpose of that payment. The governing body of any county issuing bonds under this chapter shall appropriate out of the general fund of the county all amounts necessary for the payment of the principal of and interest on the bonds as and when the same become due, and the appropriation shall be a paramount appropriation upon the general fund of the county issuing same.

**§47-14 Federal tax-exempt status; preference; protection.** Bonds issued under this chapter, to the extent practicable, shall be issued so as to comply with requirements imposed by valid federal law providing that the interest on those bonds shall be excluded from gross income for federal income<sup>1</sup> purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance is authorized to enter into arrangements, establish funds or accounts, and take any action required in order to comply with any valid federal law. Nothing in this chapter shall be deemed to prohibit the issuance of bonds, the interest on which may be included in gross income for federal income tax purposes.

For the purpose of ensuring that interest on bonds issued pursuant to this chapter which is excluded from gross income for federal income tax purposes (except as provided above) on the date of issuance shall continue to be so excluded. No county officer or employee or user of an undertaking or loan program shall authorize or allow any change, amendment, or modification to an undertaking or loan program financed or refinanced with the proceeds of the bonds which change, amendment or modification would affect the exclusion of interest on the bonds from gross income for federal income tax purposes unless the change, amendment, or modification shall have received the prior approval of the director of finance. Failure to receive the approval of the director of finance shall render any change, amendment, or modification void.

**§47-15 Payment by director of finance.** The director of finance of the county shall pay the principal of the bonds at maturity and the interest thereon as and when the same become due at the place or places and in the manner prescribed for the payment under this chapter and the proceedings authorizing those bonds.

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**§47-16 Bond anticipation notes.** Whenever the governing body of the county shall have authorized the issuance of bonds under this chapter, general obligation bond anticipation notes of the county are hereby authorized to be issued in anticipation of the issuance of the bonds and of the receipt of the proceeds of sale thereof, for the purposes for which the bonds have been authorized. All general obligation notes must be authorized by the governing body of the county issuing same by ordinance or resolution of the governing body, which may be the same or a different ordinance or resolution as that authorizing the bonds. The maximum principal amount of the notes shall not exceed the authorized principal amount of the bonds. The director of finance of the county, with the approval of the governing body, may issue and sell from time to time the bond anticipation notes which have been authorized by the governing body. The full faith and credit of the county shall be pledged to the payment of the principal of and interest on the notes. The authorization, issuance, and details of the notes shall be governed by this chapter with respect to bonds insofar as the same may be applicable, provided that:

- (1) Each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note; and
- (2) The interest on the notes shall be paid from the general fund of the county and the principal of the notes shall be paid from the proceeds of sale of the bonds in anticipation of which the notes have been issued or from any money in the general fund available therefor.

To the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of the bonds, the maximum amount of bonds in anticipation of which the notes are issued that has been authorized shall be reduced by the amount of notes paid in that manner.

**§47-17 Refunding bonds authorized.** For the purpose of refunding all or any portion of the present and future bonded indebtedness of any county issued pursuant to this chapter or bonds payable from the revenue of an undertaking or loan program as defined in section 49-1, the director of finance of any county, upon authorization of the governing body, may from time to time issue general obligation refunding bonds of the county to pay or to provide for the payment of all or any part thereof, and may include various series and issues of the outstanding bonds in a single issue of refunding bonds and may include refunding bonds and bonds otherwise to be issued under this chapter, in a single issue of bonds.

The interest rate or rates of the refunding bonds shall not be limited by the interest rate or rates borne by any of the bonds to be refunded thereby.

The refunding bonds may be issued and delivered on, or at any time before, the maturity or redemption date of the bonds to be refunded that the director of finance, with the approval of the governing body, determines to be in the best interest of the county. The refunding bonds shall be issued in accordance with this chapter with respect to bonds otherwise issued under this chapter, and all of the provisions of this chapter shall apply to the refunding bonds. Nothing in this section shall require or be deemed to require the county to elect to redeem or prepay bonds being refunded, or, if the county elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates.

Proceeds of the sale of the refunding bonds shall be applied solely to the payment of the principal of, and redemption premium, if any, and interest on the bonds to be refunded under this chapter and to the payment of all costs of issuance of such refunding bonds and interest accrued on the refunding bonds to the date of delivery thereof and payment therefor. Pending the time the proceeds derived from the sale of refunding bonds issued under this section are required for the purposes for which they were issued, the director of finance, upon authorization or approval

of the governing body, may invest the proceeds in obligations of, or obligations unconditionally guaranteed by, the United States of America or in savings accounts, time deposits, or certificates of deposit of any bank or trust company, within or without the State, to the extent that the savings accounts, time deposits, or certificates of deposit are collaterally secured by a pledge of obligations of, or obligations unconditionally guaranteed by, the United States of America; or in obligations of any state of the United States of America or any agency, instrumentality or local government of any such state, the provision for payment of the principal of and interest on which shall have irrevocably been made by deposit of obligations of, or obligations unconditionally guaranteed by, the United States of America. To further secure the bonds being refunded the director of finance, upon authorization or approval of the governing body, may enter into a contract with any bank or trust company, within or without the State, with respect to the safekeeping and application of the proceeds of the refunding bonds, and the safekeeping and application of the earnings on the investment, which contract shall become a part of the contract with the holders of the bonds being refunded.

**§47-18 Action on default.** In case of any default in the payment of the principal of any bonds at maturity or of the interest thereon when the same becomes due, the holder of any of the bonds on which any default is made may bring an action at law against the county making the default, for the amount due by reason of the default, and should any moneys be then or thereafter payable by the State to the county which is defendant in the action, the holder, in the petition and prayer for process, may insert a request to the court issuing process to insert therein a direction to the officer serving the same to leave a true copy thereof attested by any chief of police, sheriff, deputy sheriff, or their authorized subordinates, with the state comptroller, who, hereafter in this chapter, is called the garnishee.

**§47-19 Service on garnishee.** Service of process upon the garnishee may be made as follows:

- (1) If the garnishee lives or has the garnishee's office in the district where the process is issued, by handing the copy to the garnishee personally or leaving it in the garnishee's office with a deputy, clerk, or other employee therein; or
- (2) If the garnishee does not live, nor have an office in the district where the process is issued, by handing the copy to the garnishee personally, or by depositing it in the nearest post office, enclosed in a sealed envelope, postage prepaid, and addressed to the garnishee at the garnishee's office in Honolulu.

**§47-20 Garnishee to withhold funds.** It shall not be incumbent on the garnishee to appear and answer the process, but the trial of the action shall proceed in all respects as if the garnishee had not been made a party. From the time of service upon the garnishee, it shall be unlawful for the garnishee to draw, sign, or issue any warrant payable to the order of the county defendant or any of its officers, or permit or cause the same to be done, for any money which be then or thereafter payable to the defendant, until the action has been finally determined and the judgment therein rendered, if any, has been fully paid and satisfied with legal interest thereon. All moneys due or to become due to the defendant shall be held in the treasury of the State from the time of the service until the final judgment or determination of the action; provided that no more shall thus be held than shall be sufficient to meet the demand with costs and interest of plaintiff or plaintiffs in the action.

**§47-21 Certificate furnished garnishee.** After final judgment or determination of the action, the party prevailing shall obtain from the court by which the

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final judgment or determination was made, a certificate, which shall sufficiently describe the action to apprise the garnishee of its identity, and shall state the nature and amount of the final judgment or determination made therein, and the certificate shall be immediately furnished to the garnishee.

**§47-22 Garnishee to satisfy judgment.** If final judgment is rendered against defendant in the action, garnishee shall immediately thereafter draw, sign, and deliver to the plaintiff or plaintiffs a warrant or warrants for the sum held by the garnishee in obedience to service of process; and if the sum does not equal the amount of the final judgment, then the drawing, signing, and delivery of the warrants shall continue to be made from time to time as funds become available until the final judgment, with interest, is fully paid. All warrants so drawn, signed, and delivered shall be charged against the defendant.

**§47-23 Successive actions.** In case of successive actions being so brought against the same county defendant, precedence shall be given by the garnishee to that in which process is first served on the garnishee; and if two or more processes are simultaneously served, precedence shall be given in the order of the priority of their issuance by the courts issuing them. This order of precedence shall not be disturbed by the fact of a posterior action being carried to final judgment earlier than its anterior in time of service on the garnishee. All amounts held on account of the anterior action shall be held until the final determination thereof, and then applied in payment of the judgment therein. In case the amounts shall not be sufficient fully to satisfy the judgment, then all judgments obtained in posterior actions shall be again postponed to that in the anterior action until it is satisfied.

**§47-24 Validation of proceedings.** All proceedings heretofore taken with respect to the contracting of general obligation bonded indebtedness and the issuance, sale, execution and delivery of bonds by or on behalf of a county, are hereby validated, ratified, approved and confirmed, notwithstanding any defects or irregularities in any such proceedings or in the issuance, execution, sale or delivery, and the bonds so issued or to be issued are and shall be binding, legal, valid and enforceable obligations of the county.

**§47-25 Bonds negotiable, contestable.** This chapter, without reference to any other law, shall be full authority to issue, exchange, or sell bonds of the county, and the bonds and all interim receipts or certificates shall have all the qualities of negotiable paper under state law. The bonds shall not be invalid for any irregularity or defect in the proceedings for the issue, sale or exchange thereof. The bonds shall contain a recital that they have been authorized and issued pursuant to the laws of the State, which recital shall be conclusive evidence of their validity and the regularity of their issuance. No proceedings in respect of the issuance of any bonds shall be necessary except such proceedings as are required by this chapter.

**§47-26 Provisions of chapter controlling.** Insofar as the provisions of this chapter are inconsistent with the provisions of any law or charter, the provisions of this chapter shall be controlling. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law or charter, and bonds may be issued hereunder for any public improvement or other purpose as may from time to time be authorized by law, including special improvements the cost of which is assessed or assessable in whole or in part against properties benefited or improved thereby or an undertaking, improvement or system of the county, notwithstanding that any other law or charter may provide for the issuance of bonds for like purposes and without regard to the requirements, restrictions, or

other provisions contained in any other law or charter. Bonds may be issued under this chapter notwithstanding any debt or other limitation prescribed by any other law or charter and without obtaining the consent of any commission, board, bureau, agency, or department of the State, and without any other proceeding or happening of any other condition or thing than those proceedings, conditions, or things which are specifically required by this chapter, and the mode and method of procedure for the issuance of bonds under this chapter need not conform to any other law or charter. The authorization, issuance, and validity of bonds under this chapter shall not be dependent on or affected in any way by proceedings taken, contracts made, acts performed or done in connection with, or in furtherance of any public improvement undertaken by the county authorizing and issuing the bonds, or by the validity of any such proceedings, contracts, or acts, nor shall the authorization, issuance, and validity of bonds issued under this chapter be dependent upon or affected in any way by the proceedings taken in connection with the creation of any improvement district and the fixing or imposition of any assessments or by the validity of any such proceedings or assessments, nor shall the authorization, issuance and validity of bonds issued under this chapter be dependent in any way upon the due adoption or enactment of any capital program or capital budget ordinance or resolution or upon the continued effectiveness of any appropriation made in any capital budget ordinance or resolution; provided that nothing in this section shall be deemed to permit the application of the proceeds of the bonds to appropriations which have lapsed pursuant to the provisions of law or of a charter.

## PART II. SINKING FUNDS

**§47-31 Sinking fund.** The director of finance of each county shall establish as a special deposit in the treasury of the county a sinking fund with which to pay any present or future bonded indebtedness of the county issued under this chapter in the form commonly known as "term bonds", and may establish the sinking fund with respect to bonds issued under this chapter in the form commonly known as "serial bonds". The governing body or the director of finance in the case of term bonds shall, and in the case of serial bonds may, provide in the proceedings authorizing the bonds, that for the purpose of retiring the bonds, there shall be transferred from the current receipts of the county provided by law for the purpose or which may be set aside by the governing body for the purpose and deposited to the sinking fund, such a sum of moneys that at such times and in such amounts that the aggregate of the amounts on deposit in the sinking fund will be sufficient to provide for the retirement of the bonds, whether at maturity or upon redemption or purchase, at the times and in the amounts set forth in the proceedings.

Except as otherwise provided by law, the director of finance of each county shall also deposit to the sinking fund, immediately upon the receipt thereof, all premiums received on the sale of bonds under this chapter; provided that the premiums on serial bonds shall be deposited to the interest fund from which the payment of interest on the bonds will be made.

The money deposited in a sinking fund shall be used for the retirement, whether at maturity or upon redemption or purchase, of any outstanding bonds of the county issued under this chapter in accordance with the proceedings authorizing the bonds, and shall be held in trust exclusively for those purposes.

**§47-32 Retirement of bonds from sinking fund money.** The director of finance, without further authorization or direction, shall apply money on deposit to a sinking fund to redeem bonds at such times and in such amounts as is required by the proceedings authorizing the bonds. The director of finance shall provide a notice of redemption in the event the bonds are retired by redemption, in such form

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and substance as is required by the proceedings authorizing the bonds. If the bonds so redeemed as aforesaid are not presented for payment or redemption on or before the redemption date specified in the notice, the amount due thereon shall be held exclusively for the payment of the bonds whenever presented. All redemptions shall be made as provided by law and no notice of redemption shall be required other than that as provided in the proceedings authorizing the bonds.

**§47-33 Purchase of bonds, when.** Provided it can be shown to be to the financial advantage of the county, whenever there are any moneys on deposit in the sinking fund in excess of the amount needed for the redemption of any bonds then matured or required to be redeemed, the director of finance of each county, with the approval of the governing body, may buy with those moneys, on the open market, any of the outstanding bonds or any interest bearing notes of the county, or invest the moneys in obligations of, or obligations unconditionally guaranteed by, the United States of America or in savings accounts, time deposits, or certificates of deposit of any bank or trust company, within or without the State, to the extent that the savings accounts, time deposits, or certificates of deposit are collaterally secured by a pledge of obligations of, or obligations unconditionally guaranteed by, the United States of America; or in obligations of any state of the United States of America or any agency, instrumentality or local government of any such state, the provision for payment of the principal of and interest on which shall have irrevocably been made by deposit of obligations of, or obligations unconditionally guaranteed by, the United States of America.

All bonds and notes purchased pursuant to this section shall be canceled and not reissued.

### PART III. LOST, STOLEN, DESTROYED, DEFACED BONDS AND COUPONS

**§47-41 Request for replacement or payment.** Any party claiming ownership of a bond issued by a county or any interest coupon appertaining to any bond of that county and which bond, coupon, or both, as the case may be, has been lost, stolen, destroyed, wholly or in part, or so defaced as to impair its value, may file with the director of finance of that county a request for replacement or payment of the bond, coupon or both, as the case may be. The request shall be in the form of an affidavit describing the bond, coupon, or both, as the case may be, and explaining the circumstances under which the bond, coupon, or both, as the case may be, was lost, stolen, destroyed or defaced. The affidavit shall be presented with such evidence as the director of finance may require to establish the ownership of the bond, coupon, or both.

**§47-42 Issuance of duplicate.** (a) When the director of finance is satisfied that the bond, coupon, or both, as the case may be, is in fact lost, stolen, destroyed, wholly or in part, or defaced and that the claimant is the legal and beneficial owner of such bond, coupon, or both, as the case may be, and that if lost or stolen, such bond, coupon, or both, as the case may be, has not been acquired by a bona fide purchaser, the director, except as provided in sections 47-43 and 47-44, may cause to be issued a duplicate thereof, which shall be so marked as to adequately identify it as such to the county, any transfer agent, paying agent, or bond registrar.

(b) A duplicate bond in coupon form issued in place of a bond lost, stolen, destroyed, or defaced shall be lithographed or steel engraved unless otherwise provided in the proceedings authorizing the issuance thereof, and shall bear the manual signature of the director of finance or duly authorized deputy director of finance of the county and the mayor of the county, and an impression of the seal

of the county shall be affixed thereon. Any duplicate coupon issued in place of any lost, stolen, destroyed, or defaced coupon appertaining to an interest bearing bond of the county shall bear a lithographed or engraved facsimile of the signature of the director of finance. When a duplicate of the bond being replaced bears the manual signature of the mayor and the manual signature of the director of finance or deputy director of finance in office at the time of issuance of such duplicate bond, or any coupon being replaced bears the facsimile signature of the director of finance in office at the time of issuance of such coupon, the signature of the mayor and director of finance or deputy director of finance shall be valid and sufficient and shall have the same effect as that of the persons originally signing the bond or whose facsimile signatures appears on such bond, coupon, or both, as the case may be.

(c) All duplicate bonds in fully registered form issued in place of bonds lost, stolen, destroyed, wholly or in part, or defaced shall be from the stock of fully registered bonds of the series then held by the registrar for the series and shall be executed, sealed, and authenticated in the same manner as fully registered bonds of the series, and any duplicate fully registered bond so executed, sealed, and authenticated shall be valid and sufficient for all purposes.

**§47-43 Payment to be made.** If a lost, stolen, destroyed or defaced bond, coupon or both, as the case may be, has matured, has been called for redemption or is due, as the case may be, at the time of request for replacement of such bond, coupon or both, as the case may be, the director of finance may pay the face value of the matured bond or coupon or the call price of the called bond, as the case may be.

**§47-44 Issuance of transferable certificate.** If a lost, stolen, destroyed, wholly or in part, or defaced bond, coupon or both, as the case may be, will mature, will be called for redemption or will become due, as the case may be, within a period of one year from the date of request for replacement, the director of finance may issue to the claimant a transferable certificate for the face value of the bond, coupon or both, as the case may be, such certificate to be in such form as shall be prescribed by the director of finance.

**§47-45 Condition of replacement or payment.** The director of finance shall not provide for the issuance of a replacement for or the payment of the lost, stolen, destroyed, wholly or in part, or defaced bond, coupon, or both, as the case may be, unless the claimant shall have executed and delivered to the director a legal and sufficient surety bond in an amount equal to the loss which may be suffered by the county, any transfer agent, paying agent, or registrar by reason of issuing replacements or making payments mentioned herein. Any such surety bond shall be in such form and with such sufficient surety or sureties as shall be satisfactory to the director of finance, and shall be conditioned to indemnify and save harmless the county, any transfer agent, paying agent, or registrar from any and all loss on account of the bond, coupon, or both, as the case may be, so claimed to have been lost, stolen, destroyed, or defaced. The duration of the surety bond shall be not less than the date upon which the bond, coupon, or both, as the case may be, being replaced or paid become due and payable, plus the period of the statute of limitations applicable to bonds and coupons. In the case of a partially destroyed or defaced bond, coupon, or both, as the case may be, the claimant shall surrender the partially destroyed or defaced bond, coupon, or both, as the case may be, at the time of delivery of the replacement therefor.

All expenses necessary for the providing of any duplicate bond, coupon, or both, as the case may be, or any transferable certificate shall be borne by the

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claimant thereof, and the expenses shall be paid at the time the request for replacement is filed.

**§47-46 Disputed ownership.** If there are two or more claimants claiming adversely, each to the other or others, to be the owner in due course of a bond, coupon, or both, as the case may be, alleged to have been lost, stolen, or destroyed, or defaced, the director of finance, in the director's discretion, may require the claimants, if not within the State, to appoint agents within the State to accept service of process, or otherwise to submit to the jurisdiction of the courts of the State, and may bring suit on behalf of the State in any circuit court against the claimants, by interpleader, for the determination of the claimant or claimants entitled to the payment of the bond, coupon, or both, as the case may be. Jurisdiction is hereby conferred upon the designated circuit court to hear and determine, without a jury, the suits and to determine whether any of the claimants is entitled to the payment, and, if so, which of the claimants is so entitled; provided that no such judicial determination shall dispense with the condition prescribed by section 47-45 requiring a surety bond before the payment of the claims. The cost of the suit shall be borne by the claimants and the court may decree the payment of such costs by any of the unsuccessful claimants, or the apportionments thereof, as may be deemed just. The decision of the court may be appealed to the supreme court in the same manner and subject to the same conditions and incidents as appeals in equity."

SECTION 3. The Hawaii Revised Statutes is amended by adding a new chapter 49 to read as follows:

## “CHAPTER 49 REVENUE BONDS

**§49-1 Definitions.** Whenever used in this chapter, unless a different meaning clearly appears from the context:

“Board” means any department or board of a county authorized to issue revenue bonds under this chapter.

“County” means the city and county of Honolulu and the counties of Hawaii, Kauai, and Maui, the board of water supply of the city and county of Honolulu and the boards of water supply of the counties of Hawaii, Kauai, and Maui.

“Director of finance” means the director of finance of the various counties.

“Governing body” means council of each county, or any other body exercising the legislative powers of the county.

“Loan program” means the activities and policies undertaken by any county to provide assistance to members of the general public who are residents of the county by making loans or causing loans to be made available to them for such purposes as may be authorized by law.

“Revenue” means the moneys collected, including any moneys collected from the county or any department thereof, from the rates, rentals, fees and charges prescribed for the use and services of, and the facilities and commodities furnished by, an undertaking or the use and services and benefits of a loan program.

“Revenue bonds” means all bonds payable solely from and secured by the revenue, or user taxes, or any combination of both, of an undertaking or loan program or any loan made thereunder for which such bonds are issued and as otherwise provided in this chapter.

“Undertaking” means any public works and properties, improvement or system owned or operated by the county, and from which the county may derive revenue, or with respect to which the county may derive user taxes, including, but not limited to one or a combination of two or more of the following: water, sewerage,

gas or electric, heat, light or power works, solid waste processing and disposal, public off-street parking facilities, plants, and systems, together with all parts thereof and appurtenances thereto.

“User taxes” means taxes on goods or services or on the consumption thereof, the receipts of which are substantially derived from the consumption, use or sale of goods and services in the utilization of the functions or services furnished by the undertaking.

**§49-2 Declaration of policy.** It is declared to be the policy of the State that any county acquiring, purchasing, constructing, reconstructing, improving, bettering, or extending an undertaking or establishing or administering a loan program pursuant to this chapter shall manage the undertaking or loan program in the most efficient manner consistent with sound economy and public advantage and consistent with the protection of bondholders.

**§49-3 Additional powers of counties.** In addition to the powers which it may now have, any county under this chapter may:

- (1) Construct, acquire by gift, purchase, or the exercise of the right of eminent domain, reconstruct, improve, better, or extend any undertaking, within or without the county, or partially within or partially without the county, and acquire by gift, purchase, or the exercise of the right of eminent domain, lands or rights in land or water rights in connection therewith or undertake the establishment and administration of a loan program as authorized by the law;
- (2) Operate and maintain any undertaking and maintain a loan program as authorized by law and furnish the services, facilities, and commodities thereof for its own use and for the use of public and private consumers within or without the territorial boundaries of the county;
- (3) Issue its revenue bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of any undertaking or the establishment and administration of any loan program as authorized by law;
- (4) Impose, prescribe, and collect rates, rentals, fees and charges for the use and services of, and the facilities and commodities furnished by, the undertaking or the use and services of the loan program as authorized by law, as provided in section 49-10; and
- (5) Pledge to the punctual payment of the revenue bonds and interest thereon or covenant to pay into any special funds from which any revenue bonds may be payable, all or any portion of the revenue of the undertaking or loan program or of any part thereof, or the user taxes derived therefrom, or any combination of both (including improvements, betterments, or extensions thereto thereafter constructed or acquired) sufficient, among other things, to pay the revenue bonds and interest thereon as the same shall become due and create and maintain reasonable reserves therefor.

The governing body of the county in determining the cost may include all costs and estimated costs of the issuance of the revenue bonds, all architectural, engineering, inspection, financial and legal expenses, all costs of establishing or administering a loan program authorized by law, the cost of causing the payment of the principal or interest or both of the revenue bonds to be insured or guaranteed, the initial cost of any support facility obtained as permitted by section 47-8, and interest which it is estimated will accrue on the bonds during the construction or origination period and for six months thereafter.

Subject to the approval of the governing body, a board may exercise all or any part of the powers vested in the county pursuant to this chapter but only with

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respect to an undertaking or loan program under the jurisdiction of such board. In the event a board shall exercise any of the powers vested in the county pursuant to this chapter, the term governing body as used in this chapter shall be deemed to mean the board, and the term director of finance shall be deemed to mean the chief financial officer of the board.

**§49-4 Authorization of undertaking, loan program and revenue bonds; details of revenue bonds.** (a) The acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking or the establishment and administration of a loan program may be authorized under this chapter, and revenue bonds may be authorized to be issued under this chapter by resolution or resolutions of the governing body of the county issuing the revenue bonds which may be adopted at the same meeting at which the same are introduced by a majority of all the members of the governing body of the county then in office and shall take effect immediately upon adoption.

(b) The revenue bonds, subject to the proviso to this paragraph shall, bear interest at such rate or rates payable at such time or times, may be in one or more series, may bear such date or dates, may mature at such time or times not exceeding thirty years from their respective dates, may be payable in such medium of payment and at such place or places, may carry such registration privileges, may be subject to such terms of redemption, to being tendered for purchase or to being purchased prior to their stated maturity at the option of the county, the holder or either or both, may contain such terms, covenants, and conditions, and may be in such form, either coupon or registered, as the resolution and subsequent resolutions may provide; provided that notwithstanding the foregoing the governing body may provide for deeply discounted revenue bonds which do not bear interest but which are subject to redemption or retirement at their accredited value provided that the discounted value of the revenue bonds shall not exceed ten per cent of any series of revenue bonds.

(c) The governing body shall determine the date, denomination or denominations, interest payment dates, maturity date or dates, place or places of payment, registration privileges and place or places of registration, redemption price or prices and time or times and terms and conditions and method of redemption, the rights of the holder to tender for purchase and the price or prices and time or times and terms and conditions upon which the rights might be exercised, the rights to purchase and the price or prices and the time or times and terms and conditions upon which the rights might be exercised and the purchase may be made, and all other details of revenue bonds issued under this part. A governing body may delegate the responsibility for any or all of the aforesaid determinations, within limits prescribed by the governing body, to the director of finance.

**§49-5 Sale of revenue bonds.** (a) The director of finance may make such arrangements as may be necessary or proper for the sale of each issue of revenue bonds or part thereof as are issued under this chapter, including, without limitation, arranging for the preparation and printing of the revenue bonds, the official statement and any other documents or instruments deemed required for the issuance and sale of revenue bonds and retaining such financial, accounting and legal consultants, all upon such terms and conditions as the director of finance deems advisable and in the best interest of the county. The governing body may offer the revenue bonds at competitive sale or may negotiate the sale of the revenue bonds to any person or group of persons, to the United States of America, or any board, agency, instrumentality, or corporation thereof, to the employees retirement system of the State, to the State or any political subdivision of the State, or to any board, agency, instrumentality, public corporation, or other governmental organization of the State or of any political subdivision of the State.

(b) The sale of the revenue bonds by the governing body by negotiation shall be at such price or prices and upon such terms and conditions, and the revenue bonds shall bear interest at such rate or rates or such varying rates determined from time to time in such manner, as the governing body shall approve.

(c) The sale of the revenue bonds by the governing body at competitive sale shall be at such price or prices and upon such terms and conditions, and the revenue bonds shall bear interest at such rate or rates or such varying rates determined from time to time in the manner, as specified by the successful bidders, in which event the revenue bonds shall be sold in accordance with this subsection. The revenue bonds offered at competitive sale shall be sold only after published notice of sale advising prospective purchasers of the proposed sale. The revenue bonds offered at competitive sale may be sold to the bidder offering to purchase the revenue bonds at the lowest interest cost, such interest cost, for the purpose of this subsection, being determined on one of the following bases as selected by the governing body:

- (1) The figure obtained by adding together the amounts of interest payable on the revenue bonds from their dates to their respective maturity dates at the rate or rates specified by the bidder and deducting from the sum obtained the amount of any premium offered by the bidder;
- (2) Where the interest on the revenue bonds is payable annually, the annual interest rate (compounded annually), or, where the interest on the bonds is payable semiannually, the rate obtained by doubling the semiannual interest rate (compounded semiannually), necessary to discount the principal and interest payments on the revenue bonds from the dates of payment thereof to the date of the revenue bonds and to the price bid (the price bid for the purpose of this paragraph shall not include the amount of interest accrued on the revenue bonds from their date to the date of delivery and payment); or
- (3) Where the interest on the revenue bonds is payable other than annually or semiannually or will vary from time to time upon such basis as, in the opinion of the director of finance, shall result in the lowest cost to the county;

provided that in any case the right shall be reserved to reject any or all bids and waive any irregularity or informality in any bid.

(d) Revenue bonds offered at competitive sale, without further action of the governing body, shall bear interest at the rate or rates specified by the successful bidder or such varying rates determined from time to time in the manner specified by the successful bidder with the consent of the governing body. The notice of sale required by this section shall be published at least once and at least five days prior to the date of the sale in a newspaper or newspapers published in any of the cities of New York, Chicago, or San Francisco, and shall be in such form and contain such terms and conditions as the governing body shall determine. The notice of sale shall comply with the requirements of this section if it merely advises prospective purchasers of the proposed sale and makes reference to a detailed notice of sale which is available to the prospective purchasers and which sets forth the specific details of the revenue bonds and terms and conditions upon which any revenue bonds are to be offered. The notice of sale published and any detailed notice of sale may omit the date and time of sale, in which event such date and time shall be either published or transmitted via electronic communication systems deemed proper by the governing body which is generally available to the financial community, in either case at least forty-eight hours prior to the time fixed for such sale.

(e) A governing body may delegate the responsibility for any or all of the determinations or actions under this chapter to the director of finance.

**§49-6 Form and execution of revenue bonds.** (a) Revenue bonds issued under this chapter shall be in such form as the governing body may determine, shall be lithographed or engraved, shall be manually signed by the director of finance or deputy director of finance, shall be countersigned with a lithographed or engraved facsimile of the signature of the mayor, and shall be sealed with the seal or a lithographed or engraved facsimile of the seal of the county. In addition, fully registered revenue bonds may be authenticated with the manual signature of the registrar, if any, thereunto duly appointed by the director of finance. Notwithstanding the preceding provisions of this section, the governing body may provide that revenue bonds issued under this chapter may be typewritten, printed, or otherwise reproduced, and that the signature of the mayor upon the revenue bonds may be the mayor's manual signature. The coupons pertaining to the revenue bonds shall be executed with the lithographed or engraved facsimile signatures of the mayor and the director of finance. In the case of a board, for purposes of this section, the member thereof who is the presiding officer or, if authorized by the board, the executive director, and such other officer of the board as is provided by the board, shall be deemed the mayor and the director of finance. Pending the preparation of the definitive revenue bonds, interim receipts or certificates in such form and with such provisions as the governing body may determine may be issued.

(b) The revenue bonds bearing the signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, and shall have the same effect as if the persons officially signing the bonds had remained in office until the delivery of the revenue bonds to the initial purchasers thereof, and in the case of fully registered bonds upon any exchange or transfer between subsequent holders thereof notwithstanding that the term of office of the persons or any of them may have expired or they may otherwise have ceased to be officers before the delivery, exchange, or transfer. If the director of finance shall have designated a registrar for fully registered revenue bonds, the resolution authorizing the revenue bonds may provide that no fully registered revenue bond shall be valid or obligatory for any purpose unless certified or authenticated by the registrar. If the resolution provides, then all signatures of the officers of the county upon the fully registered revenue bonds may be facsimiles of the signatures, and the fully registered revenue bonds shall be valid and sufficient only if certified or authenticated by the manual signature of an authorized officer or signatory of such registrar. Any law to the contrary notwithstanding, if blanks of fully registered revenue bonds are held by a registrar pending exchange or transfer for other fully registered revenue bonds of the same series, then upon delivery of revenue bonds in an exchange or transfer, the revenue bonds shall be valid and sufficient for all purposes notwithstanding that the signatures of the officers of the county appearing thereon shall be that of the persons in office at the time of initial delivery of the revenue bonds or that of the persons in office at the time of the exchange or transfer. The validity of the revenue bonds shall not be dependent on or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the undertaking or establishment or administration of the loan program authorized by law for which the revenue bonds are issued. The resolution authorizing the revenue bonds shall provide that the revenue bonds shall contain a recital that they are issued pursuant to this chapter, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

**§49-7 CUSIP numbers.** The governing body issuing revenue bonds pursuant to this chapter, in its discretion, may provide that CUSIP identification numbers shall be imprinted on the revenue bonds. In the event such numbers are imprinted on any revenue bonds (1) no CUSIP number shall constitute a part of the contract

evidenced by the particular revenue bond upon which it is imprinted and (2) no liability shall attach to the county, or any officer or agent thereof, including any fiscal agent, paying agent, or registrar for the bonds, by reason of the numbers or any use made thereof, and including any use thereof made by the county, any officer or any agent, or by reason of any inaccuracy, error, or omission with respect thereto or in that use. The governing body in its discretion may require that all cost of obtaining and imprinting the numbers shall be paid by the purchaser of the bonds. For the purposes of this section the term "CUSIP identification numbers" means the numbering system adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association.

**§49-8 Support facility for variable rate revenue bonds.** If revenue bonds issued pursuant to this chapter are issued bearing interest at a rate or rates which vary from time to time and with a right of holders to tender the revenue bonds for purchase, the governing body may authorize the director of finance to contract for such support facility or facilities and remarketing arrangements as are required to market the revenue bonds to the greatest advantage of the county upon such terms and conditions as deemed necessary and proper. The director of finance may enter into contracts or agreement with the entity or entities providing a support facility; provided that any contract or agreement shall provide, in essence, that any amount due and owing by the county under the contract or agreement on an annual basis shall be payable solely from the revenue of the undertaking or loan program and any obligation issued or arising pursuant to the terms of the contract or agreement in the form of bonds, notes, or other evidences of indebtedness shall only arise at such time as either:

- (1) Moneys or securities have been irrevocably set aside for the full payment of a like principal amount of revenue bonds issued pursuant to this chapter; or
- (2) A like principal amount of the issue or series of revenue bonds to which the support facility relates are held in escrow by the entity or entities providing the support facility.

**§49-9 Covenants in resolution authorizing issuance of revenue bonds.**

Any resolution or resolutions authorizing the issuance of revenue bonds under this chapter may contain covenants including but not limited to:

- (1) The purpose or purposes to which the proceeds of sale of the revenue bonds shall be applied and the use and disposition thereof;
- (2) The use and disposition of the revenue of the undertaking or the loan program for which the revenue bonds are to be issued, or the user taxes derived therefrom, or both, to the extent pledged to the payment of the revenue bonds, including the priority of payments from such revenue and the creation and maintenance of reserves and the investment thereof;
- (3) Transfer from the general fund of the county to the account or accounts of the undertaking an amount equal to the cost of furnishing the county or any of its departments, boards, or agencies, at their request, with the services, facilities and commodities of the undertaking;
- (4) The issuance of other or additional revenue bonds payable from the revenue of the loan program or of the undertaking, or the user taxes derived therefrom, or both revenue and user taxes, to the extent pledged to the payment of the revenue bonds;
- (5) The operation, maintenance, and repair of the undertaking or the administration, operation, and maintenance of the loan program; or

- (6) Other appropriate suit, action, or proceeding in any court of competent jurisdiction.

**§49-10 Rates, rentals, fees and charges; undertakings and loan programs to be self-sustaining.** The governing body issuing revenue bonds pursuant to this chapter shall impose, prescribe and collect, or authorize and require the imposition, prescription and collection of, rates, rentals, fees or charges for the use and services of, and the facilities and commodities furnished by, the undertaking or for the use and services and benefits of the loan program for which the revenue bonds are issued, and shall revise, or require revision of, the rates, rentals, fees or charges from time to time whenever necessary, so that, together with the proceeds of the user taxes derived with respect to the undertaking pledged to the payment of the revenue bonds, the undertaking or loan program shall be and always remain self-sustaining. The rates, rentals, fees or charges imposed and prescribed shall produce revenue which, together with the proceeds of such user taxes, will be at least sufficient:

- (1) To make the required payments of the principal of and interest on all revenue bonds issued for the undertaking or loan program, including the payment of all revenue bonds and interest thereon for the payment of which the revenue, or user taxes, or combination of both, are or shall have been pledged, charged or otherwise encumbered, or which are otherwise payable from the revenue, or user taxes, or combination of both, or are payable from a special fund maintained, or to be maintained, from the revenue, or user taxes, or combination of both, including reserves therefor, and to maintain the special fund in an amount at least sufficient to pay when due all revenue bonds and interest thereon which are payable from the special fund, including reserves therefor;
- (2) To pay the cost of operation, maintenance, and repair of the undertaking, or to pay the cost of the administration, operation, and maintenance of the loan program, including reserves therefor; and
- (3) To carry out the covenants of the resolution or resolutions authorizing the issuance of the revenue bonds, including any covenant as to the minimum amounts of revenue to be produced by the undertaking or loan program for which the revenue bonds are issued.

**§49-11 Use of revenue and user taxes of undertaking or loan program.** Whenever any revenue bonds have been issued under this chapter for an undertaking or a loan program, the revenue, or the user taxes, or combination of both, from which the revenue bonds are payable and by which they are secured of the undertaking or loan program shall be deposited in a special fund and shall be appropriated, applied, or expended, and the county shall have the right to appropriate, apply, or expend the same, in the amount necessary therefor for the following purposes and in such order of priority as the county shall provide in the resolution or resolutions authorizing the issuance of revenue bonds:

- (1) To pay when due all revenue bonds and interest thereon issued for the undertaking or loan program, for the payment of which the revenue, or user taxes, or combination of both, is or shall have been pledged, charged, or otherwise encumbered, including reserves therefor;
- (2) To pay or provide for the payment of the cost of operation, maintenance, and repair of the undertaking, or to pay or provide for the payment of administering, operating, and maintaining the loan program, including reserves therefor;

- (3) For such purposes, within the jurisdiction, powers, duties, and functions of the county, including the creation and maintenance of reserves, as shall have been covenanted in any resolution or resolutions of the county providing for the issuance of revenue bonds;
- (4) To reimburse the general fund of the county for all bond requirements for general obligation bonds which are or shall have been issued for the undertaking or loan program, or to refund any of the general obligation bonds, except insofar as the obligation of reimbursement has been or shall be canceled by the governing body, the bond requirements being the interest on term and serial bonds, sinking fund for term bonds, and principal of serial bonds maturing the following year;
- (5) To provide for betterments and improvements to the undertaking or expansion of the loan program, including reserves therefor; or
- (6) To provide such special reserve funds and other special funds as are or may be created by the resolution or resolutions authorizing the revenue bonds.

Unless and until adequate provision has been made for the foregoing purposes, the county shall not have the right to transfer to its general fund or apply to any other purposes any part of the revenue, or user taxes, pledged to the payment of the revenue bonds, of the undertaking or loan program.

**§49-12 Lien and charge of revenue bonds.** Unless otherwise provided in the resolution or resolutions, all revenue bonds of the same issue, subject to the prior and superior rights of outstanding revenue bonds, claims, or obligations, shall have a prior and paramount lien and charge on the revenue, or the user taxes, or combination of both, pledged to the payment thereof, of the undertaking or loan program for which the revenue bonds have been issued, over and ahead of all bonds of any issue payable from the revenue, or user taxes, or combination of both, which may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenue, or user taxes, or combination of both, subsequently arising or subsequently incurred. All revenue bonds of the same issue shall be equally and ratably secured without priority by reason of number, date of bonds, of sale, of execution, or of delivery, by a lien and charge on the revenue or user taxes, or combination of both, pledged to the payment thereof, in accordance with this chapter and the resolution or resolutions authorizing the revenue bonds.

**§49-13 Revenue bonds not a general or moral obligation of the county.** Unless otherwise provided in this section, revenue bonds issued under this chapter shall be payable solely from and secured by the revenue, or the user taxes, or combination of both, pledged to the payment thereof, of the undertaking or loan program for which the revenue bonds have been issued, or secured solely by and payable from a special fund to be maintained from the revenue, or user taxes, or combination of both, pledged to the special fund, and shall not constitute a general or moral obligation of the county or a charge upon the general fund of the county, nor shall the full faith and credit of the county be pledged to the payment of the principal and interest thereof. Revenue bonds issued for the purpose of establishing and administering a loan program authorized by law may also be secured by a pledge of all or a portion of undertakings, mortgages, and other obligations held by the county as security for a loan made under the program. Each revenue bond issued under this chapter shall recite in substance that the revenue bonds and the interest thereon are payable from and secured by the revenue, or the user taxes, or combination of both, pledged to the payment thereof, of the undertaking or loan program for which the revenue bond is issued, or secured by and payable from a

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special fund to be maintained from the revenue, or user taxes, or combination of both, pledged to the special fund, and that the revenue bond is not a general or moral obligation of the county and the full faith and credit of the county are not pledged to the payment of the principal and interest.

**§49-14 Undertaking, loan program, and revenue bonds exempt from taxation.** So long as the county owns any undertaking or administers a loan program, the property and revenue of the undertaking or loan program shall be exempt from all state, county, and municipal taxation; provided that any interest in property provided or given as security for a loan made under a loan program shall not be or be deemed to be property of the county for purposes of this section. Revenue bonds issued pursuant to this chapter and the income therefrom shall be exempt from all taxation by the State or any county or other political subdivision thereof, except inheritance, transfer, and estate taxes.

**§49-15 Federal tax-exempt status; preference; protection.** Revenue bonds issued under this chapter, to the extent practicable, shall be issued so as to comply with requirements imposed by valid federal law providing that the interest on the bonds shall be excluded from gross income for federal income<sup>1</sup> purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance is authorized to enter into such agreements, establish such funds or accounts and take any action as required in order to comply with such valid federal law. Nothing in this chapter shall be deemed to prohibit the issuance of revenue bonds, the interest on which may be included in gross income for federal income tax purposes.

For the purpose of ensuring that interest on revenue bonds issued pursuant to this chapter which is excluded from gross income for federal income tax purposes (except as provided above) on the date of issuance shall continue to be so excluded<sup>1</sup> no county officer or employee or user of an undertaking or loan program shall authorize or allow any change, amendment, or modification to an undertaking or loan program financed or refinanced with the proceeds of revenue bonds which change, amendment or modification would affect the exclusion of interest on the revenue bonds from gross income for federal income tax purposes unless the change, amendment, or modification shall have received the prior approval of the director of finance. Failure to receive the approval of the director of finance shall render any change, amendment, or modification void.

**§49-16 Revenue bonds legal investments.** All public officers and bodies of the State, all political subdivisions, all insurance companies and associations, all banks, saving banks, and savings institutions, including building or savings and loan associations, all trust companies, all personal representatives, guardians, trustees, and all other persons and fiduciaries in the State who are regulated by law as to the character of their investment, may legally invest funds within their control and available for investment in revenue bonds of the county. The purpose of this section is to authorize any persons, firms, corporations, associations, political subdivisions, bodies, and officers, public or private, to use any funds owned or controlled by them, including (without prejudice to the generality of the foregoing), sinking, insurance, investment, retirement, compensation, pension, and trust funds, and funds held on deposit, for the purchase of any revenue bonds of the county.

**§49-17 Duties of the director of finance.** (a) The director of finance shall be the fiscal agent for the payment of all principal and interest, and for the transfer of revenue bonds. The director of finance may appoint other fiscal agents and transfer agents.

The director of finance shall cause to be set up in the treasury of the county suitable accounts for the deposit of all revenue of the undertaking or loan program,

and for the payment of all revenue bonds and the interest thereon and for all other payment provided or required by this chapter, and for the holding of all reserves created under this chapter.

If deemed necessary or advisable by the director of finance, the director may appoint a national or state bank or trust company within or without the State to serve as trustee for the holders of the revenue bonds and the director of finance may enter into a trust indenture or trust agreement or indenture of mortgage with the trustee. The trustee may be authorized by the county to receive and receipt for, hold and administer the proceeds of the revenue bonds and to apply the same to the purposes for which the bonds are issued, or to receive and receipt for, hold and administer all or part of the revenue derived by the county from the undertaking and to apply the revenue to the payment of the principal of and interest on the revenue bonds, or both. In the event that the trustee shall be appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the director of finance with the trustee may contain whatever covenants and provisions as may be authorized by this chapter as may be deemed necessary by the director, and any covenants or provisions so contained need not be included in a resolution or resolutions adopted under this chapter, but may be incorporated by general reference thereto in such resolution or resolutions. Any resolution or resolutions, trust indenture or trust agreement or indenture of mortgage adopted by the governing body or entered into by the director of finance pursuant to this chapter may also contain any provisions required for the qualification thereof under the United States Trust Indenture Act of 1939 or deemed necessary or desirable by the director of finance for the security and protection of the holders of the revenue bonds or to carry out the purposes of this chapter. The county may pledge and assign to the trustee all or part of the revenue of the undertaking or the loan program for the benefit of the holders of the revenue bonds.

(b) If the director of finance appoints a trustee for the holders of the revenue bonds, then notwithstanding the first sentence of subsection (a), the director of finance may elect not to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange and redemption, of the revenue bonds, or may elect to limit the functions the director shall perform as the fiscal agent. The director of finance may appoint the trustee to serve as the fiscal agent, and may authorize and empower the trustee to perform the functions with respect to the payment, purchase, registration, transfer, exchange and redemption, as the director of finance may deem necessary, advisable, or expedient, including without limitation the holding of the revenue bonds and coupons which have been paid and the supervision and conducting of the destruction thereof in accordance with law, to appoint the trustee or others as fiscal agents, paying agents, and registrars for the revenue bonds or to authorize and empower the fiscal agents, paying agents, and registrars to perform the functions referred to in subsection (a), it being the intent of this subsection to permit, the director of finance, at the director's election, not to serve as fiscal agent for the revenue bonds or to limit the functions the director shall perform as such fiscal agent, as the director may deem necessary, advisable, or expedient.

**§49-18 Investment of reserves, etc.** The director of finance may invest any money held as reserves or in sinking funds or not required for immediate disbursement, including proceeds of the revenue bonds, which in the director's judgment are in excess of the amounts necessary for the meeting of immediate requirements, in securities permitted by the resolution or resolutions and which constitute legal investments for public funds. Income derived therefrom shall be treated as revenue of the undertaking or loan program; expenses of purchase, safekeeping, sale, and redemption, and all other expenses of the undertaking or loan program. Securities

so purchased shall be considered as being deposited in the custody or control of the director of finance and shall be legally secured as required by law.

**§49-19 Bond anticipation notes.** In anticipation of the issuance under this chapter of revenue bonds theretofore authorized by the governing body for an undertaking or a loan program and of the receipt of the proceeds of the bonds, the county, with the approval of the governing body, may issue and sell revenue bond anticipation notes for the purposes for which the revenue bonds have been authorized, the maximum principal amount of which notes shall not exceed the authorized principal amount of the revenue bonds. The notes shall be payable solely from and secured by the proceeds of the sale of the revenue bonds in anticipation of which they were issued and the revenue, or the user taxes, or a combination of both, from which would be payable and by which would be secured those revenue bonds; provided that to the extent the principal of the notes is paid from moneys other than the proceeds of sale of the revenue bonds, the maximum amount of revenue bonds in anticipation of which the notes are issued that has been authorized shall be reduced by the amount of the notes paid in that manner. The issuance of the notes and the details thereof shall be governed by this chapter with respect to revenue bonds insofar as the same may apply, provided that each note, together with all renewals and extensions thereof or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note.

**§49-20 Refunding revenue bonds.** Whenever the county has any outstanding revenue bonds or general obligation bonds issued for an undertaking or loan program pursuant to section 47-4, and the governing body determines that it will be financially sound and advantageous to the county to refund the outstanding revenue bonds or general obligation bonds, the governing body shall have the power to provide for the issuance of refunding revenue bonds with which to provide for the payment of the outstanding bonds or any part thereof at or before the maturity or redemption date thereof, with the right to include various series and issues of the outstanding bonds in a single issue of refunding revenue bonds and to pay any redemption premium and interest to accrue and become payable on the outstanding bonds being refunded and to establish reserves for the refunding revenue bonds and partly for the construction or acquisition of improvements and additions to and extensions of the undertaking for the construction or acquisition of which the outstanding bonds were issued or in the case of a loan program partly to extend the loan program.

The refunding revenue bonds shall be payable solely from and secured by the revenue of the loan program or undertaking financed from the proceeds of the bonds being refunded, or the user taxes derived with respect to such undertaking, or a combination of both, and shall be a valid claim only as against that revenue, or user taxes, or combination of both. Refunding revenue bonds issued for the purpose of establishing and administering a loan program may also be secured by a pledge of all or a portion of undertakings, mortgages, and other obligations held by the department as security for a loan made under the program. The interest rate or rates of the refunding revenue bonds shall not be limited by the interest rate or rates borne by any of the revenue bonds to be refunded thereby. The refunding revenue bonds, in the discretion of the governing body, may be exchanged at par for the bonds which are being refunded or may be sold in the manner provided in this chapter for revenue bonds, as the governing body shall deem for the best interests of the county. The refunding revenue bonds may be issued and delivered at any time prior to the date of maturity or redemption date of the bonds to be refunded that the governing body determines to be in the best interest of the county. The refunding revenue bonds, except as specifically provided in this section, shall

be issued in accordance with this chapter. Pending the time the proceeds derived from the sale of refunding revenue bonds issued hereunder are required for the purposes for which they were issued, the proceeds, upon authorization or approval of the governing body, may be invested in obligations of, or obligations unconditionally guaranteed by, the United States of America or in savings accounts, time deposits or certificates of deposit of any bank or trust company within or without the State, to the extent that the savings accounts, time deposits, or certificates of deposit are collaterally secured by a pledge of obligations of, or obligations unconditionally guaranteed by, the United States of America; or in obligations of any state of the United States of America or any agency, instrumentality or local government of any state, the provision for payment of the principal of and interest on which shall have irrevocably been made by deposit of obligations of, or obligations unconditionally guaranteed by, the United States of America, and to further secure the refunding revenue bonds, or the revenue bonds being refunded, or both, the county may enter into a contract with any bank or trust company, within or without the State, with respect to the safekeeping and application of the proceeds of the refunding revenue bonds, and the safekeeping and application of the earnings of the investment. All bonds so refunded and redeemed by the issue and sale or issue and exchange of refunding revenue bonds shall be canceled.

Nothing in this section shall require or be deemed to require the county to elect to redeem or prepay bonds being refunded, or to redeem or prepay revenue bonds being refunded which were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any proceedings authorizing the issuance thereof, or, in the event the county elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates. The determination of the county with respect to the financial soundness and advantage of the issuance and delivery of refunding revenue bonds authorized hereby when approved by the governing body shall be conclusive, but nothing in this section shall require the holders of any outstanding revenue bonds being refunded to accept payment thereof otherwise than as provided in the revenue bonds to be refunded.

**§49-21 General laws applicable.** The provisions of part III of chapter 47, relating to lost, stolen, destroyed, or defaced bonds, and to lost, stolen, destroyed, or defaced coupons, to the extent that they are applicable, shall apply to revenue bonds issued pursuant to this chapter.

**§49-22 Consent of another county.** No county shall construct an undertaking or administer a loan program wholly or partly within the corporate limits of another county except with the consent of the governing body of the other county.

**§49-23 Consent of state agencies.** It shall not be necessary for any county proceeding under this chapter to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other like instrumentality of the State in order to acquire, construct, purchase, reconstruct, improve, better, extend, maintain, and operate an undertaking or undertake the establishment of loan programs, but the powers and duties of the bureau, board, commission, or instrumentality shall continue as heretofore.

**§49-24 Validation of proceedings.** All proceedings heretofore taken with respect to the contracting of revenue bonded indebtedness and the issuance, sale, execution, and delivery of revenue bonds by or on behalf of the county, are hereby validated, ratified, approved and confirmed, notwithstanding any defects or irregularities in any of those proceedings or in the issuance, execution, sale, or delivery,

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and the bonds so issued or to be issued are and shall be binding, legal, valid, and enforceable obligations of the county.

**§49-25 Construction of chapter.** The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law or charter. The undertaking may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and the loan program may be established, and revenue bonds may be issued under this chapter for those purposes, notwithstanding that any other law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like undertaking, or the establishment of a like loan program, or the issuance of revenue bonds for like purposes, and without regard to the requirements, restrictions, limitations, or other provisions contained in any other law or charter, including, but not limited to, any requirement for the approval by the voters of any county. Revenue bonds may be issued under this chapter notwithstanding any debt or other limitation prescribed by any law or charter and without obtaining the consent of any commission, board, bureau, agency, or department of the State, and without any other proceeding or happening of any other condition or thing than those proceedings, conditions, or things which are specifically required by this chapter, and the mode and method of procedure for the issuance of revenue bonds under this chapter need not conform to the provisions of any other law or charter. The authorization, issuance and validity of revenue bonds under this chapter shall not be dependent on or affected in any way by proceedings taken, contracts made, acts performed or done in connection with, or in furtherance of any undertaking or loan program by the county authorizing and issuing the revenue bonds, or by the validity of any such proceedings, contracts or acts, nor shall the authorization, issuance and validity of bonds issued under this chapter be dependent in any way upon the due adoption or enactment of any capital program or capital budget ordinance or resolution or upon the continued effectiveness of any appropriation made in any capital budget ordinance or resolution; provided that nothing in this section shall be deemed to permit the application of the proceeds of such bonds to appropriations which have lapsed pursuant to the provisions of law or of a charter. Insofar as the provisions of any other law or charter conflicts with this chapter, this chapter shall be controlling."

**SECTION 4.** Chapter 47, Hawaii Revised Statutes, is repealed.

**SECTION 5.** Chapter 49, Hawaii Revised Statutes, is repealed.

**SECTION 6.** The provisions of this Act shall control over any and all acts passed by the legislature during this Regular Session of 1989, whether enacted before or after the effective date of this Act, unless such acts shall specifically provide that this Act is being amended.

**SECTION 7.** This Act shall take effect upon its approval.

(Approved May 12, 1989.)

### **Note**

1. So in original.

**ACT 81**

H.B. NO. 161

A Bill for an Act Relating to Professional Corporations.

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

SECTION 1. Section 415A-2, Hawaii Revised Statutes, is amended by amending the definition of "professional service" to read as follows:

"Professional service" means any service which lawfully may be rendered only by persons licensed under chapters 442, 448, 453, 455, 459, 460, 461, 465, 466, 471, 554-2, and 605 and may not lawfully be rendered by a corporation organized under the Hawaii Business Corporation Act, chapter 415."

SECTION 2. New statutory material is underscored.

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

(Approved May 12, 1989.)

**ACT 82**

H.B. NO. 401

A Bill for an Act Relating to the Department of the Attorney General.

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

SECTION 1. Chapter 28, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§28- Special assistant to the attorney general; appointment and duties; secretary.** The attorney general may appoint, and at the attorney general's pleasure dismiss, a special assistant to the attorney general who shall generally assist the attorney general, as the attorney general may require, in the initiation, direction, or monitoring of administrative or managerial special projects that the attorney general has determined to be necessary. In addition, the special assistant shall, as the attorney general may direct, serve as the attorney general's representative to, and monitor and apprise the attorney general of the activities of, the various national, regional, state, and local organizations and committees in which the attorney general has membership, participation, or interest. The special assistant to the attorney general shall be appointed without regard to chapters 76 and 77, need not be an attorney, and shall hold no other public or private office or employment. Section 26-53 shall not be applicable to the special assistant to the attorney general. The attorney general may also appoint, without regard to chapters 76 and 77, one secretary for the special assistant to the attorney general."

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

SECTION 3. This Act shall take effect on July 1, 1989.

(Approved May 15, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 83

### ACT 83

S.B. NO. 905

A Bill for an Act Relating to Motor Vehicle Insurance.

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

SECTION 1. Section 431:10C-307, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10C-307 [Rights of subrogation.] Reimbursement of duplicate benefits.** Whenever any person effects a tort liability recovery for accidental harm, whether by suit or settlement, which duplicates no-fault benefits already paid under the provisions of this article, the no-fault insurer shall be [subrogated to] reimbursed fifty per cent of the no-fault benefits[,] by such person receiving the duplicate benefits, up to the maximum limit specified by section 431:10C-103(6)[, paid to such person].”

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

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

(Approved May 17, 1989.)

### ACT 84

H.B. NO. 942

A Bill for an Act Relating to Examinations.

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

SECTION 1. Section 455-7, Hawaii Revised Statutes, is amended to read as follows:

**“§455-7 Examinations.** The board shall conduct examinations not less than twice in each year on subjects as the board may require. If the applicant receives a converted score of seventy-five on each part of the [entire] examination, the applicant shall be considered as having passed the examination. The board shall contract with a professional testing agency to prepare, administer, and grade examinations for licensure. Each applicant shall pass a written examination that has been developed, validated, and tested for reliability by a professional testing agency selected by the board that is able to demonstrate the validity and reliability of the examination. The board shall provide in its rules the passing scores for any examination given or approved by the board.”

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

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

(Approved May 17, 1989.)

## ACT 85

H.B. NO. 943

A Bill for an Act Relating to Naturopath.

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

SECTION 1. Section 455-9, Hawaii Revised Statutes, is amended to read as follows:

**“§455-9 Penalty.** Any person except a licensed naturopathic physician who practices, [or] attempts to practice, or advertises the practice of naturopathy, or any person who buys, sells, or fraudulently obtains any diploma or license to practice naturopathy whether recorded or not, or any person who uses the title “natureopath”, “naturopath”, or “N.D.”, or any word or title to induce the belief that the person is engaged in the practice of naturopathy without complying with this chapter, or any person who violates this chapter, shall be fined a sum of not less than \$500 nor more than \$10,000 for each violation, which sum shall be collected in a civil action brought by the attorney general or the department on behalf of the State.”

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

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

(Approved May 17, 1989.)

## ACT 86

H.B. NO. 1015

A Bill for an Act Relating to State Bonds.

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

SECTION 1. Section 39-33, Hawaii Revised Statutes, is amended to read as follows:

**“§39-33 Method of issuance and payment.** A claimant for issuance of a new bond or for payment shall make written application, under oath, in such form as the director of finance shall prescribe, stating facts definitively identifying the bonds or coupons and showing the loss, whole or partial destruction, defacement, or theft of the same, and the ownership of the same by the person applying, and shall present further evidence as the director of finance may reasonably require to establish the identity of the bonds or coupons, their loss, whole or partial destruction, defacement, or theft, and the ownership of the same by the claimant.

The director of finance shall not provide for the issuance of a replacement for or the payment of the lost, stolen, wholly or partially destroyed, or defaced bond, coupon, or both, as the case may be, unless the claimant shall have executed and delivered to the director of finance a legal and sufficient surety bond or other form of surety acceptable to the director of finance in an amount equal to the loss which may be suffered by the State, any transfer agent, paying agent, or registrar by reason of issuing replacements or making payments mentioned in this section. Any surety bond or other form of surety acceptable to the director of finance shall be in the form and with sufficient surety or sureties as shall be satisfactory to the director of finance, and shall be conditioned to indemnify and save harmless the State, any transfer agent, paying agent, or registrar from any and all loss on account

## **ACT 87**

of the bond, coupon, or both, as the case may be, so claimed to have been lost, stolen, wholly or partially destroyed, or defaced. The duration of the surety bond or other form of surety acceptable to the director of finance shall be not less than the date upon which the bond, coupon, or both, as the case may be, being replaced or paid, become due and payable, plus the period of the statute of limitations applicable to bonds and coupons. In the case of a partially destroyed or defaced bond, coupon, or both, as the case may be, the claimant shall surrender the partially destroyed or defaced bond, coupon, or both, as the case may be, at the time of delivery of the replacement."

**SECTION 2.** New statutory material is underscored.

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

(Approved May 17, 1989.)

## **ACT 87**

H.B. NO. 1205

A Bill for an Act Relating to Chicken Eggs.

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

**SECTION 1.** Section 147-76, Hawaii Revised Statutes, is amended to read as follows:

**"§147-76 Advertisement of eggs and price.** It shall be unlawful to advertise in newspaper or by sign, handbill, placard, or otherwise, the price at which eggs are offered for sale without plainly indicating in conjunction with price, the full and correct designation of grade, size of the eggs according to the standards in this chapter, of geographic origin of eggs, and of shell treatment if applicable. The designations shall be in [bold face type] a typeface or other conspicuous letters [which shall be at least one-half the size of the letters or figures used to designate the price of eggs.] as provided in the rules of the department of agriculture."

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

**SECTION 3.** This Act shall take effect on April 1, 1990 or when appropriate rules have been adopted by the department of agriculture, whichever comes sooner.

(Approved May 17, 1989.)

## **ACT 88**

S.B. NO. 38

A Bill for an Act Relating to Elections.

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

**SECTION 1.** The purpose of this Act is to delete from the law on election frauds a phrase that has been held unconstitutionally vague by the Hawaii supreme court in State of Hawaii v. Albano, 67 Haw. 398, 688 P.2d 1152 (1984).

**SECTION 2.** Section 19-3, Hawaii Revised Statutes, is amended to read as follows:

**“§19-3 Election frauds.** The following persons shall be deemed guilty of an election fraud:

- (1) Every person who, directly or indirectly, personally or through another, gives, procures, or lends, or agrees or offers to give, procure, or lend, or who endeavors to procure, any money or office or place of employment or valuable consideration to or for any elector, or to or for any person for an elector, or to or for any person in order to induce any elector to vote or refrain from voting, or to vote or refrain from voting for any particular person or party, or who does any such act on account of any person having voted or refrained from voting for any particular person at any election[.];
- (2) Every person who advances or pays, or causes to be paid, any money to, or to the use of, any other person, with the intent that the money, or any part thereof, shall be expended in bribery at any election, or for any purpose connected with or incidental to any election; or who knowingly pays or causes to be paid any money to any person in the discharge or repayment of any money wholly or partly expended in bribery at any election, or for any purpose connected with or incidental to any election[.];
- (3) Every elector who, before, during or after any election, directly or indirectly, personally or through another, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place, or employment for oneself or any other person for voting or agreeing to vote, or for refraining to vote or agreeing to refrain from voting, or for voting or refraining to vote for any particular person or party[.];
- (4) Every person who, directly or indirectly, personally or through another, makes use of, or threatens to make use of, any force, violence, or restraint; or inflicts or threatens to inflict any injury, damage, or loss in any manner, or in any way practices intimidation upon or against any person in order to induce or compel the person to vote or refrain from voting, or to vote or refrain from voting for any particular person or party, at any election, or on account of the person having voted or refrained from voting, or voted or refrained from voting for any particular person or party; or who by abduction, distress, or any device or contrivance impedes, prevents, or otherwise interferes with the free exercise of the elective franchise[.];
- (5) Every person who, at any election, votes or attempts to vote in the name of any other person, living or dead, or in some fictitious name, or who, having once voted, votes or attempts to vote again, or knowingly gives or attempts to give more than one ballot for the same office at one time of voting[.];
- (6) Every person who, before or during an election, knowingly publishes a false statement of the withdrawal of any candidate at the election[.];
- (7) Every person who induces or procures any person to withdraw from being a candidate at an election in consideration of any payment or gift or valuable consideration; or of any threat; and every candidate who withdraws from being a candidate in pursuance of such inducement or procurement[.];
- (8) Every public officer by law required to do or perform any act or thing with reference to any of the provisions in any law concerning elections [contained,] who wilfully fails, neglects, or refuses to do or perform the same, [or who wilfully performs it in such a way as to hinder the objects thereof,] or who is guilty of any wilful violation of any of the provisions thereof[.]; and

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- (9) Any person wilfully tampering or attempting to tamper with, disarrange, deface, or impair in any manner whatsoever, or destroy any voting machine while the same is in use at any election, or who, after the machine is locked in order to preserve the registration or record of any election made by the same, tampers or attempts to tamper with any voting machine."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved May 19, 1989.)

## ACT 89

S.B. NO. 101

A Bill for an Act Relating to Fumigation.

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

SECTION 1. Chapter 450, Hawaii Revised Statutes, is repealed.

SECTION 2. Section 92-28, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

(Approved May 19, 1989.)

## ACT 90

S.B. NO. 255

A Bill for an Act Relating to Real Estate Collection Servicing Agents.

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

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

**“§26H-4 Repeal dates.** (a) The following chapters are hereby repealed effective December 31, 1989:

- (1) Chapter 444 (Contractors License Board)
- (2) Chapter 448E (Board of Electricians and Plumbers)
- (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)
- (4) Chapter 466 (Board of Public Accountancy)
- (5) Chapter 467 (Real Estate Commission)
- (6) Chapter 439 (Board of Cosmetology)
- (7) Chapter 454 (Mortgage Brokers and Solicitors)
- [ (8) Chapter 454D (Mortgage and Collection Servicing Agents)]

(b) The following chapter and sections are hereby repealed effective December 31, 1990:

- (1) Chapter 466J (Board of Radiologic Technology)
- (2) Sections 321-13 to 321-15 (midwives, laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, tattoo artists, electrologists, and sanitarians)

(c) The following chapters are hereby repealed effective December 31, 1991:

- (1) Chapter 447 (Dental Hygienists)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 457 (Board of Nursing)
- (4) Chapter 458 (Board of Dispensing Opticians)
- (5) Chapter 460J (Pest Control Board)
- (6) Chapter 462A (Pilotage)
- (7) Chapter 438 (Board of Barbers)
- (8) Chapter 468K (Travel Agencies)

(d) The following chapters are hereby repealed effective December 31, 1992:

- (1) Chapter 448H (Elevator Mechanics Licensing Board)
- (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- (3) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- (4) Chapter 460 (Board of Osteopathic Examiners)
- (5) Chapter 461 (Board of Pharmacy)
- (6) Chapter 461J (Board of Physical Therapy)
- (7) Chapter 463E (Podiatry)

(e) The following chapters are hereby repealed effective December 31, 1993:

- (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
- (2) Chapter 437B (Motor Vehicle Repair Industry Board)
- (3) Chapter 440 (Boxing Commission)
- (4) Chapter 446 (Debt Adjusters)
- (5) Chapter 436E (Board of Acupuncture)

(f) The following sections are hereby repealed effective December 31, 1993:

- (1) Sections 445-21 to 38 (Auctions)
- (2) Sections 445-131 to 136 (Pawnbrokers)
- (3) Sections 445-171 to 172 (Secondhand Dealers)

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- (4) Sections 445-231 to 235 (Scrap Dealers)
- (g) The following chapters are hereby repealed effective December 31, 1994:
  - (1) Chapter 441 (Cemetery and Funeral Trusts)
  - (2) Chapter 443B (Collection Agencies)
  - (3) Chapter 452 (Board of Massage)
  - (4) Chapter 455 (Board of Examiners in Naturopathy)
  - (5) Chapter 459 (Board of Examiners in Optometry)
  - (6) Chapter 442 (Board of Chiropractic Examiners)
  - (7) Chapter 373 (Commercial Employment Agencies)
  - (8) Chapter 448 (Board of Dental Examiners)
  - (9) Chapter 465 (Board of Psychology)
- (10) Chapter 468E (Speech Pathology and Audiology)

(h) The following chapter is hereby repealed effective December 31, 1995:

- (1) Chapter 454D (Real Estate Collection Servicing Agents)

[[(h)] (i) The following chapters are hereby repealed effective December 31, 1997:

- (1) Chapter 463 (Board of Private Detectives and Guards)
- (2) Chapter 471 (Board of Veterinary Examiners)."

SECTION 2. Chapter 454D, Hawaii Revised Statutes, is amended as follows:

1. By amending the title to read:

### **"[MORTGAGE AND] REAL ESTATE COLLECTION SERVICING AGENTS"**

2. By amending section 454D-1 to read:

**"[§]454D-1[] Definitions.** As used in this chapter:

[(1)] "Person" includes an individual, partnership, joint venture, corporation, association, business, trust, or any organized group of persons, or any combination thereof.

[(2) A person shall be deemed to engage in the business of a "mortgage servicing agent" or "collection servicing agent" if the person] "Real estate collection servicing agent" means a person who by oneself or through others offers to undertake or holds oneself out as being able to undertake or does undertake to collect for another person the amounts due under any agreement which provides for installment payments and which is secured by an interest in real property, including without limitation mortgage loans and agreements of sale, whether or not such real estate collection servicing agent receives any compensation or other consideration for the agent's services. When referred to collectively in this chapter, such persons shall be called "servicing agents".

[(3)] "Installment payments" shall be deemed to include principal and interest and any expenses due in connection with the real property securing such agreement, including without limitation real property taxes, lease rent, insurance premiums, maintenance fees, and similar expenses."

3. By amending section 454D-2 to read:

**"§454D-2 Exemptions.** This chapter shall not apply to the following persons:

- (1) Real estate brokers and salesmen licensed under chapter 467 and residing in the State who provide collection and mortgage services where the services are limited to those incident to a particular real estate transaction, or where the broker, or the salesman's broker, has an errors and commissions insurance policy in effect which has, as part of the insurance policy, coverage for activities relating to collection and mortgage services and where a copy of the insurance policy is filed annually with the department of commerce and consumer affairs;
  - (2) Banks, collection agencies, credit unions, escrow depositories, industrial loan companies, savings and loan associations, and trust companies authorized to do business in the State;
  - (3) [A financial institution which services only Federal Housing Administration and Veterans Administration loans and has been approved as a lender by the United States Department of Housing and Urban Development; provided that the financial institution files annually with the department of commerce and consumer affairs certification that it is still an approved lender by the United States Department of Housing and Urban Development and continues to service only Federal Housing Administration and Veterans Administration loans;] Any financial institution which is an approved lender for programs administered by the United States Department of Housing and Urban Development; provided that the financial institution files annually with the department of commerce and consumer affairs satisfactory proof of that status;
  - (4) Persons performing the services normally rendered by servicing agents under order of any court; and
  - (5) Persons performing the services normally rendered by servicing agents, but with respect to fewer than five agreements at any one time that would otherwise come within the purview of this chapter."
4. By amending section 454D-2.5 to read:

**"[§454D-2.5] Powers and duties of the director of commerce and consumer affairs.** In addition to any other powers and duties granted by this chapter, the director of commerce and consumer affairs shall:

- (1) Register [mortgage and] real estate collection servicing agents pursuant to this chapter;
  - (2) Enforce this chapter and rules adopted pursuant thereto;
  - (3) Investigate the actions of any person acting in the capacity of a [mortgage and] real estate collection servicing agent if there is reason to believe that there may be a violation of this chapter or the rules adopted pursuant thereto;
  - (4) Fine, suspend, or revoke a registration for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant registration for any cause which would be grounds for suspension or revocation of the registration;
  - (5) Apply to a court having competent jurisdiction for an injunction to restrain any violation of this chapter; and
  - (6) Establish registration and biennial renewal fees for [mortgage and] real estate collection servicing agents."
5. By amending section 454D-5 to read:

**"[§454D-5] Trust accounts, records.** (a) Every servicing agent shall maintain a separate trust account in a federally insured depository institution for funds collected in behalf of its customers, and shall keep at its principal office in this State or office of its agent located in this State permanent records of all of its

## ACT 91

receipts and disbursements for each customer. Such records shall be kept, as to each installment payment agreement, for a period of at least six years following the last installment payment collected pursuant to such agreement.

(b) Every servicing agent shall provide to each buyer and seller a written statement of all the amounts received and disbursed, together with any remaining balances annually and upon satisfaction of the agreement of sale."

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

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

(Approved May 19, 1989.)

## ACT 91

S.B. NO. 567

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431:1-204, Hawaii Revised Statutes, is amended to read as follows:

**“§431:1-204 Life insurance defined.** Life insurance is insurance on human lives and insurance appertaining thereto or connected therewith. For the purposes of this code the transacting of life insurance includes the granting of annuities and endowment benefits[;], except for annuities which are provided by a nonprofit educational foundation for a public educational institution under a charitable gift annuity agreement with a donor, provided that the charitable gift annuity is purchased by the nonprofit educational foundation from an insurer authorized by the State to offer life insurance; additional benefits in event of death or dismemberment by accident or accidental means; additional benefits in event of total and permanent disability of the insured; and optional modes of settlement of proceeds.

For purposes of this section, “charitable gift annuity agreement” means a contract under which an individual transfers property to a charity, conditioned upon the right to receive a specific sum of money for life.”

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

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

(Approved May 19, 1989.)

## ACT 92

S.B. NO. 627

A Bill for an Act Relating to Meat Inspection.

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

SECTION 1. Section 159-15, Hawaii Revised Statutes, is amended to read as follows:

**“§159-15 Bonding.** Upon a person being granted a license to slaughter animals for the purpose of using the meat or meat products thereof in intrastate

commerce, the board shall exact from the licensee a bond, or other form of surety acceptable to the board or an appropriate agent, officer, or employee designated by the board, in the penal sum of \$5,000, the bond or other form of surety to be obtained from a surety company or financial institution authorized to do business in the State and to be so conditioned that the licensee shall be required to keep a full and accurate record concerning every animal which the licensee may purchase, kill, or sell; and that the licensee will at all times during regular business hours keep the record open for the inspection by representatives of the board who may desire to examine the same. The record shall contain:

- (1) The sex of the animal.
- (2) A full description of each and every brand on the animal, stating the position of each brand on the animal. If any of the described brands on the animal appear to be obliterated, as described in section 142-47, or to be felonious, as described in section 142-48, the person shall make a report of the obliterated or felonious brand to the appropriate law enforcement agency pursuant to rules adopted by the department of agriculture.
- (3) Ear tag number or other mark of identification.
- (4) The principal color of the animal.
- (5) The name of the person who sold the animal to the licensee.
- (6) The date when the animal was sold to the licensee.
- (7) The date when the animal was delivered to the licensee.
- (8) The date when the animal was killed."

**SECTION 2.** New statutory material is underscored.

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

(Approved May 19, 1989.)

**ACT 93**

S.B. NO. 418

A Bill for an Act Relating to Financial Planners.

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

**SECTION 1.** Section 485-14, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) Investment adviser's approval; bond, insurance required. If the commissioner finds that the applicant for registration as an investment adviser is eligible for such registration, the commissioner shall register the investment adviser upon a payment of a fee hereinafter provided and upon [such] the investment adviser filing a bond in the sum of \$50,000 with the State as the obligee. The bond requirement shall be \$5,000 if the adviser does not have custody of or discretionary authority over client money, securities, or other assets. The bond shall be conditioned upon the faithful compliance with this chapter by the investment adviser. The bond shall be executed as a surety by a surety company authorized to do business in the State[,]; provided that in lieu of the above bond any investment adviser may deposit and keep deposited with the commissioner cash in the applicable amount of \$50,000 or \$5,000 or securities to be approved by the commissioner having a market value at all times of not less than \$50,000 or \$5,000 which cash or securities shall be held in trust for the fulfilling of the same terms and conditions as in the case of a bond required by this section, which cash or securities may be

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withdrawn at any time subject to the deposit in lieu thereof of cash or other securities of equal value, or upon the filing of a bond as provided in this section, and which cash or securities will be so held in trust for a period of two years beyond the revocation or termination of the registration of the investment adviser depositing the same. In addition, the investment adviser shall file with the commissioner a certificate of insurance which indicates that such investment adviser's business is insured for errors and omissions for at least \$100,000 per occurrence with a \$200,000 aggregate for those with less than two years experience and a \$500,000 aggregate for those with two or more years of experience for the protection of the investment adviser's client[.], or shall meet an alternative requirement which also provides for the protection of the client of the investment advisor, as determined by rules adopted by the commissioner."

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

SECTION 3. This Act shall take effect on July 1, 1989.

(Approved May 19, 1989.)

## ACT 94

S.B. NO. 646

A Bill for an Act Relating to the Public Employees Health Fund.

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

SECTION 1. Section 87-22, Hawaii Revised Statutes, is amended to read as follows:

**"§87-22 Determine health benefits plan; contract with carriers.** The board of trustees shall determine the health benefits plan, which shall be excepted from the minimum group requirements of chapter 431. The health benefits plan shall provide, pay for, arrange for, or reimburse the cost of hospitalization, surgery, medical, dental treatment, and care, and may include prescribed drugs, medicines, prosthetic appliances, hospital in-patient and out-patient service benefits, vision treatment and care, medical, and dental indemnity benefits.

The board may contract for the following health benefits plans; provided that benefits provided under any respective plan shall be equally available to all employee-beneficiaries and dependent-beneficiaries selecting the plan regardless of age, as provided for below:

- (1) A statewide indemnity benefit plan under which a carrier agrees to pay certain sums of money not in excess of the actual expenses incurred for health services.
- (2) A statewide service benefit plan under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services, or, under certain conditions, payment is made by a carrier to an employee-beneficiary.
- (3) Health maintenance organization plans which provide or arrange health services for members on a prepaid basis, with professional services provided by physicians practicing individually or as a group in a common center or centers.
- (4) [A plan] Plans to offer dental benefits through [either] a statewide indemnity plan, a statewide service benefit plan, [or health] dental maintenance organization plans[.], or combinations thereof.

- (5) [A plan] Plans to offer prescription drug benefits through [either] a statewide indemnity plan, a statewide service benefit plan, health maintenance organization plans, or [a combination] combinations thereof.
- (6) [A plan] Plans to offer vision care benefits through [either] a statewide indemnity plan, a statewide service benefit plan, health maintenance organization plans, or [a combination] combinations thereof.
- (7) A noninsured schedule of benefits similar to any of the schedule of benefits set forth in the health [benefit] benefits plans authorized in paragraphs (1) to (6)."

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

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

(Approved May 19, 1989.)

## ACT 95

S.B. NO. 662

A Bill for an Act Relating to Tuberculosis.

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

SECTION 1. Section 325-71, Hawaii Revised Statutes, is amended to read as follows:

**"§325-71 Reports by physicians and others.** (a) Every physician, and every individual in charge of an inpatient or outpatient health care facility, shall report in writing to the department of health [the name, age, sex, nationality, occupation, place where last employed, if known, and address of] the identity of and epidemiologic information concerning every person known or suspected [by the physician] to have tuberculosis[, to the department of health or its nearest agent, within twenty-four hours after the fact comes to the knowledge of the physician,] and shall, upon request, provide to the department x-ray films and medical information from the record of any person known or suspected by the department to have tuberculosis. [The superintendent in charge of any hospital, dispensary, asylum, or other similar private or public institution shall report in like manner the name, age, sex, nationality, occupation, place where last employed, if known, and previous address of every patient having tuberculosis who comes into the superintendent's care or under the superintendent's observation, within twenty-four hours thereafter, and shall, upon request provide to the department x-ray films and medical information from the record of any person suspected by the department to have tuberculosis.]

(b) Every director of a laboratory identifying mycobacterium tuberculosis [from] or organisms which may be mycobacterium tuberculosis in the sputum, body fluids, or tissues of any person, living or dead, shall submit a report of such examination in writing to the department of health.

(c) Release of information to the department of health pursuant to this section may be made without the prior informed consent of the individual to whom the information pertains.

(d) A report made by one of the above charged individuals does not absolve the others from their individual reporting responsibilities.

(e) The director of health may adopt rules pursuant to chapter 91 necessary for the purposes of this part."

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

SECTION 3. This Act shall take effect January 1, 1990.

(Approved May 19, 1989.)

## ACT 96

S.B. NO. 672

A Bill for an Act Relating to Hunting.

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

SECTION 1. Section 183D-22, Hawaii Revised Statutes, is amended to read as follows:

**"§183D-22 Application and issuance of licenses; fees.** (a) [Hunting licensess] A hunting license shall be issued to a person by [agents] an agent of the department upon [written]:

- (1) Written application in the form prescribed by the department [and the payment];
- (2) Payment of a hunting license fee or any other hunting related fee the board may require as provided in this chapter[.]; and
- (3) Showing of a valid hunter education certificate or written exemption issued under section 183D-28.

The application shall require a statement under oath of the applicant's name, address, domicile or residence, length of residence in the State, age, race, height, weight, and color of hair and eyes.

(b) The hunting license fee shall be:

- (1) \$10 for any person who has resided in the State for one year or longer, or who is a member of the armed forces of the United States on active duty and the spouse and children thereof;
- (2) \$20 for all other persons; and
- (3) Free to all persons sixty-five years of age or older."

SECTION 2. Section 183D-28, Hawaii Revised Statutes, is amended to read as follows:

**"§183D-28 Hunter [safety training] education program.** (a) The department shall establish a hunter [safety training] education program to provide instruction in hunter safety, principles of conservation, and sportsmanship. No person shall be eligible for a hunting license unless the person possesses a valid hunter education certificate issued under this section or is exempted from completing the hunter education program as provided under this section.

(b) Successful completion of the hunter education program shall be mandatory for any person who is:

- (1) Born after December 31, 1971, unless that person meets the requirements of subsection (c)(2); or
- (2) Born before January 1, 1972, but who has never been issued a hunting license in the State, unless that person meets the requirements of subsection (c)(2).

Upon successful completion of the program, the department shall issue to the person a hunter education certificate which shall be valid for the life of the person.

(c) The following persons shall not be required to successfully complete the hunter education program provided they meet at least one of the following requirements:

- (1) A person born before January 1, 1972 and who at one time possessed a hunting license issued by the State; provided that the person shows satisfactory proof to the department that the person had possessed the hunting license; and
- (2) A person who has successfully completed a hunter education or safety course in another state or any hunter education or safety program approved by the North American Association of Hunter Safety Coordinators; provided that the person shows satisfactory proof to the department of successful completion of the course or program.

Upon application and satisfaction of the requirements of either subsection (c)(1) or (c)(2), the department shall issue an exemption which shall be in written form and be valid for the life of the person.

(d) The department may establish a hunter [safety] education officer position to administer the program, outline all phases of instruction, conduct general supervision of individual programs, and distribute information on the program, or may contract the program to a qualified organization.

[(b)] (e) The department may construct, operate, and maintain public outdoor and indoor target ranges for the program.

[(c)] (f) The department shall prepare reports as may be necessary to seek approval under Public Law 91-503 for federal assistance in this program of hunter safety, conservation, and sportsmanship."

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

SECTION 4. This Act shall take effect on July 1, 1990.

(Approved May 19, 1989.)

## ACT 97

S.B. NO. 849

A Bill for an Act Relating to Kalaupapa.

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

SECTION 1. Section 326-35, Hawaii Revised Statutes, is amended to read as follows:

**"§326-35 Sheriff, appointment, removal.** There shall be no county officer in the county other than a sheriff, who shall be a patient resident of and be appointed in the county by the department of health and who shall hold office at the pleasure of the department or until a successor is appointed by the department. When a qualified patient resident is not available, the department may appoint a staff employee or other qualified person to serve as sheriff [on a noncompensated basis]."

SECTION 2. Section 326-36, Hawaii Revised Statutes, is amended to read as follows:

**"§326-36 Sheriff, salary.** The salary of the sheriff [who is a patient resident] shall be fixed and paid by the department of health out of the appropriation allowed by the legislature for the care and treatment of persons affected with Hansen's disease."

SECTION 3. Statutory material to be repealed is bracketed.

## **ACT 98**

SECTION 4. This Act shall take effect on July 1, 1989.

(Approved May 19, 1989.)

## **ACT 98**

S.B. NO. 886

A Bill for an Act Relating to the First Assistant or First Deputy to the Auditor.

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

SECTION 1. Chapter 23, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§23- Acting auditor.** In the event that the auditor dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the first assistant or first deputy to the auditor shall become the acting auditor until an auditor is appointed pursuant to Article VII, section 10 of the Constitution of the State of Hawaii. The acting auditor shall have all of the powers and duties of the auditor.”

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

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

(Approved May 19, 1989.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 99**

S.B. NO. 1554

A Bill for an Act Relating to the Public Employees Health Fund.

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

SECTION 1. Section 87-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding any other law to the contrary, the beneficiary of an employee who is killed in the performance of [his] duty, an employee-beneficiary who retired after June 30, 1984 due to a disability as defined in sections 88-77, 88-79, and 88-285, an employee-beneficiary who retired before July 1, 1984, an employee-beneficiary who retired after June 30, 1984, and who had ten years or more of credited service, excluding sick leave, or upon his death his beneficiary, including employees who retired prior to the establishing of the fund and their beneficiaries, or the beneficiary of any employee-beneficiary, as described in section 87-1(6) shall not be required to make any contribution to the fund. The monthly contribution of the persons identified in this subsection shall be financed by the State through the department of budget and finance and the several counties through their respective departments of finance for each of their respective employee-beneficiaries.”

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

SECTION 3. This Act shall take effect on July 1, 1989.

(Approved May 19, 1989.)

## ACT 100

S.B. NO. 1812

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

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

SECTION 1. Section 88-59, Hawaii Revised Statutes, is amended to read as follows:

**"§88-59 Acquisition of credit for previous service.** Under such rules [and regulations] as the board of trustees may adopt, any member may file with the board a statement of all service as an employee or other service paid for by the State or a county rendered prior to the member's last becoming a member which is not otherwise credited to the member, for which the member claims prior service credit, and also a statement of such services for which the member claims membership service credit and for which the member agrees to have additional deductions made from the member's compensation or to make a lump sum payment as hereinafter described.

After the filing of the statement, the board shall verify the service therein claimed and determine the service credit allowable therefor. Verified prior service shall be credited forthwith. Verified membership service shall be paid for by the member in any one of the following methods, at the member's option:

- (1) By deductions from the member's compensation of twice the contribution rate provided for in section 88-45 over a period equal to the period for which membership service credit is allowable; [or]
- (2) By deductions from the member's compensation of one and one-half times the contribution rate provided for in section 88-45 over a period equal to twice the period for which membership service credit is allowable; or
- (3) By lump sum payment of contributions computed at the contribution rate provided for in section 88-45 applied to the member's monthly rate of compensation at the time of payment multiplied by the number of months for which membership service credit is allowable; provided that after July 1, 1982, this method shall not be available to any new member with [less] fewer than five years of membership service exclusive of any previous service acquired under the provisions of paragraphs (1) and (2).

The deductions from compensation or lump sum payment shall be paid to the system and shall be credited to the member's individual account and become part of the member's accumulated contributions.

Membership service credit in addition to any other service credited to the member shall be allowed the member for the period for which the deductions from compensation or lump sum payment have been made as hereinabove described.

[No post retirement contributions shall be required for any service being claimed which is prior to July 1, 1961.]

The contribution rates provided for in section 88-45 shall be reduced by one and eight-tenths per cent for any service being claimed that was rendered prior to July 1, 1961.

Any member of the legislature who reenrolls as an active member in accordance with section 88-62 and who desires to obtain membership service for a

## ACT 100

period of service as a member of the legislature during which the member received a retirement allowance shall, in addition to complying with the provisions of this section, refund while a reenrolled active member the retirement allowance received during the period of [a] legislative service.”

SECTION 2. Section 88-96, Hawaii Revised Statutes, is amended to read as follows:

**“§88-96 Rights of members separated from service.** (a) Any member who ceases to be an employee and who has [less] fewer than five years of credited service shall, upon application to the board of trustees, be paid all of the member's accumulated contributions and the member's membership shall thereupon terminate, provided that interest shall not be credited to an individual's account nor shall the membership continue after the fourth full year following the calendar year in which the member's employment terminates, after which time the system, as soon thereafter as possible, shall return the member's contributions; provided that any such member shall not be paid the member's accumulated contributions:

- (1) If the member becomes an employee again within fifteen calendar days from the date the member ceased to be an employee; or
- (2) If, at the time the application for return of accumulated contributions is received by the board of trustees, the member has become an employee again.

(b) Any member having five or more years of credited service who ceases to be an employee shall, upon application to the board of trustees, be paid all of the member's accumulated contributions; provided that any such member shall not be paid the member's accumulated contributions:

- (1) If the member becomes an employee again within fifteen calendar days from the date the member ceased to be an employee; or
- (2) If, at the time the application for return of accumulated contributions is received by the board of trustees, the member has become an employee again.

If the contributions are not withdrawn by the member within four calendar years following the calendar year in which the member's employment terminates, the member shall be deemed to have established vested benefit status and shall be eligible for the service retirement benefit in effect at the time of the member's separation from service, payable in accordance with the provisions thereto and the contributions shall not be withdrawn by the member thereafter.

(c) In case of the death of any former member after the termination of service, the former member's accumulated contributions shall be payable to the former member's estate or to such person as the former member has nominated by written designation duly executed and filed with the board.

[(d) After July 1, 1961, there shall be included in any payment of accumulated contributions made pursuant to this section, the sums contributed by the member to the post retirement fund.]”

SECTION 3. Section 88-132, Hawaii Revised Statutes, is amended to read as follows:

**“§88-132 Service credit; payment of contributions.** Every active member of the system who leaves active service of the State or any county for the purpose of entering the military service of the United States in time of war or declared national or state emergency, or is called involuntarily to active duty after June 24, 1950, shall, so long as the member remains in military service, be allowed service credit in the system to the same extent as if the member were continuously in the

active service of the State or<sup>1</sup> county, as the case may be, in the position which the member held immediately prior to the member's entry into military service; provided that in no event shall the allowance of service credit exceed a period of four years.

The State or county, as the case may be, in whose service the member was employed immediately prior to the member's induction into military service shall, so long as the member remains in military service, pay all contributions to the pension accumulation fund[, post retirement fund,] and to the annuity savings fund, and any other payment to the system, which would otherwise be payable to the system by the State, the county, or the member if the member were continuously in the active service of the State or county, as the case may be, so long as the member remains continuously in military service, but in no event shall payment be made for more than four years. This section shall apply only to members who return to state or county government service within ninety days of release from active duty under honorable conditions."

SECTION 4. Section 88-271, Hawaii Revised Statutes, is amended to read as follows:

**"[§88-271] Election.** (a) Any class A or class B member who:

- (1) Is in service on June 30, 1984, or who returns to service after June 30, 1984, and has vested benefit status as provided in section 88-96(b); and
- (2) Is in a position covered by Title II of the Social Security Act, may elect to become a class C member effective January 1, 1985, or upon return to service, by filing an election form with the board.

The election shall be made prior to December 1, 1984, or within thirty days of return to service and shall be irrevocable. A class A or class B member who makes such an election shall be refunded all accumulated [and post retirement] contributions and shall not be required to make further contributions upon becoming a class C member. The refund shall be made by March 31, 1985, or within ninety days after return to service. Upon the effective date of the election, all rights as a class A or class B member shall be extinguished.

(b) A class A or class B member, who returns to service but does not have vested benefit status as provided in section 88-96(b), shall become a class C member upon return to service and shall be refunded all accumulated [and post retirement] contributions.

(c) The board shall provide information explaining the effects of the election described in subsection (a)."

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

SECTION 6. This Act shall take effect on July 1, 1989.

(Approved May 19, 1989.)

**Note**

1. So in original.

## ACT 101

S.B. NO. 1841

A Bill for an Act Relating to Fishing in Certain Waters.

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

SECTION 1. Section 188-35, Hawaii Revised Statutes, is amended to read as follows:

**“§188-35 Fishing in certain waters.** (a) [It] Except as otherwise provided in this section, it is unlawful for any person to fish in or take aquatic life from the waters:

- (1) Of the Waikiki reclamation canal, Oahu;
- (2) Of the drainage canal constructed in connection with Kapiolani Boulevard, Oahu;
- (3) Of the Kapalama drainage canal, Oahu;
- (4) Off Heeia-Kea wharf, Oahu;
- (5) Within that portion of Waialua Bay delineated on the seaward boundary by lines drawn one hundred yards seaward of and parallel to the Haleiwa Harbor Breakwater and one hundred yards seaward of and parallel to the Haleiwa Beach Groin including the extension to the intercept of these lines and the inland boundary consisting of a line drawn ten yards downstream of and parallel to the Anahulu Bridge, Oahu;
- (6) Within that portion of Pokai Bay including the Pokai Boat Harbor and the Waianae Small Boat Harbor delineated on the seaward boundary by a straight line drawn from Kaneilio Point to Lahilahi Point with the northwestern boundary to be delineated by a straight line extending from the southernmost tip of the point immediately seaward of Waianae High School on a southwest azimuth to the intercept of the seaward boundary extending from Kaneilio Point to Lahilahi Point, Oahu; **and**
- (7) Of the Kapaa and Waikaena canals, Kauai[; and]
- (8) Within that portion of Kailua Bay, Hawaii, to be delineated by the department of land and natural resources pursuant to chapter 91; with any device whatsoever, except as provided in this section].

(b) With reference to any of the places or areas named above, any person may [at any time fish or take any], subject to applicable laws and rules, fish with one line, or one rod and line, provided the line shall not have more than two hooks; or may take crabs with not more than ten nets, provided the nets shall not exceed two feet in diameter; or may take shrimps for bait purposes only with a hand net, provided the net shall not exceed three feet in any dimension; provided that in the Waikiki reclamation canal any person may take up to fifty tabai or mosquito fish, or o'opu akupa, or tilapia or any combination thereof, per day, for noncommercial purposes only, with a single small mesh net, provided that the net including any handle and other attachment thereto shall not exceed three feet in any dimension.

(c) An owner or operator of a fish pond may take pua or other small fish, using nets, with a license obtained from the department of land and natural resources and under rules the department may adopt, for the purpose of stocking the fish pond.

(d) Commercial marine licensees, with a license from the department of land and natural resources, may take nehu, iao, or any other species of baitfish as authorized by section 188-45, using nets for bait purposes only.

(e) The department may issue licenses at its discretion and at any time may revoke any or all licenses when, in its judgment, the action is necessary to preserve the stock of fish in the canals or waters.”

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

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

(Approved May 19, 1989.)

**ACT 102**

S.B. NO. 1843

A Bill for an Act Relating to the Workers' Compensation Payment Function.

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

SECTION 1. The purpose of this bill is to empower the director of personnel services to pay any claims against the state as required under chapter 386.

SECTION 2. Section 76-13, Hawaii Revised Statutes, is amended to read as follows:

**“§76-13 Specific duties and powers of director.** The director of personnel services shall direct and supervise all the administrative and technical activities of the director's department. In addition to other duties imposed upon the director by this chapter and chapter 77, the director shall:

- (1) Attend all meetings of the commission;
- (2) Establish and maintain a roster of all persons in the civil service in which shall be set forth, as to each, the class of position held, the salary or pay, any change in class, title, pay, or status, and any other necessary data;
- (3) Appoint such assistants and employees as may be necessary to assist the director in the proper performance of the director's duties and for which appropriations shall have been made;
- (4) Foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee efficiency;
- (5) Cooperate fully with appointing authorities in the administration of this chapter and chapter 77 in order to promote public service and establish conditions of service which will attract and retain employees of character and capacity, and to increase efficiency and economy in governmental departments by the improvement of methods of personnel administration with full recognition of the requirements and needs of management;
- (6) Encourage and exercise leadership in the development of effective personnel administration within the several departments in civil service and make available the facilities of the director's department to this end;
- (7) Investigate from time to time the operation and effect of this chapter and chapter 77 and of the rules adopted thereunder;
- (8) Develop and maintain a position classification plan; and
  - (A) Create and adjust classes of positions and adopt class specifications including title, description of typical duties and responsibilities, statement of training and experience and other requirements to be met by applicants, covering all positions;
  - (B) Allocate each position and each newly created position to the appropriate class;

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- (C) Reallocate positions to recognize material changes in duties and responsibilities or to correct a previous action. Reallocations shall be made effective retroactively to the beginning of the pay period immediately following the date the application for reallocation was filed with the director or such other date as provided by the rules and regulations; provided that an employee who is otherwise properly compensated shall not be required to make reimbursement of overpayment in salary when such overpayment is due to salary increments or repricing actions nullified by the retroactive feature of a classification action; and provided further that the proper salary adjustment shall be made as of the first pay period following the action taken by the director;
  - (D) Determine the status of employees holding positions affected by classification actions;
- (9) Pay any claims against the State as required under chapter 386;
- [(10)] Perform any other lawful acts deemed by the director to be necessary or desirable to carry out the purposes and provisions of this part.”

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

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

(Approved May 19, 1989.)

## ACT 103

S.B. NO. 509

A Bill for an Act Relating to Nursing Home Administrators.

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

SECTION 1. Chapter 457B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§457B- Limited and temporary licenses.** The board of examiners of nursing home administrators may issue a limited and temporary license to an applicant who has not been examined as required by section 457B-6, if the applicant is otherwise qualified to be examined. Such a license shall be effective only until the next licensure examination process has been completed.”

SECTION 2. Section 457B-3.1, Hawaii Revised Statutes, is amended by amending subsection (b), to read as follows:

“(b) The rules of the board regarding the education required of an applicant for licensure shall:

- (1) Require a baccalaureate degree from an accredited institution of higher education; provided that the board shall seek the advice of the University of Hawaii, office of admissions, regarding the college or University's accreditation, and that the board shall approve any degree recognized by the University of Hawaii.
- (2) The board may exempt an applicant from completing the currently approved nursing home administrator's correspondence course if the board determines that the applicant's baccalaureate or post-baccala-

reate formal education has imparted the knowledge and skills taught in the course.

- (3) The board may exempt an applicant from the requirements of paragraph (1) if the board determines that:
  - (A) Within the ten years immediately preceding the application, the applicant has served for at least eight years at the level of an assistant administrator (or its functional equivalent) in a nursing home; and
  - (B) At least five administrators currently licensed under this chapter recommend in writing to the board that the applicant be allowed to sit for the licensing examination."

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

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

(Approved May 19, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 104**

S.B. NO. 1890

A Bill for an Act Relating to Public Lands.

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

SECTION 1. Section 171-36, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise provided, the following restrictions shall apply to all leases:

- (1) Options for renewal of terms are prohibited;
- (2) No lease shall be for a longer term than sixty-five years, except in the case of a residential leasehold which may provide for an initial term of fifty-five years with the privilege of extension to meet the requirements of the Federal Housing Administration, Federal National Mortgage Association, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or Veterans Administration requirements; provided that the aggregate of the initial term and extension shall in no event exceed seventy-five years;
- (3) No lease shall be made for any land under a lease which has more than two years to run;
- (4) No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations owing the State or any of its political subdivisions;
- (5) No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board of land and natural resources, the assignment and transfer of a lease or unit thereof may be made if:
  - (A) It contains the personal residence of the lessee;

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- (B) In the case of commercial, industrial, hotel, resort, apartment, and other business uses, the lessee was required to put in substantial building improvements;
- (C) The lessee becomes mentally or physically disabled;
- (D) Extreme economic hardship is demonstrated to the satisfaction of the board; or
- (E) It is to the corporate successor of the lessee;  
provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and[, if necessary, revise the rent of the demised premises based upon the consideration paid by the assignee; and provided that the rent shall not be revised downward;] may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of improvements and trade fixtures being transferred to the assignee;
- (6) The lessee shall not sublet the whole or any part of the demised premises except with the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further that in the case where the lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee shall be included as part of the lessee's gross receipts; provided further that the board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided that the rent may not be revised downward;
- (7) The lease shall be for a specific use or uses and shall not include waste lands, unless it is impractical to provide otherwise;
- (8) Mineral and metallic rights and surface and ground water shall be reserved to the State; and
- (9) No lease of public lands, including submerged lands, nor any extension of any such lease, shall be issued by the State to any person to construct, use, or maintain a sunbathing or swimming pier or to use the lands for such purposes, unless such lease, or any extension thereof, contains provisions permitting the general public to use the pier facilities on the public lands and requiring that a sign or signs be placed on the pier, clearly visible to the public, which indicates the public's right to the use of the pier. The board, at the earliest practicable date, and where legally possible, shall cause all existing leases to be amended to conform to this paragraph. The term "lease", for the purposes of this paragraph, includes month to month rental agreements and similar tenancies."

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

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

(Approved May 24, 1989.)

## ACT 105

S.B. NO. 655

A Bill for an Act Relating to Civil Service Law.

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

SECTION 1. Section 76-16, Hawaii Revised Statutes, is amended to read as follows:

**“§76-16 Civil service and exemptions.** The civil service to which this part applies comprises all positions in the State now existing or hereafter established and embraces all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of personnel services has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
- (3) Positions of a temporary nature needed in the public interest where the need for the position does not exceed one year, but before any person may be employed to render the temporary service, the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, jury commissioners, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, and one law clerk for each judge of the circuit court and the administrative judge of the district court of the first circuit (provided that the law clerk for a judge of the circuit court shall be employed in lieu of and shall have the powers and duties of a court officer and bailiff under section 606-14); sheriff, first deputy sheriff, and second deputy sheriff; and one private secretary for each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);

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- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
- (11) Teachers, principals, vice-principals, district superintendents, chief deputy superintendents, other certificated personnel, and not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work in the department of education, and members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
- (12) Employees engaged in special, research, or demonstration projects approved by the governor;
- (13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating on the work experience training programs, and students and positions filled through federally funded programs which provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;
- (14) A custodian or guide at Iolani Palace, Royal Mausoleum, and Hulihee Palace;
- (15) Positions filled by persons employed on a fee, contract, or piecework basis who lawfully may perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
- (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of the State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; one additional deputy to administer all hospitals within the jurisdiction of the department of health; one additional deputy in the department of health to administer all environmental health programs within the jurisdiction of the department; one additional deputy in the department of human services either in charge of welfare or other functions within the department as may be assigned by the director of human services; [one] four additional [deputy] deputies in the department of health in charge of administration or other functions within the department as may be assigned by the director of health with the approval of the governor; one additional deputy in the department of business and economic development to perform the duties assigned by the director of business and economic development and approved by the governor; one additional deputy in the department of budget and finance to perform the duties assigned by the director of finance and approved by the governor; one additional deputy within the department of land and natural resources to perform the duties to be assigned by the chairperson of the board of land and natural resources; and an administrative assistant to the superintendent of education;

- (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
- (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
- (19) Household employees at the official residence of the president of the University of Hawaii;
- (20) Employees in the department of education engaged in the supervision of students during lunch periods and in the cleaning of classrooms after school hours on a less than half-time basis;
- (21) Employees hired under the tenant hire program of the Hawaii housing authority; provided that no more than twenty-six per cent of the authority's work force in any housing project maintained or operated by the authority shall be hired under the tenant hire program;
- (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii which require hiring of nutrition program assistants who live in the areas they serve; and
- (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

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

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

(Approved May 31, 1989.)

## ACT 106

H.B. NO. 1859

A Bill for an Act Relating to the Civil Service and Exemptions.

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

**SECTION 1.** Section 76-16, Hawaii Revised Statutes, is amended to read as follows:

**"§76-16 Civil service and exemptions.** The civil service to which this part applies comprises all positions in the State now existing or hereafter established and embraces all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of personnel services has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;

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- (3) Positions of a temporary nature needed in the public interest where the need for the position does not exceed one year, but before any person may be employed to render the temporary service, the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officer,<sup>1</sup> and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, jury commissioners, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, and one law clerk for each judge of the circuit court and the administrative judge of the district court of the first circuit (provided that the law clerk for a judge of the circuit court shall be employed in lieu of and shall have the powers and duties of a court officer and bailiff under section 606-14); sheriff, first deputy sheriff, and second deputy sheriff; and one private secretary for each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
- (11) Teachers, principals, vice-principals, district superintendents, chief deputy superintendents, other certificated personnel, and not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work in the department of education, and members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
- (12) Employees engaged in special, research, or demonstration projects approved by the governor;
- (13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating on the work experience training programs, and students and positions filled through federally funded programs which provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;

- (14) A custodian or guide at Iolani Palace, Royal Mausoleum, and Hulihee Palace;
- (15) Positions filled by persons employed on a fee, contract, or piecework basis who lawfully may perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
- (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of the State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; one additional deputy to administer all hospitals within the jurisdiction of the department of health; one additional deputy in the department of health to administer all environmental health programs within the jurisdiction of the department; one additional deputy in the department of human services either in charge of welfare or other functions within the department as may be assigned by the director of human services; one additional deputy in the department of health in charge of administration or other functions within the department as may be assigned by the director of health with the approval of the governor; one additional deputy in the department of business and economic development to perform the duties assigned by the director of business and economic development and approved by the governor; one additional deputy in the department of budget and finance to perform the duties assigned by the director of finance and approved by the governor; one additional deputy within the department of land and natural resources to perform the duties to be assigned by the chairperson of the board of land and natural resources; one additional deputy in the department of taxation to perform the duties assigned by the director of taxation and approved by the governor; and an administrative assistant to the superintendent of education;
- (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
- (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
- (19) Household employees at the official residence of the president of the University of Hawaii;
- (20) Employees in the department of education engaged in the supervision of students during lunch periods and in the cleaning of classrooms after school hours on a less than half-time basis;
- (21) Employees hired under the tenant hire program of the Hawaii housing authority; provided that no more than twenty-six per cent of the authority's work force in any housing project maintained or operated by the authority shall be hired under the tenant hire program;
- (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii which require hiring of nutrition program assistants who live in the areas they serve; and

## **ACT 107**

- (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

**SECTION 2.** New statutory material is underscored.

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

(Approved May 31, 1989.)

### **Note**

1. So in original.

## **ACT 107**

H.B. NO. 845

A Bill for an Act Relating to Infants and Toddlers.

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

**SECTION 1.** The legislature finds that there is an urgent and substantial need to enhance the development of infants and toddlers with special needs to minimize their potential for developmental delay, reduce the education costs to our society, minimize the likelihood of institutionalization, and enhance the capacity of families to meet the special needs of these infants and toddlers.

Case management services are also urgently needed by these families to assist them in accessing services, provide counseling and support at this time of crisis, and advocate on behalf of the needs of the infants or toddlers and their families. There is also a need to provide a statewide resource to enable the families to access information concerning available early intervention services in the community.

The purpose of this Act is to establish a statewide, comprehensive, coordinated, interdisciplinary program of early intervention services for infants and toddlers with special needs and their families by facilitating coordination of payments for early intervention services from various public and private sources, enhancing the capacity to provide quality early intervention services, and expanding and improving existing services. This Act also provides for case management services for infants and toddlers with special needs and establishes a central directory of services for this population.

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

### **"PART . INFANTS AND TODDLERS**

**§321- Definitions.** As used in this part, unless the context requires otherwise:

"Biological risk" means prenatal, perinatal, neonatal, or early developmental events suggestive of biological insults to the developing central nervous system which increase the probability of delayed development.

"Case management" means an ongoing service of shared responsibility between families and professionals that identifies needs and assists in obtaining coordinated, appropriate services and resources.

“Delayed development” means a significant delay in one or more of the following areas of development: cognition, speech, language, physical, motor, vision, hearing, psychosocial, or self-help skills.

“Department” means the department of health.

“Director” means the director of health.

“Early intervention services” means services which:

- (1) Are provided under public supervision;
- (2) Are provided at no cost, except where federal or state law provides for a system of payments by families, including a sliding fee schedule;
- (3) Are designed to meet the developmental needs of infants and toddlers with special needs, which include but are not limited to physical development, cognitive development, and self-help skills;
- (4) Are provided by qualified professional and paraprofessional personnel;
- (5) Are provided in conformity with an individualized family support plan; and
- (6) Include but are not limited to: family support, counseling, and home visits; special instruction; speech pathology and audiology; occupational therapy; physical therapy; psychological services; case management services; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services; and health services necessary to enable the infant or toddler to benefit from the other early intervention services.

“Environmental risk” means physical, social, or economic factors which may limit development. Environmental risk includes, but is not limited to the following conditions:

- (1) Birthweight between 1,500 and 2,500 grams, in combination with any other environmental risk factor;
- (2) Parental age less than sixteen;
- (3) Parental age between sixteen and eighteen and less than a high school education in combination with any other environmental risk factor;
- (4) Any existing physical, developmental, emotional, or psychiatric disability in a primary caregiver;
- (5) Presence of physical, developmental, emotional, or psychiatric disability in a sibling or any other family member in the home in combination with any other environmental risk factor;
- (6) Abuse of any legal or illegal substance by a primary caregiver;
- (7) Child abuse and neglect of target child or siblings;
- (8) Economically disadvantaged family in combination with any other environmental risk factor;
- (9) Single parent in combination with any other environmental risk factor; and
- (10) Incarceration of a primary caregiver in combination with any other environmental risk factor.

“Individual family support plan” means a dynamic, voluntary plan of action and support developed by families and professionals that emanates from the families’ expressions of needs and goals.

“Infants and toddlers with special needs” means infants and toddlers from birth to the age of three with delayed development, biological risk, or environmental risk.

**§321- Early intervention services for infants and toddlers with special needs.** The department may develop a statewide, coordinated, multidisciplinary program which contains a continuum of services to meet the needs of infants and toddlers with special needs. The department shall be the lead agency for the co-

## ACT 108

ordination of federal and state funding for those programs. Pursuant to chapter 42, the department may purchase services appropriate to carry out activities under this part.

### **§321- Hawaii early intervention coordinating council; establishment.**

(a) There is established within the department for administrative purposes the Hawaii early intervention coordinating council. Members shall be appointed for three year terms by the governor without the necessity of the advice and consent of the senate. The membership of the council shall consist of fifteen members selected from the following:

- (1) At least three parents of infants, toddlers, or children under the age of seven with special needs;
- (2) At least three public or private providers of early intervention services;
- (3) At least one representative from the legislature;
- (4) At least one person involved in personnel preparation;
- (5) At least one member representing the department of education;
- (6) At least one member representing the department of human services;
- (7) At least one member representing the office of children and youth; and
- (8) Other members representing private or public agencies involved in or interested in the payment for or provision of services to infants and toddlers with special needs and their families.

Any vacancy on the council shall be filled in the same manner in which the original position was filled.

(b) The council shall elect its officers, and eight members shall constitute a quorum. Members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(c) The council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly announced, and be open and accessible to the general public.

(d) The council shall perform the following functions:

- (1) Advise and assist the director in the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;
- (2) Advise and assist the department in the preparation of applications and amendments thereto; and
- (3) Prepare and submit an annual report to the governor on the status of early intervention programs for infants and toddlers with special needs and their families within the State.

**§321- Rules.** The director, in consultation with the council, private agencies, users of services under this part, and other interested parties, may adopt rules pursuant to chapter 91 to carry out the purposes of this part."

SECTION 3. This Act shall take effect on July 1, 1989.

(Approved May 31, 1989.)

## ACT 108

S.B. NO. 10

A Bill for an Act Relating to Intoxicating Liquor.

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

SECTION 1. Section 328-6, Hawaii Revised Statutes, is amended to read as follows:

**“§328-6 Prohibited acts.** The following acts and the causing thereof within the State by any person are prohibited:

- (1) The manufacture, sale, delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;
- (2) The adulteration or misbranding of any food, drug, device, or cosmetic;
- (3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;
- (4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of section 328-11, 328-12, or 328-17;
- (5) The dissemination of any false advertisement;
- (6) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by sections 328-22, 328-23 to 328-27, or to permit access to or copying of any record as authorized by section 328-23;
- (7) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State from whom he received in good faith the food, drug, device, or cosmetic;
- (8) The removal or disposal of a detained or embargoed article in violation of sections 328-25 to 328-27;
- (9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if the act is done while the article is held for sale and results in the article being adulterated or misbranded;
- (10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under this part or the Federal Act;
- (11) The using, on the labeling of any drug or in any advertisement relating to the drug, of any representation or suggestion that an application with respect to the drug is effective under section 328-17, or that the drug complies with the provisions of such section;
- (12) The using by any person to his own advantage, or revealing other than to the department of health or to the courts when relevant in any judicial proceeding under this part, any information acquired under authority of section 328-11, 328-12, 328-17, or 328-23, concerning any method or process which as a trade secret is entitled to protection;
- (13) In the case of a prescription drug distributed or offered for sale in this State, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer the drug who makes written request for information as to the drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the Federal Act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this part;
- (14) (A) Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or

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- (B) Selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subparagraph (A) hereof; or
  - (C) Making, selling, disposing of, or causing to be made, sold, or disposed of, or keeping in possession, control, or custody, or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device, or container thereof;
- (15) Except as provided in part VI, dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without express permission in each case of the person ordering or prescribing;
- (16) The distribution in commerce of a consumer commodity as defined in this part, if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this part and of regulations promulgated under authority of this part; provided that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons (1) are engaged in the packaging or labeling of such commodities, or (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled;
- (17) The selling or dispensing in restaurants, soda fountains, drive-ins, lunch wagons, or similar public eating establishments of imitation milk and imitation milk products in place of fresh milk and fresh milk products respectively; of liquid or dry products which simulate cream but do not comply with content requirements for cream in place of cream; of non-dairy frozen desserts which do not comply with content requirements for dairy frozen desserts in place of dairy frozen desserts; and of any other imitation food or one made in semblance of a genuine food in place of such genuine food, unless the consumer is notified by either proper labeling or conspicuous posted signs or conspicuous notices on menu cards and advertisements informing of such substitution, to include but not limited to the substitution of imitation milk in milk shake and malted milk drinks;
- (18) Wilfully and falsely representing or using any devices, substances, methods, or treatment as effective in the diagnosis, cure, mitigation, treatment, or alleviation of cancer. The provisions of this paragraph shall not apply to any person who depends exclusively upon prayer for healing in accordance with teachings of a bona fide religious sect, denomination, or organization, nor to a practitioner thereof;
- (19) The selling or offering for sale at any food facility which serves or sells over the counter directly to the consumer an unlabeled or unpackaged food that is a confectionery which contains alcohol in excess of one-half of one per cent by weight unless the consumer is notified of that fact by either proper labeling or conspicuous posted signs or conspicuous notices on menu cards and advertisements[.];

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- (20) The sale to a person below the age of twenty-one years of any food which is a confectionery which contains alcohol is excess of one-half of one per cent by weight.”

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

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

(Approved June 7, 1989.)

## ACT 109

S.B. NO. 12

A Bill for an Act Relating to Milk Control.

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

SECTION 1. The Legislature finds that the passage of Act 262, Session Laws of Hawaii 1988, obviates the need for Section 157-16, Hawaii Revised Statutes.

SECTION 2. Section 157-16, Hawaii Revised Statutes, is repealed.

SECTION 3. Statutory material to be repealed is bracketed.<sup>1</sup>

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

(Approved June 7, 1989.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 110

S.B. NO. 300

A Bill for an Act Relating to Public Accountancy.

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

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

**“§26H-4 Repeal dates.** (a) The following chapters are hereby repealed effective December 31, 1989:

- (1) Chapter 444 (Contractors License Board)
- (2) Chapter 448E (Board of Electricians and Plumbers)
- (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)
- [4] Chapter 466 (Board of Public Accountancy)
- [5] (4) Chapter 467 (Real Estate Commission)
- [6] (5) Chapter 439 (Board of Cosmetology)
- [7] (6) Chapter 454 (Mortgage Brokers and Solicitors)

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- [8] (7) Chapter 454D (Mortgage and Collection Servicing Agents)
- (b) The following chapter and sections are hereby repealed effective December 31, 1990:
- (1) Chapter 466J (Board of Radiologic Technology)
  - (2) Sections 321-13 to 321-15 (midwives, laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, tattoo artists, electrologists, and sanitarians)
- (c) The following chapters are hereby repealed effective December 31, 1991:
- (1) Chapter 447 (Dental Hygienists)
  - (2) Chapter 453 (Board of Medical Examiners)
  - (3) Chapter 457 (Board of Nursing)
  - (4) Chapter 458 (Board of Dispensing Opticians)
  - (5) Chapter 460J (Pest Control Board)
  - (6) Chapter 462A (Pilotage)
  - (7) Chapter 438 (Board of Barbers)
  - (8) Chapter 468K (Travel Agencies)
- (d) The following chapters are hereby repealed effective December 31, 1992:
- (1) Chapter 448H (Elevator Mechanics Licensing Board)
  - (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
  - (3) Chapter 457B (Board of Examiners of Nursing Home Administrators)
  - (4) Chapter 460 (Board of Osteopathic Examiners)
  - (5) Chapter 461 (Board of Pharmacy)
  - (6) Chapter 461J (Board of Physical Therapy)
  - (7) Chapter 463E (Podiatry)
- (e) The following chapters are hereby repealed effective December 31, 1993:
- (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
  - (2) Chapter 437B (Motor Vehicle Repair Industry Board)
  - (3) Chapter 440 (Boxing Commission)
  - (4) Chapter 446 (Debt Adjusters)
  - (5) Chapter 436E (Board of Acupuncture)
- (f) The following sections are hereby repealed effective December 31, 1993:
- (1) Sections 445-21 to 38 (Auctions)
  - (2) Sections 445-131 to 136 (Pawnbrokers)
  - (3) Sections 445-171 to 172 (Secondhand Dealers)
  - (4) Sections 445-231 to 235 (Scrap Dealers)
- (g) The following chapters are hereby repealed effective December 31, 1994:
- (1) Chapter 441 (Cemetery and Funeral Trusts)
  - (2) Chapter 443B (Collection Agencies)
  - (3) Chapter 452 (Board of Massage)
  - (4) Chapter 455 (Board of Examiners in Naturopathy)
  - (5) Chapter 459 (Board of Examiners in Optometry)
  - (6) Chapter 442 (Board of Chiropractic Examiners)
  - (7) Chapter 373 (Commercial Employment Agencies)
  - (8) Chapter 448 (Board of Dental Examiners)
  - (9) Chapter 465 (Board of Psychology)
  - (10) Chapter 468E (Speech Pathology and Audiology)
- (h) The following chapter is hereby repealed effective December 31, 1995:
- (1) Chapter 466 (Board of Public Accountancy)
- [h] (i) The following chapters are hereby repealed effective December 31, 1997:
- (1) Chapter 463 (Board of Private Detectives and Guards)
  - (2) Chapter 471 (Board of Veterinary Examiners)."

SECTION 2. Chapter 466, Hawaii Revised Statutes, is amended by adding new sections to be designated and to read as follows:

**“§466-11.5 Single act evidence of practice.** In any action brought under this section, evidence of the commission of a single act prohibited by this chapter shall be sufficient to justify a penalty, injunction, restraining order, or conviction, respectively, without evidence of a general course of conduct.

**§466-13 Quality review committee.** The board may appoint a quality review committee to review the publicly available professional work of firms on a random basis, without any requirement of a formal complaint or suspicion of impropriety on the part of any particular firm. The identity of the person for whom the professional work is done shall be preserved in confidence. In the event the review discloses information that a firm has not met the appropriate professional standards, the board may require further investigation of the firm.

Neither the proceedings nor the records of the quality review committees shall be subject to discovery. Except as hereinafter provided, no person in attendance at a meeting of the committee shall be required to testify as to what transpired at the meeting; provided that the statements made by any person in attendance at the meeting who is a party to an action or proceeding the subject matter of which was reviewed at the meeting, shall be subject to discovery.

**§466-14 Hearings.** In every case in which it is proposed to revoke or suspend a license or permit or in which an application has been denied, the board shall give the person concerned an opportunity for a hearing in conformity with chapter 91.

**§466-15 Advisory committees.** (a) The director may establish advisory committees, the members of which shall serve as consultants to the board in their review of certified public accountants and public accountants referred for possible disciplinary action, and as experts to the department for investigation. The advisory committee shall be appointed by the director from a list of certified public accountants and public accountants submitted annually by the board.

(b) Each member of the committee shall serve until a new committee is established, or until the particular case for which the member was designated a consultant or expert has been concluded.

(c) The members of the advisory committee shall serve without compensation, but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(d) No member of the advisory committee shall bear any civil liability for any act done in furtherance of the purpose for which the advisory committee was established.

**§466-17 Construction; severability.** If any provision of this chapter or the application thereof to any person or entity or in any circumstance is held invalid, the remainder of the chapter and the application of such provision to others or in other circumstances shall not be affected thereby.”

SECTION 3. Section 466-1, Hawaii Revised Statutes, is amended to read as follows:

**“§466-1 Purpose.** It is the policy of this State, and the purpose of this chapter to promote the [dependability] reliability of information [which] that is used for guidance in financial transactions or for accounting for or assessing the financial status or performance of commercial and noncommercial enterprises, whether public

## ACT 110

or private. The public interest requires that persons [attesting as experts] professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information [be qualified in fact to do so;] shall have demonstrated their qualifications to do so, and that persons who have demonstrated and maintained such qualifications be permitted to hold themselves out as having such special competence or to offer such assurance; that the professional conduct of persons licensed as having special competence in accountancy be regulated in a manner consistent with nationally recognized standards of professional conduct; that a public authority competent to prescribe and assess the qualifications [of public accountants] and to regulate the professional conduct of practitioners of public accountancy be established [and continued]; and that [the attestation of financial information by persons professing special knowledge in accountancy be reserved to persons who demonstrate their ability and fitness to observe and apply the standards of the accounting profession.] the use of titles relating to the practice of public accountancy that are likely to mislead the public as to the status or competence of the persons using such titles be prohibited."

SECTION 4. Section 466-3, Hawaii Revised Statutes, is amended to read as follows:

**“§466-3 Definitions.** [(1) The term “board” when] When used in this chapter [shall mean the state board of public accountancy established in section 466-4.], the following terms have the meanings indicated:

(2) The term “state” when used in this chapter shall include any state, territory or insular possession of the United States, and the District of Columbia.

(3) Masculine terms when used in this chapter shall also include the feminine.]

“Board” means the state board of public accountancy established under section 466-4.

“Certified public accountant” means the designation given to a person licensed under section 466-5 or the law of any other state or foreign country.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Firm” means a sole proprietorship, a corporation, or a partnership.

“License” means the document issued by the board to a person designated as a certified public accountant under section 466-5, or a person licensed as a public accountant under section 466-6, or a valid comparable certificate, registration, or license of certified public accountant or public accountant issued after examination under the law of any other state or foreign country, or of a permit issued under section 466-7.

“Licensee” means the holder of a license issued by the board under sections 466-5 and 466-6.

“Permit” means a permit to actively practice public accountancy issued under section 466-7.

“Practice of public accountancy” means the performance or the offering to perform, by a person or firm holding itself out to the public as a licensee, for a client or potential client of one or more kinds of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements, or of one or more kinds of management advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.

“Public accountant” means the designation given to a person licensed under section 466-6, or the law of any other state or foreign country.

“Quality review” means a study, appraisal, or review of one or more aspects of the professional work of a firm in the practice of public accountancy by a person

or persons who hold certificates and who are not affiliated with the firm being reviewed.

"Report", when used with reference to financial statements, means an opinion, report, or other form of language that states or implies the measure of assurance as to the reliability of any financial statements, and that also includes, or is accompanied by, any statement or implication that the firm issuing it has special knowledge or competence in accounting or auditing.

"State" means any state, territory, or insular possession of the United States, except that "this State" means the State of Hawaii."

SECTION 5. Section 466-4, Hawaii Revised Statutes, is amended to read as follows:

**"§466-4 Board of public accountancy.** (a) [Members.] There shall be a board of public accountancy to be known as the state board of public accountancy, which shall consist of nine members appointed by the governor in the manner prescribed in section 26-34. All members of the board shall be citizens of the United States and residents of this State. Five members thereof shall be certified public accountants in active practice, holding current [certificates as such] licenses and current permits to practice public accountancy[,] issued under this chapter. Two members thereof shall be public accountants in active practice holding current [registrations as such] licenses and current permits to practice public accountancy issued under this chapter, and two shall be public members.

(b) [Removal.] The governor shall remove or suspend any member of the board for cause, in accordance with the provisions of section 26-34, including any member thereof:

- (1) [who] Who ceases to engage in active practice as a certified public accountant or as a public accountant, as the case may be[,]; or
- (2) [whose certificate] Whose license of certified public accountant or [registration] of public accountant, as the case may be, or whose permit to practice public accountancy:
  - (i) has] (A) Has been [cancelled,] canceled, revoked, or suspended[,];
  - (ii) has] (B) Has expired without renewal[,]; or
  - (iii) has] (C) Has otherwise become invalid.

(c) [Organization.] The board shall elect annually a [chairman] chairperson and a [secretary-treasurer] vice chairperson from its members. The board shall conduct its meetings and keep records of its proceedings in accordance with the provisions of chapter 92.

(d) [Compensation and expenses.] Members of the board of [accountants] public accountancy shall not receive any compensation for performance of the duties imposed upon them by this chapter, but shall be entitled to necessary traveling expenses.

(e) [Employees.] The director [of commerce and consumer affairs] shall employ clerks, proctors, examiners, and other personnel under the provisions of chapters 76 and 77 to assist the board in the performance of its duties.

(f) [Powers.] The board may[,] in accordance with the provisions of chapter 91[,]:

- (1) [conduct] Initiate investigations and hearings, either upon complaint or on its own motion on any matter involving the conduct of certified public accountants [or], public accountants, or firms, or the violation of any of the provisions of this chapter[, and] or the rules of the board;

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- (2) [adopt,] Adopt, amend, and repeal rules [with the approval of the governor, and the director of commerce and consumer affairs, and issue decisions, orders and declaratory rulings, for the orderly conduct of its affairs and for the administration of this chapter] governing the administration and enforcement of this chapter and the conduct of the licensees [including, but not limited to, rules governing professional qualifications, continuing education and professional conduct, and the affiliations of individuals, partnerships and corporations for the practice of public accountancy], as it deems appropriate to establish and maintain high standards of competence and integrity in the practice of public accountancy.
  - (3) Grant, deny, suspend, or revoke licenses which are authorized by this chapter and impose such conditions as may be necessary in connection with the granting, denial, suspension, or revocation of licenses;
  - (4) Prescribe the proof to be furnished for the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement for any indemnity deemed appropriate to the case;
  - (5) Grant, renew, forfeit and restore permits to practice which are authorized by this chapter and impose such conditions as may be necessary in connection with the granting, renewal, forfeiture and restoration of permits.
- [(g) Existing board. A person who, on January 1, 1974, was serving as a member of the board of public accountants theretofore existing under the laws of this State shall be permitted to continue without reappointment as a member of the state board of public accountancy established in this section for the duration of the term in which the person was previously appointed, but shall otherwise be subject to all the provisions of this chapter; and the person's appointment as a member of the previous board shall, for all purposes, be considered as made under this chapter and subject to the provisions hereof.]"

SECTION 6. Section 466-5, Hawaii Revised Statutes, is amended to read as follows:

"**§466-5 [Certificate] License of certified public accountant.** (a) [Issuance.] A license and a permit are required to practice public accountancy. The board may license and grant the designation of "certified public accountant" to any person [(1)] who has [attained] met the following:

- (1) Attained eighteen years of age[.];
- (2) [who has a reputation for] Possesses a history of competence, trustworthiness, [and fairness,] and fair dealing;
- (3) [who meets the educational] Educational [and examination] requirements [hereinafter provided in this section, and] of subsection (b);
- (4) [who meets the experience requirement hereinafter provided in this section shall, upon application to the board, be issued a certificate of "certified public accountant".] Experience requirements of subsection (d);
- (5) Examination requirements of subsection (e); and
- (6) Paid the appropriate fees and assessments.

[The board shall maintain a list of all persons to whom such certificates are issued. Such certificates shall be effective for a period not exceeding two years and shall be renewable biennially upon application to the board.]

(b) [Educational requirements. A person applying for a certificate of certified public accountant (1) before January 1, 1979,] The educational requirement for a license shall [be required to have obtained] include a baccalaureate degree conferred

by a college or university recognized by the board<sup>1</sup> [or (2) after December 31, 1978 shall:] and:

- [A] Obtain a baccalaureate degree conferred by a college or university recognized by the board;
- (B) Complete the study of accounting and related courses as the board by rule deems appropriate; and
- (C) Complete] (1) Completion of not less than thirty semester hours of study in addition to those semester hours required for a baccalaureate degree [at a college or university recognized by the board. The person may commence the additional hours of study required by this subparagraph prior to obtainment of a baccalaureate degree but only after the completion of one hundred five semester hours towards the baccalaureate degree]. The baccalaureate degree and the thirty semester hours of additional study shall include a minimum of eighteen semester hours of upper division or graduate level accounting or auditing subjects. The content of the additional qualifying hours of study shall be determined by rules adopted by the board pursuant to chapter 91[.]; or
- (2) If the applicant has a minimum of eighteen semester hours of upper division or graduate level accounting and auditing subjects, the applicant may elect to replace the thirty semester hours with an additional thirty months of professional experience in a public accounting practice. This experience shall not be credited toward the experience requirements in subsection (d).

(c) [Exemption from educational requirements.] A person[:] shall be exempt from the requirements in subsection (b) if that person:

- (1) [Who holds] Holds a current [registration] license as a public accountant under section 466-6; or
- (2) [Who: (A)] Holds, and has continued to hold, a valid comparable certificate, registration, or license of certified public accountant of another state for a period of not less than ten years preceding the date of the person's application under this section, and has been in active practice of public accountancy in one or more states for a period of not less than five years preceding the date of the application [under this section]; or
- (B) The] (3) As the board determines, has met the educational requirements of this State for a [certificate] license of certified public accountant as [they] the requirements existed when the person was originally issued a [certificate] license of certified public accountant by the other state[;]

shall, upon application to the board and demonstration that the continuing education requirements established by rule of the board have been satisfied, be exempt from the educational requirements of subsection (b)].

(d) [Experience requirement. A person applying for a certificate of certified public accountant shall be required to:] Each applicant shall present satisfactory evidence in the form of a notarized or certified statement from present or former employer(s) that the applicant has met one of the following experience requirements for license:

- (1) [Complete] Completion of one thousand five hundred chargeable hours in the performance of audits involving the application of generally accepted accounting principles and<sup>1</sup> auditing standards[;] earned while in public accounting practice; or
- (2) [Complete] Completion of two years of professional experience in public accounting practice[. Representation of satisfaction of the experience requirement by an applicant for a certificate of certified public

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accountant and by any of the applicant's employers shall be submitted to the board under oath.] as defined in section 466-3.

(e) [Examination requirements. A person applying for a certificate of certified public accountant shall be required to have satisfactorily completed an examination in accounting, auditing, and such other related subjects as the board shall determine to be appropriate. Such examination shall be held by the board and shall take place as often as the board shall determine to be desirable, but not less frequently than once each year.] The examination required to be passed shall be in writing, shall be held twice a year, and shall test the applicant's knowledge of the subjects of accounting theory, accounting practice, auditing, and other related subjects as the board may specify by rule. The time for holding the examination shall be fixed by the board and may be changed from time to time. The board shall prescribe the methods of applying for and conducting the examination, including methods for grading papers and determining a passing grade required by an applicant for a license; provided that the board shall, to the extent possible, see to it that the grading of the examination and the passing grades are uniform with those applicable in all other states. The board may use the Uniform Certified Public Accountant Examination and Advisory Grading Service of the American Institute of Certified Public Accountants, and may contract with third parties to perform the administrative services with respect to the examination as the board deems appropriate to assist it in performing its duties herein.

(f) [Admission to examination. A person (1) who has met the applicable educational requirements prescribed in subsection (b) of this section, or (2) who has not met all of the requirements prescribed by subsection (b)(2) of this section but who expects to meet the requirements of subsections (b)(2)(A) and (b)(2)(B) of this section within one hundred twenty days following the examination prescribed in subsection (e), or (3) who is exempted from such educational requirements by subsection (c), shall, upon application to the board, be admitted to such examination. An applicant who has been admitted to the examination pursuant to subsection (f)(2) will not receive any conditional credit pursuant to subsection (g) for any portion of the examination, unless the applicant completes all of the educational requirements of subsections (b)(2)(A) and (b)(2)(B) within one hundred twenty days following the examination. An applicant admitted to the examination pursuant to subsection (f)(2), who satisfactorily completes the entire examination, will not be entitled to receive a certificate of certified public accountant unless:

- (1) The applicant completes the educational requirements of subsections (b)(2)(A) and (b)(2)(B) within one hundred twenty days following the examination; and
- (2) The applicant completes the educational requirements of subsection (b)(2)(C) within a time period following the examination which shall be established by the board by rules promulgated pursuant to chapter 91.] The board may allow an applicant to sit for the Uniform Certified Public Accountant Examination, if the applicant has met at least one of the following:
  - (1) Baccalaureate degree in accounting conferred by a college or university acceptable to the board; or
  - (2) Baccalaureate degree with a major in a subject other than in accounting, plus eighteen semester hours of upper division or graduate level accounting or auditing subjects, conferred by a college or university acceptable to the board; or
  - (3) Baccalaureate degree or its equivalent in accounting, conferred by a college or university outside of the United States and submission of a letter of acceptance from an accredited United States college or university to its advanced degree program.

(g) [Re-examination.] The board [may by regulation] shall prescribe the terms and conditions under which an applicant who has taken the examination [described] prescribed in subsection (e), but who has not satisfactorily completed [that] the examination, may be given credit for any part thereof that the applicant has satisfactorily completed. The board may also provide [by regulation for a reasonable waiting period] a specific length of time for an applicant to apply for re-examination.

(h) [Exemption from examination requirements.] A person [(1)] who is the holder of a valid comparable certificate, registration, or license of certified public accountant issued under the laws of another state[, or (2) who is] may be exempted from taking the Uniform Certified Public Accountant Examination. The board shall prescribe the methods and requirements for exemption from examination requirements. The board shall prescribe the methods and requirements for exemption for the holder of a valid comparable certificate, registration, or license[, or] and a degree [in] from a foreign country [determined by the board to be (A) a recognized qualification for the practice of public accountancy in such other country, (B) comparable to a certificate of certified public accountant of this State, and (C) issued to such person on the basis of an examination comparable to the examination described in subsection (e), shall, upon application to the board, be exempt from the examination requirements specified in subsection (e)].

(i) [Existing certificate holders.] A person who, on January 1, 1974, holds a [certificate] license of certified public accountant issued under the laws of this State theretofore existing shall not be required to obtain an additional [certificate] license of certified public accountant under this chapter, but shall otherwise be subject to all the provisions of this chapter; and [such a certificate] the license theretofore issued shall<sup>1</sup> for all purposes<sup>1</sup> be considered a [certificate] license issued under this chapter and subject to the provisions [hereof] herein.

(j) A person applying for a [certificate] license of certified public accountant after December 31, 1983, shall be allowed the option of electing to replace the requirements of subsection [(b)(2)(C)] (b)(1) with an additional thirty months of professional experience in a public accounting practice.

(k) Licenses shall be effective for a period not exceeding two years and shall be renewable biennially on or before December 31 of every odd-numbered year upon application to the board.

(l) The board may renew the license of a certified public accountant who completes a renewal application and fulfills the following requirements:

- (1) Holds a valid and current license; and
- (2) Paid appropriate fees and assessments.

(m) Failure to renew a license on or before December 31 of every odd-numbered year, shall constitute a forfeiture of license. Continued practice in public accountancy without renewing or restoring a license and permit shall constitute unlicensed activity. Any person engaged in unlicensed activity shall be subject to sections 466-9, 466-11, 487-13, and 26-9.

(n) The board shall specify the method and requirements of application for restoration of a forfeited license. The date of restoration of the license shall be the date of board approval of the restoration. Restorations shall not be retrospective."

SECTION 7. Section 466-6, Hawaii Revised Statutes, is amended to read as follows:

**"§466-6 [Registration] License of public accountant.** (a) [Registration.] A license and a permit are required to actively practice public accountancy. A person;

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- (1) [who] Who has attained eighteen years of age[.];
- (2) [who is of good moral character,] Who possesses a history of competence, trustworthiness, and fair dealing;
- (3) [who] Who was serving in the armed forces of the United States on June 15, 1955[.];
- (4) [who] Who was a resident of the Territory of Hawaii at the time of entering such service in the armed forces[,]; and
- (5) [who] Who at the time of entering such service, met the requirements set forth in [paragraph] subparagraph (A), (B) or (C) of this subsection, shall, upon application to the board within six months after honorable discharge or release from such service, be [registered] licensed by the board as a "public accountant":
  - (A) Any person who held oneself out to the public as being engaged in the practice of public accountancy and who was engaged in the practice of public accountancy as the person's principal occupation, either on the person's own account or as a member of a firm, or as an employee of a certified public accountant or public accountant, and was regularly assigned to accountancy engagements[.];
  - (B) Any person who was engaged in accounting or auditing work in the Territory of Hawaii as an employee of the United States, of the Territory, or of any county, in a position in grade GS-9 under the territorial classification schedule in effect on March 1, 1955, or the equivalent or higher grade[.]; or
  - (C) Any person who was engaged in private accounting or auditing who has had not less than three [years'] years of experience in such work, or in public accounting, or both, and whose experience was of such a character and for a length of time sufficient in the opinion of the board to be substantially equivalent to three years of public accounting experience.

[The board shall maintain a list of all persons who are so registered. Such registrations]

(b) Licenses shall be effective for a period not exceeding two years and shall be renewable biennially on or before December 31 of every odd-numbered year upon application to the board.

[(b)] (c) [Existing registrations.] A person who, on January 1, 1974, holds a [registration] license of public accountant under the laws of this State theretofore existing, shall not be required to [register again] obtain an additional license under this chapter, but shall otherwise be subject to all the provisions of this chapter; and such previous [registration] license shall, for all purposes, be considered [registration] a license under this chapter and subject to the provisions [hereof.] herein."

SECTION 8. Section 466-7, Hawaii Revised Statutes, is amended to read as follows:

**"§466-7 Permits to practice.** (a) [Biennial practice permits. A person (1) who is holding a current certificate of certified public accountant or a current registration as a public accountant and (2) who has complied with continuing education requirements established by rule of the board, shall, upon application to the board, be issued a permit to practice public accountancy in this State. Such permit to practice shall be effective for a period not exceeding two years.] A license and permit are required to actively engage in the practice of public accountancy. The board may grant or renew a permit to actively engage in the practice of public accountancy. Permits shall be initially issued and renewed for periods of two years

but in any event shall expire on December 31 of every odd-numbered year. The board shall prescribe the methods and requirements for application.

(b) [Temporary practice permits. A person] An applicant for the initial issuance or renewal of a permit shall have:

- (1) A valid license;
- (2) Completed continuing professional education hours, the content of which shall be specified by the board which may provide for special consideration by the board to applicants for permit renewal when, in the judgment of the board, full compliance with all requirements of continuing education cannot reasonably be met;
- (3) Completed an application; and
- (4) Paid appropriate fees and assessments.

(c) The board may grant a temporary permit to actively engage in the practice of public accountancy to any person who:

- (1) [who has] Has attained eighteen years of age[.];
- (2) [who is of good moral character,] Possesses a history of competence, trustworthiness, and fair dealing;
- (3) [who holds] Holds a valid [certificate] license of certified public accountant or [a valid registration as a] of public accountant issued under the laws of another state, or who holds a valid comparable certificate, registration, or license or degree [of] from a foreign country determined by the board to be a recognized qualification for the practice of public accountancy in such other country[, and];
- (4) [who, incidental] Incidental to the person's practice in such other state or country, desires to practice public accountancy in this State on a temporary basis[, shall, upon application to the board, be issued a temporary practice permit.]; and
- (5) Has completed an application.

Such permit shall be effective for a period not exceeding three months, and shall specify the nature and extent of the practice so permitted.

(d) All firms shall obtain a permit to practice. The board may issue or renew a permit to actively engage in the practice of public accountancy to any firm which submits a completed application and demonstrates qualifications as prescribed by the board.

(e) Failure to submit the required fees, continuing education hours, or other requirements for renewal as specified in this section by December 31 of every odd-numbered year, shall constitute forfeiture of the permit. Continued performance in the practice of public accountancy without a permit shall constitute unlicensed activity and the individual or firm shall be subject to sections 466-9 and 466-11, section 487-13, and section 26-9.

(f) The board may restore forfeited permits to the individual or firm which satisfies the following:

- (1) The requirements of subsections (a), (b), (c) or (d) of this section; and
- (2) Payment of required fees."

SECTION 9. Section 466-8, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) An application for the issuance of a biennial permit to practice for an individual or firm under section 466-7(a) and (d) shall be accompanied by the application and permit to practice fees. An applicant for the restoration of a forfeited permit shall pay a fee with the application for restoration in an amount equal to twice the amount of the fees which the applicant would have paid had the applicant renewed the permit by December 31 of every odd-numbered year."

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SECTION 10. Section 466-9, Hawaii Revised Statutes, is amended to read as follows:

**“§466-9 Disciplinary action.** (a) [Causes. The] In accordance with chapter 91, the board may[, in accordance with the provisions of chapter 91,] take the following action:

- (1) [cancel,] Cancel or revoke[,] any license or permit issued under section 466-5, 466-6, or 466-7, or corresponding provisions of prior law;
- (2) [suspend] Suspend a license or permit for a period of not [exceeding more than two years[, or refuse];
- (3) Refuse to renew [any certificate of certified public accountant, registration of public accountant] a license or permit [to practice issued under this chapter, or it may (2)] for a period of not more than two years;
- (4) Reprimand, censure [a person holding any such certificate, registration or permit, for any one or a combination of the following causes: (A) Dishonesty,] or limit the scope of practice of any licensee or firm;
- (5) Impose an administrative fine not exceeding \$1,000;
- (6) Place a licensee or firm on probation;
- (7) Require a firm to have a quality review conducted in the manner specified by the board; or
- (8) Require a licensee to attain satisfactory completion of additional continuing professional education hours as specified by the board.

(b) Any one or more of the following shall constitute grounds for disciplinary action:

- (1) Fraud or deceit [or fraud] in obtaining [any certificate, registration] a license or permit; [to practice issued under the provisions of this chapter.]
  - (2) Disciplinary action taken by another state where the license is canceled, revoked, suspended, denied, or refused renewal;
  - (3) Failure, on the part of a holder of a license or a permit under sections 466-5, 466-6, or 466-7, to maintain compliance with the requirements for issuance of a license or a permit, or renewal of a license or permit, or to report changes to the board;
  - (4) Revocation or suspension of the right to practice before any state or federal agency;
  - (B) (5) Dishonesty, deceit, fraud, or gross negligence in the practice of public accountancy[.] or in the filing or failure to file a licensee's or firm's own income tax returns;
  - (C) (6) Violation of any [of the provisions] provision of [section 466-10] this chapter or of any rule [or regulation of] adopted by the board [relating to professional conduct.];
  - (7) Violation of any provision of professional conduct established by the board under this chapter;
  - (8) Conviction of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this State, or of any other state if the act involved would have constituted a crime under the laws of this State;
  - (9) Performance of any fraudulent act while holding a license or permit issued under this chapter; or
  - (10) Any conduct reflecting adversely upon the licensee's or permit holder's fitness to engage in the practice of public accountancy.
- (b) ReinstateMENT.] (c) Upon application of any person against whom disciplinary action has been taken under the provisions of subsection (a) of this section,

the board may, in accordance with the provisions of chapter 91, reinstate such person and reissue any [certificate, registration] license or permit to practice which was affected by such disciplinary action.

- (1) The board shall specify the manner in which an application shall be made, the time within which it shall be made, and the circumstances under which the forfeited license may be reinstated.
- (2) Before reissuing, the board may:
  - (A) Require the applicant to show successful completion of specified continuing professional education; and
  - (B) Make the reinstatement of a license or permit conditional and subject to satisfactory completion of a quality review conducted in a manner as the board may specify.

SECTION 11. Section 466-10, Hawaii Revised Statutes, is amended to read as follows:

- “§466-10 Prohibited acts.** (a) Use of title “certified public accountant”[.]:
- (1) Except as otherwise provided in subsection (d) of this section, no person shall assume or use the title or designation “certified public accountant” or the abbreviation “CPA” or any other title, designation, words, letters, sign, card, or device likely to be confused with “certified public accountant” or “CPA” or tending to indicate that [such] the person is a certified public accountant, unless [such] the person holds a current [certificate] license of certified public accountant issued under this chapter and a current permit to practice [as such] issued under this chapter[.];
  - (2) No partnership or corporation shall assume or use the title or designation “certified public accountant” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card, or device likely to be confused with “certified public accountant” or “CPA” or tending to indicate that such partnership or corporation is composed of certified public accountants, unless each of the partners of [such] the partnership who are in the practice of public accountancy in this State, or each of the shareholders of [such] the corporation who are in the practice of public accountancy in this State, holds a current [certificate] license of certified public accountant issued under this chapter and a current permit to practice [as such] issued under this chapter[.]; and
  - (3) No person shall assume or use the title or designation “certified public accountant” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card, or device likely to be confused with “certified public accountant” or “CPA”, in conjunction with names indicating or implying that there is a partnership or corporation, or in conjunction with the designation “and Company” or “and Co.” or a similar designation if, in any [such] case, there is in fact no bona fide partnership or corporation existing under the laws of this State.
- (b) Use of title “public accountant”[.]:
- (1) Except as otherwise provided in subsection (d) of this section, no person shall assume or use the title or designation “public accountant” or the abbreviation “PA” or any other title, designation, words, letters, sign, card, or device likely to be confused with “public accountant” or “PA” or tending to indicate that [such] the person is a public accountant unless [such] the person holds a current registration of public accountant issued under this chapter and a current permit to practice [as such] issued under this chapter[.];

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- (2) No partnership or corporation shall assume or use the title or designation "public accountant" or the abbreviation "PA" or any other title, designation, words, letters, abbreviation, sign, card, or device likely to be confused with "public accountant" or "PA" or tending to indicate that [such] the partnership or corporation is composed of public accountants, unless each of the partners of [such] the partnership who are in the practice of public accountancy in this State, or each of the shareholders of [such] the corporation who are in the practice of public accountancy in this State, holds a current [registration] license of public accountant issued under this chapter and a current permit to practice [as such] issued under this chapter[.]; and
- (3) No person shall assume or use the title or designation "public accountant" or the abbreviation "PA" or any other title, designation, words, letters, abbreviation, sign, card, or device likely to be confused with "public accountant" or "PA", in conjunction with names indicating or implying that there is a partnership or corporation, or in conjunction with the designation "and Company" or "and Co." or a similar designation if, in any [such] case, there is in fact no bona fide partnership or corporation existing under the laws of this State.
- (c) Representation of special knowledge[.]:
- (1) No person shall sign or affix [his] the person's name or any trade or assumed name used by [him] the person in [his] the person's profession or business with any wording indicating, suggesting, or implying that [he] the person is an accountant or auditor, or with any wording indicating, suggesting, or implying that [he] the person has special knowledge in accounting or auditing, to any opinion or certificate attesting in any way to the reliability of any representation or estimate in regard to any person or organization embracing:
- (A) Financial information, or
- (B) Facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans, and appropriations, unless [such] the person holds a current [certificate or registration] license and a current permit to practice issued under this chapter.
- (2) No person shall sign or affix a partnership or corporate name with any wording indicating, suggesting, or implying that it is a partnership or corporation composed of accountants or auditors or persons having special knowledge of accounting or auditing, to any opinion or certificate attesting in any way to the reliability of any representation or estimate in regard to any person or organization embracing:
- (A) Financial information, or
- (B) Facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans, and appropriations,
- unless each of the partners of [such] the partnership who are in the practice of public accountancy in this State or each of the shareholders of [such] the corporation who are in the practice of public accountancy in this State holds a current [certificate] license of certified public accountant or [a current registration] of public accountant issued under this chapter and a current permit to practice [as such] issued under this chapter.
- (d) [Exceptions.] Nothing contained in this chapter shall prohibit any person:

- (1) Who holds a current [certificate] license of certified public accountant issued under this chapter from assuming and using the title and designation "certified public accountant" or "CPA"; provided that if [such] the person does not also hold a current permit to practice [as such] issued under this chapter, [he] the person shall clearly indicate in assuming and using said title that [he] the person does not hold [himself] the person's self out to be in the practice of public accountancy[.];
- (2) Who holds a current [registration] license of public accountant issued under this chapter from assuming and using the title and designation "public accountant" or "PA"; provided that if [such] the person does not also hold a current permit to practice [as such] issued under this chapter, [he] the person shall clearly indicate in assuming and using [said] the title that [he] the person does not hold [himself] the person's self out to be in the practice of public accountancy[.];
- (3) Who holds a temporary practice permit issued under this chapter from using the title and designation under which [he] the person is generally known in the state or country from which [he] the person received [his] a valid comparable certificate, registration, or license [or degree] for the practice of public accountancy[.];
- (4) Who is not a certified public accountant or public accountant from serving as an employee of, or an assistant to, a certified public accountant or public accountant; provided that [such] the employee or assistant works under the control and supervision of a person who holds a current [certificate] license of certified public accountant or [a current registration] of public accountant and a current permit to practice [as such] issued under this chapter; and provided further that [such] the employee or assistant does not issue any statement or report over [his] the person's name except [such] office reports to [his] the person's employer as are customary, and that [such] the employee or assistant is not in any manner held out to the public as a certified public accountant or public accountant[.];
- (5) Who is an officer, employee, partner, or principal of any organization from signing or affixing [his] the person's name to any statement or report in reference to the affairs of that organization; provided that in so signing or affixing [his] the person's name [he] the person shall clearly indicate that [he] the person is an officer, employee, partner, or principal of the organization, and the position, title, or office which [he] the person holds therein[.];
- (6) Who is a public official or public employee from the performance of [his] the person's duties as such[.]; or
- (7) Who is an attorney at law from engaging in practice as such."

SECTION 12. Section 466-11, Hawaii Revised Statutes, is amended to read as follows:

**"§466-11 [Measures] Injunctions against [violation.] prohibited acts.** (a) Whenever, as a result of an investigation under section 466-13 or otherwise, the board has reason to believe that any person or firm has engaged, or is about to engage, in any act, or acts, or [practice which constitutes,] practices that constitute or will constitute[,] a violation of section 466-10, the board may certify the facts underlying the belief to the attorney general of this State, who shall make application to the appropriate court for an order enjoining the act, or acts, or [practice,] practices, and, upon a showing by the board that the person or firm has engaged, or is about to engage, in any act, or acts, or [practice,] practices, an injunction, restraining

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order, or other order as may be appropriate shall be granted by the court without bond.

(b) [Any person who violates any provision] A violation of section 466-10 [shall be guilty of] is a misdemeanor. Whenever the board has reason to believe that any person is liable to punishment under this section it may certify the facts underlying the belief to the county attorney or prosecuting attorney of the county in which the violation occurred who shall cause appropriate proceedings to be brought.

(c) Any person [violating] or firm who violates this chapter [shall] may be fined not more than \$1,000 for each violation.

(d) The display or uttering by a person or firm of a card, sign, advertisement, or other printed, engraved, or written instrument or device bearing a person's or firm's name in conjunction with the words "certified public accountant" or any abbreviation thereof, of the words "public accountant" or any abbreviation thereof, shall be prima facie evidence in any action brought under subsection (a) or (b) of this section that the person or firm whose name is so displayed, caused or procured the display or uttering of the card, sign, advertisement, or other printed, engraved, or written instrument or device and that the person or firm is holding [oneself] itself out to be a certified public accountant or public accountant holding a current permit to practice issued under section 466-7. [In any action, evidence of the commission of a single act prohibited in section 466-10 shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct.]

(e) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State."

SECTION 13. Section 466-12, Hawaii Revised Statutes, is amended to read as follows:

**"§466-12 Ownership of accountant's working papers.** All statements, records, schedules, working papers, and memoranda made by [a certified public accountant or public accountant incident] the licensee, partner, shareholder, officer, director, or employee incidental to, or in the course of [professional service] rendering services to [clients by such accountant,] a client in the practice of public accountancy, except reports submitted by [a certified public accountant or public accountant] the licensee to [a] the client[,] and except for records that are part of the client's records, shall be and remain the property of [such accountant] the licensee in the absence of an express agreement between [such accountant] the licensee and the client to the contrary. No [such] statement, record, schedule, working paper, or memorandum shall be sold, transferred, or bequeathed, without the consent of the client or the client's personal representative or assignee, to anyone other than one or more surviving partners or stockholders or new partners or stockholders of [such accountant or to the accountant's corporation.] the licensee, or any combined or merged firm or successor in interest to the licensee or operation of law."

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 15. This Act shall take effect upon its approval.

(Approved June 7, 1989.)

## Notes

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

## ACT 111

S.B. NO. 717

A Bill for an Act Relating to Voter Registration.

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

SECTION 1. Section 11-15, Hawaii Revised Statutes, is amended to read as follows:

**“§11-15 Application to register.** (a) Any person qualified to and desiring to register as a voter in any county, may present oneself at any time during business hours to the clerk of the county, then and there to be [examined under oath as to the person’s qualifications as a voter.] registered to vote. Each applicant shall make and subscribe to an application in the form of an affidavit.

The affidavit shall contain the following information:

- (1) Name;
- (2) Social security number;
- (3) Date of birth;
- (4) Residence, including mailing address;
- (5) That the residence stated in the affidavit is not simply because of the person’s presence in the State but that the residence was acquired with the intent to make Hawaii the person’s legal residence with all the accompanying obligations therein;
- (6) That the person is a citizen.

(b) Any person qualified to and desiring to register as a voter for the election of members of the board of trustees of the office of Hawaiian affairs shall make and subscribe to an application in the form of an affidavit which shall state that the person is Hawaiian and which shall contain the information required under subsection (a). The affidavit shall also apply to all elections, primary, special primary, general, special general, special, or county, held in the State, under all voting systems used within the State, so far as applicable and not inconsistent with this title.

(c) The applicant shall swear to the truth of the allegations in [the applicant’s application before the clerk, who is authorized to administer oaths.] the affidavit on application for voter registration or other form prescribed by the chief election officer. Unless contested by a qualified voter, the clerk may accept, as prima facie evidence, the allegation of the applicant in information required in the affidavit in item 5 of subsection (a), and the allegation of the applicant that the applicant is Hawaiian required in subsection (b). In any other case where the clerk shall so desire or believe the same to be expedient, the clerk may demand that the applicant furnish substantiating evidence to the allegations of the applicant’s application.

(d) If the clerk is satisfied that the applicant is entitled to be registered as a voter, the applicant shall then affix the applicant’s signature to the affidavit [and the clerk shall affix the clerk’s signature; or]. In the case where an applicant is unable to write for reason of illiteracy, blindness, or other physical disability the clerk shall enter “Unable to sign” and the reason in the space for the applicant’s signature. A voter having once been registered shall not be required to register again for any succeeding election, except as hereinafter provided. The affidavits so approved or accepted by the clerk shall thereupon be numbered appropriately,

## ACT 112

filed by the clerk and kept in some convenient place so as to be open to public inspection and examination.

(e) The clerk may designate a subordinate or subordinates to act in the clerk's place and stead in all matters covered by this section, [provided] except that no candidate shall be eligible to serve as a subordinate."

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ , or so much thereof as may be necessary for fiscal year 1989-90, to carry out the purposes of this Act, including the hiring of necessary staff. The sum appropriated shall be expended by the office of the lieutenant governor.

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

SECTION 4. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

### Note

1. So in original.

## ACT 112

S.B. NO. 733

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. Section 76-16, Hawaii Revised Statutes, is amended to read as follows:

**"§76-16 Civil service and exemptions.** The civil service to which this part applies comprises all positions in the State now existing or hereafter established and embraces all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of personnel services has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
- (3) Positions of a temporary nature needed in the public interest where the need for the position does not exceed one year, but before any person may be employed to render the temporary service, the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and household employees at Washington Place;

- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, jury commissioners, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, and one law clerk for each judge of the circuit court and the administrative judge of the district court of the first circuit (provided that the law clerk for a judge of the circuit court shall be employed in lieu of and shall have the powers and duties of a court officer and bailiff under section 606-14); sheriff, first deputy sheriff, and second deputy sheriff; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resource coordination functions, and law clerks;
- (11) Teachers, principals, vice-principals, district superintendents, chief deputy superintendents, other certificated personnel, and not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work in the department of education, and members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
- (12) Employees engaged in special, research, or demonstration projects approved by the governor;
- (13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating on the work experience training programs, and students and positions filled through federally funded programs which provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;
- (14) A custodian or guide at Iolani Palace, Royal Mausoleum, and Hulihee Palace;
- (15) Positions filled by persons employed on a fee, contract, or piecework basis who lawfully may perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;

## ACT 112

- (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of the State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; one additional deputy to administer all hospitals within the jurisdiction of the department of health; one additional deputy in the department of health to administer all environmental health programs within the jurisdiction of the department; one additional deputy in the department of human services either in charge of welfare or other functions within the department as may be assigned by the director of human services; one additional deputy in the department of health in charge of administration or other functions within the department as may be assigned by the director of health with the approval of the governor; one additional deputy in the department of business and economic development to perform the duties assigned by the director of business and economic development and approved by the governor; one additional deputy in the department of budget and finance to perform the duties assigned by the director of finance and approved by the governor; one additional deputy within the department of land and natural resources to perform the duties to be assigned by the chairperson of the board of land and natural resources; and an administrative assistant to the superintendent of education;
- (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
- (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
- (19) Household employees at the official residence of the president of the University of Hawaii;
- (20) Employees in the department of education engaged in the supervision of students during lunch periods and in the cleaning of classrooms after school hours on a less than half-time basis;
- (21) Employees hired under the tenant hire program of the Hawaii housing authority; provided that no more than twenty-six per cent of the authority's work force in any housing project maintained or operated by the authority shall be hired under the tenant hire program;
- (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii which require hiring of nutrition program assistants who live in the areas they serve; and
- (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

**SECTION 2.** Nothing in this Act shall be deemed to affect the civil service status of any incumbent as of the effective date of the Act.

**SECTION 3.** Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

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

(Approved June 7, 1989.)

**Note**

1. No bracketed material.

**ACT 113**

S.B. NO. 751

A Bill for an Act Relating to Financial Disclosure.

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

SECTION 1. Section 84-17, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The following persons shall file annually with the state ethics commission a disclosure of financial interests:

- (1) The governor, the lieutenant governor, the members of the legislature, and delegates to the constitutional convention; provided that delegates to the constitutional convention shall only be required to file initial disclosures.
- (2) The directors and their deputies, the division chiefs, the executive directors and the executive secretaries and their deputies, the purchasing agents and the fiscal officers, regardless of the titles by which the foregoing persons are designated, of every state agency and department.
- (3) The permanent employees of the legislature and its service agencies, other than persons employed in clerical, secretarial, or similar positions.
- (4) The administrative director of the State, and the assistants in the office of the governor and the lieutenant governor, other than persons employed in clerical, secretarial, or similar positions.
- (5) The hearings officers of every state agency and department.
- (6) The president, the vice presidents, assistant vice presidents, the chancellors, and the provosts of the University of Hawaii and its community colleges.
- (7) The superintendent, the deputy superintendent, the assistant superintendents, [and] the district superintendents, the state librarian, and the deputy state librarian of the department of education.
- (8) The administrative director and the deputy director of the courts.
- (9) The members of every state board or commission whose original terms of office are for periods exceeding one year and whose functions are not solely advisory.
- (10) Candidates for state elective offices, including candidates for election to the constitutional convention, provided that candidates shall only be required to file initial disclosures.
- (11) The administrator and assistant administrator of the office of Hawaiian affairs.

SECTION 2. Section 84-17, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The financial disclosure statements of the following persons shall be public records and available for inspection and duplication [as specified in section 92-51]:

## ACT 114

- (1) The governor, the lieutenant governor, the members of the legislature, candidates for and delegates to the constitutional convention, the members of the board of education, the trustees of the office of Hawaiian affairs, and candidates for state elective offices.
- (2) The directors of the state departments and their first and second deputies.
- (3) The administrative director of the State.
- (4) The president, the vice presidents, the assistant vice presidents, [and] the chancellors,<sup>1</sup> and the provosts of the University of Hawaii.
- (5) The superintendent [and], the deputy superintendent, the state librarian, and the deputy state librarian of the department of education.
- (6) The administrative director and the deputy director of the courts.
- (7) The administrator and the assistant administrator of the office of Hawaiian affairs."

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

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

(Approved June 7, 1989.)

### Note

1. Comma should be underscored.

## ACT 114

S.B. NO. 1553

A Bill for an Act Relating to Public Officers and Employees.

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

SECTION 1. Section 88-82, Hawaii Revised Statutes, is amended to read as follows:

**"§88-82 Appeal of decision of medical board[.]; attorney's fees and costs reimbursable.** (a) A member who is not satisfied with the decision of the medical board may appeal the decision to the board of trustees within sixty days after receiving notification of the decision of the medical board. [The board of trustees, after hearing the appeal, may refer the matter to the medical review board, whose decision shall be final and binding.] The right of appeal to the board of trustees shall apply to all decisions and recommendations which the medical board is authorized to make. [The provisions of sections 91-9 to 91-13 shall not apply to reviews or proceedings of the medical review board.]

**(b)** If, in the event of an appeal of a decision of the medical board, retirement benefits are awarded to a member by the board of trustees or court of the appropriate jurisdiction under sections 88-75, 88-77, 88-79, 88-85, 88-284, or 88-285, the member shall be reimbursed reasonable attorney's fees together with any costs payable by the system. If an appeal is had, the attorney's fees or costs shall be subject to the approval of the board of trustees or by the appellate court deciding the appeal."

SECTION 2. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause

the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$50,000, or 0.0021 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 3.** There is appropriated out of the general funds of the State of Hawaii the sum of \$50,000, or so much thereof as may be necessary for fiscal year 1989-1990, to carry out the purposes of this Act.

**SECTION 4.** The sum appropriated shall be expended by the department of budget and finance.

**SECTION 5.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 6.** This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

**ACT 115**

S.B. NO. 1573

A Bill for an Act Relating to Milk.

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

**SECTION 1.** Section 157-41, Hawaii Revised Statutes, is amended to read as follows:

**“§157-41 Remedies; penalties.** (a) The board of agriculture may institute such action as may be necessary to enforce compliance with this chapter. [Any person convicted of violating this chapter shall be fined not less than \$25 nor more than \$500 or imprisoned not more than six months, or both.]

(b) Any person who violates this chapter shall be guilty of a misdemeanor and subject to a fine of not less than \$250 or more than \$1,000 or imprisonment for not more than one year, or both.

(c) The board of agriculture, after notice and opportunity for hearing, may fine any person who violates this chapter or any rule adopted under this chapter, not less than \$250 or more than \$1,000 for each separate offense. Each day or instance of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(d) Lawful compliance with this chapter shall not be deemed a violation of chapter 480.”

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

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

(Approved June 7, 1989.)

## ACT 116

## ACT 116

S.B. NO. 1842

A Bill for an Act Relating to Status of Convicted Persons.

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

SECTION 1. Section 831-3.1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The following criminal records shall not be used, distributed, or disseminated by the State or any of its political subdivisions or agencies in connection with an application for any said employment, permit, license, registration, or certificate:

- (1) Records of arrest not followed by a valid conviction;
- (2) Convictions which have been annulled or expunged;
- (3) Convictions of a penal offense for which no jail sentence may be imposed;
- (4) Conviction of a misdemeanor in which the period of twenty years has elapsed since date of conviction and during which elapsed time there has not been any subsequent arrest or conviction.

Except as provided in paragraphs (1) to (4), the State or any of its political subdivisions or agencies may consider as a possible justification for the refusal, suspension, or revocation of any employment or of any permit, license, registration, or certificate, any conviction of a penal offense when such offense directly relates (i) to the applicant's possible performance in the job applied for, or (ii) to the employee's possible performance in the job which the employee holds, or (iii) to the applicant's or holder's possible performance in the occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is applied for or held.

For the purpose of this subsection, such refusal, suspension, or revocation may occur only when the agency determines, after investigation in accordance with chapter 91, or, in the case of employment in the civil service, after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding, all of which need not be conducted in accordance with chapter 91, that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; provided that discharge from probation or parole supervision, or a period of two years after final discharge or release from any term of imprisonment, without subsequent criminal conviction, [shall be deemed rebuttable prima facie evidence of sufficient] may be considered as one of many factors to determine sufficiency of rehabilitation. A person deemed ineligible for employment in the civil service shall be entitled to appeal any and all adverse decisions to the civil service commission within twenty days after the notice of action has been sent to the person."

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

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

(Approved June 7, 1989.)

**ACT 117**

S.B. NO. 1938

A Bill for an Act Relating to Exceptional Children.

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

SECTION 1. Chapter 301, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§301- Coverage for workers’ compensation.** Whenever an exceptional child as defined in section 301-21 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.”

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

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

(Approved June 7, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 118**

H.B. NO. 12

A Bill for an Act Relating to Economic Development.

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

SECTION 1. Section 237-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The words “gross income” and “gross proceeds of sales” shall not be construed to include: gross receipts from the sale of securities as defined in [section 485-1] 15 U.S.C. section 78c or similar laws of jurisdictions outside the United States, contracts for the sale of a commodity for future delivery and other agreements, options, and rights as defined in 7 U.S.C. section 2 that are permitted to be traded on a board of trade designated by the Commodities Futures Trading Commission under the Commodity Exchange Act, or [other] evidence of indebtedness or, except as otherwise provided, from the sale of land in fee simple, improved or unimproved, dividends as defined by chapter 235; cash discounts allowed and taken on sales; the proceeds of sale of goods, wares, or merchandise returned by customers when the sale price is refunded either in cash or by credit; or the sale price of any article accepted as part payment on any new article sold, if the full sale price of the new article is included in the “gross income” or “gross proceeds of sales”; gross receipts from the sale or transfer of materials or supplies, interest on loans, or the provision of engineering, construction, maintenance, or managerial services by one “member” of an “affiliated public service company group” to another “member” of the same group as such terms are defined in section 239-2(6). Accounts found to be worthless and actually charged off for income tax purposes may, at corresponding periods, be deducted from gross proceeds of sale, or gross income, within this chapter, so far as they reflect taxable sales made, or gross income earned, after July 1, 1935, but shall be added to gross proceeds of sale or gross income when and if afterwards collected.”

SECTION 2. Section 237-24.5, Hawaii Revised Statutes, is amended to read as follows:

**"[§237-24.5] Additional exemptions.** (a) In addition to the amounts exempt under section 237-24, this chapter shall not apply to amounts[:] received by:

- (1) [Received by a stock] An exchange from:
  - (A) Transaction fees charged exchange members by the exchange for:
    - (i) The sale or purchase of [stocks or option contracts] securities or products, or both, bought or sold on [the] an exchange by exchange members[;] for their own account or an account for which they have responsibility as an agent, broker, or fiduciary;
    - (ii) Order book [official entries] executions made [by exchange employees in an official order book for accounting and monitoring] for purposes[;] of effecting transactions; and
    - (iii) [Data entries] Trade processing performed by an exchange [employees which entries match] in matching trades [for buy and sell purposes;], keypunching, record keeping, post cashiering, and notarization;
  - (B) Membership dues, fees, charges, assessments, and fines from individuals or firms, including charges for firm symbols (member identification)[;], application processing, registration, initiation, membership transfers, floor or post privileges, transaction time extensions, expediting transactions, crossover trades (trading out of assigned functions) and rule infractions;
  - (C) Service fees charged to members including fees for communications, badges, forms, documents, and reports;
  - (D) Listing fees and listing maintenance fees charged to companies that wish to be listed and have their securities or products traded on the exchange; and
  - (E) Participation in the communication network consortium [owned and] operated collectively by United States exchanges or other markets recognized by the Securities and Exchange Commission, the Commodities Futures Trading Commissions, or similar regulatory authorities outside the United States that provides last sale and quote securities information to subscribers[; and] or that connects such markets or exchanges for purposes of data transmission;
- (2) [Amounts received by any stock exchange member] Exchange members by reason of executing a securities or product transaction [relating to securities] on [the floor of a stock] an exchange; provided that this [exclusion] exemption shall [not] apply only to amounts received by [any person for transactions preceding or succeeding a transaction on the floor of the stock exchange.] exchange members from brokers or dealers registered with the Securities and Exchange Commission, from futures commission merchants, brokers, or associates registered with the Commodities Futures Trading Commission, or from similar individuals or firms registered with similar regulatory authorities outside the United States; and
- (3) Exchange members as proceeds from the sale of their exchange memberships.

- (b) As used in this section:

[“Securities” means securities as defined in section 485-1.

“Stock exchange” means a stock exchange organized under the laws of, or authorized to do business in, this State.

“Stock exchange member” means an individual or firm that pays membership dues to the exchange in order to trade securities on the floor of the exchange.]

“Exchange” means an exchange or board of trade as defined in 15 U.S.C. section 78c(a)(1) or in 7 U.S.C. section 7, respectively, which is subject to regulation by the Securities and Exchange Commission or the Commodities Futures Trading Commission or an organization subject to similar regulation under the laws of a jurisdiction outside the United States.

“Exchange member” means an individual or firm that is qualified by an exchange as a member and pays membership dues to an exchange in order to trade securities or products on an exchange.

“Securities” means securities as defined in 15 U.S.C. section 78c and “products” means contracts of sale of commodities for future delivery, futures contracts, options, calls, puts, and similar rights as defined in 7 U.S.C. section 2, which securities or products are permitted to be traded on an exchange.

(c) This section is repealed on June 30, 1992.”

SECTION 3. Act 295, Session Laws of Hawaii 1988, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect upon its approval[, and Section 1 shall be repealed on June 30, 1989].”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 7, 1989.)

## ACT 119

H.B. NO. 181

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. Section 626-1, Hawaii Revised Statutes, is amended by amending Rule 408 to read as follows:

**“Rule 408 Compromise [and], offers to compromise[.], and mediation proceedings.** Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, or (3) mediation or attempts to mediate a claim which was disputed, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations or mediation proceedings is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations[.] or mediation proceedings. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.”

## **ACT 120**

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

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

(Approved June 7, 1989.)

## **ACT 120**

H.B. NO. 254

A Bill for an Act Relating to Elections.

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

SECTION 1. The legislature finds that the Hawaii election campaign fund (HECF) has been accumulating a surplus since its inception. The legislature further finds that the HECF has been utilized infrequently by candidates running for the state house of representatives, the senate, and the councils of all counties.

In the 1988 races for the house of representatives, which are the smallest districts and represent the starting point for many political careers, only four candidates applied for HECF funding. They each received \$50. In the 1988 senate races, only one candidate received HECF funds. Similarly, only one candidate for the Honolulu city council received HECF funds. They also received \$50 each.

The intent of this Act is to increase utilization of HECF funds and compliance with the voluntary spending limits. This will be accomplished by increasing the amount of funds available from \$50 to \$250, for a trial period of one election. After reviewing the utilization during the 1990 elections, the legislature can better estimate the costs and benefits of extending the higher maximums to house, senate, and council races on a permanent basis.

SECTION 2. Section 11-218, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For the office of state senator, state representative, city<sup>1</sup> council member, prosecuting attorney, board of education, and all other offices, the maximum amount of public funds available to a candidate shall not exceed [\$100] \$500 in any election year.”

SECTION 3. Section 11-221, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The maximum amount of public funds available to candidates for the office of state senator, state representative, county council member, prosecuting attorney, board of education, and all other offices shall not exceed [\$50] \$250 for any primary, special primary, or general election.”

SECTION 4. Section 11-219, Hawaii Revised Statutes, is amended to read as follows:

**“§11-219 Qualifying campaign contributions; amounts.** As a condition of receiving public funds for a primary, special primary, or general election, a candidate shall have filed an affidavit with the commission pursuant to section 11-208 to voluntarily limit the candidate's campaign expenditures and shall be in receipt of the following sum of qualifying campaign contributions for the candidate's respective office:

- (1) For the office of governor—qualifying contributions which in the aggregate exceed \$25,000;
- (2) For the office of lieutenant governor—qualifying contributions which in the aggregate exceed \$20,000;
- (3) For the office of mayor in a county having more than 100,000 registered voters—qualifying contributions which in the aggregate exceed \$15,000;
- (4) For the office of mayor in a county having less than 100,000 registered voters—qualifying contributions which in the aggregate exceed \$5,000; and
- (5) For all other offices—qualifying contributions which in the aggregate exceed [\$500.] \$1,000."

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

SECTION 6. This Act shall take effect upon its approval and shall be repealed on December 31, 1990, and upon that occurrence, sections 11-221(c), 11-219, and 11-218(b) shall be reenacted in the form in which they existed on the day before the effective date of this Act.

(Approved June 7, 1989.)

**Note**

1. So in original.

**ACT 121**

H.B. NO. 339

A Bill for an Act Relating to Elections.

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

SECTION 1. The purpose of this Act is to amend the law relating to election offenses to narrow the period of time during which campaign activities within an area of one thousand feet in radius around the polling place are prohibited.

SECTION 2. Section 19-6, Hawaii Revised Statutes, is amended to read as follows:

**“§19-6 Misdemeanors.** The following persons shall be guilty of a misdemeanor:

- (1) Any person who offers any bribe or makes any promise of gain, or with knowledge of the same permits any person to offer any bribe or make any promise of gain for [his] the person's benefit[,] to any voter to induce [him] the voter to sign a nomination paper, and any person who accepts any bribe or promise of gain of any kind as consideration for signing the same, whether the bribe or promise of gain be offered or accepted before or after the signing[.];
- (2) Any person who wilfully tears down or destroys or defaces any election proclamation or any poster or notice or list of voters or visual aids or facsimile ballot, issued or posted by authority of law[.];
- (3) Any person printing or duplicating or causing to be printed or duplicated any ballot, conforming as to the size, weight, shape, thickness, or color[,] to the official ballot so that it could be cast or counted as an official ballot in an election[.];

## ACT 121

- (4) Every person who is disorderly or creates a disturbance whereby any meeting of the precinct officials or the board of registration of voters during an election is disturbed or interfered with; or whereby any person who intends to be lawfully present at any meeting or election is prevented from attending; or who causes any disturbance at any election; and every person assisting or aiding or abetting any disturbance[.];
- (5) Every person who, either in person or through another, in any manner breaks up or prevents, or endeavors to break up or prevent, the holding of any meeting of the board of registration of voters, or in any manner breaks up or prevents, or endeavors to break up or prevent, the holding of any election[.];
- (6) Any person, other than those designated by section 11-132, who remains or loiters within the area set aside for voting as set forth in section 11-132 during the time appointed for voting[.];
- (7) Any person, including candidates,<sup>1</sup> carrying on any campaign activities within the area described in section 11-132 [on the day on which an election is being held] during the period of time starting one hour before the polling place opens and ending when the polling place closes for the purpose of influencing votes. Campaign activities shall include the following:
  - (A) Any distribution, circulation, carrying, holding, posting, or staking of campaign cards, pamphlets, posters and other literature;
  - (B) The use of public address systems and other public communication media;
  - (C) The use of motor caravans or parades; and
  - (D) The use of entertainment troupes or the free distribution of goods and services;[The "day of election" as used in this paragraph shall commence at midnight of the day before the polls are opened and shall end with the closing of the polls.]
- (8) Any person who opens a return envelope containing an absentee ballot voted under chapter 15 other than those authorized to do so under chapter 15[.];
- (9) Any unauthorized person found in possession of any voting machine or keys thereof[.];
- (10) Every person who wilfully violates or fails to obey any of the provisions of law, punishment for which is not otherwise in this chapter specially provided for[.]; or
- (11) Any person who, knowing that [he] the person is not entitled to register or to vote, registers or votes; and any person taking any oath in this title prescribed or authorized to be administered and wilfully making oath to any false statement of fact, or wilfully making a false answer to any question put to [him] the person thereunder."

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

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

(Approved June 7, 1989.)

### Note

1. So in original.

## ACT 122

H.B. NO. 405

A Bill for an Act Relating to Enforcement.

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

SECTION 1. Section 199-7, Hawaii Revised Statutes, is amended to read as follows:

**“§199-7 [Seizure] Search and seizure; forfeiture of [certain] property.**

[Any equipment, article, instrument, aircraft, vehicle, or vessel, used or possessed in violation of title 12 and rules adopted thereunder, is declared to be a public nuisance and subject to seizure by any enforcement officer of the department of land and natural resources or by any police officer; and upon conviction of the person having possession or control of such equipment, article, instrument, aircraft, vehicle, or vessel, for a violation of any provision of the laws or rules, the equipment, article, instrument, aircraft, vehicle, or vessel, may be declared by the court to be forfeited to the State in accordance with the procedure set forth in section 701-119. Any equipment, article, instrument, aircraft, vehicle, or vessel so] (a) Any police officer or agent of the department of land and natural resources upon whom the board of land and natural resources has conferred powers of police officers, shall have the authority to conduct searches on probable cause as provided by law and to seize any equipment, article, instrument, aircraft, vehicle, vessel, business records, or natural resource used or taken in violation of the provisions contained in chapter 6E or title 12, or any rules adopted thereunder. For purposes of this section, “natural resource” includes any archaeological artifacts, minerals, any aquatic life or wildlife or parts thereof, including their eggs, and any land plants or parts thereof, including seeds.

(b) Any equipment, article, instrument, aircraft, vehicle, vessel, business records, or natural resource seized is subject to forfeiture pursuant to chapter 712A. Notwithstanding section 712A-16 or any other law to the contrary, any natural resource forfeited shall be turned over to the department of land and natural resources for disposition as determined by that department and may be destroyed, if illegal, or may be kept and retained and utilized by the department of land and natural resources or any other state agency, or if not needed or required by the department or other state agency, [shall] may be sold at public auction in the judicial circuit in which it was seized, the auction to be held once annually at a place and time to be designated by the department and notice thereof to be published in a newspaper of general circulation within the judicial circuit at least once before the auction, the first publication to be not less than twenty days prior to the auction. The auction shall be conducted by a person other than an employee of the department but designated by the department.

(c) The department of land and natural resources shall compile a list of all equipment, articles, instruments, aircraft, vehicles, [or] vessels, or any natural resource forfeited as provided in this section and shall publish the list in its annual report.”

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

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

(Approved June 7, 1989.)

ACT 123

H.B. NO. 536

A Bill for an Act Relating to Service of Process.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
SERVICE OF PROCESS”**

**§ -1 Process servers; license required.** Except as otherwise provided by law or rules of court, no person shall engage in the business as or serve in the capacity of a process server without being licensed as provided in this chapter. This chapter shall not apply to:

- (1) The sheriff or the sheriff's deputies;
- (2) The chief of police of the county in which the service is made or the chief's authorized subordinate;
- (3) Bailiffs and any other authorized court personnel; and
- (4) Other persons appointed by the court to serve process.

**§ -2 Qualifications.** The supreme court shall prescribe qualifications for process servers licensed under this chapter.

**§ -3 Application; fees.** (a) Every applicant for a license under this chapter shall file an application with the supreme court in such form and setting forth such information as may be prescribed or required by the supreme court, and shall furnish such additional information bearing upon the issuance of the license as the supreme court shall require. Every application shall be sworn to before an officer authorized to administer oaths. In the case of a partnership or corporation, any member or officer thereof may sign the application and verify the same on behalf of the applicant.

(b) Every application for a license hereunder shall be accompanied by an application fee of \$25.

**§ -4 Bond; recovery for damages.** (a) An application for a license shall be accompanied by a bond in the sum of not less than \$5,000 which has been executed by the applicant as principal and by a surety company authorized to do business in the State as surety, and conditioned upon compliance with this chapter and all laws governing the service of process in the State.

(b) Any person who recovers damages in any action or proceeding for injuries caused by a service of process which was made by a licensed process server and which did not comply with the provisions of law governing the service of process may recover the amount of the damages from the bond required in subsection (a).

(c) Whenever there has been a recovery against a bond under subsection (b) the licensed process server shall file a new bond within thirty days to reinstate the bond. If the licensed process server does not file the bond within thirty days, the license shall be revoked and the remainder of the bond forfeited to the general fund.

**§ -5 Place of business and posting of license.** (a) A licensed process server shall have, maintain, and operate from a definite place of business in the State and shall display the process server's license at that location.

(b) The licensed process server shall report any change of address or telephone number to the supreme court within ten business days from the change.

**§ -6 Service of process fees.** All process servers licensed under this chapter shall receive mileage and fees as established in sections 607-4 and 607-8.

**§ -7 Acts prohibited; penalty.** No person shall be qualified to act as a process server or shall enter upon any of the duties of the office or offer or assume to perform any of those duties until the person has fully complied with each of the requirements in each of the foregoing sections of this chapter and any other qualifications required by rules of court. Any person wilfully violating this section is guilty of a misdemeanor. Nothing in this section shall be construed to restrict or to do away with any liability for civil damages.”

SECTION 2. Section 634-21, Hawaii Revised Statutes, is amended to read as follows:

**“[§]§634-21[] Service of process, by whom.** Except as otherwise provided, service of all process and orders shall be made by the sheriff or the sheriff’s deputy, the chief of police of the county in which the service is made or the chief’s duly authorized subordinate, [or] some other person specially appointed by the court for the purpose[.], or a process server licensed pursuant to chapter .”

SECTION 3. Section 634-22, Hawaii Revised Statutes, is amended to read as follows:

**“[§]§634-22[] Return.** In all cases where any process or order of a court is served by any officer of the court or of the police force or the sheriff or the sheriff’s deputies, a record thereof shall be endorsed upon the back of the process, complaint, order, or citation. The record shall state the name of the person served and the time and place of service and shall be signed by the officer making the service. If the officer fails to make service the officer [shall], in like manner, shall endorse the reason for the officer’s failure and sign this record. When service is made by a person specially appointed by the court, or a licensed process server, the person or process server shall make affidavit of [such] that service.

The record or the affidavit shall be prima facie evidence of all it contains, and no further proof thereof shall be required unless either party desires to examine the officer or person making service, in which case the officer or person shall be notified to appear for examination.”

SECTION 4. Section 651-1, Hawaii Revised Statutes, is amended to read as follows:

**“§651-1 General provisions.** This part shall apply to circuit and district courts. A judge of any court of record may make any order at chambers which may by the provisions of this part be made by the court in term time. When the proceedings are before a district judge, the judge shall be regarded as the clerk of the court for all purposes contemplated herein. The phrase “police officer,” as used in this part, means a licensed process server, or the sheriff of the State or the sheriff’s deputy, and any chief of police or subordinate police officer duly authorized by the sheriff. Nothing in this part shall be construed to permit a district judge to issue a writ of attachment to be served out of the circuit in which [such] the judge’s court is situated, or to permit an attachment of real estate, or any interest therein, under a writ issued by a district court judge.”

SECTION 5. Section 653-6, Hawaii Revised Statutes, is amended to read as follows:

**“§653-6 Garnishee process.** Any provision to the contrary notwithstanding, no garnishee summons shall be issued before judgment until the creditor upon motion and after hearing has proved to the satisfaction of the court any of the following allegations:

- (1) That the defendant debtor is not a resident of the State and may depart from the State within six months from the date of filing of the action;
- (2) That the defendant debtor has departed from the State;
- (3) That the defendant debtor has left the county of the defendant debtor's residence with intent to avoid service of summons; or
- (4) That the defendant debtor, although a resident of the State, intends to depart from the State and remain absent therefrom for a period in excess of nine months.

If the ruling of the court is in favor of the creditor on any of the allegations above enumerated before judgment or if the creditor has received judgment in the creditor's favor on the creditor's complaint, the creditor may then request the court issuing the garnishee summons to direct the officer serving the same to leave a true copy thereof, which shall be attested by the sheriff, the sheriff's deputy, a licensed process server or other serving officer, with the comptroller of the State, or of the political or municipal subdivision of the State, or other officer through whom the salary, stipend, or wages of the debtor is sought to be attached, who shall herein<sup>1</sup> be called the garnishee.

In any action brought in the district court by a creditor against a debtor, the creditor [may], ten days after judgment rendered in the creditor's favor, in lieu of requesting the issuance of a garnishee summons, may file a certified copy of the judgment and the creditor's affidavit as to the amount due and unpaid on account of the judgment with the comptroller of the State, or of the political or municipal subdivision of the State<sup>1</sup> or other officers through whom the salary, stipend, or wages of the judgment debtor is paid, and upon [such] that filing the comptroller or other officer shall withhold from the wages of the judgment debtor the amounts provided in section 651-1(a)<sup>1</sup> subject to payment in good faith as provided in section 652-1(f) and pay the same to the judgment creditor.”

SECTION 6. Section 654-2, Hawaii Revised Statutes, is amended to read as follows:

**“[§654-2] Bond.** When the plaintiff desires the immediate delivery of the property, the plaintiff shall execute a bond to the defendant in possession of the property, and to all persons having an interest in the property, of such amount and with such sureties as are approved by the court, conditioned that the plaintiff will prosecute the plaintiff's action to judgment without delay, and deliver the property to the defendant in possession or any other person, if such delivery is adjudged, and pay all costs and damages that may be adjudged against the plaintiff. Upon the filing of the verified complaint or affidavit with the bond and a motion for immediate consideration of the matter, the court shall forthwith inquire into the matter, ex parte or otherwise, as in its discretion it determines. If thereupon the court finds that a prima facie claim for relief has been established, it shall issue an order directed to the sheriff, or the sheriff's deputy, or the chief of police, or an authorized police officer of any county, or a licensed process server, to take the property therein described and deliver the same to the plaintiff.

Copies of the verified complainant or affidavit, and, if a bond for immediate seizure has been filed, of the bond, and, if an order for the taking has been issued on an ex parte hearing, of the order, shall forthwith be served upon the defendant in possession and each person having or claiming a possessory interest in the property, in the same manner as is provided for service of summons unless the

party to be served has appeared in the action, in which case service may be made in the same manner as is provided for service of papers other than the summons. In a proper case, either before or after issuance of an order for the taking, the required service may be combined with the publication of the summons, in which event the giving of notice of the substance of the proceeding shall be sufficient.

Upon the application of any party, the proceeding shall be advanced and assigned for hearing at the earliest possible date."

**SECTION 7.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 8.** This Act shall take effect upon its approval; provided that this Act shall not affect any rights, duties, or responsibilities which have matured, penalties that were incurred, or proceedings that were begun before its effective date.

(Approved June 7, 1989.)

**Note**

1. So in original.

**ACT 124**

H.B. NO. 559

A Bill for an Act Relating to the Judiciary.

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

**SECTION 1.** Hawaii Revised Statutes, Section 706-623, is amended to read as follows:

**"§706-623 Terms of probation.** (a) When the court has sentenced a defendant to be placed on probation, the period of probation shall be five years upon conviction of a felony, one year upon conviction of a misdemeanor, or six months upon conviction of a petty misdemeanor, unless the defendant is sooner discharged by order of the court. The court, on application of a probation officer or of the defendant, or on its own motion, may discharge the defendant at any time. Prior to granting early discharge, the court shall afford the prosecuting attorney an opportunity to be heard.

(b) When a defendant who is sentenced to probation has previously been detained in any State or local correctional or other institution following arrest for the crime for which sentence is imposed, such period of detention following arrest shall be deducted from the term of imprisonment if such term is given as a condition of probation. The pre-sentence report shall contain a certificate showing the length of such detention of the defendant prior to sentence in any State or local correctional or other institution, and the certificate shall be annexed to the official records of the defendant's sentence."

**SECTION 2.** New statutory material is underscored.

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

(Approved June 7, 1989.)

## ACT 125

### ACT 125

H.B. NO. 561

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. Section 706-626, Hawaii Revised Statutes, is amended to read as follows:

**"§706-626 Summons or arrest of defendant on probation; commitment without bail.** At any time before the discharge of the defendant or the termination of the period of probation:

- (1) The court may, in connection with the probation, summon the defendant to appear before it or may issue a warrant for [his] the defendant's arrest;
- (2) A probation or peace officer, having probable cause to believe that the defendant has failed to comply with a requirement imposed as a condition of the order, may arrest [him] the defendant without a warrant[;]  
and the defendant shall be held in custody pending the posting of bail pursuant to a bail schedule established by the court, or until a hearing date is set;
- (3) The court, if there is probable cause to believe that the defendant has committed another crime or [if he] has been held to answer therefor, may commit [him] the defendant without bail, pending a determination of the charge by the court having jurisdiction thereof."

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

SECTION 3. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

### ACT 126

H.B. NO. 566

A Bill for an Act Relating to the Family Court.

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

SECTION 1. Section 576-37.5, Hawaii Revised Statutes, is amended to read as follows:

**"[§576-37.5] Interstate request for income withholding.** (a) Upon receipt by the agency, as defined in [Section 576D-1,] Chapter 576E, of a request from another state for enforcement of a support order by income withholding, which request is accompanied by a certified copy of the support order, the agency may enter an income withholding order as authorized in section 576E-16 [or forward the request and support order to the court for filing].

(b) [If the request is forwarded to the court, the certified copy of the support order shall be filed with the court. The support order so filed has the same effect and shall be enforced in the same manner as a support order rendered by a court of this state or by the agency. The agency shall notify the obligor that unless the obligor contests it, an order for income withholding pursuant to the procedures in section 571-52.3, shall automatically issue thirty days after the mailing of the notice.

An obligor may contest the issuance of an income withholding order under this section by filing with the agency a statement of objections within twenty days from the date of receipt of the notice of the pending order for income withholding. If no such statement of objections is received, the court shall issue an income withholding order upon the expiration of the thirty day period. If a statement of objections is made within this time, the agency shall notify the court to set the matter for a hearing. At the hearing, the court shall determine whether an income withholding order shall issue and the amount thereof. The only basis for contesting a withholding under this section is a mistake of fact, which, for purposes of this section, means an error in the amount of current or overdue support or in the identity of the alleged absent parent.] The obligor shall be notified of the agency's intent to withhold the obligor's wages not less than fourteen days prior to the enforcement of the support order. That notification shall be by certified mail with return receipt requested, and notice shall be deemed complete upon deposit in the mails, postage prepaid, addressed to the obligor's last known address."

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

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

(Approved June 7, 1989.)

## ACT 127

H.B. NO. 567

A Bill for an Act Relating to the Family Court.

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

SECTION 1. Section 580-5, Hawaii Revised Statutes, is amended to read as follows:

**“§580-5 Proof.** Upon the hearing of every complaint for annulment, divorce, or separation, the court shall require exact legal proof upon every point, notwithstanding the consent of the parties. Where the matter is uncontested and the court, in its discretion, waives the need for a hearing, then the court shall require exact legal proof upon every point by affidavit.”

SECTION 2. Section 580-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**“§580-42 Irretrievable breakdown.**<sup>1</sup> (a) If both of the parties by complaint or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken. The court, in its discretion, may waive a hearing on an uncontested divorce complaint and admit proof by affidavit.”

SECTION 3. Section 580-45, Hawaii Revised Statutes, is amended to read as follows:

**“§580-45 Decree.** If after a full hearing, the court is of opinion that a divorce ought to be granted from the bonds of matrimony a decree shall be signed, filed and entered, which shall take effect from and after such time as may be fixed by

## **ACT 128**

the court in the decree. The court, in its discretion, may waive a hearing on an uncontested divorce complaint and admit proof by affidavit. In case of a decree dissolving the bonds of matrimony, such time so fixed shall not be more than one month from and after the date of the decree."

**SECTION 4.** Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 7, 1989.)

### **Note**

1. So in original.

## **ACT 128**

H.B. NO. 571

A Bill for an Act Relating to Driving Under the Influence of Alcohol.

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

**SECTION 1.** Section 291-4, Hawaii Revised Statutes, is amended to read as follows:

**"§291-4 Driving under influence of intoxicating liquor.** (a) A person commits the offense of driving under the influence of intoxicating liquor if:

(1) The person operates or assumes actual physical control of the operation of any vehicle while under the influence of intoxicating liquor; or

(2) The person operates or assumes actual physical control of the operation of any vehicle with 0.10 per cent or more, by weight of alcohol in the person's blood.

(b) A person committing the offense of driving under the influence of intoxicating liquor shall be sentenced as follows without possibility of probation or suspension of sentence:

(1) For a first offense, or any offense not preceded within a five-year period by a conviction under this section, by:

(A) A fourteen-hour minimum alcohol abuse rehabilitation program including education and counseling, or other comparable program deemed appropriate by the court; and

(B) Ninety-day prompt suspension of license with absolute prohibition from operating a motor vehicle during suspension of license, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a motor vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in alcoholism treatment programs; and

(C) Any one or more of the following:

(i) Seventy-two hours of community service work; or

(ii) Not less than forty-eight hours of imprisonment; or

(iii) A fine of not less than \$150 but not more than \$1,000.

- (2) For an offense which occurs within five years of a prior conviction under this section:
  - (A) Prompt suspension of license for a period of one year with the absolute prohibition from operating a motor vehicle during suspension of license;
  - (B) Either one of the following:
    - (i) Not less than eighty hours of community service work; or
    - (ii) Not less than forty-eight consecutive hours of imprisonment; and
  - (C) A fine of not less than \$500 but not more than \$1,000.
- (3) For an offense which occurs within five years of two prior convictions under this section, by:
  - (A) A fine of not less than \$500 but not more than \$1,000;
  - (B) Revocation of license for a period not less than one year but not more than five years; and
  - (C) Not less than ten days but not more than one hundred eighty days imprisonment.
- (4) Notwithstanding any other law to the contrary, any conviction for driving under the influence of intoxicating liquor, shall be considered a prior conviction.

(c) Whenever a court sentences a person pursuant to section 291-4(b)(2) or (3), it shall also require that the offender be referred to a substance abuse counselor who has been certified pursuant to section 321-193 for an assessment of the offender's alcohol abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court may require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's alcohol abuse or dependence.

All cost for such assessment or treatment or both shall be borne by the offender.

(d) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to the provisions of this section, the examiner of drivers shall not grant to such person an application for a new driver's license for such period as specified by the court.

(e) Any person sentenced under the provisions of this part may be ordered to make restitution to the county for the actual cost incurred in conducting any blood tests under the provisions of section 286-152. The court may order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department, or other agency incurring the expense of the blood test.

[(e)] (f) As used in this section the terms "driver," "driver's license," and "examiner of drivers," shall have the same meanings as provided in section 286-2; and the term "vehicle" shall have the same meaning as provided in section 291C-1."

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

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

(Approved June 7, 1989.)

ACT 129

H.B. NO. 672

A Bill for an Act Relating to Libraries.

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

SECTION 1. The purpose of this Act is to establish a libraries special fund in which moneys collected as fines for overdue books and payments for lost or otherwise unreturned books are deposited. Currently these moneys are deposited in the state general fund. The libraries special fund shall be used to purchase books or other library materials. The fund will better ensure that library books and materials are replenished at the same rate at which they are lost, damaged, or destroyed.

SECTION 2. Section 312-4, Hawaii Revised Statutes, is amended to read as follows:

**“§312-4 Disposition of [fines and related] other income.** Income from the operation of libraries that are financially supported by the State, with the exception of income generated pursuant to section 312-3.5, shall be deposited with the director of finance to the credit of the general fund; provided that moneys or properties donated for library use and patrons' deposits shall be deposited and accounted for in accordance with regulations prescribed by the comptroller.”

SECTION 3. Chapter 312, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§312- Libraries special fund.** (a) There is established in the state treasury a libraries special fund into which shall be deposited all moneys collected pursuant to section 312-3.5.

(b) The fund shall be administered by the state librarian who shall, after consultation with the library advisory committee, determine the annual amount, based on the balance in the fund as of the first day of the fiscal year, that each public library shall receive. Allocations shall be made in quarterly installments within thirty days of the end of each calendar quarter.

(c) Moneys allocated from the libraries special fund to the public libraries shall be used to purchase books or other library materials. Each public library may post on a bulletin board or other appropriate place a list of the purchases made from the special fund in the preceding quarter.

(d) The state librarian shall submit an annual report on the status of the libraries special fund, to include deposits into the fund and the source of these revenues, allocations to each public library, descriptions and amounts of expenditures made from the fund, and balances remaining on June 30 of each year; provided that this report shall be submitted to the legislature and to the governor, or the director of finance if so delegated by the governor, no later than twenty days prior to the convening of each regular session of the legislature.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 130**

H.B. NO. 837

A Bill for an Act Relating to the Developmentally Disabled.

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

**SECTION 1. Findings and purpose.** The legislature finds that Section 333F-16, Hawaii Revised Statutes, includes a technical fault, which negates the intent of the legislature and existing policy of the department of health in regard to voluntary readmittance of previous residents of the institution to the Waimano training school and hospital. It is the purpose of this Act to correct the technical fault in the section. It is not the intent of the legislature to create a presumption that all persons committed to Waimano training school and hospital were properly committed.

**SECTION 2.** Section 333F-16, Hawaii Revised Statutes, is amended to read as follows:

**“[[§333F-16]] Effect on prior commitments.** [Persons committed to Waimano training school and hospital prior to July 1, 1987, shall remain wards of the director, and the] The director is hereby granted the power to voluntarily [admit such] readmit persons previously admitted to Waimano training school and hospital. [These persons shall be deemed to have met] Persons readmitted shall meet the criteria for admission under this chapter. Any parent or other interested person may petition the family court for removal of the director as guardian of the person of any person committed to Waimano training school and hospital [on July 1, 1987,] under section 560:5-307. If the person is a minor, a parent, guardian, or other person or agency having legal custody may request that the minor be readmitted upon written application to the director. If the person is an adult, the person or guardian of the person may request that the adult person be readmitted upon written application to the director.”

**SECTION 3.** Section 560:5-601, Hawaii Revised Statutes, is amended by amending the definition of “Ward” to read as follows:

“ “Ward” means an incapacitated person for whom [the family court has appointed, pursuant to sections 560:5-303<sup>1</sup> and 560:5-304,] a guardian of the person [of the incapacitated person] has been appointed and who, because of the terms of the [family court’s order of] appointment of the guardian, lacks the legal power to consent to sterilization.”

**SECTION 4.** Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 7, 1989.)

**Note**

1. So in original.

## ACT 131

### ACT 131

H.B. NO. 1135

A Bill for an Act Relating to Terroristic Threatening of an Educational Worker.

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

SECTION 1. Section 707-716, Hawaii Revised Statutes, is amended to read as follows:

**“[§]§707-716[] Terroristic threatening in the first degree.** (1) A person commits the offense of terroristic threatening in the first degree if he commits terroristic threatening:

- (a) By threatening another person on more than one occasion for the same or a similar purpose; or
  - (b) By threats made in a common scheme against different persons; or
  - (c) Against a public servant[; or], including but not limited to an educational worker, who for the purposes of this section shall mean an administrator, specialist, counselor, teacher, or other employee of the department of education, or a volunteer as defined by section 90-1, in a school program, activity, or function that is established, sanctioned, or approved by the department of education, or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function; or
  - (d) With the use of a dangerous instrument.
- (2) Terroristic threatening in the first degree is a class C felony.”

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

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

(Approved June 7, 1989.)

### ACT 132

H.B. NO. 1593

A Bill for an Act Relating to Custody Awards.

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

SECTION 1. Section 571-46, Hawaii Revised Statutes, is amended to read as follows:

**“§571-46 Criteria and procedure in awarding custody.** In the actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is at issue a dispute as to the custody of a minor child, the court [may], during the pendency of the action, at the final hearing, or any time during the minority of the child, may make [such] an order for the custody of the minor child as may seem necessary or proper. In awarding the custody, the court [is to] shall be guided by the following standards, considerations, and procedures:

- (1) Custody should be awarded to either parent or to both parents according to the best interests of the child[.];
- (2) Custody may be awarded to persons other than the father or mother whenever [such] the award serves the best interest of the child. Any person who has had de facto custody of the child in a stable and

- wholesome home and is a fit and proper person shall [prima facie] be entitled prima facie to an award of custody[.];
- (3) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, the child's wishes as to custody shall be considered and be given due weight by the court[.];
  - (4) Whenever good cause appears therefor, the court may require an investigation and report concerning the care, welfare, and custody of any minor child of the parties. When so directed by the court, investigators or professional personnel attached to or assisting the court shall make investigations and reports which shall be made available to all interested parties and counsel before hearing, and [such] the reports may be received in evidence if no objection is made and, if objection is made, may be received in evidence provided the person or persons responsible for the report are available for cross-examination as to any matter [which] that has been investigated[.];
  - (5) The court may hear the testimony of any person or expert produced by any party or upon the court's own motion, whose skill, insight, knowledge, or experience is such that the person's or expert's testimony is relevant to a just and reasonable determination of what is [to] for the best physical, mental, moral, and spiritual well-being of the child whose custody is at issue[.];
  - (6) Any custody award shall be subject to modification or change whenever the best interests of the child require or justify the modification or change and, wherever practicable, the same person who made the original order shall hear the motion or petition for modification of the prior award[.];
  - (7) Reasonable visitation rights shall be awarded to parents, grandparents, and any person interested in the welfare of the child in the discretion of the court, unless it is shown that [such] rights of visitation are detrimental to the best interests of the child[.];
  - (8) The court may appoint a guardian ad litem to represent the interests of the child and may assess the reasonable fees and expenses of the guardian ad litem as costs of the action, payable in whole or in part by either or both parties as the circumstances may justify[.]; and
  - (9) The court shall consider evidence of family violence, including but not limited to spouse abuse, as one of the factors in determining the best interests of the child in establishing custody and visitation rights.”

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

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

(Approved June 7, 1989.)

## ACT 133

H.B. NO. 1698

A Bill for an Act Relating to Child Support.

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

SECTION 1. Chapter 576D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§576D- Protection of records; divulging confidential information prohibited; penalties.** (a) The agency and its agents shall keep such records as may

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be necessary or proper in accordance with this chapter. All applications and records concerning any applicant for support services or recipient of public assistance shall be confidential. The use or disclosure of information concerning any applicant or recipient shall be limited to:

- (1) Persons duly authorized by the State or the United States in connection with their official duties, when their official duties are directly concerned with the administration and implementation of any child support enforcement plan or program approved by Title IV-A through D, or under Titles II, X, XIV, XVI, XIX, or XX of the Social Security Act, including but not limited to any legal counsel working on behalf of the agency;
  - (2) Disclosure to the extent necessary to provide information to family support payors or payees or their authorized representatives regarding payments received by the agency and the status of their support accounts; provided that the information shall be disclosed to an authorized representative only if the request is accompanied by a written waiver of the payor or payee concerned;
  - (3) Disclosure to consumer reporting agencies as provided in section 576D-6(6);
  - (4) Other agencies or persons connected with the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need;
  - (5) Employees acting within the scope and course of their employment with the department as may be approved by the agency; and
  - (6) Purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any plan or program in subsection (a)(1).
  - (7) Disclosure to the family court as may be deemed necessary by the family court for any case pending before a court or for purposes of implementation of section 571-51.5.
- (b) Disclosure to any committee or legislative body (federal, state, or county) of any information that identifies by name and address any applicant or recipient shall be prohibited.

(c) The agency shall adopt and enforce such rules as may be necessary to prevent improper acquisition or use of confidential information. Any information obtained pursuant to this section by officials, employees, or legal counsel working on behalf of the agency may be used in connection with their official duties or within the scope and course of their employment but not otherwise, and shall be kept in confidential records or files, which shall not be subject to any other law permitting inspection of public records. The agency and its agents shall determine whether the inspection is in connection with the official duties or within the scope and course of employment.

(d) The use of the records, and other communications of the agency or its agents by any other agency or department of the government to which they may be furnished, shall be limited to the purposes for which they are furnished.

(e) Any person, including any person who is authorized by this section to obtain information, who, knowing the information obtained is from confidential records or files of the agency, intentionally discloses the information other than as authorized by law, or who intentionally or knowingly aids or abets in the inspection or disclosure of the applications or records by any person not authorized by this section to inspect such applications or records, shall be guilty of a misdemeanor, unless a greater penalty is otherwise provided by law.

(f) Nothing in this section shall require the sealing of family court records or preclude the disclosure of information by the family court relating to any case pending before a court or for purposes of implementation of section 571-51.5."

SECTION 2. Section 576D-1, Hawaii Revised Statutes, is amended by amending the definition of "Title IV-A", "Title IV-D", and "Title IV-E", to read as follows:

"Title IV-A", "Title IV-B", "Title IV-C", "Title IV-D", and "Title IV-E" mean Title IV-A, Title IV-B, Title IV-C, Title IV-D, and Title IV-E, respectively, of the federal Social Security Act (August 14, 1935, chapter 531, 49 Stat. 620), as amended."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. New statutory material is underscored.<sup>1</sup>

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

(Approved June 7, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 134**

H.B. NO. 1851

A Bill for an Act Relating to the Hawaii State Public Library System.

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

SECTION 1. Chapter 312, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§312- Special assistant to the state librarian; appointment and duties; secretary.** The state librarian shall appoint a special assistant to the state librarian who shall serve at the pleasure of the state librarian and shall generally assist the state librarian, as the state librarian may require, in the initiation, direction, or monitoring of administrative or managerial special projects, studies, investigations, and any other assignments that the state librarian determines to be necessary. In addition, the special assistant shall, as the state librarian may direct, serve as the state librarian's representative to, and monitor and apprise the state librarian of the activities of the various national, regional, state, and local organizations and committees in which the state librarian has membership, participation, or interest. The special assistant to the state librarian shall be appointed without regard to chapters 76 and 77, and shall hold no other public or private office or employment. Section 26-53 shall not be applicable to the special assistant to the state librarian. The state librarian may also appoint, without regard to chapters 76 and 77, one secretary for the special assistant to the state librarian. The secretary for the special assistant to the state librarian shall serve at the pleasure of the state librarian.”

SECTION 2. Section 76-16, Hawaii Revised Statutes, is amended to read as follows:

**“§76-16 Civil service and exemptions.** The civil service to which this part applies comprises all positions in the State now existing or hereafter established and embraces all personal services performed for the State, except the following:

## ACT 134

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of personnel services has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
- (3) Positions of a temporary nature needed in the public interest where the need for the position does not exceed one year, but before any person may be employed to render the temporary service, the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, jury commissioners, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, and one law clerk for each judge of the circuit court and the administrative judge of the district court of the first circuit (provided that the law clerk for a judge of the circuit court shall be employed in lieu of and shall have the powers and duties of a court officer and bailiff under section 606-14); sheriff, first deputy sheriff, and second deputy sheriff; and one private secretary for each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
- (11) Teachers, principals, vice-principals, district superintendents, chief deputy superintendents, other certificated personnel, and not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work in the department of education, the special assistant to the state librarian, one secretary for the special assistant to the state librarian, and members of the faculty of the University of Hawaii, including research workers, extension agents,

- personnel engaged in instructional work and administrative, professional, and technical personnel of the university;
- (12) Employees engaged in special, research, or demonstration projects approved by the governor;
  - (13) Positions filled by inmates, kokusas, patients of state institutions, persons with severe physical or mental handicaps participating on the work experience training programs, and students and positions filled through federally funded programs which provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;
  - (14) A custodian or guide at Iolani Palace, Royal Mausoleum, and Hulihee Palace;
  - (15) Positions filled by persons employed on a fee, contract, or piecework basis who [lawfully] may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
  - (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of the State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; one additional deputy to administer all hospitals within the jurisdiction of the department of health; one additional deputy in the department of health to administer all environmental health programs within the jurisdiction of the department; one additional deputy in the department of human services either in charge of welfare or other functions within the department as may be assigned by the director of human services; one additional deputy in the department of health in charge of administration or other functions within the department as may be assigned by the director of health with the approval of the governor; one additional deputy in the department of business and economic development to perform the duties assigned by the director of business and economic development and approved by the governor; one additional deputy in the department of budget and finance to perform the duties assigned by the director of finance and approved by the governor; one additional deputy within the department of land and natural resources to perform the duties to be assigned by the chairperson of the board of land and natural resources; and an administrative assistant to the superintendent of education;
  - (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
  - (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
  - (19) Household employees at the official residence of the president of the University of Hawaii;
  - (20) Employees in the department of education engaged in the supervision of students during lunch periods and in the cleaning of classrooms after school hours on a less than half-time basis;

## **ACT 136**

- (21) Employees hired under the tenant hire program of the Hawaii housing authority; provided that no more than twenty-six per cent of the authority's work force in any housing project maintained or operated by the authority shall be hired under the tenant hire program;
- (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii which require hiring of nutrition program assistants who live in the areas they serve; and
- (23) Positions filled by the<sup>1</sup> severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to safely perform<sup>1</sup> the duties of the positions.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

**SECTION 3.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

**SECTION 4.** This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

### **Notes**

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

## **ACT 135**

S.B. NO. 15

A Bill for an Act Relating to Civil Defense.

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

**SECTION 1.** The purpose of this Act is to repeal a redundant statute relating to blackouts. The legislature finds that the powers granted by chapter 129 are included in chapter 128 and need not be reiterated in a separate chapter.

**SECTION 2.** Chapter 129, Hawaii Revised Statutes, is repealed.

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

(Approved June 7, 1989.)

## **ACT 136**

S.B. NO. 20

A Bill for an Act Relating to Police Departments.

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

**SECTION 1.** Chapter 52, Hawaii Revised Statutes, is repealed.

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

## “CHAPTER POLICE DEPARTMENTS”

**§ -1 Police commission.** A police commission is created for each of the counties. The composition, appointment, terms of office, staff, powers, duties, and functions of each police commission shall be prescribed by the charter of each county.

**§ -2 Chief of police.** The police commission shall appoint a chief of police. The chief of police shall annually make a report to the police commission on the state of affairs and condition of the police department.

**§ -3 Powers and duties of chief of police.** The chief of police shall have the powers and duties as prescribed by law, the respective county charter, and as provided by this chapter.

**§ -4 Ex officio coroner.** Where there is no other county medical examiner, the chief of police or any duly authorized subordinate shall be ex officio county coroner. An ex officio county coroner shall have all the powers and perform all the duties of coroner, within that county, as provided by law.

**§ -5 Powers of chief of police outside own county.** The chief of police of each county and any duly authorized subordinates shall have and may exercise all powers, privileges, and authority necessary to enforce the laws of the State, in a county other than the county in and for which the chief has been appointed, if:

- (1) The exercise of such power, privilege, and authority is required in the pursuit of any investigation commenced within the county in and for which the chief has been appointed; and
- (2) The concurrence of the chief of police of the county in which the power, privilege, and authority sought to be exercised is obtained.

**§ -6 Police force; employees.** The chief of police may appoint officers and other employees under such rules and at such salaries as are authorized by law. Probationary appointment, suspension, and dismissal of officers and employees of the police department shall be as authorized by law.

**§ -7 Traffic control surrounding school premises.** (a) The chief of police shall have charge, direction, and control of all matters relating to preserving and protecting the public health, safety, and welfare on and about the streets surrounding any school. To perform this function, the chief of police shall appoint, train, and compensate traffic monitors to perform such duties as the chief directs. Nothing contained in this section shall be construed to diminish the role now performed by the junior police officer program.

(b) The traffic monitors of the respective counties shall be provided with suitable badges or insignia of office, and shall have the duty to assist police officers throughout the State in all matters relating to the enforcement of traffic regulations on and about the streets surrounding any public school premises.

(c) The term “traffic monitor” means all persons over the age of eighteen who are appointed, trained, and compensated by the chief of police of each county to perform duties under this section whether called traffic monitors or by any other name or title.

**§ -8 Police officers; counsel for.** Whenever a police officer is prosecuted for a crime or sued in a civil action for acts done in the performance of the officer’s duty as a police officer, the police officer shall be represented and defended:

## **ACT 136**

- (1) In criminal proceedings by an attorney to be employed and paid by the county in which the officer is serving; and
- (2) In civil cases by the corporation counsel or county attorney of the county in which the police officer is serving.

**§ -9 Determination of scope of duty.** The determination of whether an act, for which the police officer is being prosecuted or sued, was done in the performance of the police officer's duty, so as to entitle the police officer to be represented by counsel provided by the county, shall be made by the police commission of the county. Before making a determination, the police commission shall consult the county attorney or the corporation counsel, who may make a recommendation to the police commission with respect thereto if the county attorney or corporation counsel so desires. The determination of the police commission shall be conclusive for the purpose of this section and section -8.

**§ -10 Disposition of found, stolen, or unclaimed property.** Each chief of police, on the first Monday in January and the first Monday in July, shall give the county director of finance a sworn statement listing all moneys (except money found), goods, wares, and merchandise in the chief's custody which have been unclaimed for a period of not less than ninety days. At least annually, the chief of police shall give notice to the public, once a week for four successive weeks in a newspaper of general circulation in the county (and may also give notice by posting in conspicuous places), that, unless claimed by an owner with satisfactory proof of ownership, the goods, wares, and merchandise listed will be sold at public auction to the highest bidder. On the day and at the place specified in the notice, all property still unclaimed, except money and found property, shall be sold by auction by or under the direction of the chief of police. Any unclaimed goods, wares, or merchandise of a perishable nature or which are unreasonably expensive to keep or safeguard, may be sold at public auction or by any commercially reasonable manner, at such time and after such notice as the chief of police deems proper and reasonable under the circumstances. The chief of police, immediately after the sale of any property in accordance with this section, shall pay to the director of finance of the county all moneys remaining unclaimed and all moneys received upon the sale.

**§ -11 Reports by common carriers and court clerks.** All property held by common carriers, subject to section 490:7-308, and by clerks of the court, subject to section 606-4, shall be reported by the common carriers or clerks of the court, in June and December of each year, to the chief of police of the county in which the property is held.

**§ -12 Duty of police officer to owner.** Any stolen or lost property in the custody of a police officer shall be delivered to its owner or the owner's duly authorized agent upon satisfactory proof of ownership, and if to an agent, of the agency; subject to payment by the owner or agent of all reasonable expenses incurred in the preservation and safekeeping of the property.

**§ -13 Orders of retention.** No property shall be sold or delivered under sections -10 to -14 if the chief of police, any county attorney or corporation counsel, or any court directs that it be retained as evidence.

**§ -14 Duty and right of finders.** (a) Except as provided in section 261-17.7, all money or property found shall be reported or delivered by the finder to the chief of police of the county. When so delivered, it shall be held by the chief

of police for forty-five days or until claimed by some person who establishes title or right of custody thereto to the satisfaction of the chief of police. If title or right of custody is established, the money or property shall be delivered to the claimant by the chief of police.

(b) If no claim is made or no such right is established within the forty-five days, the money or property shall be returned to the person who delivered it to the chief of police; provided that if the person who delivered it to the chief of police fails to claim the money or property within thirty days after being notified by the chief of police that the person is entitled to possession, the chief of police shall dispose of the money or property in accordance with the procedures established in section -10. For the purpose of this section, notice by regular mail to the person's last known address shall be sufficient."

SECTION 3. This Act shall take effect on July 1, 1990.

(Approved June 7, 1989.)

**ACT 137**

S.B. NO. 25

A Bill for an Act Relating to Urban and Regional Design.

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

SECTION 1. The legislature finds that the purpose of the urban and regional design law was to provide for urban and regional plans for each county to facilitate design in future development and construction. The legislature further finds that the counties are given general jurisdiction and powers to govern themselves, are generally capable of doing so, and that the urban and regional design law is an unnecessary intrusion into the jurisdiction of the counties. The purpose of this Act is to repeal the urban and regional design law.

SECTION 2. Chapter 57, Hawaii Revised Statutes, is repealed.

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

(Approved June 7, 1989.)

**ACT 138**

S.B. NO. 36

A Bill for an Act Relating to Elections.

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

SECTION 1. **Findings and purpose.** The legislature finds that there is a conflict within section 11-216, Hawaii Revised Statutes, in that subsection (c)(2) of that section provides for public hearings, while subsection (d), requires confidentiality. An opinion letter from the Attorney General, dated January 21, 1988, opines that subsection (d) should be given effect and advises "against enforcing the public hearing requirement in subsection (c)(2) to the extent that it is impossible to have a public hearing and maintain the required confidentiality." The purpose of this Act is to remove the conflicting language from the statute and clearly articulate the legislative intent to maintain confidentiality.

SECTION 2. Section 11-216, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

## **ACT 139**

"(c) Upon hearing the response of the person cited, if the person elects to respond to the complaint, and upon completion of any investigation, the commission shall make a prompt determination as to whether probable cause exists that a violation has been committed.

- (1) Any person who appears before the commission shall have all of the rights, privileges, and responsibilities of a witness appearing before the courts of this State. All witnesses summoned before the commission shall receive reimbursements as paid in like circumstances in the courts of this State. Any person whose name is mentioned during a proceeding of the commission and who may be adversely affected thereby, may appear personally before the commission on the person's own behalf or file a written statement for incorporation into the record of the proceeding.
- (2) The commission shall [conduct a public hearing and] cause a record to be made of all proceedings pursuant to this subsection. At the conclusion of proceedings concerning an alleged violation, the commission shall immediately begin deliberations on the evidence and then proceed to determine by majority vote of the members whether probable cause exists that a violation has been committed."

**SECTION 3.** Statutory material to be repealed is bracketed.

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

(Approved June 7, 1989.)

## **ACT 139**

S.B. NO. 54

A Bill for an Act Relating to Corporations.

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

**SECTION 1.** Section 415-143, Hawaii Revised Statutes, is amended to read as follows:

**"[§415-143]** **Greater voting requirements.** Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this chapter with respect to such action, [the provisions of] the articles of incorporation shall control. An amendment to the articles of incorporation that adds, changes, or deletes a greater voting requirement shall be adopted by the same vote and classes or series thereof required to take action under the voting requirement then in effect or proposed to be adopted, whichever is greater."

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

**SECTION 3.** This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

## ACT 140

S.B. NO. 100

A Bill for an Act Relating to District Court Practitioners.

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

**SECTION 1. Findings and purpose.** The legislature finds that the last district court practitioner, William K. Isaacs, Jr., closed his practice in July, 1988. Accordingly, the purpose of this Act is to repeal references to district court practitioners in the Hawaii Revised Statutes which are now obsolete.

**SECTION 2.** Section 443B-1, Hawaii Revised Statutes, is amended by amending the definition of "collection agency" to read as follows:

"Collection agency" means any person, whether located within or outside this State, who by oneself or through others offers to undertake or holds oneself out as being able to undertake or does undertake to collect for another person, claims or money due on accounts or other forms of indebtedness for a commission, fixed fee, or a portion of the sums so collected.

"Collection agency" includes:

- (1) Any person using any name other than the person's own in collecting the person's own claims with the intention of conveying, or which tends to convey the impression that a third party has been employed;
- (2) Any person who, in the conduct of the person's business for a fee, regularly repossesses any merchandise or chattels for another; and
- (3) Any person who regularly accepts the assignment of claims or money due on accounts or other forms of indebtedness and brings suits upon the assigned claims or money due on accounts or other forms of indebtedness in the person's own name; provided that any suits shall be initiated and prosecuted by an attorney who shall have been appointed by the assignee; provided further that any person who by oneself or through others offers to undertake or holds oneself out as being able to undertake or does undertake to collect for another person the amounts due under any agreement which provides for installment payments and which is secured by an interest in real property, including without limitation, mortgage loans and agreements of sale, whether or not the collection servicing agent receives any compensation or other consideration for one's services, shall fall within the purview of chapter 454D.

"Collection agency" does not include licensed attorneys at law [or district court practitioners] acting within the scope of their profession, licensed real estate brokers, and salesmen residing in this State when engaged in the regular practice of their profession, nor banks, trust companies, building and loan associations, savings and loan associations, industrial loan companies, credit unions, companies doing an escrow business, individuals regularly employed on a regular wage or salary in the capacity of credit men or in other similar capacity for a single employer who is not a collection agency, nor any person doing business subject to public supervision and regulation, nor any public officer or any person acting under an order of court."

**SECTION 3.** Section 605-11, Hawaii Revised Statutes, is repealed.

**SECTION 4.** Section 605-2, Hawaii Revised Statutes, is amended to read as follows:

**"§605-2 Attorneys; license required.** Except as provided by the rules of court, no person shall be allowed to practice in any court of the State unless he

## ACT 141

has been duly licensed so to do by the supreme court; provided that nothing in this chapter shall prevent any person, plaintiff, defendant, or accused, from appearing in person before any court, and there prosecuting or defending his own cause, without the aid of legal counsel; provided further that in the district courts sections [605-11,] 605-13[,] and 633-28 shall apply."

SECTION 5. Statutory material to be repealed is bracketed.<sup>1</sup>

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

(Approved June 7, 1989.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 141

S.B. NO. 297

A Bill for an Act Relating to Contractors.

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

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

**"§26H-4 Repeal dates.** (a) The following chapters are hereby repealed effective December 31, 1989:

- [(1)] Chapter 444 (Contractors License Board)
- [(2)] (1) Chapter 448E (Board of Electricians and Plumbers)
- [(3)] (2) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)
- [(4)] (3) Chapter 466 (Board of Public Accountancy)
- [(5)] (4) Chapter 467 (Real Estate Commission)
- [(6)] (5) Chapter 439 (Board of Cosmetology)
- [(7)] (6) Chapter 454 (Mortgage Brokers and Solicitors)
- [(8)] (7) Chapter 454D (Mortgage and Collection Servicing Agents)

(b) The following chapter and sections are hereby repealed effective December 31, 1990:

- (1) Chapter 466J (Board of Radiologic Technology)
- (2) Sections 321-13 to 321-15 (midwives, laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, tattoo artists, electrologists, and sanitarians)

(c) The following chapters are hereby repealed effective December 31, 1991:

- (1) Chapter 447 (Dental Hygienists)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 457 (Board of Nursing)
- (4) Chapter 458 (Board of Dispensing Opticians)
- (5) Chapter 460J (Pest Control Board)
- (6) Chapter 462A (Pilotage)
- (7) Chapter 438 (Board of Barbers)
- (8) Chapter 468K (Travel Agencies)

(d) The following chapters are hereby repealed effective December 31, 1992:

- (1) Chapter 448H (Elevator Mechanics Licensing Board)

- (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- (3) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- (4) Chapter 460 (Board of Osteopathic Examiners)
- (5) Chapter 461 (Board of Pharmacy)
- (6) Chapter 461J (Board of Physical Therapy)
- (7) Chapter 463E (Podiatry)
- (e) The following chapters are hereby repealed effective December 31, 1993:
  - (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
  - (2) Chapter 437B (Motor Vehicle Repair Industry Board)
  - (3) Chapter 440 (Boxing Commission)
  - (4) Chapter 446 (Debt Adjusters)
  - (5) Chapter 436E (Board of Acupuncture)
- (f) The following sections are hereby repealed effective December 31, 1993:
  - (1) Sections 445-21 to 38 (Auctions)
  - (2) Sections 445-131 to 136 (Pawnbrokers)
  - (3) Sections 445-171 to 172 (Secondhand Dealers)
  - (4) Sections 445-231 to 235 (Scrap Dealers)
- (g) The following chapters are hereby repealed effective December 31, 1994:
  - (1) Chapter 441 (Cemetery and Funeral Trusts)
  - (2) Chapter 443B (Collection Agencies)
  - (3) Chapter 452 (Board of Massage)
  - (4) Chapter 455 (Board of Examiners in Naturopathy)
  - (5) Chapter 459 (Board of Examiners in Optometry)
  - (6) Chapter 442 (Board of Chiropractic Examiners)
  - (7) Chapter 373 (Commercial Employment Agencies)
  - (8) Chapter 448 (Board of Dental Examiners)
  - (9) Chapter 465 (Board of Psychology)
  - (10) Chapter 468E (Speech Pathology and Audiology)
- (h) The following chapter is hereby repealed effective December 31, 1995:
  - (1) Chapter 444 (Contractors License Board)
- [(h)] (i) The following chapters are hereby repealed effective December 31, 1997:
  - (1) Chapter 463 (Board of Private Detectives and Guards)
  - (2) Chapter 471 (Board of Veterinary Examiners)."

SECTION 2. The Contractors License Board shall conduct a comprehensive review of all general and specialty license classifications. In conducting this review, the Contractors License Board shall first develop guidelines regarding:

- (1) What falls within the scope of construction work or building trade;
- (2) What activities warrant regulation; and
- (3) What criteria must an activity meet to be considered a specialty.

The Contractors License Board shall also establish uniform criteria to govern issuance of all general and specialty classifications licenses. The Contractors License Board shall report its findings to the legislature no later than twenty days prior to the convening of the Regular Session of 1991.

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

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

(Approved June 7, 1989.)

**ACT 142**

S.B. NO. 299

A Bill for an Act Relating to Electricians and Plumbers.

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

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

**"§26H-4 Repeal dates.** (a) The following chapters are hereby repealed effective December 31, 1989:

- (1) Chapter 444 (Contractors License Board)
- [2] Chapter 448E (Board of Electricians and Plumbers)
- [3] (2) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)
- [4] (3) Chapter 466 (Board of Public Accountancy)
- [5] (4) Chapter 467 (Real Estate Commission)
- [6] (5) Chapter 439 (Board of Cosmetology)
- [7] (6) Chapter 454 (Mortgage Brokers and Solicitors)
- [8] (7) Chapter 454D (Mortgage and Collection Servicing Agents)

(b) The following chapter and sections are hereby repealed effective December 31, 1990:

- (1) Chapter 466J (Board of Radiologic Technology)
- (2) Sections 321-13 to 321-15 (midwives, laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, tattoo artists, electrologists, and sanitarians)

(c) The following chapters are hereby repealed effective December 31, 1991:

- (1) Chapter 447 (Dental Hygienists)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 457 (Board of Nursing)
- (4) Chapter 458 (Board of Dispensing Opticians)
- (5) Chapter 460J (Pest Control Board)
- (6) Chapter 462A (Pilotage)
- (7) Chapter 438 (Board of Barbers)
- (8) Chapter 468K (Travel Agencies)

(d) The following chapters are hereby repealed effective December 31, 1992:

- (1) Chapter 448H (Elevator Mechanics Licensing Board)
- (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- (3) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- (4) Chapter 460 (Board of Osteopathic Examiners)
- (5) Chapter 461 (Board of Pharmacy)
- (6) Chapter 461J (Board of Physical Therapy)
- (7) Chapter 463E (Podiatry)

(e) The following chapters are hereby repealed effective December 31, 1993:

- (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
- (2) Chapter 437B (Motor Vehicle Repair Industry Board)
- (3) Chapter 440 (Boxing Commission)
- (4) Chapter 446 (Debt Adjusters)
- (5) Chapter 436E (Board of Acupuncture)

(f) The following sections are hereby repealed effective December 31, 1993:

- (1) Sections 445-21 to 38 (Auctions)
- (2) Sections 445-131 to 136 (Pawnbrokers)
- (3) Sections 445-171 to 172 (Secondhand Dealers)

- (4) Sections 445-231 to 235 (Scrap Dealers)
- (g) The following chapters are hereby repealed effective December 31, 1994:
  - (1) Chapter 441 (Cemetery and Funeral Trusts)
  - (2) Chapter 443B (Collection Agencies)
  - (3) Chapter 452 (Board of Massage)
  - (4) Chapter 455 (Board of Examiners in Naturopathy)
  - (5) Chapter 459 (Board of Examiners in Optometry)
  - (6) Chapter 442 (Board of Chiropractic Examiners)
  - (7) Chapter 373 (Commercial Employment Agencies)
  - (8) Chapter 448 (Board of Dental Examiners)
  - (9) Chapter 465 (Board of Psychology)
  - (10) Chapter 468E (Speech Pathology and Audiology)
- (h) The following chapter is hereby repealed effective December 31, 1995:
  - (1) Chapter 448E (Board of Electricians and Plumbers)
- [h] (i) The following chapters are hereby repealed effective December 31, 1997:
  - (1) Chapter 463 (Board of Private Detectives and Guards)
  - (2) Chapter 471 (Board of Veterinary Examiners)."

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

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

- (1) An officer or employee of the United States, the State, or any political subdivision while in the performance of their governmental duties;
- (2) Any person acting as a receiver, trustee in bankruptcy, personal representative, or any other person acting under any order or authorization of any court;
- (3) A person who sells or installs any finished products, materials, or articles of merchandise which are not actually fabricated into and do not become a permanent fixed part of the structure, or to the construction, alteration, improvement, or repair of personal property;
- (4) Any project or operation for which the aggregate contract price for labor, materials, and all other items is less than \$100. This exemption shall not apply in any case wherein the undertaking is only a part of a larger or major project or operation, whether undertaken by the same or a different contractor or in which a division of the project or operation is made in contracts of amounts less than \$100 for the purpose of evading this chapter or otherwise;
- (5) A registered architect or professional engineer acting solely in the person's professional capacity;
- (6) Any person who engages in the activities [herein] regulated in this chapter as an employee with wages as the person's sole compensation;
- (7) Owners or lessees of property who build or improve residential, farm, industrial, or commercial buildings or structures on property for their own use, or for use by their grandparents, parents, siblings, or children and do not offer the buildings or structures for sale or lease[.]; provided that this exemption shall not apply to electrical or plumbing work, which must be performed only by persons or entities licensed under this chapter or the owner or lessee of the property if the owner or lessee is licensed under chapter 448E. In all actions brought under this paragraph, proof of the sale or lease, or offering for sale or lease, of the structure within one year after completion is *prima facie* evidence that the construction or improvement of the structure was undertaken

## ACT 143

- for the purpose of sale or lease; provided that this shall not apply to residential properties sold or leased to employees of the owner or lessee; provided further that in order to qualify for this exemption the owner or lessee must register for the exemptions as provided in section 444-9.1; or
- (8) Any copartnership or joint venture if all members thereof hold licenses issued under this chapter."

SECTION 3. Section 444-9.1, Hawaii Revised Statutes, is amended to read as follows:

**"§444-9.1 Issuance of building permits; owner-builder registration.** Each county or other local subdivision of the State which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall also require that each applicant for such a permit file as a condition to the issuance of a permit a statement that the applicant is licensed under this chapter, giving the number of the license and stating that it is in full force and effect, or, if the applicant is exempt from this chapter, the basis for the claimed exemption; provided that if the applicant claims an exemption under section 444-2(7), the applicant shall also be required to certify that the building or structure is for the applicant's personal use and not for use or occupancy by the general public. Each county or local subdivision of the State shall maintain an owner-builder registration list which shall contain the following information: (1) the name of any owner or lessee who claims an exemption from this chapter as provided in section 444-2(7); (2) the address of the property where exempt building or improvement activity is to occur; (3) a description of the type of building or improvement activity to occur; [and] (4) the approximate dates of construction activity[.]; and (5) whether any electrical or plumbing work is to be performed and if so, the name and license number of the person or entity who will do the work. The absence of such registration is prima facie evidence that the exemption in section 444-2(7) does not apply.

The county shall verify the license against a list of licensed contractors provided by the state contractors licensing board, which list shall be updated at least quarterly. The county shall also verify that the applicant is in fact the contractor so licensed or the contractor's duly authorized agent."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 7, 1989.)

## ACT 143

S.B. NO. 308

A Bill for an Act Relating to the Residential Landlord-tenant Code.

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

SECTION 1. Section 521-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The landlord shall at all times during the tenancy:

- (1) Comply with all applicable [provisions of any state or county law, code, ordinance, or regulation, noncompliance with which would have the effect of endangering health or safety, governing maintenance, construction, use, or appearance of the dwelling unit and the premises of which it is a part;] building and housing laws materially affecting health and safety;
- (2) Keep common areas of a multi-dwelling unit premises in a clean and safe condition;
- (3) Make all repairs and arrangements necessary to put and keep the premises in a habitable condition;
- (4) Maintain all electrical, plumbing, and other facilities and appliances supplied by the landlord in good working order and condition, subject to reasonable wear and tear;
- (5) Except in the case of a single family residence, provide and maintain appropriate receptacles and conveniences for the removal of normal amounts of rubbish and garbage, and arrange for the frequent removal of such waste materials; and
- (6) Except in the case of a single family residence, or where the building is not required by law to be equipped for the purpose, provide for the supplying of running water as reasonably required by the tenant.

Prior to the initial date of initial occupancy, the landlord shall inventory the premises and make a written record detailing the condition of the premises and any furnishings or appliances provided. Duplicate copies of this inventory shall be signed by the landlord and by the tenant and a copy given to each tenant. In an action arising under this section, the executed copy of the inventory shall be presumed to be correct. If the landlord fails to make such an inventory and written record, the condition of the premises and any furnishings or appliances provided, upon the termination of the tenancy shall be rebuttably presumed to be the same as when the tenant first occupied the premises."

SECTION 2. Section 521-51, Hawaii Revised Statutes, is amended to read as follows:

"[[§521-51]] **Tenant to maintain dwelling unit.** Each tenant shall at all times during the tenancy:

- (1) Comply with all [provisions primarily applicable to tenants of any state or county law, code, ordinance, or regulation, noncompliance with which would have the effect of endangering health or safety, governing maintenance, use, or appearance of the dwelling unit and that part of the premises which the tenant occupies and uses;] applicable building and housing laws materially affecting health and safety;
- (2) Keep that part of the premises which the tenant occupies and uses as clean and safe as the conditions of the premises permit;
- (3) Dispose from the tenant's dwelling unit all rubbish, garbage, and other organic or flammable waste in a clean and safe manner;
- (4) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
- (5) Properly use and operate all electrical and plumbing fixtures and appliances in the dwelling unit or used by the tenant;
- (6) Not permit any person on the premises with the tenant's permission to wilfully destroy, deface, damage, impair, or remove any part of the premises which include the dwelling unit or the facilities, equipment, or appurtenances thereto, nor oneself do any such thing;

## ACT 144

- (7) Keep the dwelling unit and all facilities, appliances, furniture, and furnishings supplied therein by the landlord in fit condition, reasonable wear and tear excepted; and
- (8) Comply with all obligations, restrictions, rules, and the like which are in accordance with section 521-52 and which the landlord can demonstrate are reasonably necessary for the preservation of the property and protection of the persons of the landlord, other tenants, or any other person."

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

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

(Approved June 7, 1989.)

## ACT 144

S.B. NO. 368

A Bill for an Act Relating to Condominium Hotel Operators.

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

SECTION 1. Section 467-30, Hawaii Revised Statutes, is amended to read as follows:

**"§467-30 [Licenses] Registration, licenses and bonding required to operate condominium hotel.** (a) As used in this section, "condominium hotel" includes those apartments in a project as defined in section 514A-3 and subject to chapter 514A, [which may provide for customary hotel services including, but not limited to, front desk, restaurant, maid or linen service, bell service, or telephone switchboard.] which are used to provide transient lodging for periods of less than thirty days.

(b) Any sole proprietor, partnership, corporation, or other business entity [who, in the operation of a] operating a condominium hotel [engages in any activity set forth in the definitions of "real estate", "real estate broker", and "real estate salesman" in section 467-1 and] who [also] is not a custodian or caretaker as defined in section 467-1 shall:

- (1) Obtain a license as a real estate broker in compliance with this chapter and the rules of the commission;
- (2) Provide evidence of bonding to the real estate commission in an amount equal to \$500 multiplied by the aggregate number of units covered by all of the condominium hotel contracts; except that the minimum of the bond required by this paragraph shall not be less than \$20,000 nor greater than \$100,000. The aggregate number of units excludes the number of units owned by the condominium hotel operator either as a sole proprietor, partnership or corporation. The bond shall protect the apartment owners against fraudulent or dishonest acts by the condominium hotel operator in handling the apartment owners' funds; and
- (2)<sup>1</sup> Register on an annual basis as a condominium hotel operator. Registration information shall include but not be limited to the number of apartment units managed for others as well as the number of apartment units owned by the condominium hotel operator. Any operator failing to register with the commission shall be subject to a fine not exceeding an amount equal to \$25 multiplied by the aggregate number of units

being utilized as a condominium hotel. Each month or fraction of a month of non-compliance shall be deemed a new and separate violation;

- [3) Register on a biennial basis as a condominium hotel operator. Registration information shall include, but not limited to, the number of apartment units managed for others as well as the number of apartment units owned by the condominium hotel operator. Any operator failing to register with the real estate commission within three months of June 8, 1988, shall be subject to a fine not exceeding an amount equal to \$25 multiplied by the aggregate number of units being utilized as a condominium hotel. Each month or fraction of a month of non-compliance shall be deemed a new and separate violation.]

- (3)<sup>1</sup> Provide evidence of fidelity bonding to the commission in an amount equal to \$500 multiplied by the aggregate number of apartment units in the condominium hotel operation; provided that the minimum of the bond required by this paragraph shall not be less than \$20,000 nor greater than \$100,000. The aggregate number of units excludes the number of units owned by the condominium hotel operator either as a sole proprietor, partnership, or corporation or those units included in a registered time share plan managed by a registered time share plan manager. The bond shall protect the apartment owners against fraudulent or dishonest acts by the condominium hotel operator and by persons acting on behalf of the condominium hotel operator having custody and control of either the condominium hotel operator's or the apartment owner's funds, or both; and

- (4) [A] Pay an initial and an annual registration fee [may be assessed by the commission. Such fees required by this subsection shall be] as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91[. All], which fees [required by this subsection] shall be deposited with the director of finance to the credit of the general fund.

(c) [Neither] In the course of operating a condominium hotel, neither a real estate broker license nor a salesperson license shall be required of those employees of any sole proprietor, partnership, corporation, or other business entity performing or facilitating the delivery of customary hotel services [as described in this section].

(d) All persons having custody or control of the funds received by the condominium hotel operator shall be covered by a fidelity bond.

(e) As used in this section "operating a condominium hotel" includes the management of the apartment units in a condominium project for purposes of providing transient lodging, and includes the renting or leasing of condominium apartment units directly or indirectly from the apartment owners for purposes of providing transient lodging.

(f) Condominium hotel operators operating exclusively in condominium projects specifically authorized as hotels by county zoning and regulations and permitted by the condominium project's declaration and bylaws shall be exempt from the provisions of subsection (b)(1); provided that they shall apply to the commission for such exemption or exclusion on a form provided by the commission.

(g) Any apartment owner aggrieved by the fraudulent or dishonest acts of a condominium hotel operator or by the fraudulent or dishonest acts of any person acting on behalf of a condominium hotel operator shall seek recovery first from the fidelity bond required by this section and second, where the condominium hotel operator or the person acting on behalf of the condominium hotel operator is a real estate licensee, from the real estate recovery fund pursuant to section 467-18."

## **ACT 146**

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

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

(Approved June 7, 1989.)

### **Note**

1. Should be underscored.

## **ACT 145**

S.B. NO. 431

A Bill for an Act Relating to Public Lands.

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

SECTION 1. Section 171-24, Hawaii Revised Statutes, is amended to read as follows:

**“§171-24 Land conveyances, preparation, signing, record, copies.** Except for the preparation and execution of leases and licenses and the issuance of revocable permits and rights of entry by the department of transportation, in its harbor and airport functions, all land patents, deeds, leases, grants, or other conveyances of any public land or any interest therein, shall be prepared by the department of land and natural resources. The department of transportation shall, within thirty days after the execution or issuance of such documents, file or record as directed by the board of land and natural resources the original of the same with the board.

Documents setting aside lands for public purposes or withdrawing the same shall be signed by the governor. All other documents prepared by the department of land and natural resources shall be signed by its [chairman and countersigned by any member of the board and in the absence or vacancy in the office of the chairman such documents shall be signed by two members of the board.] chairperson or any authorized employee.

The board shall keep a complete record of all such documents. The record shall be open to public inspection and the board shall furnish a certified copy, under its official seal, of any document to any person applying therefor, upon payment of reasonable charges set by the board for certified copies.”

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

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

(Approved June 7, 1989.)

## **ACT 146**

S.B. NO. 514

A Bill for an Act Relating to Condominium Property Regimes.

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

SECTION 1. Section 514A-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Labor performed on or materials furnished to an apartment shall not be the basis of a lien pursuant to part II of chapter 507 against the apartment of any apartment owner not expressly consenting to or requesting the same, except that [such] express consent shall be deemed to be given by the owner of any apartment in the case of emergency repairs thereto. No labor performed on or materials furnished to the common elements shall be the basis of a lien thereon[, but all funds received and to be received by the manager or board of directors in payment of common expenses, and the right to receive such funds, shall constitute trust funds for the purpose of paying the cost of such labor or materials performed or furnished at the express request or with the consent of the manager or board of directors, and the same shall be expended first for such purpose before expending any part of the same for any other purpose].”

SECTION 2. Statutory material to be repealed is bracketed.

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

(Approved June 7, 1989.)

## ACT 147

S.B. NO. 770

A Bill for an Act Relating to the Grant of a Franchise for the Island of Molokai to Molokai Electric Company, Limited.

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

SECTION 1. A franchise for the island of Molokai, State of Hawaii, is hereby granted to Molokai Electric Company, Limited, to read in its entirety as follows:

### “FRANCHISE

**Section 1. Definitions.** The following words, wherever they are used or appear in this franchise, shall be construed to mean and be held to have the force and effect as follows:

“Corporation” shall mean, include, and represent Molokai Electric Company, Limited, and its successors and assigns as a body corporate under that or any other name as the company and its successors and assigns may adopt hereafter.

“Public utilities commission” shall mean and include any officer, board, or commission authorized or empowered to regulate public utilities under chapter 269, Hawaii Revised Statutes, or any amendments thereto.

**Section 2. Franchise.** The corporation is granted the right, authority, and privilege to manufacture, sell, furnish, and supply electric light, electric current, or electric power on the island of Molokai, State of Hawaii, for lighting the streets, roads, public and private buildings and property, or for motive power, or for any other purpose that it may deem advisable, and from time to time for the purposes stated in this section to construct, maintain, and operate suitable poles, lines, wires, cables, lamps, lamp posts, conductors, conduits, and any other appliances and appurtenances as from time to time may be necessary or convenient for the transmission, distribution, or supply of electricity to consumers thereof, under, along, upon, and over public rights-of-way, including but not limited to the streets, sidewalks, roads, squares, bridges, alleys, and lanes on that island, and to connect those wires, lines, and conductors with any manufactory, private or public buildings,

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lamps, lamp posts, or other structure or object and the place or source of supply; provided that the proposed installation meets standards prescribed by the public utilities commission governing the installation.

**Section 3. Rules.** The council of the county of Maui and the director of health with respect to the county of Kalawao is authorized to make and from time to time to change, amend, or add to reasonable rules regulating, within the island of Molokai, the placing of poles and wires, the insulation of wires and apparatus carrying electric current, the excavation of conduits, and the maintenance in good repair of all poles, wires, and apparatus, and generally concerning the manufacture and supply of electricity that may be necessary or proper for the public safety and welfare. If at any time the corporation, after reasonable notice given to it in writing, shall fail to observe or execute the rules as provided for relative to the placing of poles and wires, the insulation of wires and apparatus carrying electric current, and the repair of all poles and appliances, the council of the county of Maui and the director of health with respect to the county of Kalawao, after giving the corporation reasonable notice thereof in writing of its intention so to do, may proceed to enforce rules regulating the placing of poles and wires, the insulation of wires and apparatus carrying electric current, the excavation of conduits, and the maintenance in good repair of all poles, wires, and apparatus and to make whatever repairs as may be necessary to enforce the rules; and the actual cost thereof may be recovered from the corporation by the county of Maui or the county of Kalawao, as the case may be.

**Section 4. Poles not to interfere with streets.** All poles, lines, wires, cables, lamps, lamp posts, conductors, conduits, and other apparatus constructed, maintained, or operated under, along, upon, or over the streets, sidewalks, roads, squares, bridges, alleys, and lanes on the island shall be so constructed, maintained, and operated by the corporation as not to interfere unnecessarily with the use of the streets, sidewalks, roads, squares, bridges, alleys, and lanes by the public.

**Section 5. Plant subject to inspection.** The entire plant, corporation, books, and accounts of the corporation shall be subject at all times to the inspection of the public utilities commission and the treasurer of the county of Maui and the director of health.

**Section 6. Meters and rates.** The corporation shall have the right to maintain, operate, and use electric meters or other means of measuring electric light, power, or current supply from time to time and to locate the same at whatever places may be necessary for determining the current supplied or to be supplied by the corporation. The corporation shall have the right to charge, receive, and collect from all consumers of electricity those reasonable rates as from time to time may be fixed and determined by the public utilities commission.

**Section 7. Extensions of lines and charges for making connections.** The public utilities commission may order the corporation to make extensions of its service lines whenever it appears that the extension is a public necessity and that the total plant of the corporation, including the extension or extensions, can earn a reasonable profit on the cost and maintenance of the extension or extensions.

**Section 8. Charges for making connections.** The corporation shall have the right, subject to the approval of the public utilities commission, to charge consumers or applicants for the use of electricity and for the cost and expense of making connections between the nearest line of supply and the premises where the

electricity is to be used. The cost and expense shall include price of all wires, poles, insulators, and other materials and labor necessary to be used in making the connections. The reasonableness of the charges, upon the application of any party in the interest, shall be subject to the approval of the public utilities commission.

**Section 9. Rights to acquire property, limits to.** The corporation shall have the right to acquire, hold, or take over, either by purchase or lease, property, both real or personal or mixed, as may be necessary or incidental to the proper conduct of its business; provided the corporation shall not have the power or right to acquire the franchise or property of any other public utility company, except with the approval of the public utilities commission.

**Section 10. Power to borrow money and bonds.** Whenever from time to time it shall be deemed expedient in the furtherance of the objects of the corporation, the corporation shall have the power to borrow money and secure the payment thereof, with interest agreed upon, by mortgage of all or any part of its property and this franchise; or if it is deemed advisable, bonds may be issued, secured by deed of trust of property and this franchise together with all future acquired property and franchises, the income and receipts of the property and franchises, as well as the income and receipts of the property from whatever sources derived, in whatever form and under whatever terms as the corporation may consider advisable; provided that nothing contained in this section shall operate to prevent the corporation from obtaining the usual business credits or making promissory notes without security.

**Section 11. Franchise not exclusive.** Nothing contained in this franchise shall be construed to grant to the corporation an exclusive right to furnish, sell, or supply electric current for light and power.

**Section 12. Forfeiture of franchise.** If the corporation, its representatives, successors, and assigns shall fail or refuse to do, perform, or comply with any of the provisions of this franchise or the laws of the State and continue to refuse, fail to perform, or comply therewith after reasonable notice given by the public utilities commission to comply therewith, the public utilities commission, with the consent of the governor and of the attorney general, may cause proceedings to be instituted before any appropriate tribunal to have the franchise forfeited and declared void.

**Section 13. Rules to enforce rates.** The corporation shall have the right to discontinue or cut off the supply of electricity to any consumer who refuses to pay the amount due for electricity supplied by the corporation within a reasonable time as the corporation may fix by general rules for the payment of amounts due, and the discontinuance of service or supply of electricity shall not be a bar to or prejudice the rights of the corporation in any remedy or remedies now or that may be authorized by law for the recovery and collection of the amount due.

**Section 14. Eminent domain.** The corporation shall continue to have the power of eminent domain pursuant to chapter 101, Hawaii Revised Statutes, or any amendments thereto and may continue to exercise the power; provided that prior to the exercise of the power:

- (1) The corporation submits to the public utilities commission its intention to exercise the power, with a description of the property to be condemned; and
- (2) The public utilities commission finds that the proposed condemnation is in the public interest, that the proposed condemnation is necessary, and that the corporation will use the property for its operations as a public utility.

## **ACT 148**

**Section 15. Annual statement, payment to government.** Within one month after the expiration of each calendar year, the corporation shall file with the treasurer of the county of Maui a detailed statement, showing all of its receipts and expenditures during the preceding calendar year, and, at that time, shall pay to the treasurer of the county of Maui, for and on behalf of the county, two and one-half per cent of the gross receipts of the corporation from all electric current or power furnished to consumers on the island of Molokai during the preceding year; and all its books, papers, records, and accounts shall be open to inspection at all reasonable times by the treasurer of the county and the treasurer's respective agents appointed for that purpose. The payment by the corporation to the treasurer of the county of Maui under this section shall be in lieu of any other payment that the corporation may be required to pay to the treasurer of the county of Maui based on gross receipts of the corporation from electric current or power furnished to consumers on the island of Molokai under any other franchise held by the corporation.

**Section 16. Regulation.** The corporation shall have all the powers and be subject to all of the liabilities provided by law for corporations and shall be subject in all respects to all laws relating to public utilities and all laws as may be applicable from time to time to electric light and power companies or the persons or corporations operating them; provided that from every ruling, decision, and order, an appeal shall lie as provided by law.

**Section 17. Amendment and repeal of franchise.** This franchise may be amended or repealed at any time by the legislature of the State of Hawaii."

**SECTION 2.** The franchise previously granted to the corporation shall be superseded and replaced in its entirety by this Act, upon this Act's effective date.

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

(Approved June 7, 1989.)

## **ACT 148**

S.B. NO. 966

A Bill for an Act Relating to Licensing of Physical Therapists.

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

**SECTION 1.** Section 461J-7, Hawaii Revised Statutes, is amended to read as follows:

"[[§461J-7]] Reciprocity.] Examination waiver. The board [shall establish procedures for waiving the examination requirement for applicants who have already taken and passed an equivalent examination or who have been licensed in another state with standards equivalent to or higher than those in Hawaii.] may recommend licensing without written examination of an applicant who submits evidence satisfactory to the board that the applicant has scored equal to or higher than the established passing score of the examination administered by a testing agency selected by the board."

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

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

(Approved June 7, 1989.)

## ACT 149

S.B. NO. 1187

A Bill for an Act Relating to Taxation.

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

SECTION 1. Act 344, Session Laws of Hawaii 1986, section 20, is amended to read as follows:

"SECTION 20. This Act shall take effect upon its approval; provided that the tax imposed under section 244D-4, Hawaii Revised Statutes, as amended by this Act shall apply to the sale of liquor made after June 30, 1986[; provided further that on July 1, 1989, sections 1, 2, 4, 5, 6, 7, 11, 16, and 18 of this Act shall be repealed; and sections 244D-1, 244D-4, 244D-5, 244D-6, 244D-9, 237-25, and 281-83, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the approval of this Act]."

SECTION 2. Section 244D-4.5, Hawaii Revised Statutes, is amended to read as follows:

**"§244D-4.5 Adjustment of tax rate.** (a) [After July 1, 1987, the tax rate for a given liquor category taxed in section 244D-4(a) shall be adjusted automatically on January 1 or July 1, as the case may be, in the following circumstances. If at the end of a six-month reporting period ending on March 31 or September 30 the department finds that:

- (1) The:
  - (A) Total gallonage for a given liquor category has not declined over the same six-month reporting period; and
  - (B) Unit price for such liquor category over such six-month reporting period has increased over the corresponding unit price over the preceding six-month reporting period; or
- (2) The:
  - (A) Total gallonage for a given liquor category has not declined over the same six-month reporting period; and
  - (B) Unit price for such liquor category over such six-month reporting period has decreased over the corresponding unit price over the preceding six-month reporting period;

then the tax rate, rounded to the nearest whole cent, for the liquor category or liquor categories shall increase or decrease, as appropriate, in the same percentage as the increase or decrease in unit price. Under no circumstances shall the tax rate for a liquor category be decreased below the tax rates established by section 244D-4(a).

The department shall make its determination based upon information it receives from returns representing not less than ninety per cent of the estimated sales volume by wine gallonage by liquor categories required to be filed for the six-month reporting period not later than one hundred-eighty days following the close of such six-month reporting period. The department shall circulate the tax rate change to each permittee and shall publish the tax rate change in a newspaper of general circulation in the State.

The tax rate increase or decrease, as appropriate, shall be effective on the January 1 or July 1 next following such determination.

## ACT 149

(b)] On or after January 1, 1989, the tax rate for a given liquor category in each paragraph in section 244D-4(a) shall be adjusted automatically on January 1 or July 1, as the case may be, in the following circumstances. If at the end of a twelve-month reporting period ending on June 30 or a twelve-month reporting period ending on December 31 the department finds that:

- (1) The:
  - (A) Total gallonage for a given liquor category has not declined over the preceding twelve-month reporting period; and
  - (B) Unit price for the given liquor category over a twelve-month reporting period is greater than the corresponding unit price for that liquor category over the preceding twelve-month reporting period; or
- (2) The:
  - (A) Total gallonage for a given liquor category has not declined over the preceding twelve-month reporting period; and
  - (B) Unit price for the given liquor category over a twelve-month reporting period is less than the corresponding unit price for that liquor category over the preceding twelve-month reporting period;

then the tax rate, rounded to the nearest whole cent, for the liquor category or liquor categories shall increase or decrease, as appropriate, in the same percentage as the increase or decrease in unit price. Under no circumstances shall the tax rate for a liquor category be decreased below the tax rates established by section 244D-4(a).

The department shall make its determination based upon information it receives from returns representing not less than ninety per cent of the [estimate] estimated sales volume by wine gallonage by liquor category required to be filed for the twelve-month reporting period not later than one hundred-eighty days following the close of such twelve-month reporting period. The department shall circulate the tax rate change to each permittee and shall publish the tax rate change in a newspaper of general circulation in the State.

The tax rate increase or decrease, as appropriate, shall be effective on the January 1 or July 1 next following such determination.

(b) The adjustment of liquor tax rates, but not the collection of liquor tax information under section 244D-6, shall be suspended for the period beginning on the approval date of this Act and ending on June 30, 1991. The liquor tax rates in effect on the approval date of this Act shall remain in effect during this suspension period and until the liquor tax rates are next adjusted. Upon termination of the suspension period, the first increase or decrease of the liquor tax rates under this section after June 30, 1991, shall take place on July 1, 1992, and shall be based upon a comparison of the twelve-month reporting periods, January 1, 1990, through December 31, 1990, and January 1, 1991, through December 31, 1991. The operation of this section shall thereafter compare reporting periods as required by subsection (a), with any consequent increases or decreases effective on January 1 or July 1 as the case may be."

SECTION 3. Statutory material to be repealed is bracketed.<sup>1</sup>

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

(Approved June 7, 1989.)

### Note

1. So in original.

## ACT 150

S.B. NO. 1949

A Bill for an Act Relating to Public Utilities.

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

SECTION 1. The purpose of this Act is to grant to the public utilities commission the authority to regulate and inspect gas pipeline systems that are owned and operated by nonpublic utility companies or entities. Gas pipeline systems owned and operated by nonpublic utility companies and entities commonly are referred to as "master meter systems".

A master meter system is a system for the transmission of gas through pipelines for a fee by the operator of the system to an ultimate consumer or ultimate consumers in a given, definable area. The operator purchases the gas from an outside source for resale to the ultimate consumer or ultimate consumers. The fee charged is at a metered rate or at a flat rate. Examples of master meter systems are gas pipelines situated in housing projects or apartment complexes.

The regulation and inspection of gas pipeline systems are under the jurisdiction of the United States Office of Pipeline Safety (OPS). The applicable federal statute is 49 U.S.C. 1672. Under regulations promulgated by OPS, operators of master meter systems must report all incidents of injuries, death, property damages, and leaks to the OPS.

Although initial jurisdiction over the regulation and inspection of the master meter systems is in the OPS, under federal regulations (Parts 191 and 192, Code of Federal Regulations, Title 49) states are provided the option to assume responsibility for the regulation and inspection of the master meter systems. Federal funding is provided to any state assuming this responsibility, provided the state performs the responsibility in a manner consistent with minimum federal requirements.

Since 1970, Hawaii, through the public utilities commission, has been inspecting gas pipeline systems owned and operated by public utilities, and since 1979, it has exercised enforcement authority over the systems owned and operated by public utilities. Federal funding has been received over the years. The public utilities commission's authority to regulate and inspect gas pipelines owned and operated by public utilities is derived from chapter 269, Hawaii Revised Statutes.

It is in the public interest that the public utilities commission's authority to regulate and inspect gas pipeline systems be extended to those systems owned and operated by nonpublic utility entities. The prevention of injury to life and damage to property will be promoted by extension of the commission's jurisdiction.

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

#### "PART . GAS PIPELINE SYSTEMS

**§269- Definitions.** As used in this part, unless the context otherwise requires:

"Commission" means the public utilities commission.

"Gas" means manufactured gas, hydrocarbon gas, mixture of manufactured and hydrocarbon gas, flammable gas, or gas that is toxic or corrosive or both.

"Master meter system" means a pipeline system, not owned or operated by a public utility, for distributing gas within a definable area, including but not limited to a mobile home park, a housing project, and an apartment complex, where the operator of the system purchases gas from an outside source for resale through the pipeline system to an ultimate consumer or ultimate consumers at a metered or flat rate or at a price determined in any other manner.

## ACT 151

“Pipeline” or “pipeline system” means all parts of those physical facilities through which gas moves in transmission, including pipes, valves and other appurtenances attached to pipes, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

“Operator” means a person who engages in the transmission of gas.

**§269- Master meter system; operators; compliance.** (a) The commission, by rule, shall establish safety standards consistent with the regulations adopted by the United States Office of Pipeline Safety for pipelines and master meter systems. Standards may be established for, among other things: the design, installation, construction, inspection, testing, extension, operation, replacement, and maintenance of pipeline facilities; emergency plans and procedures; and reporting requirements. The standards affecting the design, installation, construction, initial inspection, and initial testing of pipeline facilities shall not apply to those master meter systems in existence on the date the standards are adopted.

(b) All operators of master meter systems shall comply with the commission’s rules adopted pursuant to subsection (a). Any person violating the rules shall be subject to the penalties provided in section 269-28.

**§269- Inspection.** Officers, employees, or agents authorized by the commission, upon presenting appropriate credentials, may enter upon, inspect, and examine at a reasonable times or in times of an emergency the records and properties of any operator to determine compliance by the operator with the commission’s rules governing pipelines and master meter systems.

**§269- Enforcement.** In addition to the penalties that may be imposed under section 269-28, the commission, if in its judgment there is a hazardous condition in a pipeline or master meter system and a likelihood of serious harm to life or property, may request the attorney general to bring an action in an appropriate court for necessary or appropriate relief, including mandatory or prohibitory injunctive relief.”

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

(Approved June 7, 1989.)

## ACT 151

H.B. NO. 148

A Bill for an Act Relating to Racing on Highways.

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

SECTION 1. Section 291C-103, Hawaii Revised Statutes, is amended to read as follows:

**“§291C-103 Racing on highways.** (a) Except as provided in section 291C-149, no person shall drive any vehicle in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, and no person shall in any manner participate in any [such] race, competition, contest, test, or exhibition[.] prohibited by this section.

(b) [Drag race is defined as] **“Drag race” means** the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a

common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of [such] the vehicle or vehicles within a certain distance or time limit.

(c) [Racing is defined as] "Racing" means the use of one or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long distance driving routes.

(d) "Exhibition of speed or acceleration" means the sudden acceleration of a vehicle resulting in the screeching of the vehicle's tires which is done to intentionally draw the attention of persons present toward the vehicle.

[(d)] (e) Any person who violates this section, except subsection (d),<sup>1</sup> shall be fined not more than \$500 or imprisoned not more than six months, or both. Any person who violates subsection (d) shall be fined not more than \$500 or be sentenced to perform community service, or both."

SECTION 2. This Act shall not apply to acts which occurred prior to its effective date.

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

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

(Approved June 7, 1989.)

**Note**

1. So in original.

**ACT 152**

H.B. NO. 188

A Bill for an Act Relating to Credit Services Organizations.

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

SECTION 1. Chapter 481B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§481B- Credit repair organizations.** (a) No person shall:

- (1) Solicit or induce a consumer to pay money or other valuable consideration based on false representations that the person can erase, correct, repair, alter, or otherwise modify an accurately reported consumer credit history;
- (2) Solicit or induce a consumer to pay money or other valuable consideration for the referral of a consumer to a credit granting entity, if that person knows or has reason to know that the consumer will be granted credit, if at all, by the entity on substantially the same terms as those available to the general public;
- (3) Make or counsel or advise a consumer to make any statement which is untrue or misleading or that the person should know by the exercise of reasonable care to be untrue or misleading, to a credit reporting agency or to any credit granting entity with respect to that customer's credit worthiness, credit standing, or credit capacity; or

## ACT 153

- (4) Provide advice or assistance with regard to any of the foregoing activities.
- (b) For the purposes of this section, "consumer" means a natural person acting in his or her own personal capacity.
- (c) Any violation of this section shall constitute an unfair or deceptive act or practice in the conduct of trade or commerce under section 480-2."

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

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

(Approved June 7, 1989.)

### Note

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

## ACT 153

H.B. NO. 219

A Bill for an Act Relating to Beauty Culture.

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

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

**"§26H-4 Repeal dates.** (a) The following chapters are hereby repealed effective December 31, 1989:

- (1) Chapter 444 (Contractors License Board)
  - (2) Chapter 448E (Board of Electricians and Plumbers)
  - (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)
  - (4) Chapter 466 (Board of Public Accountancy)
  - (5) Chapter 467 (Real Estate Commission)
  - [6] Chapter 439 (Board of Cosmetology)
  - [7] (6) Chapter 454 (Mortgage Brokers and Solicitors)
  - [8] (7) Chapter 454D (Mortgage and Collection Servicing Agents)
- (b) The following chapter and sections are hereby repealed effective December 31, 1990:
- (1) Chapter 466J (Board of Radiologic Technology)
  - (2) Sections 321-13 to 321-15 (midwives, laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, tattoo artists, electrologists, and sanitarians)
- (c) The following chapters are hereby repealed effective December 31, 1991:
- (1) Chapter 447 (Dental Hygienists)
  - (2) Chapter 453 (Board of Medical Examiners)
  - (3) Chapter 457 (Board of Nursing)
  - (4) Chapter 458 (Board of Dispensing Opticians)
  - (5) Chapter 460J (Pest Control Board)
  - (6) Chapter 462A (Pilotage)
  - (7) Chapter 438 (Board of Barbers)
  - (8) Chapter 468K (Travel Agencies)
- (d) The following chapters are hereby repealed effective December 31, 1992:

- (1) Chapter 448H (Elevator Mechanics Licensing Board)
- (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- (3) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- (4) Chapter 460 (Board of Osteopathic Examiners)
- (5) Chapter 461 (Board of Pharmacy)
- (6) Chapter 461J (Board of Physical Therapy)
- (7) Chapter 463E (Podiatry)
- (e) The following chapters are hereby repealed effective December 31, 1993:
  - (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
  - (2) Chapter 437B (Motor Vehicle Repair Industry Board)
  - (3) Chapter 440 (Boxing Commission)
  - (4) Chapter 446 (Debt Adjusters)
  - (5) Chapter 436E (Board of Acupuncture)
- (f) The following sections are hereby repealed effective December 31, 1993:
  - (1) Sections 445-21 to 38 (Auctions)
  - (2) Sections 445-131 to 136 (Pawnbrokers)
  - (3) Sections 445-171 to 172 (Secondhand Dealers)
  - (4) Sections 445-231 to 235 (Scrap Dealers)
- (g) The following chapters are hereby repealed effective December 31, 1994:
  - (1) Chapter 441 (Cemetery and Funeral Trusts)
  - (2) Chapter 443B (Collection Agencies)
  - (3) Chapter 452 (Board of Massage)
  - (4) Chapter 455 (Board of Examiners in Naturopathy)
  - (5) Chapter 459 (Board of Examiners in Optometry)
  - (6) Chapter 442 (Board of Chiropractic Examiners)
  - (7) Chapter 373 (Commercial Employment Agencies)
  - (8) Chapter 448 (Board of Dental Examiners)
  - (9) Chapter 465 (Board of Psychology)
  - (10) Chapter 468E (Speech Pathology and Audiology)

(h) The following chapter is hereby repealed effective December 31, 1995:

(1) Chapter 439 (Board of Cosmetology)

[(h)] (i) The following chapters are hereby repealed effective December 31, 1997:

- (1) Chapter 463 (Board of Private Detectives and Guards)
- (2) Chapter 471 (Board of Veterinary Examiners)."

SECTION 2. Section 439-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "beauty operator" to read as follows:

" "Beauty operator" means one of the following [certification] licensure categories: cosmetologist; hairdresser; cosmetician; or manicurist."

2. By amending the definition of "cosmetology" to read as follows:

" "Cosmetology", also known as beauty culture, means the art and science of beauty care of the skin, hair, scalp, and nails, and includes any one or a combination of the [certification] licensure categories if they are performed on a person's head, face, neck, shoulders, arms, hands, legs, or feet for cosmetic purposes."

3. By amending the definition of "instructor" to read as follows:

" "Instructor" means a person who teaches any of the [certification] licensure categories; provided that the term shall not be taken to include an operator who teaches apprentices in a beauty shop."

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SECTION 3. Section 439-2, Hawaii Revised Statutes, is amended to read as follows:

**“§439-2 [Registration] License; required.** (a) No person shall for commercial purposes [demonstrate any hair or cosmetic preparations or products or] practice as a beauty operator, apprentice, or instructor or operate a school or beauty shop or announce or advertise as being prepared or qualified to do so unless the person is [registered with and holds a certificate from the board authorizing the person to do so;] licensed as required by this chapter; provided that this chapter shall not affect the right of any person licensed by the State to engage in any other occupation from doing any of the acts properly authorized by the person's license. The [certificate] license of a beauty operator, instructor, [apprentice,] shop, or school and the permit of an apprentice or temporary permittee shall be displayed in a conspicuous place in the office, place of business or employment, or school of the holder [thereof].

(b) The practice of cosmetology shall be carried on only by persons duly [registered] licensed to practice in this State and only in [registered] licensed beauty shops; provided a [registered] licensed beauty operator may practice cosmetology at any place for educational purposes or upon persons at a health care, nursing, mental, or correctional facility, at a barber shop, and at a charitable event.”

SECTION 4. Section 439-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Five of the members of the board, at least one of whom shall be from an island other than Oahu, shall be beauty operators who have been [registered] licensed to practice in the State for at least five years and have been actively and continuously engaged in the practice of cosmetology for that period and two shall be public members.”

SECTION 5. Section 439-10, Hawaii Revised Statutes, is amended to read as follows:

**“§439-10 Apprentices [and instructor-trainees].** All apprentices [and instructor-trainees] shall be registered upon payment of application and registration fees and submission of evidence satisfactory to the board that the applicant is:

- (1) At least sixteen years of age and possessed of an education equivalent to the completion of high school; and
- (2) In the case of an instructor-trainee, has the required [three years] one year of experience as a registered beauty operator.”

SECTION 6. Section 439-12, Hawaii Revised Statutes, is amended to read as follows:

**“§439-12 Requisites for admission to examination.** (a) The executive secretary of the board shall determine the sufficiency of the preliminary qualifications of applicants for admission to examinations; provided that the [certification] licensure categories shall be limited to cosmetologist, hairdresser, cosmetician, manicurist, and instructor. The preliminary qualifications for admission to examination shall be as provided in this section.

(b) A cosmetologist applicant shall be at least sixteen years old and have an education equivalent to the completion of high school and either:

- (1) Three thousand six hundred hours of training as an apprentice under the supervision of a [registered] licensed cosmetologist; or
  - (2) One thousand eight hundred hours of training in a [registered] licensed beauty school.
- (c) A hairdresser applicant shall be at least sixteen years old and have an education equivalent to the completion of high school and either:
- (1) Two thousand five hundred hours of training as an apprentice under the supervision of a [registered] licensed cosmetologist or hairdresser; or
  - (2) One thousand two hundred fifty hours of training in a [registered] licensed beauty school.
- (d) A cosmetician applicant shall be at least sixteen years old and have an education equivalent to the completion of high school and either:
- (1) One thousand one hundred hours of training as an apprentice under the supervision of a [registered] licensed cosmetologist or cosmetician; or
  - (2) Five hundred fifty hours of training in a [registered] licensed beauty school.
- (e) A manicurist applicant shall be at least sixteen years old and have an education equivalent to the completion of high school and either:
- (1) Seven hundred hours of training as an apprentice under the supervision of a [registered] licensed cosmetologist, cosmetician, or manicurist; or
  - (2) Three hundred fifty hours of training in a [registered] licensed beauty school.
- (f) An instructor applicant may apply to teach in any of the practices of cosmetology if the applicant [has completed a course satisfactory to the board in the theory and practice of education in cosmetology consisting of six hundred hours and has served actively for a period of at least three years as a registered beauty operator in the State or in another jurisdiction having standards for registration as a beauty operator substantially equivalent to those of the State; provided that the board may at its discretion and without regard to the requirements of this section, issue and revoke a temporary permit to any person holding a valid existing instructor's registration in another jurisdiction having standards substantially equivalent to those in force in the State at the time of the registration, for the limited purpose of either:
- (1) Commercially demonstrating in the State, any hair or cosmetic preparations or products identifiable by a trade name or trademark; or
  - (2) Instructing in hairstyling in a school or under the sponsorship of any organization approved by the board until the next following instructor's examination given by the board. Instructors duly registered under chapter 453, need not be holders of instructors certificates.] has:
- (1) Completed six hundred hours of a board approved course in the theory and practice of teaching; and
  - (2) Served actively for a period of at least one year as a licensed beauty operator in the State or in another jurisdiction having standards for beauty operators substantially equivalent to those of this State.
- (g) The board shall recognize beauty training obtained in another jurisdiction which is substantially equivalent to the training available in this State. If such training is not equivalent, the board shall make a determination as to whether or not to recognize the training by evaluating the type and duration of the training and the experience required to obtain a license in the other jurisdiction."

## ACT 153

SECTION 7. Section 439-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) An applicant who fails an initial examination thereafter may file another application [with the board] for examination with the professional testing service and pay the [application and] examination fee for any subsequent examination.”

SECTION 8. Section 439-15, Hawaii Revised Statutes, is amended by amending its title and subsections (a) to (d) to read as follows:

**“§439-15 [Certificates of registration,] License, fees.** (a) The board shall issue a [certificate of registration] license as a beauty operator, or instructor, as the case may be, to each person who passes the required examination, pays the proper fees, and meets all of the other requirements of this chapter. The [certificate] license shall state specifically the [certification] licensure category for which the person is [registered] licensed and shall be signed by the chairperson and executive secretary and impressed with the seal of the board.

(b) All [certificates] licenses issued by the board shall expire on December 31 of each odd-numbered year.

(c) Every [registered] licensed beauty operator and instructor shall pay to the board by December 31 of each odd-numbered year a biennial renewal fee. The payment of the renewal fee shall entitle the [registrant] licensee to renewal of the [certificate.] license.

(d) Failure or refusal to renew the [certificate] license by December 31 of each odd-numbered year shall constitute a forfeiture of the [certificate.] license. The [certificate] license shall be reinstated upon payment of all delinquent fees and a penalty fee if application is made within three years after lapse.”

SECTION 9. Section 439-16, Hawaii Revised Statutes, is amended to read as follows:

**“§439-16 Temporary permits.** The board may issue temporary permits to qualified applicants approved to be examined to practice or teach cosmetology under supervision of a [registered] licensed beauty operator or licensed instructor until the results of the examination [has] have been published. Applicants who have not successfully passed the examination as prescribed by the board but continue to satisfy the requirements of section 439-14(c) may be issued temporary permits; provided that applicants shall pass the third examination as consecutively scheduled by the board. After failing to pass the third examination, applicants that satisfy the requirements of section 439-14(c) shall continue to qualify for examination and [registration] licensure but not for the privilege of temporary permits. The permits may be issued upon application for examination and payment of the required fees. [In addition to those applicants who satisfy the requirements of section 439-14(c), an applicant who possesses one of the following qualifications may be issued a temporary permit:

- (1) Is a graduate of a school and course which meet the standards established for schools in the State;
- (2) Has been, for three out of the four years immediately preceding the date of the application, lawfully engaged in another state, territory, or country in the occupation covered by the certificate sought; or
- (3) Holds a valid and existing license to engage in the occupation covered by the certificate sought in a state, territory, or country having standards for registration substantially equivalent to those in force in the State at the time of the application].”

SECTION 10. Section 439-17, Hawaii Revised Statutes, is amended to read as follows:

**“§439-17 Beauty shops.** (a) A [certificate of registration of] license for a beauty shop may be secured by filing an application and paying the application and [registration] license fees and showing that the shop has been inspected not more than one year before the application was filed and meets the standards of sanitation required by the department of health, that a [registered] licensed beauty operator in the appropriate [certification] licensure category [is] shall be in charge of the shop, and that it is adequately equipped for the practices in which it engages. [The board may waive the requirement that the registered managing operator has practiced in the State, for at least one year, upon a showing that the person has had other experience as a managing operator equivalent to one year’s practice in this State and upon further showing that the aforesaid requirement creates undue hardship on the shop].

(b) All [certificates] licenses shall expire on December 31 in each odd-numbered year. [Certificates] Licenses may be renewed by payment of a biennial fee prior to the date of expiration. A lapsed [certificate] license may be reinstated upon payment of all delinquent fees and a penalty fee.

(c) Nothing in this chapter shall prohibit [registered] licensed beauty operators within a beauty shop from teaching any of the practices of cosmetology in which the beauty operator is [registered] licensed in the regular course of business; provided that the owners or beauty operators do not hold themselves out as a school, and do not hire or employ or teach, regularly, at any one time, more than one apprentice unless there is one beauty operator regularly employed in the business for each apprentice.

(d) The beauty shop owner shall be responsible for all operations of the shop and shall be responsible to see that only currently [registered] licensed individuals are performing cosmetology practices in the shop.

(e) Transfer of ownership, change in beauty shop name, and relocation of a beauty shop shall require filing of an application together with required fees.”

SECTION 11. Section 439-18, Hawaii Revised Statutes, is amended to read as follows:

**“§439-18 Schools.** (a) Any person may apply to the board for a [certificate of registration] license as a school in the practice of cosmetology, upon the payment of application and initial [registration] license fees. Thereafter an annual [registration] license fee shall be based on student enrollment.

(b) No school shall be granted a [certificate of registration] license unless it [attaches to its staff a regularly licensed physician and] employs and maintains a sufficient number of [registered] licensed instructors, and requires a course of training of a proportioned number of hours as approved by the board, for any of the [certification] licensure categories, to include both practical demonstrations, written and oral tests, and practical instruction in sanitation, sterilization, and the use of antiseptics consistent with the practical and theoretical requirements applicable to the practice of cosmetology.

(c) All [certificates] licenses shall expire on December 31 [next] following the date of issue, but may be renewed by payment of the annual [registration] license fee prior to the date of expiration. A lapsed [certificate] license may be reinstated upon the payment of all delinquent fees and a penalty fee.

(d) All schools shall have sufficient equipment and adequate facilities as prescribed by the rules of the board.”

SECTION 12. Section 439-19, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

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**“§439-19 Refusal to grant and revocation and suspension of [certificates.] licenses.** (a) The board may take disciplinary action against any [certificate or registration] license issued under this chapter, including but not limited to revocation, suspension, fine, or a combination thereof, or refuse to grant or renew any [certificate or registration] license for any of the following causes:

- (1) Procuring a [certificate] license through fraud, misrepresentation, or deceit;
- (2) Professional misconduct, gross carelessness, or manifest incapacity;
- (3) Permitting an [uncertified] unlicensed person to perform activities which require a [certificate] license under this chapter;
- (4) Violation of this chapter or the rules adopted pursuant thereto;
- (5) Making any false representation or promise through advertising or otherwise;
- (6) Failing to display the [certificate] license as provided in this chapter;
- (7) Any other conduct constituting fraudulent or dishonest dealings;
- (8) Failing to comply with a board order; or
- (9) Making a false statement on any document submitted or required to be filed by this chapter.”

SECTION 13. Section 439-20, Hawaii Revised Statutes, is amended to read as follows:

**“§439-20 Hearing.** In every case where it is proposed to revoke or suspend [the exercise of a certificate] a license for any of the causes enumerated in section 439-19, the person concerned shall be given notice and opportunity for hearing in conformity with chapter 91. Any person aggrieved by the denial or refusal of a [certificate] license by the board[,] shall submit a request for a hearing pursuant to chapter 91 within sixty days of the date of the denial or refusal. The notice of hearing shall be given at least five days before the hearing.

In all proceedings before it, the board and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses, and the production of documentary evidence, and examining witnesses, as are possessed by circuit courts. In case of disobedience by any person of any order of the board, or any member thereof, or of any subpoena issued by it, or any member, or the refusal of any witness to testify to any matter regarding which the witness may lawfully be questioned, any circuit judge, on application by the board, or any member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.”

SECTION 14. Section 439-22, Hawaii Revised Statutes, is amended to read as follows:

**“§439-22 Penalty.** Any person who practices cosmetology, maintains a school or a beauty shop, or acts in any capacity wherein a [certificate] license is required, without a [certificate] license as provided in this chapter, shall be fined not more than \$100, or imprisoned not more than ninety days, or both. Each and every day of violation shall be a separate offense.”

SECTION 15. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 16. This Act shall take effect upon its approval.

(Approved June 7, 1989.)

**ACT 154**

H.B. NO. 362

A Bill for an Act Relating to Public Assistance.

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

SECTION 1. Section 2, Act 192, Session Laws of Hawaii 1983, as amended by Act 207, Session Laws of Hawaii 1985, Act 134, Session Laws of 1987, and Act 208, Session Laws of 1988, is amended by amending the definition of "non-Medicaid recipient" to read as follows:

"Non-Medicaid recipient" means an individual whose income is at least [two] one hundred per cent of and not more than [four] three hundred per cent of the current medical assistance community income limit; and whose personal reserve is [at least one hundred per cent of and] not more than four hundred per cent of the current medical assistance limit for personal reserve retention."

SECTION 2. Section 346-53, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The assistance allowance provided shall be based on a percentage of the standard of need. On July 1, [1988,] 1989, the assistance allowance shall be set at sixty-two and one half per cent of the standard of need. Changes in the financial assistance standard of need and the assistance allowance shall become effective on July 1 of each year thereafter, subsequent to any change in the federal poverty level."

SECTION 3. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$1,695,232, or 0.072 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,695,232, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$1,989,999, or so much thereof as may be necessary for fiscal year 1990-1991, to carry out the purposes of Section 2 of this Act.

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

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

## **ACT 155**

### **ACT 155**

H.B. NO. 548

A Bill for an Act Relating to Elections.

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

SECTION 1. Section 11-76, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Electronic ballot and voting machine elections. Precinct officials, other than the chairman and voter assistance official, shall be paid [\$60] \$75 for each election. The voter assistance official shall be paid [\$65] \$80 for each election. The [chairman] chairperson of the precinct officials for each precinct shall be paid [\$70] \$85 for each election for a single-unit precinct and [\$10] \$15 more per unit for larger precincts. Alternate precinct officials who are trained and certified and who remain available but [who are not placed for] do not work in either the primary or general election shall be compensated \$5."

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$108,000, or so much thereof as may be necessary for fiscal year 1990-1991, to increase the compensation of precinct officials.

SECTION 3. The sum appropriated shall be expended by the office of the lieutenant governor for the purposes of this Act.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

### **ACT 156**

H.B. NO. 694

A Bill for an Act Relating to the Relief of Certain Persons' Claims Against the State and Providing Appropriations Therefor.

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

SECTION 1. The following sums of money are appropriated out of the general revenues of the State of Hawaii for the purpose of satisfying claims for legislative relief as to the following named persons, firms, corporations, others, and cases for overpayment of taxes, or on account of other claims for refunds, reimbursements, payments of judgments or settlements, or other payments, against the State in the amount set forth opposite their names:

REFUND OF TAXES:	Amount
JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:	Amount
Carr v. State	
Civil No. 3159, 5th Cir.	
Amount of judgment: \$50,172.07	53,136.90
Trial Costs: \$1,077.70	
Appeal Costs: \$455.14	
Interest from 9-21-88 judgment: \$1,431.99	

Cintron v. State, et al.	
Civil No. 86-0262, 1st Cir.	
Amount of settlement:	13,000.00
No interest	
Collier v. State of Hawaii, et al.	
Civil No. 88-2681-08, 1st Cir.	
Amount of settlement:	34,000.00
No interest	
Cosby v. County of Maui, et al.	
Civil No. 86-0617(3), 2nd Cir.	
Amount of settlement:	15,000.00
No interest	
Elwell v. State of Hawaii, et al.	
Civil No. 49283, 1st Cir.	
Amount of settlement:	30,000.00
No interest	
Hasbrouck v. State	
Civil No. 88-155(K), Third Circuit	
Amount of Settlement	23,000.00
No interest	
Hustace v. Department of Agriculture, et al.	
Civil No. 87-2148-07, 1st Cir.	
Amount of settlement:	40,000.00
No interest	
Ino v. Maui Community College	
Civil No. 85-1525, U.S.D.C.	
Amount of settlement:	16,000.00
No interest	
Kaauwai v. Spencer, et al.	
Civil No. 89-0084-01, First Circuit	
Amount of Settlement:	85,000.00
No interest	
Lefley v. State	
Civil No. 86-4239, 1st Cir.	
Amount of settlement:	12,500.00
No interest	
Mark v. State of Hawaii	
Civil No. 87-0660-02, 1st Cir.	
Amount of settlement:	15,000.00
No interest	
Nishijo v. Queen's Medical Center, et al.	
Nishijo v. Jatinder Dhillon, M.D., et al.	
Civil Nos. 86-1245 and 87-2504-08, 1st Cir.	
Amount of settlement:	16,500.00
No interest	
Ogata v. Department of Education, et al.	
Civil No. 85-090, 5th Cir.	
Amount of settlement:	15,000.00
No interest	
Oguma v. Reff	
Civil No. 86-1910, 1st Cir.	
Amount of settlement:	30,000.00
No interest	
Robinson v. Ariyoshi, et al.	
Civil No. 74-32, U.S.D.C.	
Amount of judgment:	2,835,945.70
\$2,335,945.70	
Post judgment interest:	
\$500,000.00	
Rubenstein v. State	
Civil No. 87-4016, 1st Cir.	
Amount of settlement:	25,000.00
No interest	

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Strecker v. State, et al. Civil No. 86-3231, 1st Cir.	
Amount of settlement:	190,000.00
No interest	
Terry v. State of Hawaii Civil No. 86-0590, 1st Cir.	
Amount of settlement:	15,000.00
No interest	
Yoshizawa v. State of Hawaii Civil No. 87-2685-08, 1st Cir.	
Amount of settlement:	40,000.00
No interest	
MISCELLANEOUS CLAIMS:	
Kuniyoshi, Richard S.	Amount 5,298.00
Stanton, Mary Mae	29.80
Stanton, Mary Mae	259.86

SECTION 2. The sums hereinabove appropriated shall be paid to the respective persons, or for the satisfaction or settlement of the respectively identified cases, and in the several amounts hereinabove set forth upon warrants issued by the comptroller of the State: (1) upon vouchers approved by the director of taxation as to claims for overpayment of taxes or related taxes, and (2) upon vouchers approved by the attorney general as to all other claims.

SECTION 3. Notwithstanding the sums hereinabove appropriated as interest upon judgments against the State and settlements of claims, payment of interest, at the rate stated above, shall be limited to the period from the date of judgment or settlement, if applicable, to thirty days after the effective date of this Act, as provided in section 662-8, Hawaii Revised Statutes, for those cases where judgment or settlement was based on chapter 662, Hawaii Revised Statutes.

SECTION 4. All unexpended and unencumbered balances of the appropriations made by section 1 of this Act as of the close of business on June 30, 1990, shall lapse into the general fund of the State.

SECTION 5. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

(Approved June 7, 1989.)

## ACT 157

H.B. NO. 711

A Bill for an Act Relating to Compulsory School Attendance.

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

SECTION 1. Section 298-9, Hawaii Revised Statutes, is amended to read as follows:

**“§298-9 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, on or before December 31 of any school year, shall attend either a public or private school for and during such 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. Such 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 a competent person is employed as a tutor in the family wherein the child resides and proper instruction is thereby imparted as approved by the superintendent;
- [2] Where the child who has reached the fifteenth anniversary of birth is suitably employed and has been excused from school attendance by the [school department] superintendent or [its] the superintendent's authorized [agents, the] representative, or by a family court [or the district] judge;
- [3] Where, upon investigation by the family court, [when feasible, or by the district judge,] it has been shown that for any other reason the child may properly remain away from school;
- [4] (4) Where a child graduated from<sup>1</sup> high school [or vocational school]; or
- [6] (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 of education[.], or notification of intent to home school has been submitted to the principal of the public school which 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."

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

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

(Approved June 7, 1989.)

#### Note

1. Prior to amendment "a" appeared here.

## ACT 158

H.B. NO. 821

A Bill for an Act Relating to Abandoned Vehicles.

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

SECTION 1. **Findings.** The committee on derelict and abandoned vehicles was created by the legislature during the 1987 Regular Session in Senate Resolution No. 101, S.D. 1, to study the aesthetic, safety, environmental, and financial problems caused by the proliferation of abandoned vehicles on Oahu. The committee, which was comprised of representatives from the city and county of Honolulu, the

## ACT 158

State of Hawaii, and the federal government, issued its findings and recommendations in A Report to the State Legislature: The Problem of Derelict and Abandoned Vehicles on Oahu. This Act implements the changes recommended by the committee in its report.

SECTION 2. Section 249-10, Hawaii Revised Statutes, is amended to read as follows:

**“§249-10 Delinquent penalties; seizure and sale for tax.** (a) Any tax imposed by sections 249-1 to 249-13 for any year and not paid before April 1 of [such] that year, or at any subsequent date when due, shall become delinquent and a penalty shall be added to, and become a part of, the delinquent tax. The amount of the delinquency penalty shall be established by the county's legislative body. Any vehicle not having the number plates required by sections 249-1 to 249-13, or any vehicle upon which taxes are delinquent as [hereinbefore] provided[,] in this section, may be seized, wherever found, by the director of finance or by any police officer, and held for a period of ten days, during which time the vehicle shall be subject to redemption by its owner by payment of the taxes due, together with the delinquent penalties and the cost of storage and other charges incident to the seizure of the vehicle. The director of finance, chief of police, or any police officer shall be deemed to have seized and taken possession of any vehicle, after having securely sealed it where located and posted a notice upon the vehicle, setting forth the fact that it has been seized for taxes and warning all other persons from molesting it under penalty provided by section 249-11.

(b) All vehicles [so] seized and sealed shall remain at the place of seizure or at such other place as the director of finance may direct, at the expense and risk of the owner. If the owner of the vehicle fails to redeem it within ten days after seizure, the vehicle may be sold by the director of finance at public auction to the highest bidder for cash, after giving ten days public notice [thereof] in a newspaper of general circulation published in the county, or by posting notices [thereof] in at least three public places in the district where the vehicle was seized[.], provided that the requirements of public auction may be waived when the appraised value of any vehicle is less than \$250 as determined by the director of finance or authorized representative, in which case the vehicle may be disposed of in the same manner as when a vehicle is put up for public auction and for which no bid is received. The amount realized at the sale, less the amount of the tax and penalty due, together with all costs incurred in advertising, storing, and selling the vehicle and all other charges incident to the seizure and sale, shall be paid to the owner of the vehicle. If no claim for the surplus is filed with the director of finance within sixty days from the date of the sale, the surplus shall be paid into the county treasury as a government realization and all claim to such sum shall thereafter be forever barred.

(c) The owner of any antique motor vehicle shall be exempt from the tax and delinquent penalty imposed under this chapter for the entire period of nonuse; provided that the owner of the antique motor vehicle shall first present to the director of finance a signed and sworn certificate attesting to the antique motor vehicle's period of nonuse.”

SECTION 3. Section 290-2, Hawaii Revised Statutes, is amended to read as follows:

**“§290-2 Notice to owner.** Upon taking custody of any [such] abandoned vehicle, a written notice shall immediately be sent by registered or certified mail, with a return receipt, to the legal and registered owner of the vehicle at the address on record at the vehicle licensing division. The notice shall contain a brief description

of the vehicle, the location of custody, and intended disposition of the vehicle if not repossessed within [twenty] ten days after the mailing of the notice. A notice need not be sent to a legal or registered owner or any person with an unrecorded interest in the vehicle whose name or address cannot be determined."

**SECTION 4.** Section 290-5, Hawaii Revised Statutes, is amended to read as follows:

**"§290-5 Waiver of public auction requirements.** The requirements of public auction may be waived when the appraised value of any vehicle is less than [\$100] \$250 as determined by [an independent appraiser who has had at least one year of experience in the sale or purchase of motor vehicles as a licensed motor vehicle salesman.] the director of finance or authorized representative. In that event the vehicle [may], after public advertisement has been made once in a newspaper of general circulation, may be disposed of in the same manner as when a vehicle is put up for public auction and for which no bid is received."

**SECTION 5.** Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 7, 1989.)

**ACT 159**

H.B. NO. 924

A Bill for an Act Relating to Compensation for State and County Service.

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

**SECTION 1.** Act 400, Session Laws of Hawaii 1988, corrected a pay inequity affecting excluded managerial employees who remained incumbents since the excluded managerial compensation plan (hereafter referred to as "EMCP") went into effect on July 1, 1981, and those employees who were assigned to the EMCP without a pay increase prior to July 1, 1982, by providing lump sum payments and pay adjustments for those managers. Act 400 appropriated funds and authorized the chief executives of the State and counties and the chief justice, or their designated representatives, to provide lump sum payments and pay adjustments to charter members of the EMCP who remained as incumbents as of July 1, 1988. However, Act 400 did not provide for back pay for those charter members of the EMCP who had left their positions prior to July 1, 1988, although they had performed services but were not paid correctly for those services. As a matter of fairness and equity, former charter members of the EMCP who had performed services as managerial employees during any part of the period covered by Act 400 also should be provided back pay.

The purpose of this Act is to provide lump sum payments to those former charter members of the EMCP who retired from active service, who left state or county government employment, or who transferred to positions covered by a pay plan other than the EMCP, and who would have received a lump sum payment under Act 400 had they remained in the EMCP as of July 1, 1988.

**SECTION 2.** Lump sum payments and adjustments shall be granted to former charter members of the EMCP, other than those charter members who were employed as of July 1, 1988, and were provided back pay and pay adjustments under

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Act 400, Session Laws of Hawaii 1988; provided that the former charter member was an incumbent of the EMCP as of July 1, 1981, or was assigned to the EMCP without a pay increase prior to July 1, 1982, and performed services as a managerial employee during any part of the period beginning July 1, 1981 and ending June 30, 1988. The lump sum payment shall be computed as if adjustments were made as follows: beginning from July 1, 1981, each such former employee's pay shall be adjusted by amounts equal to the dollar differences between the minimum rates of the initial EM range and the minimum rates of the comparable SR range, and the former employee shall be given credit for each full month of service performed or any fraction thereof.

**SECTION 3.** The designated representatives of the chief executives of the State and counties and the chief justice shall identify the eligible former managerial employees and compute the back pay due each person. The method of computation necessary to achieve the purpose of this Act shall be determined uniformly and applied by all jurisdictions.

**SECTION 4.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$1,027,659, or 0.044 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

**SECTION 5.** There is hereby appropriated from the general revenues of the State of Hawaii to the program planning, analysis, and budgeting program (BUF 101) the sum of \$425,350, or so much thereof as may be necessary for fiscal year 1989-1990, to fund the lump sum payments for former managerial employees of the state executive branch eligible for payments pursuant to section 2 of this Act. Special funds, federal funds, and other funds available for funding the purpose of this Act are hereby appropriated or authorized in lieu of general funds. Funds appropriated or authorized by this section shall be expended by the director of finance for the purpose of this Act.

**SECTION 6.** There is hereby appropriated from the general revenues of the State of Hawaii to the administrative director of services (JUD 201) the sum of \$26,977, or so much thereof as may be necessary for fiscal year 1989-1990, to fund the lump sum payments for former managerial employees of the state judicial branch eligible for payments pursuant to section 2 of this Act. Funds appropriated by this section shall be expended by the chief justice for the purposes of this Act.

**SECTION 7.** There are hereby appropriated from the general revenues of the State of Hawaii the following sums, or so much thereof as may be necessary for fiscal year 1989-1990, to fund the lump sum payments for former managerial employees of the counties eligible for payments pursuant to section 2 of this Act:

City and county of Honolulu	\$409,332
County of Hawaii	\$ 50,000
County of Maui	\$ 66,000
County of Kauai	\$ 50,000

Funds appropriated by this section shall be expended by the respective county finance directors for the purposes of this Act.

**SECTION 8.** The provisions of this Act shall not be interpreted as affected by Article 5, section 8, of the Hawaii State Constitution. The funds provided for

fiscal year 1989-1990 to the counties are of a one-time nature to carry out the purpose of this Act.

SECTION 9. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

## ACT 160

H.B. NO. 1362

A Bill for an Act Relating to Freedom of Information.

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

SECTION 1. Section 89-8, Hawaii Revised Statutes, recognizes the right of the exclusive bargaining unit representative "to act for" and negotiate agreements covering "all employees" in the unit and "to be responsible" for representing the interests of all such employees.

As a result, exclusive representatives for public employees need accurate, relevant, timely, complete, and consistent information concerning bargaining unit positions and employees. This information is sometimes contained in government personnel and payroll records. At times, this information is necessary so the representative can comply with Chapter 89, Hawaii Revised Statutes.

Act 262, SLH 1988, "The Uniform Information Practices Act (Modified)" fails to specifically address or clarify the issue of disclosure of certain information to the exclusive representatives. This Act clarifies the nature of the information that can be disclosed.

SECTION 2. Chapter 92F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§92F- Disclosure to an exclusive representative.** (a) The appropriate government agencies shall disclose to an exclusive representative, as defined by chapter 89, information related to the administration of payroll deductions as authorized by section 89-4, as follows: the name, social security number, bargaining unit, amounts and dates of all statutory dues and fees and voluntary payroll deductions remitted to the exclusive representative.

(b) An exclusive representative receiving government records pursuant to this law shall be subject to the same restrictions on disclosure of the records as the originating agency."

SECTION 3. Section 92F-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any provision 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;

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- (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 record 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 which may include name, business address, type of license held, and status of the license;
- (14) The name, compensation ([or] but only the salary range for employees covered by chapters 76 [and], 77[)], 297 or 304,) job title, business address, business telephone number, job description, education and training background, previous work experience, [and] 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 shall not require the creation of a roster of employees; except that this provision 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 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

### Note

1. Edited pursuant to HRS §23G-16.5.

**ACT 161**

H.B. NO. 1850

A Bill for an Act Relating to Financial Assistance for Treatment Works.

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

SECTION 1. The legislature finds that the protection of the waters of this State is of such magnitude and complexity as to justify state participation and assistance.

The federal Water Pollution Control Act, 33 United States Code, section 1250, and the Hawaii Environmental Quality law, chapter 342, Hawaii Revised Statutes, provide national and state regulation to ensure the restoration, preservation, and protection of the nation's and State's waters. State agencies are prohibited from polluting navigable waters of the State and are subject to various penalties for failing to meet minimum standards of the federal Water Pollution Control Act. Pursuant to the requirements of the federal Water Pollution Control Act, the State has established water quality standards and effluent limitations with respect to the waters of this State. The State must certify compliance with these standards and limitations for federal permits affecting state waters.

Under the federal Water Pollution Control Act, the State and its political subdivisions may receive federal grants, subject to the availability of funds, to be used for construction of treatment works. The State or its political subdivisions must contribute to the nonfederal share of construction costs of treatment works. It is desirable for the State to seek federal grants and assist in providing financing mechanisms to aid political subdivisions in the acquisition and construction of wastewater projects in order to meet minimum federal standards, to protect the public health and welfare, and to provide for the continuation of timely construction of needed treatment works.

The recent changes in the Water Quality Act of 1987 (Public Law 100-4) embody a dramatic shift in the financing of wastewater treatment facilities from the federal government to state and local governments. The new law provides for alternative policy approaches for establishing funding mechanisms and for specific financial strategies for state governments while the federal government is scheduled to phase out its involvement in providing direct federal grants for construction projects by 1990. Under the new law the states may receive federal grants to capitalize a revolving fund until 1994. To qualify for a capitalization grant, the legislature passed Act 365, Session Laws of Hawaii 1988, which established a water pollution control revolving fund in accordance with the provisions and requirements of the Water Quality Act of 1987.

Recent surveys indicate that there will be approximately \$1.4 billion of wastewater treatment facilities required over the next twenty years to protect our valuable, pristine coastal and fresh underground waters. The total federal capitalization grants of \$63 million that the State expects to receive until the year 1994, are not adequate to finance the needed wastewater treatment facilities. Due to the shortage of necessary funds, it is the intent of the legislature that available funds be expended on the construction of new treatment facilities, including primary facilities, if applicable, and for the expansion of existing sewage plant facilities. It is not the intent of the legislature to utilize these funds to upgrade sewage plant facilities to secondary treatment if this level of treatment is not warranted.

The legislature further finds that it is desirable that the State assist in providing financial mechanisms such as grants, loans, or a combination of grants and loans to aid political subdivisions in the construction of wastewater projects in order to meet statutory deadlines, to protect the public health and welfare, to provide for the continuation of prompt construction of needed treatment works to meet the

## ACT 161

anticipated growth in the State, and to encourage development of the State's water resources.

SECTION 2. Section 342-34, Hawaii Revised Statutes, is amended to read as follows:

**"§342-34 Treatment works; construction grants; advances; state revolving fund.** (a) The director may make grants or loans, or both, to any state or county agency of state funds as authorized and appropriated by the legislature for the construction of necessary treatment works and for other projects intended for wastewater reclamation or waste management by other than conventional means to prevent or to control the discharge of untreated or inadequately treated sewage or other waste into any state waters[.]; provided that the director ensures that the grants or loans, or both, are allocated to projects on the basis of existing and future growth patterns. The director shall coordinate the granting of state funds with available federal funds for the same purpose. No grant or loan shall be made for any project unless[.]:

- (1) [the] The project conforms with the state water pollution control plan[, and];
- (2) [the] The project is certified by the director as entitled to priority over other eligible projects on the basis of financial as well as water pollution control needs[,]; and[, in]
- (3) In the case of treatment works, [(3)] the application for the grant [or], loan, or both, contains reasonable assurances that the applicant will provide for the proper and efficient operation and maintenance of the treatment works after its construction.

If federal grant funds are available, the applicant shall be required to pay sixty per cent of the nonfederal share of the estimated reasonable cost of [such] the approved treatment works as defined by Public Law 92-500. If federal grant funds are not available, the director may make grants or loans, or both, up to one hundred per cent of the estimated reasonable cost of the project.

(b) If the federal funds are not immediately available, the director may advance the federal share of the planning and design cost to the county or state agency, subject to the following provisions:

- (1) The director shall enter into a contract with the applicant specifying the conditions of the advance; and
  - (2) The advances made by the State to the county or state agency shall be reimbursed to the State immediately upon the receipt from the federal government of the advanced funds or within one year after the completion of project construction.
- (c) There is established in the state treasury a fund to be known as the water pollution control revolving fund solely for the purpose of receiving federal and state funds to provide financial assistance to governmental agencies for the planning, design, and construction of treatment works owned by a governmental agency in accordance with Title VI of the Water Quality Act of 1987, Public Law 100-4, and implementation of management programs established under sections 319 and 320 of the Water Quality Act of 1987; provided that:
- (1) The director may enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept capitalization grants which shall be deposited into the revolving fund;
  - (2) The financial assistance which may be provided to governmental agencies by the revolving fund shall be limited to loans, loan guarantees, [and] bond guarantees[;], and grants;

- (3) The revolving fund shall be established, maintained, and credited with loan repayments and the fund balance shall be available in perpetuity for its stated purpose;
- (4) The director may make and condition loans from the fund as required by state or federal law. [Such] These loans shall:
  - (A) Be made at or below market interest rates;
  - (B) Require annual payments of principal and interest with repayment commencing not later than one year after completion of the project for which the loan is made; and
  - (C) Be fully amortized not later than twenty years after project completion;
- (5) The director shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for appropriate accounting periods of payments and disbursements received and made by the revolving fund and for fund balances at the beginning and end of the accounting period;
- (6) The director may enter into any necessary or required agreement and give or make any necessary or required assurance or certification with any person to receive payments or grants or to make or provide any financial assistance in conformance with Title VI of the Water Quality Act of 1987;
- (7) No loan from the revolving fund shall be made unless the loan recipient establishes a dedicated source of revenue for the repayment of such loans; [and]
- (8) The director may adopt rules pursuant to chapter 91 necessary for the purposes of this section, including but not limited to, penalties for default of loan repayments[.];
- (9) The director may utilize moneys from the revolving fund to finance administrative costs, including monitoring and enforcement, of a non-point source pollution control program; provided that the director shall not utilize more than \$50,000 during fiscal year 1989-90; and
- (10) Not less than twenty days prior to the convening of each regular session of the legislature, the director shall submit a report to the legislature of all grants made from the revolving fund during the last completed fiscal year, and during the first three months of the fiscal year in progress. For each grant, the report shall include:
  - (A) The recipient;
  - (B) The effective date of the grant;
  - (C) The amount provided; and
  - (D) The intended or actual use of the funds.

(d) Nothing in this section shall be construed to restrict the director's authority to make grants or loans, or both, to treatment projects granted waivers under section 301(h) of the Federal Water Pollution Control Act (33 U.S.C. 1331)."

SECTION 3. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$50,000,000, or 2.13 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000,000, or so much thereof as may be necessary for

## **ACT 162**

fiscal year 1989-1990, to be deposited into the water pollution control revolving fund to carry out the purposes of this Act.

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

**SECTION 5.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 6.** This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

## **ACT 162**

H.B. NO. 1597

A Bill for an Act Relating to Contractors.

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

**SECTION 1.** Chapter<sup>1</sup> 444-7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) A specialty contractor is a contractor whose operations as such are the performance of construction work requiring special skill such as, but not limited to, electrical, drywall, painting and decorating, landscaping, flooring, carpet laying by any installation method, plumbing, or roofing work, and others whose principal contracting business involves the use of specialized building trades or crafts.”

**SECTION 2.** New statutory material is underscored.

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

(Approved June 7, 1989.)

### **Note**

1. So in original.

## **ACT 163**

H.B. NO. 1703

A Bill for an Act Relating to the Penal Code.

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

**SECTION 1.** Section 712-1241, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of promoting a dangerous drug in the first degree if he knowingly:

- (a) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:
  - (i) One ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or

- (ii) [Two ounces] One and one-half ounce or more, containing one or more of any of the other dangerous drugs; or
- (b) Distributes:
  - (i) [Fifty] Twenty-five or more capsules, tablets, ampules, dosage units, or syrettes containing one or more dangerous drugs; or
  - (ii) One or more preparations, compounds, mixtures, or substances of an aggregate weight of:
    - (A) One-eighth ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
    - (B) [One-half] Three-eighths ounce or more, containing any other dangerous drug; or
- (c) Distributes any dangerous drug in any amount to a minor."

SECTION 2. Section 712-1242, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- "(1) A person commits the offense of promoting a dangerous drug in the second degree if he knowingly:
- (a) Possesses [fifty] twenty-five or more capsules, tablets, ampules, dosage units, or syrettes, containing one or more dangerous drugs; or
  - (b) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:
    - (i) One-eighth ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
    - (ii) [One-half] One-fourth ounce or more, containing any dangerous drug; or
  - (c) Distributes any dangerous drug in any amount."

SECTION 3. Section 712-1244, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- "(1) A person commits the offense of promoting a harmful drug in the first degree if he knowingly:
- (a) Possesses [four hundred] one hundred or more capsules or tablets or dosage units containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or
  - (b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one ounce or more containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or
  - (c) Distributes [fifty] twenty-five or more capsules or tablets or dosage units containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or
  - (d) Distributes one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one-eighth ounce or more, containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or
  - (e) Distributes any harmful drug or any marijuana concentrate in any amount to a minor."

SECTION 4. Section 712-1245, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

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"(1) A person commits the offense of promoting a harmful drug in the second degree if he knowingly:

- (a) Possesses fifty or more capsules or tablets or dosage units containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or
- (b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one-eighth ounce or more, containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or
- (c) Distributes any harmful drug or any marijuana concentrate in any amount."

SECTION 5. Section 712-1246, Hawaii Revised Statutes, is amended to read as follows:

**"§712-1246 Promoting a harmful drug in the third degree.** (1) A person commits the offense of promoting a harmful drug in the third degree if he knowingly possesses [any harmful drug in any amount.] twenty-five or more capsules or tablets or dosage units containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof.

(2) Promoting a harmful drug in the third degree is a [misdemeanor.] class C felony."

SECTION 6. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§712- Promoting a harmful drug in the fourth degree.** (1) A person commits the offense of promoting a harmful drug in the fourth degree if the person knowingly possesses [less than ten capsules, tablets, or dosage units containing one or more of the] any harmful drug[s] in any amount.<sup>1</sup>

(2) Promoting a harmful drug in the fourth degree is a misdemeanor."

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 7, 1989.)

### Note

1. So in original.

## ACT 164

H.B. NO. 1716

A Bill for an Act Relating to Interception of Communications.

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

SECTION 1. Chapter 803, Hawaii Revised Statutes, is amended by adding five new sections to be appropriately designated and to read as follows:

**"§803- Disclosure of contents of communication while in electronic storage.**

- (a) (1) A person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and
- (2) A person or entity providing remote computing services to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service:
  - (A) On behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmissions from) a subscriber or customer of such service; and
  - (B) Solely for the purpose of providing storage and computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.
- (b) A person or entity may divulge the contents of a communication:
  - (1) To an addressee, intended recipient, or the addressee's or intended recipient's agent, of such communication;
  - (2) As otherwise authorized by a court order or search warrant;
  - (3) With the lawful consent of the originator, addressee, or intended recipient of such communication, or the subscriber in the case of a remote computing service;
  - (4) To a person employed or authorized or whose facilities are used to forward such communication to its destination.
  - (5) As may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service; or
  - (6) To a law enforcement agency, if such contents:
    - (A) Were inadvertently obtained by the service provider; and
    - (B) Appear to pertain to the commission of a crime.

**§803- Requirements for governmental access.** (a) A governmental entity may require disclosure of the contents of an electronic communication that has been in electronic storage for one hundred eighty days, or less, from the provider of the electronic communication service where storage has taken place, only by means of a search warrant. A governmental entity may require disclosure of the contents of an electronic communication which has been in electronic storage for more than one hundred eighty days by the means available under subsection (b) of this section.

(b) A governmental entity may require a provider of remote computing services to disclose the contents of any electronic communication to which this subsection is made applicable by subsection (c) of this section:

- (1) Without notice to the subscriber or customer, if a search warrant has been obtained; or
- (2) With prior notice to the subscriber or customer, if a court order for disclosure under subsection (d) of this section has been obtained; except that delayed notice may be authorized by the order.
- (c) Subsection (b) of this section is applicable to any electronic communication held or maintained on a remote computing service:
  - (1) On behalf of, and received by electronic transmission from (or created by computer processing of communications received by electronic transmission from) a subscriber or customer of such remote computing service; and

- (2) Solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for any purpose other than storage or computer processing.
- (d) (1) A provider of electronic communication or remote computing services may disclose a record or other information pertaining to a subscriber or customer of such service (other than the contents of any electronic communication) to any person other than a governmental entity.
  - (2) A provider of electronic communication or remote computing services shall disclose a record or other information pertaining to a subscriber or customer of such service (other than the contents of an electronic communication) to a governmental entity only when:
    - (A) Presented with a grand jury subpoena;
    - (B) Presented with a search warrant;
    - (C) Presented with a court order for such disclosure; or
    - (D) The consent of the subscriber or customer to such disclosure has been obtained.
  - (3) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.
- (e) A court order for disclosure under subsection (b) or (c) or this section shall issue only if the governmental entity demonstrates probable cause that the contents of a wire or electronic communication, or records or other information sought, constitute or relate to the fruits, implements, or existence of a crime or are relevant to a legitimate law enforcement inquiry. An order may be quashed or modified if, upon a motion promptly made, the service provider shows that compliance would be unduly burdensome because of the voluminous nature of the information or records requested, or some other stated reason establishing such a hardship.
- (f) No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, or subpoena.

**§803- Backup preservation.** (a) A governmental entity may include in its court order a requirement that the service provider create a backup copy of the contents of the electronic communication without notifying the subscriber or customer. The service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such a backup copy has been made. Such backup copy shall be created within two business days after receipt of a subpoena or court order by the service provider.

- (b) The governmental entity must give notice to the subscriber or customer within three days of receiving confirmation that a backup record has been made, unless notice is delayed pursuant to the procedures herein.
- (c) The service provider shall not destroy such backup copy until the later of:
  - (1) The delivery of the information; or
  - (2) The resolution of any proceedings, including any appeal therefrom, concerning a court order.
- (d) The service provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer, if such service provider:

- (1) Has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and
- (2) Has not initiated proceedings to challenge the governmental entity's request.

(e) Within fourteen days after notice by the governmental entity to the subscriber or customer under subsection (b) of this section, the subscriber or customer may file a motion to vacate such court order with written notice and a copy of the motion being served on both the governmental entity and the service provider. The motion to vacate a court order shall be filed with the circuit court judge designated by the chief justice of the Hawaii supreme court. Such motion or application shall contain an affidavit or sworn statement:

- (1) Stating that the applicant is a customer or subscriber to the service from which the contents of electronic communications are sought; and
- (2) Setting forth the applicant's reasons for believing that the records sought does not constitute probable cause or there has not been substantial compliance with some aspect of the provisions of this part.

(f) Upon receiving a copy of the motion from the subscriber or customer, the governmental agency shall file a sworn response to the court to which the motion is assigned. The response shall be filed within fourteen days. The response may ask the court for an in camera review, but must state reasons justifying such a review. If the court is unable to rule solely on the motion or application and response submitted, the court may conduct such additional proceedings as it deems appropriate. A ruling shall be made as soon as practicable after the filing of the governmental entity's response.

(g) If the court finds that the applicant is not the subscriber or customer whose communications are sought, or that there is reason to believe that the law enforcement inquiry is legitimate and the justification for the communications sought is supported by probable cause, the application or motion shall be denied, and the court shall order the release of the backup copy to the government entity. A court order denying a motion or application shall not be deemed a final order, and no interlocutory appeal may be taken therefrom by the customer. If the court finds that the applicant is a proper subscriber or customer and the justification for the communication sought is not supported by probable cause or that there has not been substantial compliance with the provisions of this part, it shall order vacation of the order previously issued.

**§803- Delay of notification.** (a) A governmental entity may as part of a request for a court order include a provision that notification be delayed for a period not exceeding ninety days if the court determines that notification of the existence of the court order may have an adverse result.

- (b) An adverse result for the purpose of subsection (a) of this section is:
- (1) Endangering the life or physical safety of an individual;
  - (2) Flight from prosecution;
  - (3) Destruction of or tampering with evidence;
  - (4) Intimidation of a potential witness; or
  - (5) Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(c) Extensions of delays in notification may be granted up to ninety days per application to a court. Each application for an extension must comply with subsection (e) of this section.

(d) Upon expiration of the period of delay of notification, the governmental entity shall serve upon, or deliver by registered mail to, the customer or subscriber a copy of the process or request together with notice that:

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- (1) States with reasonable specificity the nature of the law enforcement inquiry; and
- (2) Informs such customer or subscriber:
  - (A) That information maintained for such customer or subscriber by the service provider or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;
  - (B) That notification of such customer or subscriber was delayed;
  - (C) What governmental entity or court made the certification or determination; and
  - (D) Which provision of this part allowed such delay.
- (e) A governmental entity may apply to the circuit court designated by the chief justice of the Hawaii supreme court or any other circuit judge or district court judge, if a circuit court judge has not yet been designated by the chief justice of the Hawaii supreme court, or is otherwise unavailable, for an order commanding a provider of an electronic communication service or remote computing service to whom a search warrant, or court order is directed, not to notify any other person of the existence of the search warrant, or court order for such period as the court deems appropriate not to exceed ninety days. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the search warrant, or court order will result in:
  - (1) Endangering the life or physical safety of an individual;
  - (2) Flight from prosecution;
  - (3) Destruction of or tampering with evidence;
  - (4) Intimidation of a potential witness; or
  - (5) Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

**§803- Cost reimbursement.** A government entity obtaining the contents of communications, records, or other information shall reimburse any person or entity reasonable fees for providing or assembling such information. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service which was occasioned by the governmental needs."

SECTION 2. Chapter 803, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**"§803- Application for a pen register or a trap and trace device.** (a) The attorney general of this State or the prosecuting attorney for each county, or a subordinate designated to act in either's absence or incapacity, may apply in writing under oath or equivalent affirmation to a circuit court judge designated by the chief justice of the Hawaii supreme court or any other circuit court judge or district court judge, if a circuit court judge has not been designated by the chief justice of the Hawaii supreme court, or is otherwise unavailable, for an order or extension of an order to authorize the installation and use of a pen register or a trap and trace device.

(b) The application shall include:

- (1) The identity of the official making the application and the law enforcement agency conducting the investigation; and
- (2) The facts and circumstances relied upon by the applicant to conclude that there is probable cause to believe that information will be obtained through the installation and use of a pen register or trap and trace device which will constitute the fruits, instrumentalities, or evidence of a crime covered under this part.

**§803- Issuance of an order for a pen register or a trap and trace device.** (a) Upon application for an order authorizing the installation and use of a pen register or a trap and trace device, the reviewing judge shall satisfy itself that there are sufficient facts and circumstances contained within the application that there is probable cause to believe that information will be obtained through the installation and use of a pen register or a trap and trace device which will constitute the fruits, instrumentalities, or evidence of a crime or is relevant to an ongoing criminal investigation.

- (b) If the reviewing judge is so satisfied, the order issued shall specify:
  - (1) The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;
  - (2) The identity, if known, of the person who is the subject of the criminal investigation;
  - (3) The number and, if known, the physical location of the telephone line to which the pen register or the trap and trace device is to be attached, and, in the case of a trap and trace device, the geographical limits of the trap and trace order;
  - (4) A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and
  - (5) Upon the request of the applicant, the information, facilities, and technical assistance necessary to accomplish installation of the pen register or trap and trace device that the provider of wire communication service is directed to furnish to the applicant.

(c) An order authorizing installation and use of a pen register or a trap and trace device shall not be for a period exceeding sixty days. Extension of such an order may be granted, but only upon a reapplication for an order and a finding of probable cause to justify continuing use of a pen register or trap and trace device. The period of the extension shall not exceed sixty days.

- (d) An order authorizing the installation and use of a pen register or a trap and trace device shall direct that:
  - (1) The order be sealed until otherwise ordered by the court; and
  - (2) The person owning or leasing the line to which the pen register or trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless otherwise ordered by the court.

**§803- Application for authorization to install and use a mobile tracking device.** (a) A search warrant or court order must be obtained from the circuit court judge designated by the chief justice of the Hawaii supreme court or any other circuit court judge or district court judge, if a circuit court judge has not been designated by the chief justice of the Hawaii supreme court, or is otherwise unavailable, to install a mobile tracking device. Such order may authorize the use of that device within the jurisdiction of the court and outside that jurisdiction, if the device is installed in that jurisdiction.

(b) Upon application to the reviewing judge for a court order, the reviewing judge should satisfy itself that there are sufficient facts and circumstances contained within the application to establish probable cause to believe that the use of a mobile tracking device will discover the fruits, instrumentalities, or evidence of a crime or is relevant to an ongoing criminal investigation.

- (c) If the designated judge is so satisfied, it shall issue an order specifying:

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- (1) The identity, if known, of the person who is the subject of the investigation;
- (2) The number of mobile tracking devices to be used and the geographical location(s) where the devices are to be installed; and
- (3) The identity, if known, of any person who may have a privacy interest in the point of installation of the mobile tracking device.

(d) An order authorizing installation and use of a mobile tracking device shall not exceed sixty days. Extensions of such orders may be granted only upon reapplication establishing probable cause to justify the continued use of a mobile tracking device. The period of the extension shall not exceed sixty days.

(e) The order shall direct that the order be sealed until otherwise directed by the court."

SECTION 3. Section 803-41, Hawaii Revised Statutes, is amended to read as follows:

### **"§803-41 Definitions.** In this part:

"Aggrieved person" means a person who was party to any intercepted wire, [wireless, or] oral, or electronic communication or a person against whom the interception was directed.

"Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

"Contents" when used with respect to any wire [or wireless], oral, or electronic communication, includes any information concerning the [identity of the parties to such communication or the existence,] substance, purport, or meaning of that communication.

"Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce. The term "electronic communication" includes, but is not limited to, "display pagers" which can display visual message as part of the paging process, but does not include:

- (1) The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;
- (2) Any wire or oral communication;
- (3) Any communication made through a tone-only paging device; or
- (4) Any communication from a tracking device.

"Electronic communication system" means any wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications.

"Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, [wireless, or] oral, or electronic communication other than:

- (1) Any telephone or telegraph instrument, equipment or facility, or any component thereof, (A) furnished to the subscriber or user by a [communications common carrier] provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business[;] or furnished by such subscriber or user for connection to the facilities of such services and used in the ordinary course of its business; or (B) being used by a [communications common carrier] provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of the officer's duties; or

- (2) A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

**"Electronic storage"** means:

- (1) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and
- (2) Any storage of such communication by an electronic communication service for purposes of backup protection of such communication.

**"Intercept"** means the aural or other acquisition of the contents of any wire [or wireless], electronic, or oral communication through the use of any electronic, mechanical, or other device.

**"Investigative or law enforcement officer"** means any officer of the State or political subdivision thereof, who is empowered by the law of this State to conduct investigations of or to make arrests for offenses enumerated in this part.

**"Oral communication"** means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation[.], but such term does not include any electronic communication.

**"Organized crime"** means any combination or conspiracy to engage in criminal activity.

**"Pen register"** means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communication services provided by such provider or any device used by a provider or customer of a wire communication service, for cost accounting or other like purposes in the ordinary course of its business.

**"Person"** means any official, employee, or agent of the United States or this State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation.

**"Readily accessible to the general public"** means, with respect to radio communication, that such communication is not:

- (1) Scrambled or encrypted;
- (2) Transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;
- (3) Carried on a subcarrier or other signal subsidiary to a radio transmission;
- (4) Transmitted over a communication system provided by a common carrier, unless the communication is a tone-only paging system communication; or
- (5) Transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless in the case of a communication transmitted on a frequency allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.

**"Tracking device"** means an electronic or mechanical device which permits the tracking of the movement of a person or object.

**"Trap and trace device"** means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

**"User"** means any person or entity who:

- (1) Uses an electronic communication service; and
- (2) Is duly authorized by the provider of such service to engage in such use.

“Wire communication” means any [communication] aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged [as a common carrier] in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications. The term “wire communication” includes, but is not limited to, cellular telephones, cordless telephones, except for the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, “tone and voice” pagers which transmit a voice message along with a paging signal, and any electronic storage of a wire communication.

“Wireless communication” means any communication made in whole or in part through the use of domestic public cellular radio telecommunications facilities or microwave facilities furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications as defined and authorized by the Federal Communications Commission.]”

SECTION 4. Section 803-42, Hawaii Revised Statutes, is amended to read as follows:

**“§803-42 Interception, access,<sup>1</sup> and disclosure of wire, [wireless,] oral, or electronic communications, use of pen register, trap and trace device, and mobile tracking device prohibited.** (a) Except as otherwise specifically provided in this part any person who:

- (1) [Wilfully] Intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, [wireless, or] oral, or electronic communication;
- (2) [Wilfully] Intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any wire, [wireless, or] oral, or electronic communication;
- (3) [Wilfully] Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, [wireless, or] oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, [wireless, or] oral, or electronic communication in violation of this [subsection; or] part;
- (4) [Wilfully] Intentionally uses, or endeavors to use, the contents of any wire, [wireless, or] oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, [wireless, or] oral, or electronic communication in violation of this [subsection;] part;
- (5) (A) Intentionally accesses without authorization a facility through which an electronic communication service is provided; or  
(B) Intentionally exceeds an authorization to access that facility; and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage;
- (6) Intentionally installs or uses a pen register or a trap and trace device without first obtaining a court order; or

- (7) Intentionally installs or uses a mobile tracking device without first obtaining a search warrant or other order authorizing the installation and use of such device;

shall be guilty of a class C felony.

- (b) (1) It shall not be unlawful under this part for an operator of a switch-board, or an officer, employee, or agent of [any communication common carrier,] a provider of wire or electronic communication services, whose facilities are used in the transmission of a wire [or wireless] communication, to intercept, disclose, or use that communication in the normal course of the officer's, employee's, or agent's employment while engaged in any activity which is a necessary incident to the rendition of the officer's, employee's, or agent's service or to the protection of the rights or property of the [carrier] provider of [such communication;] that service; provided that such [communication common carriers] providers of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.
- (2) It shall not be unlawful under this part for an officer, employee, or agent of the Federal Communications Commission, in the normal course of the officer's, employee's, or agent's employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a wire or [wireless] electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.
- (3) It shall not be unlawful under this part for a person not acting under color of law to intercept a wire, [wireless, or] oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this State [or for the purpose of committing any other injurious act]; provided that installation in any private place, without consent of the person or persons entitled to privacy therein, of any device for recording, amplifying, or broadcasting sounds or events in that place, or use of any such unauthorized installation, or installation or use outside a private place of such device to intercept sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein is prohibited.
- (4) It shall not be unlawful under this part for a person acting under color of law to intercept a wire, oral, or electronic communication, when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.
- [(4)] (5) It shall not be unlawful under this part for any person to intercept a wire, [wireless, or] oral, or electronic communication or to disclose or use the contents of an intercepted communication, when such interception is pursuant to a valid court order under this chapter or as otherwise authorized by law; provided that a communications [carrier] provider with knowledge of an interception of communications accomplished through the use of the communications [carrier's] provider's facilities shall report the fact and duration of the interception to the administrative director of the courts of this State.

(6) Notwithstanding any other law, providers of wire or electronic communication service, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept or access wire, oral, or electronic communications, to conduct electronic surveillance, or to install a pen register or trap and trace device if such provider, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with:

- (A) A court order directing such assistance signed by an authorizing judge; or
- (B) A certification in writing from the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, the attorney general of the State of Hawaii, or the prosecuting attorney for each county that no warrant or court order is required by law, that all statutory requirements have been met, and that the specific assistance is required, setting forth the period of time during which the providing of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required.

No provider of wire or electronic communication service, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any access, interception, or surveillance or the device used to accomplish the interception or surveillance for which the person has been furnished a court order or certification under this part, except as may otherwise be required by legal process and then only after prior notification to the party that provided the court order or certification.

No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of a court order or certification under this part.

(7) It shall not be unlawful under this part for any person:

- (A) To intercept or access an electronic communication made through an electronic communication system configured so that such electronic communication is readily accessible to the general public.
- (B) To intercept any radio communication which is transmitted:
  - (i) By any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;
  - (ii) By any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;
  - (iii) By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or
  - (iv) By any marine or aeronautical communications system.
- (C) To engage in any conduct which:
  - (i) Is prohibited by section 633 of the Communications Act of 1934; or

- (ii) Is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act.
- (D) To intercept any wire or electronic communication which is causing harmful interference to any lawfully operating station or consumer electronic equipment to the extent necessary to identify the source of such interference;
- (E) For users of the same frequency to intercept any radio communication made through a system that uses frequencies monitored by individuals engaged in the providing or the use of such system, if such communication is not scrambled or encrypted.
- (8) It shall not be unlawful under this part:
  - (A) To use a pen register or a trap and trace device as specified in this part.
  - (B) For a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful, or abusive use of such service.
  - (C) For a provider of electronic or wire communication service to use a pen register or a trap and trace device for purposes relating to the operation, maintenance, and testing of the wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service.
  - (D) To use a pen register or a trap and trace device where consent of the user of the service has been obtained.
- (5) (9) Good faith reliance upon a court order shall be a complete defense to any criminal prosecution for illegal interception, disclosure, or use.
- (10) A person or entity providing electronic communication service to the public may divulge the contents of any such communication:
  - (A) As otherwise authorized by a court order;
  - (B) With the lawful consent of the addressee, originator, or intended recipient;
  - (C) To a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or
  - (D) Which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if divulged to a law enforcement agency.

SECTION 5. Section 803-43, Hawaii Revised Statutes, is amended to read as follows:

**“§803-43 Devices to intercept wire, [wireless, or] oral, or electronic communications and advertising of same prohibited; penalty; [confiscation.] forfeiture.** Any person, other than a [communications or other common carrier] provider of wire or electronic communication service and its duly authorized officers [and], employees, and agents, or any person acting under color of law, who, in this State, intentionally manufactures, assembles, possesses, or distributes, or who attempts to distribute, any electronic, mechanical, or other device, knowing or having reason to know that the device or the design of the device renders it primarily useful for the purpose of [wiretapping, wire interception, wireless interception, or eavesdropping,] surreptitious interception of wire, oral, or electronic communica-

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tions, or who intentionally places an advertisement of any such device or promotes the use of any such device in any newspaper, magazine, handbill, or other publication, shall be guilty of a class C felony. [Any police officer may confiscate any such electronic, mechanical, or other device in violation of this section, and upon conviction the devices shall be destroyed or otherwise disposed of as ordered by the court.] Any such electronic, mechanical, or other device in violation of this section shall be subject to seizure and forfeiture under title 37.”

SECTION 6. Section 803-44, Hawaii Revised Statutes, is amended to read as follows:

**“§803-44 Application for court order to intercept wire [or wireless], oral, or electronic communications.** The attorney general of this State, or a designated deputy attorney general in the attorney general's absence or incapacity, or the prosecuting attorney of each county, or a designated deputy prosecuting attorney in the prosecuting attorney's absence or incapacity, may make application to a circuit court judge, designated by the chief justice of the Hawaii supreme court, or any other circuit court judge or district court judge, if a circuit court judge has not been designated by the chief justice of the Hawaii supreme court, or is otherwise unavailable, in the county where the interception is to take place, for an order authorizing or approving the interception of wire [or wireless], oral, or electronic communications, and such court may grant in conformity with section 803-46 an order authorizing, or approving the interception of wire [or wireless], oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of murder, kidnapping, or felony criminal property damage involving the danger of serious bodily injury as defined in section 707-700, or involving organized crime and any of the following felony offenses: extortion; [criminal coercion;] bribery of a juror, of a witness, or of a police officer; receiving stolen property; gambling; and [sales] distribution of dangerous, harmful, or detrimental drugs.”

SECTION 7. Section 803-45, Hawaii Revised Statutes, is amended to read as follows:

**“§803-45 Authorization for disclosure and use of intercepted wire [or wireless], oral, or electronic communications.** (a) Any investigative or law enforcement officer, who, by any means authorized by this part, has obtained knowledge of the contents of any wire, [wireless, or] oral, or electronic communication, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(b) Any investigative or law enforcement officer, who by any means authorized by this part, has obtained knowledge of the contents of any wire, [wireless, or] oral, or electronic communication or evidence derived therefrom may use such contents to the extent such use is appropriate to the proper performance of the officer's official duties.

(c) Any person who has received, by any means authorized by this part, any information concerning a wire, [wireless, or] oral, or electronic communication, or evidence derived therefrom intercepted in accordance with the provisions of this part may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any proceeding in any court or before the grand jury in this State.

(d) No otherwise privileged wire, [wireless, or] oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this part shall lose its privileged character.

(e) When an investigative or law enforcement officer, while engaged in intercepting wire, [wireless, or] oral, or electronic communications in the manner authorized, intercepts communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (a) and (b) of this section. Such contents and any evidence derived therefrom may be used under subsection (c) of this section when authorized or approved by the designated circuit court where such court finds on subsequent application, made as soon as practicable, that the contents were otherwise intercepted in accordance with the provisions of this part.

(f) No testimony or evidence relating to a wire, [wireless or] oral, or electronic communication or any evidence derived therefrom intercepted in accordance with the provisions of this part shall be admissible in support of any misdemeanor charge."

SECTION 8. Section 803-46, Hawaii Revised Statutes, is amended to read as follows:

**"§803-46 Procedure for interception of wire [or wireless], oral, or electronic communication.** (a) Each application for an order authorizing or approving the interception of a wire [or wireless], oral, or electronic communication shall be made in writing upon oath or affirmation to a designated circuit court and shall state the applicant's authority to make such application. The terms "designated circuit," "designated judge," "authorized circuit court," "designated circuit court," "issuing judge," and the "court" as used in this section shall not only mean a circuit court judge specifically designated by the chief justice of Hawaii supreme court, but shall also mean any circuit court judge or district court judge if no circuit court judge has been designated by the chief justice, or is otherwise unavailable. Each application shall include the following information:

- (1) The identity of the investigative or law enforcement officer(s) requesting the application, the official(s) applying for [a wiretap] an order;
- (2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify the applicant's belief that an order should be issued, including (A) details as to the particular offense that has been, is being, or is about to be committed, (B) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (C) a particular description of the type of communications sought to be intercepted, (D) the identity or descriptions<sup>1</sup> of all persons, if known, committing<sup>1</sup> and whose communications are to be intercepted, and where appropriate (E) the involvement of organized crime;
- (3) A full and complete statement of the facts concerning how the interception is to be accomplished, and if physical entry upon private premises is necessary, facts supporting such necessity;
- (4) A full and complete statement of facts as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;
- (5) A statement of facts indicating the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been ob-

tained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(6) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any court for authorization to intercept, or for approval of interceptions of, wire [or wireless], oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the court on each such application; and

(7) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(b) An in camera adversary hearing shall be held on any [wiretap] interception application or application for extension. Upon receipt of the application the designated judge shall appoint an attorney to oppose the application. The attorney shall be appointed and compensated in the same manner as attorneys are appointed to represent indigent criminal defendants. The appointed attorney shall be given at least twenty-four hours notice of the hearing and shall be served with copies of the application, proposed order, if any, and supporting documents with the notice. At the hearing, the attorney appointed may cross-examine witnesses and present arguments in opposition to the application. The affiant supporting the application shall be present at the hearing. If an interlocutory appeal is taken by the State from the denial of an application, the appointed attorney shall be retained to answer the appeal or another attorney shall be appointed for the appeal. The designated circuit court may require the applicant to furnish additional testimony or documentary evidence under oath or affirmation in support of the application. A transcript of the hearing shall be made and kept with the application and orders.

(c) Upon such application and after such adversary hearing, the court may enter an order, as requested or as modified, authorizing or approving interception of wire [or wireless], oral, or electronic communications within the county in which the court is sitting, if the court determines on the basis of the facts submitted by the applicant that:

- (1) There is probable cause for belief that an individual is committing, has committed, or is about to commit murder, kidnapping, or felony criminal property damage involving the danger of serious bodily injury or that an individual is committing, has committed, or is about to commit one of the other offenses specified in section 803-44 and that organized crime is involved;
- (2) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception;
- (3) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and
- (4) There is probable cause for belief that the facilities from which, or the place where, the wire [or wireless], oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

If the order allows physical entry to accomplish the interception, the issuing judge shall find that the interception could not be accomplished by means other than physical entry.

(d) Each order authorizing or approving the interception, of any wire [or wireless], oral, or electronic communication shall specify:

- (1) The identity or description of all persons, if known, whose communications are to be intercepted;
- (2) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted, and the means by which such interceptions shall be made;
- (3) A particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;
- (4) The identity of the agency authorized to intercept the communications and the persons applying for the application;
- (5) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained; and

(6) How the authorization is to be accomplished.

An order authorizing the interception of a wire [or wireless], oral, or electronic communication shall, upon request of the applicant, direct that a [communication common carrier] provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such [carrier,] provider of wire or electronic communication service, landlord, custodian, or person is according the person whose communications are to be intercepted. Any [communication common carrier,] provider of wire or electronic communication service, landlord, custodian, or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant at the prevailing rates.

(e) No order entered under this section shall authorize or approve the interception of any wire [or wireless], oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days. The thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsections (a) and (b) of this section and the court making the findings required by subsection (c) of this section. The period of extension shall be no longer than the authorizing circuit court deems necessary to achieve the purposes for which it was granted and in no event for longer than fifteen days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this part, and shall terminate upon attainment of the authorized objective, or in any event in thirty days or in fifteen days in case of an extension. In the event the intercepted communication is in a code or a foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception may be conducted in whole or in part by investigative or law enforcement officer(s), or by an individual operating under contract, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.

- (1) The interception shall be conducted in such a way as to minimize the resulting invasion of privacy including but not limited to the following methods of minimization:
  - (A) Conversations that appear unlikely to result in incriminating conversations relating to the offense for which the order is issued shall be subject to intermittent monitoring; and

- (B) Privileged conversations, including those between a person and the person's spouse, attorney, physician, or clergyman, shall not be intercepted unless both parties to the conversation are named or described in the [wiretap] application and order.
- (2) In determining whether incriminating statements are likely to occur during a conversation the following factors should be considered:
  - (A) The parties to the conversation;
  - (B) The particular offense being investigated;
  - (C) The subject matter of the conversation;
  - (D) The subject matter of previous conversations between the same parties and whether any incriminating statements occurred; and
  - (E) The hour and day of conversation.
- (f) Whenever an order authorizing interception is entered pursuant to this part, the order shall require reports to be made to the court which issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the court may require.
  - (g) (1) The contents of any wire [or wireless], oral, or electronic communication intercepted by any means authorized by this part shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire [or wireless], oral, or electronic communication under this subsection shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the court issuing such order and sealed under the court's directions. Custody of the recordings shall be wherever the court orders. Recordings and other evidence of the contents of conversations and applications and orders shall not be destroyed except upon [the expiration of the statute of limitations for the particular offense for which the order was issued: six years in the case of class A felonies and three years in the case of class B and C felonies.] an order of the issuing or denying court and in any event shall be kept for ten years. However, upon the request of all the parties to particular conversations, evidence of conversations between those parties shall be destroyed (A) if there are no incriminating statements; (B) if any incriminating statements relate to only misdemeanor offenses; or (C) if the interception of the conversations is determined to have been illegal. Duplicate recordings may be made for use or disclosure pursuant to [the provisions of sections] section 803-45(a) and (b) for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire [or wireless], oral, or electronic communication or evidence derived therefrom under section 803-45(c).
  - (2) Applications made and orders granted under this part, transcripts of hearings on applications, and evidence obtained through court-ordered [wiretaps] interceptions shall be sealed by the designated circuit court. Custody of the above shall be whenever the court directs.
  - (3) Any violation of the provisions of this subsection may be punished as contempt of the issuing or denying court.
  - (4) Within a reasonable time but no later than ninety days after the termination of the period of an order or extensions thereof, the issuing court shall cause to be served, on the persons named in the order, on all other known parties to intercepted communications, and to such

other persons as the court may determine is in the interest of justice, an inventory which shall include notice of:

- (A) The fact of the entry of the order;
- (B) The date of the entry and the period of authorized, or approved interception;
- (C) The fact whether during the period wire [or wireless], oral, or electronic communications were intercepted; and
- (D) The fact whether any incriminating statements were intercepted. The designated circuit court, upon the filing of a motion, shall make available to such person or the person's counsel for inspection after the inventory has been served all portions of the intercepted communications which contain conversations of that person, applications, orders, transcripts of hearing, and other evidence obtained as a result of the use of [wiretap] interception orders. The court may order such additional disclosure as the court determines to be in the interest of justice. On an ex parte showing of good cause to a court the serving of the inventory required by this subsection may be postponed.

(h) The contents of any intercepted wire [or wireless], oral, or electronic communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing,<sup>1</sup> or other proceeding in any court of this State unless each party, not less than thirty days before the trial, hearing or proceeding, has been furnished with copies of the documents required to be disclosed, and contents of intercepted communications or other evidence obtained as a result of [wiretapping] interception which is sought to be admitted in evidence. This thirty-day period may be shortened or waived by the court if it finds that the party will not be prejudiced by the delay in receiving such information.

- (i) (1) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this State, or a political subdivision thereof, may move to suppress the content of any intercepted wire [or wireless], oral, or electronic communication, or evidence derived therefrom, on the grounds that:
  - (A) The communication was unlawfully intercepted;
  - (B) The order of authorization or approval under which it was intercepted is insufficient on its face; or
  - (C) The interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceedings unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or wireless communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this part. The court, or other official before whom the motion is made, upon the filing of such motion by the aggrieved person, shall make available to the aggrieved person or the aggrieved person's counsel for inspection portions of the recording which contain intercepted communications of the defendant or evidence derived therefrom, the applications, orders, transcript of hearing, and such additional evidence as the court determines to be in the interest of justice.

- (2) In addition to any other right to appeal the State shall have the right to appeal:
  - (A) From an order granting a motion to suppress made under paragraph (1) of this subsection if the attorney general or prosecuting attorney, or their designated representatives, shall certify to the

court or other official granting such motion that the appeal shall be taken within thirty days after the date the order of suppression was entered and shall be diligently prosecuted as in the case of other interlocutory appeals or under such rules as the supreme court may adopt;

- (B) From an order denying an application for an order of authorization or approval, and such an appeal shall be in camera and in preference to all other pending appeals in accordance with rules promulgated by the supreme court."

SECTION 9. Section 803-47, Hawaii Revised Statutes, is amended to read as follows:

**"§803-47 Reports concerning intercepted wire [or wireless], oral, or electronic communications.** (a) In January of each year, the attorney general and county prosecuting attorneys of this State shall report to the administrative director of the courts of this State and to the administrative office of the United States Courts:

- (1) The fact that an order or extension was applied for;
- (2) The kind of order or extension applied for;
- (3) The fact that the order or extension was granted as applied for, was modified, or was denied;
- (4) The period of interceptions authorized by the order, and the number and duration of any extensions of the order;
- (5) The offense specified in the order or application, or extension of an order;
- (6) The identity of the investigative or law enforcement officer and agency requesting the application and the person authorizing the request for application;
- (7) The nature of the facilities from which or the place where communications were to be intercepted;
- (8) A general description of the interceptions made under such order or extension, including (A) the approximate nature and frequency of incriminating communications intercepted, (B) the approximate nature and frequency of other communications intercepted, (C) the approximate number of persons whose communications were intercepted, and (D) the approximate nature, amount, and cost of the manpower and other resources used in the interceptions;
- (9) The number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made;
- (10) The number of trials resulting from such interceptions;
- (11) The number of motions to suppress made with respect to such interceptions, and the number granted or denied;
- (12) The number of convictions resulting from such interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions;
- (13) The information required by paragraphs (2) through (6) of this subsection with respect to orders or extensions obtained in a preceding calendar year and not yet reported; and
- (14) Other information required by the rules and regulations of the administrative office of the United States Courts.

- (b) In March of each year the administrative director of the courts shall transmit to the legislature a full and complete report concerning the number of applications for orders authorizing or approving the interception of wire [or wireless] communications.

less], oral, or electronic communications and the number of orders and extensions granted or denied during the preceding calendar year. Such report shall include a summary and analysis of the data required to be filed with the administrative director of the courts by the attorney general and prosecuting attorneys.”

SECTION 10. Section 803-48, Hawaii Revised Statutes, is amended to read as follows:

**“§803-48 Recovery of civil damages authorized.** Any person whose wire, [wireless, or] oral, or electronic communication is accessed, intercepted, disclosed, or used in violation of this part shall (1) have a civil cause of action against any person who accesses, intercepts, discloses, or uses, or procures any other person to access, intercept, disclose, or use such communications, and (2) be entitled to recover from any such person:

- (A) [Actual damages but not less than liquidated damages computed at the rate of \$100 a day for each day of violation;] The greater of (i) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, or (ii) statutory damages of whichever is the greater of \$100<sup>1</sup> day for each day of violation or \$10,000;
- (B) Punitive damages[;], where appropriate; and
- (C) A reasonable attorney’s fee and other litigation costs reasonably incurred.

The aggrieved person may also seek and be awarded such preliminary, and other equitable or declaratory relief as may be appropriate. A good faith reliance on a court order shall constitute a complete defense to any civil action brought under this part.”

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 12. This Act shall take effect upon its approval.

(Approved June 7, 1989.)

#### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

## ACT 165

S.B. NO. 31

A Bill for an Act Relating to Legislative Advisory Committees.

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

SECTION 1. In lieu of a scientific advisory committee and an economic advisory council, the legislature finds that it would be more economical and efficient to have a single broad-based advisory committee consisting of experts in different fields, who, when requested by the legislature, can convene ad hoc groups of persons having technical knowledge in a particular area, reduce the disputed facts into clear objectives, and present the legislature with clarified policy questions for resolution.

SECTION 2. Chapter 23, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . LEGISLATIVE ADVISORY COMMITTEE**

**§23- Purpose.** The legislature finds that the assistance of experts in a variety of fields ranging from science, finance, economics, business, technology, and other technical areas is vital to sound legislative decision-making. Assessment of facts and data, including a clear formulation of ideas and objectives are often needed by legislators. The purpose of this part is to provide the legislature with the necessary resource experts to aid legislators in making judicious decisions.

**§23- Definition.** As used in this part, "committee" means the legislative advisory committee.

**§23- Establishment.** There is established in the office of the legislative auditor for administrative purposes only, a legislative advisory committee to provide technical advice to the legislature.

**§23- Composition; appointment.** (a) The committee shall be composed of fifteen members representing a broad spectrum of the scientific, financial, economic, business, and academic communities who are skilled in factual inquiry and dispute resolution.

(b) The ombudsman, the legislative auditor, and the director of the legislative reference bureau shall submit a list of thirty names to the president of the senate and the speaker of the house of representatives who shall, in consultation with the party leaderships of their respective houses, jointly appoint the members of the committee.

(c) The co-chairpersons of the committee shall be the respective chairpersons of the standing committees in the senate and the house of representatives responsible for legislative management.

**§23- Term of appointment.** The members of the committee shall be appointed for three-year terms, and shall serve until a successor is appointed. Vacancies shall be filled for the remainder of any unexpired term in the same manner as original appointments.

**§23- Powers and duties.** The committee shall:

- (1) Operate within guidelines for requests for information established by the standing committee in the senate and the standing committee in the house of representatives responsible for legislative management;
- (2) Respond to legislative requests for information within guidelines established by the standing committees in the senate and the house of representatives responsible for legislative management;
- (3) Convene ad hoc panels of experts who, with the assistance of interested parties, can make findings and recommendations to the legislature in whatever technical field requested after reducing the number of disputed facts, and helping interest groups clearly express their objectives and assumptions; and
- (4) Present the clarified policy questions to the legislature for resolution.

**§23- Expenses.** The members of the committee and ad hoc committees shall serve without compensation but shall be reimbursed for all necessary expenses incurred in the performance of their duties."

SECTION 3. Parts II and III of chapter 23, Hawaii Revised Statutes, are repealed.

**SECTION 4.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$75,000, or 0.0032 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 5.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$75,000, or so much thereof as may be necessary for fiscal year 1989-1990, for the establishment of the legislative advisory committee and to carry out the purposes of this Act.

**SECTION 6.** The sum appropriated shall be expended by the office of the legislative auditor for the purposes of this Act.

**SECTION 7.** This Act shall take effect upon its approval; provided that Section 5 of this Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

**ACT 166**

S.B. NO. 34

A Bill for an Act Relating to Election Campaign Contributions.

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

**SECTION 1.** The legislature finds that the State's current political campaign contribution reporting law fails to clearly specify the appropriate reporting periods within which cumulative contributions in excess of \$100 must be aggregated and reported for public disclosure. This ambiguity has been the subject of confusion to candidates and election committees in the past and presents the potential to be the subject of further misinterpretation by campaigns in the future. The purpose of this Act is to eliminate the ambiguity which exists in the State's campaign contribution reporting law and to promote uniform and accurate reporting.

**SECTION 2.** Section 11-212, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each candidate, authorized person in the case of a party, or campaign treasurer in the case of a committee, shall file a preliminary report with the commission or appropriate county clerk's office, on forms provided by the commission no later than 4:30 p.m. on the tenth working day prior to each election. The report shall be certified pursuant to section 11-195 and shall contain the following information which is current through the fifteenth calendar day prior to the election:

- (1) The aggregate sum of all contributions and other campaign receipts received;
- (2) The amount and date of deposit of the contribution and the name and address of each donor who contributes an aggregate of more than \$100[;] during the period commencing on January 1 of the year preceding the election in the case of primary, special primary, and special elections;
- (3) All expenditures made, incurred, or authorized by or for a candidate, including the name and address of each payee and the amount, date, and purpose of each expenditure; and

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(4) A current statement of the balance on hand or deficit."

SECTION 3. Section 11-213, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

- (1) A statement of the total contributions and campaign receipts received;
- (2) The amount and date of deposit of each contribution and the name and address of each donor who contributes an aggregate of more than \$100[;]  
commencing January 1 of the preceding year or commencing on the cut-off date for the last preliminary report filed with the commission;
- (3) A statement of all expenditures made, incurred, or authorized by or for a candidate including the name and address of each payee and the amount, date, and purpose of each expenditure; and
- (4) The cash balance and a statement of surplus or deficit."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 7, 1989.)

## ACT 167

S.B. NO. 379

A Bill for an Act Relating to Traffic Violations.

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

SECTION 1. Chapter 291, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§291- Pickup trucks; passenger restrictions.** (a) No person shall stand in the bed or load-carrying area of any motor vehicle commonly known as a pickup truck while the vehicle is in operation. No operator of any pickup truck shall operate the vehicle with a passenger seated in the bed or load-carrying area of the vehicle unless:

- (1) There is no seating available in the cab of the vehicle;
- (2) The side racks of the vehicle are securely attached and the tailboard or tailgate is securely closed;
- (3) Every passenger in the bed or load-carrying area of the vehicle is seated on the floor and does not attempt to control unlashed cargo.

(b) This section shall not apply to persons or corporations operating a business or businesses that serve the public, who or which are subject to the jurisdiction, supervision, and regulations prescribed by state agencies or departments nor to their agents or employees when engaged in the business of such persons or corporations.

(c) Any person who violates this section shall be subject to a fine of \$25 for each violation but shall not be guilty of a violation for which points shall be assessed pursuant to section 286-128."

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

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

(Approved June 7, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 168**

S.B. NO. 417

A Bill for an Act Relating to Residential Leaseholds.

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

SECTION 1. Section 467-14, Hawaii Revised Statutes, is amended to read as follows:

**"§467-14 Revocation and suspension of licenses.** The real estate commission may revoke any license issued under this chapter, or suspend the right of the licensee to use the license, for any of the following causes:

- (1) Making any misrepresentation concerning any real estate transaction;
- (2) Making any false promises concerning any real estate transaction of a character likely to mislead another;
- (3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;
- (4) Without first having obtained the written consent [so] to do so of both parties involved in any real estate transaction, acting for both the parties in connection with the transaction, or collecting or attempting to collect commissions or other compensation [[for]] the licensee's services from both of such parties;
- (5) When the licensee, being a real estate salesperson, accepts any commission or other compensation for the performance of any of the acts enumerated in the definition set forth in section 467-1 of real estate salesperson from any person, copartnership, or corporation other than the salesperson's employer or the broker with whom the salesperson associates or, being a real estate broker or salesperson, compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate salesperson, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than the salesperson's employer or the broker with whom the salesperson is associated;
- (7) Failing, within a reasonable time, to account for any moneys belonging to others which may be in the possession or under the control of the licensee;
- (8) Any other conduct constituting fraudulent or dishonest dealings;
- (9) When the licensee, being a copartnership, permits any member of the copartnership who does not hold a real estate broker's license to actively participate in the real estate brokerage business thereof or permits any employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
- (10) When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage

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- business thereof or permits any officer or employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
- (11) When the licensee, being a real estate salesperson, fails to file with the commission a written statement setting forth the name of the real estate broker by whom the licensee is employed or with whom the licensee is associated;
  - (12) When the licensee fails to obtain on the contract between the parties to the real estate transaction confirmation of who the broker represents;
  - (13) Violating this chapter, chapter 484, 514A, 514E, [or] 515[.]; section 516- or       ; or the rules adopted pursuant thereto;
  - (14) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided that notwithstanding paragraph (5), a licensed broker may pay a commission to:
    - (A) A licensed broker of another state, territory, or possession of the United States if such broker does not conduct in this State any of the negotiations for which a commission is paid;
    - (B) A broker lawfully engaged in brokerage activity under the laws of a foreign country if such broker does not conduct in this State any of the negotiations for which a commission is paid; or
    - (C) A travel agency that in the course of business as a travel agency or sales representative, arranges for compensation the rental of transient vacation rental; provided that for purposes of this paragraph "travel agency" means any sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination of such, which for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services, including an air or ocean carrier;
  - (15) Commingling the money or other property of the licensee's principal with the licensee's own;
  - (16) Converting other people's moneys to the licensee's own use;
  - (17) The licensee is adjudicated insane or incompetent; and
  - (18) Failing to ascertain and disclose all material facts concerning every property for which the licensee accepts the agency, so that the licensee may fulfill the licensee's obligation to avoid error, misrepresentation, or concealment of material facts; provided that for the purposes of this paragraph, the fact that an occupant has AIDS, AIDS Related Complex (ARC) or has been tested for HIV (human immunodeficiency) infection shall not be considered a material fact.

Disciplinary action may be taken by the commission whether the licensee is acting as a real estate broker, or salesperson, or on the licensee's own behalf.

No licensee shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years."

SECTION 2. Section 514A-61, Hawaii Revised Statutes, is amended to read as follows:

**"§514A-61 Disclosure requirements.** (a) Each developer of a project subject to this chapter shall prepare and provide to each prospective initial purchaser an abstract which shall contain the following:

- (1) The name and address of the project, and the name, address, and telephone number of the developer or the developer's agent and of the project manager or the project manager's agent;
  - (2) A breakdown of the annual maintenance fees and the monthly estimated cost for each apartment, revised and updated at least every twelve months and certified to have been based on generally accepted accounting principles;
  - (3) A description of all warranties for the individual apartments and the common elements, including the date of initiation and expiration of any such warranties; and if no warranties exist, the developer shall state that no warranties exist;
  - (4) A statement of the proposed number of apartments to be used for residential or hotel use in a mixed use project containing apartments for both residential and hotel use;
  - (5) A statement of the extent of commercial or other non-residential development in the project.
- (b) In the case of a project which includes one or more existing structures being converted to condominium status:
- (1) A statement by the declarant, based upon a report prepared by an independent registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;
  - (2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1) or a statement that no representations are made in that regard;
  - (3) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the cost of curing these violations;
  - (4) A statement whether the project is on a lot, or has structures, or uses which do not conform to present zoning requirements;

provided that paragraphs (1), (2), and (3) apply only to apartments that may be occupied for residential use, and only to apartments that have been in existence for five years.

(c) In the sale of residential leasehold properties, the disclosure requirements set forth in \_\_\_\_\_ shall be complied with.

[(c)] (d)] This section shall be administered by the real estate commission. The real estate commission may waive the requirements of subsections (a) and (b) if the information required to be contained in the disclosure abstract is included in the real estate commission's public report on the project."

SECTION 3. Part III of Chapter 516, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§516- Residential lease; disclosure.** (a) Notwithstanding any provision to the contrary, for any sale of residential leasehold property, the deposit, receipt, offer, and acceptance contract (DROA) or other similar contract must state that no later than ten calendar days from acceptance, the seller shall directly or through the seller's agent provide to the buyer, a copy of the original recorded lease and any amendments thereto for the buyer's approval and acceptance. Upon receipt of the original lease and amendments thereto, the buyer shall have five calendar days to review, accept or reject the terms of the lease.

(b) In addition to the requirements set forth in subsection (a), the buyer shall acknowledge receipt of the lease documents specified under subsection (a) through a signed receipt or a signed DROA or other contract. The receipt or contract shall include at least the following information:

- (1) A standardized summary of major provisions of the lease in plain language, such as the length of the lease, lease rent terms, lease rent renegotiation dates, how renegotiated lease rents will be calculated; and surrender clause provisions;
  - (2) A standardized glossary of commonly used lease terms in plain language; and
  - (3) A statement that the buyer has read and understands the provisions of the lease document.
- (c) Within five calendar days of acknowledged receipt of the contract specified in subsection (a), the buyer shall have the right to cancel the offer to purchase with no loss of deposit.
- (d) The seller and buyer may, on a standardized form, agree to reduce or extend the time period provided herein for production and review of the applicable lease documents; provided that the agreement shall not constitute a waiver of the requirement to provide the applicable lease documents to the buyer."

SECTION 4. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **"CHAPTER RESIDENTIAL LEASEHOLD CONDOMINIUMS AND COOPERATIVES**

### **PART I. GENERAL PROVISIONS**

**§ -1 Applicability.** This chapter applies to all lands on which are situated either residential condominium property regimes created under chapter 514A, or cooperative housing corporations, which are owned or held privately or by the state or by the counties, except Hawaiian homes lands subject to Article XII of the State Constitution and lands owned or held by the federal government.

### **PART II. RIGHTS OF LESSEES**

**§ Residential lease; disclosure.** (a) Notwithstanding any provision to the contrary, for any sale of residential leasehold property, the deposit, receipt, offer, and acceptance contract (DROA) or other similar contract must state that no later than ten calendar days from acceptance, the seller shall, either directly or through the seller's agent provide to the buyer for the buyer's approval and acceptance one of the following lease documents which provide the major provisions of the lease, such as the length of the lease, lease rent terms, lease rent renegotiation dates, how renegotiated lease rents will be calculated, and surrender clause provisions:

- (1) Master lease and any amendments thereto; or
- (2) Apartment lease and any amendments thereto; or
- (3) For initial buyers of condominium apartments only, an unexpired preliminary, final or supplemental condominium property regime public report.

Upon receipt of the applicable lease document, the buyer shall have five calendar days to review, accept or reject the terms of the lease.

(b) In addition to the requirements set forth in subsection (a), the buyer, on resale of the unit, shall acknowledge receipt of the lease documents specified in subsection (a) through a signed receipt or a signed DROA or other contract. The receipt or contract shall include at least the following information:

- (1) A standardized summary of major provisions of the lease in plain language, such as the length of the lease, lease rent terms, lease rent renegotiation dates, how renegotiated lease rents will be calculated; and surrender clause provisions;
- (2) A standardized glossary of commonly used lease terms in plain language;
- (3) A statement that there are currently no statutory provisions for the mandatory conversion of leasehold condominiums and cooperatives, and that there are no assurances that such measures will be enacted in the future; and
- (4) A statement that the buyer has read and understands the provisions of the lease document.

(c) Within five calendar days of acknowledged receipt of the contract specified in subsection (a), the buyer shall have the right to cancel the offer to purchase with no loss of deposit.

(d) The seller and buyer may, on a standardized form, agree to reduce or extend the time period provided herein for the production and review of the applicable lease documents; provided that the agreement shall not constitute a waiver of the requirement to provide the applicable lease documents to the buyer.

**§ Mandatory arbitration of rent renegotiation.** (a) Every residential lease shall contain a provision for the mandatory arbitration of any rent renegotiation reopening.

(b) In the event that a residential lease does not contain a mandatory arbitration provision, the following arbitration procedure shall apply:

- (1) Rent shall be determined by three impartial arbitrators, who shall be recognized real estate appraisers;
- (2) Each party shall select an arbitrator, both of whom shall select the third arbitrator;
- (3) The three arbitrators shall determine the rent renegotiation which shall be final, conclusive, and binding on both parties; and
- (4) Lessor and lessee shall each pay one-half of all proper costs and expenses other than attorneys' fees."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect on July 1, 1990.

(Approved June 7, 1989.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 169

S.B. NO. 496

A Bill for an Act Relating to the Landlord-tenant Code.

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

SECTION 1. Section 521-44, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

## ACT 169

“(c) At the termination of a rental agreement in which the landlord required and received a security deposit if the landlord proposes to retain any amount of the security deposit for any of the purposes specified in subsection (a), the landlord shall so notify the tenant, in writing, unless the tenant had wrongfully quit the dwelling unit, together with the particulars of and grounds for the retention, including written evidence of the costs of remedying tenant defaults, such as estimates or invoices for material and services or of the costs of cleaning, such as receipts for supplies and equipment or charges for cleaning services. The security deposit, or the portion of the security deposit remaining after the landlord has claimed and retained amounts authorized under this section, if any, shall be returned to the tenant not later than fourteen days after the termination of the rental agreement. If the landlord does not furnish the tenant with the written notice and other information required by this subsection, within fourteen days after the termination of the rental agreement, the landlord shall not be entitled to retain the security deposit or any part of it, and the landlord shall return the entire amount of the security deposit to the tenant. A return of the security deposit or the furnishing of the written notice and other required information [complies with the requirements of this subsection] in compliance with the requirements of this subsection shall be presumptively proven if mailed to the tenant, at an address supplied to the landlord by the tenant, [by certified mail, return receipt requested,] with acceptable proof of mailing and post-marked before midnight of the fourteenth day after the date of the termination of the rental agreement[.] or if there is an acknowledgment by the tenant of receipt within the fourteen-day limit. All actions for the recovery of a landlord’s complete or partial retention of the security deposit shall be instituted not later than one year after termination of the rental agreement.”

SECTION 2. Section 521-71, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) When the tenancy is [month to month,] month-to-month, the landlord or the tenant may terminate the rental agreement upon the landlord’s or the tenant’s notifying the other, in writing, at least twenty-eight days in advance of the anticipated termination. When the landlord provides notification of termination, the tenant may vacate at any time within the last twenty-eight days of the period between the notification and the termination date, but the tenant shall notify the landlord of the date the tenant will vacate the dwelling unit and shall pay a prorated rent for that period of occupation. When the tenant provides notice of termination, the tenant shall be responsible for the payment of rent through the twenty-eighth day. Before a landlord terminates a month-to-month tenancy where the landlord contemplates voluntary demolition of the dwelling units, or conversion to condominium property regime under chapter 514A, the landlord shall provide notice to the tenant at least one hundred twenty days in advance of the anticipated demolition or anticipated termination, and shall comply with the provisions relating to conversions provided in section 514A-105. If notice is revoked or amended and reissued, the one hundred twenty-day period shall begin from the date it was reissued or amended. Any notice provided, revoked, or amended and reissued shall be in writing.”

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

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

(Approved June 7, 1989.)

## ACT 170

S.B. NO. 633

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

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

**PART I**

SECTION 1. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$12,321,287, or 0.53 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

**PART II**

SECTION 2. There are hereby appropriated or authorized from the sources and funding indicated below to Program Planning, Analysis, and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the 1989-1991 and 1991-1993 fiscal bienniums all collective bargaining cost items in the agreements negotiated with the exclusive bargaining representatives of collective bargaining units 1, 2, 6, 8, 9, 10, and 11.

Fund	FY 1989-90	FY 1990-91	FY 1991-92	FY 1992-93
General	\$12,195,527	\$23,063,747	\$11,417,740	\$9,558,958
Special	\$ 4,157,840	\$ 8,601,717	\$ 3,917,254	\$3,546,924
Federal	\$ 377,163	\$ 786,705	\$ 359,928	\$ 360,210
Other	\$ 159,756	\$ 314,200	\$ 121,197	\$ 163,144

SECTION 3. Funds appropriated or authorized by this Part shall be allotted by the director of finance in the respective fiscal year for the purposes of this Part.

**PART III**

SECTION 4. There are hereby appropriated or authorized from the sources of funding indicated below to Administrative Director Services (JUD 201) the following sums, or so much thereof as may be necessary, to fund for the 1989-1991 and 1991-1993 fiscal bienniums all collective bargaining cost items in the agreements negotiated with the exclusive bargaining representatives of collective bargaining units 1, 2, 6, 8, 9, 10, and 11.

Fund	FY 1989-90	FY 1990-91	FY 1991-92	FY 1992-93
General	\$125,760	\$242,393	\$122,363	\$123,397

SECTION 5. Funds appropriated or authorized by this Part shall be allotted by the chief justice in the respective fiscal year for the purposes of this Part.

**PART IV**

SECTION 6. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 7. Funds appropriated or authorized by this Act which are not expended or encumbered by June 30, 1990, June 30, 1991, June 30, 1992, and June 30, 1993, of the respective fiscal years shall lapse as of those dates.

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**SECTION 8.** This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

## **ACT 171**

S.B. NO. 635

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

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

### **PART I**

**SECTION 1.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$9,118,506, or 0.39 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

### **PART II**

**SECTION 2.** There are hereby appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the 1989-1991 fiscal biennium all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 3:

<u>Fund</u>	<u>FY 1989-90</u>	<u>FY 1990-91</u>
General	\$ 7,820,961	\$13,056,925
Special	\$ 884,164	\$ 1,440,419
Federal	\$ 484,605	\$ 763,518
Other	\$ 107,014	\$ 169,687

**SECTION 3.** Funds appropriated or authorized by this Part shall be allotted by the director of finance in the respective fiscal years for the purposes of this Part, subject to the ratification of the collective bargaining agreement for unit 3 by its members.

### **PART III**

**SECTION 4.** There are hereby appropriated or authorized from the sources of funding indicated below to Administrative Director Services (JUD 201) the following sums, or so much thereof as may be necessary, to fund for the 1989-1991 fiscal biennium all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 3:

<u>Fund</u>	<u>FY 1989-90</u>	<u>FY 1990-91</u>
General	\$ 1,297,545	\$ 2,016,113
Special	\$ 58,135	\$ 92,384

**SECTION 5.** Funds appropriated or authorized by this Part shall be allotted by the chief justice in the respective fiscal years for the purposes of this Part, subject to the ratification of the collective bargaining agreement for unit 3 by its members.

**PART IV**

**SECTION 6.** Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

**SECTION 7.** Funds appropriated or authorized by this Act which are not expended or encumbered by June 30, 1990 and June 30, 1991, of the respective fiscal years shall lapse as of those dates.

**SECTION 8.** This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

**ACT 172**

S.B. NO. 637

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

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

**PART I**

**SECTION 1.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$15,670,175, or 0.67 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

**PART II**

**SECTION 2.** There are hereby appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the 1989-1991 and 1991-1993 fiscal bienniums all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 5:

Fund	FY 1989-90	FY 1990-91	FY 1991-92	FY 1992-93
General	\$15,670,175	\$32,323,640	\$15,017,036	\$27,089,276
Special	\$ 440	\$ 620	\$ 260	\$ 0
Federal	\$ 285,421	\$ 545,316	\$ 349,752	\$ 618,978

**SECTION 3.** Funds appropriated or authorized by this Part shall be allotted by the director of finance in the respective fiscal years for the purposes of this Part, subject to the ratification of the collective bargaining agreement for unit 5 by its members.

**PART III**

**SECTION 4.** Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from

## **ACT 173**

federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

**SECTION 5.** Funds appropriated or authorized by this Act which are not expended or encumbered by June 30, 1990, June 30, 1991, June 30, 1992, and June 30, 1993, of the respective fiscal years shall lapse as of those dates.

**SECTION 6.** This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

## **ACT 173**

S.B. NO. 644

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

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

### **PART I**

**SECTION 1.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$6,735,740, or 0.29 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

### **PART II**

**SECTION 2.** There are hereby appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the 1989-1991 and 1991-1993 fiscal bienniums all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 13:

Fund	<u>FY 1989-90</u>	<u>FY 1990-91</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
General	\$ 6,089,134	\$ 10,117,703	\$ 7,269,499	\$ 5,715,329
Special	\$ 706,455	\$ 1,161,496	\$ 755,807	\$ 668,300
Federal	\$ 907,368	\$ 1,452,614	\$ 1,022,180	\$ 902,234
Other	\$ 18,325	\$ 26,124	\$ 15,109	\$ 11,330

**SECTION 3.** Funds appropriated or authorized by this Part shall be allotted by the director of finance in the respective fiscal years for the purposes of this Part, subject to the ratification of the collective bargaining agreement for unit 13 by its members.

### **PART III**

**SECTION 4.** There are hereby appropriated or authorized from the sources of funding indicated below to Administrative Director Services (JUD 201) the following sums, or so much thereof as may be necessary, to fund for the 1989-1991 and 1991-1993 fiscal bienniums all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 13:

Fund	<u>FY 1989-90</u>	<u>FY 1990-91</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
General	\$646,606	\$1,054,947	\$807,432	\$728,949
Special	\$ 8,845	\$ 14,155	\$ 9,648	\$ 8,724

SECTION 5. Funds appropriated or authorized by this Part shall be allotted by the chief justice in the respective fiscal years for the purposes of this Part, subject to the ratification of the collective bargaining agreement for unit 13 by its members.

## PART IV

SECTION 6. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 7. Funds appropriated or authorized by this Act which are not expended or encumbered by June 30, 1990, June 30, 1991, June 30, 1992, and June 30, 1993, of the respective fiscal years shall lapse as of those dates.

SECTION 8. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

## ACT 174

S.B. NO. 1885

A Bill for an Act Relating to Fishing with Nets and Traps.

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

SECTION 1. Section 188-29, Hawaii Revised Statutes, is amended to read as follows:

**“§188-29 Nets and traps.** (a) It is unlawful for any person to use nets [or traps] made of or using netting, [including] or bullpen traps [of any type] with a stretched mesh of less than two inches, [or to use any trap which is not portable or which is more than ten feet in length or six feet in height or width; provided] except that:

- (1) Persons engaged in sport fishing may use throw nets with stretched mesh of not less than one and one-half inches until December 31, 1994; thereafter, persons engaged in sport fishing may not use throw nets with stretched mesh of less than two inches;
- (2) Pond owners or operators who hold a license issued under section 188-44 may use nets of smaller mesh to take young mullet or pua for stocking their fish ponds;
- (3) Commercial marine licensees who hold a license issued under section 188-45 may use nets of smaller mesh to take nehu, iao, marquesan sardine, or any other species for which an open season may be declared by the department of land and natural resources for use as bait;
- (4) All persons may use nets of smaller mesh to take shrimp or opae, opelu, makiawa, or mikiawa;
- (5) Aquarium fish collectors with a valid aquarium fish permit issued by the department pursuant to section 188-31 may use nets of smaller mesh to take aquarium fish in conformance with the conditions of the permit;

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- (6) All persons may use a net with mesh of not less than one and one-half inches to take akule; provided that no akule measuring less than eight and one-half inches in total length from the tip of the snout to the tip of the tail shall be taken with a net during the months of July, August, September, and October; and
- (7) All persons engaged in surround net fishing with scuba, may use nets with mesh of not less than one and one-half inches only to bag and transport the fish captured with legal gear to the shore or the boat[; and]
- (8) The length of a bullpen trap shall be subject to section 188-28.5].
- (b) It is unlawful for any person to use any type of trap which is not portable or which is more than ten feet in length or six feet in height or width. It shall also be unlawful to use traps:
- (1) With netting having a stretched mesh of less than two inches; or
- (2) Made with plastic, wire, coated wire, or any other stiff material with a rigid mesh of less than two inches long by one inch wide;  
provided that existing traps otherwise prohibited by paragraph (2) which are registered with the department of land and natural resources by October 1, 1989 may be used until June 30, 1994.
- [(b)] (c) The department of land and natural resources may, pursuant to chapter 91, [promulgate] adopt rules relating to requirements for escape openings or devices on any type of nets or traps.

The rules shall include provisions describing the type, measurements, and locations of escape openings or devices on traps under this subsection and become effective three years after establishment.”

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

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

(Approved June 7, 1989.)

## ACT 175

H.B. NO. 453

A Bill for an Act Relating to Statute of Limitations.

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

SECTION 1. Section 532A-29,<sup>1</sup> Hawaii Revised Statutes, is amended to read as follows:

**“[§523A-29][J] Periods of limitation.** (a) The expiration, before or after May 18, 1983, of any period of time specified by contract, statute, or court order, during which a claim for money or property can be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, does not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the director as required by this chapter.

(b) [No] Except as provided in subsection (c), no action or proceeding may be commenced by the director with respect to any duty of a holder under this chapter more than ten years after the duty arose.

(c) The expiration of any period of time specified by law during which an action or proceeding may be commenced or enforced to secure payment of a claim

for money or recovery of property shall not serve as a defense in any action or proceeding brought by or on behalf of the director against any holder which is a federal, state, or local government or governmental subdivision, agency, or entity for the payment or delivery to the director of any property presumed abandoned pursuant to part I or part II of chapter, or to enforce or collect any penalty provided by part I or part II of this chapter. This subsection shall apply to all property presumed abandoned pursuant to this chapter which is held by any federal, state, or local government or governmental subdivision, agency, or entity on or after the effective date of this subsection, regardless of when such property is presumed abandoned.”

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

SECTION 3. This Act shall take effect upon its approval, except that to the extent that this Act applies to property held by any federal, state, or local government or governmental subdivision, agency, or entity before the enactment of this Act, this Act is intended to have retrospective effect and operation.

(Approved June 7, 1989.)

**Note**

1. So in original.

**ACT 176**

H.B. NO. 976

A Bill for an Act Relating to Witnesses.

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

SECTION 1. Section 621-7, Hawaii Revised Statutes, is amended to read as follows:

**“§621-7 Fees; criminal cases.** (a) Every witness legally required to attend [upon] a state court or [a] grand jury in any criminal case, other than a public officer or employee, shall be entitled to [\$10] \$20 for each day's attendance and [30 cents] a reasonable mileage fee to be established pursuant to rules adopted by the judiciary for each mile actually and necessarily traveled[,] on the ground each way[.], including travel to and from the nearest airport when required to travel from another island or from outside the State. [Every such witness, coming to attend upon court from any island other than that upon which the court is holding session, shall be entitled to \$12 for each day's attendance in addition to the actual round trip cost of plane travel and 30 cents for each mile actually and necessarily traveled on the ground each way.] In addition to witness' fees, every witness, who attends a state court from outside the State shall be entitled to the actual round-trip cost of plane travel, plus \$110 per twenty-four-hour day, or if from any island other than that on which the court holds session, shall be entitled to the actual round-trip cost of plane travel, plus \$55 per twenty-four-hour day, which amounts shall cover all personal expenses, such as board and lodging. These per diem payments shall be computed on the basis of quarter day periods of time.

(b) Any police officer or other public officer or employee (except the county attorney, prosecuting attorney, or deputy county attorney or deputy prosecuting attorney), [coming to attend] who attends a state court as a witness from a district other than that in which the court is holding session, shall be allowed the police

## ACT 177

officer's, public officer's, or employee's travel cost and mileage fees as provided in this section. A public officer or employee, if not salaried, shall receive witness fees."

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

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

(Approved June 7, 1989.)

## ACT 177

H.B. NO. 979

A Bill for an Act Relating to Criminal Injuries Compensation.

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

SECTION 1. Section 351-2, Hawaii Revised Statutes, is amended by amending<sup>1</sup> a new definition to be appropriately inserted and to read as follows:

"Designated person" means a person who made payments for funeral, burial, and medical expenses on behalf of a victim;"

SECTION 2. Section 351-2, Hawaii Revised Statutes, is amended by adding the definition of "resident" to be appropriately inserted and to read as follows:

"Resident" means a person who maintains a permanent abode in this State;"

SECTION 3. Section 351-2, Hawaii Revised Statutes, is amended by amending the definition of "victim" to read:

"Victim" means a person who is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State or any resident of the State who is injured or killed by an act or omission of another person in a state not having a crime victim compensation program eligible for federal funding under 42 United States Code §10601, et seq., which act or omission is within the description of any of the crimes specified in section 351-32 [of this chapter]."

SECTION 4. Section 351-11, Hawaii Revised Statutes, is amended to read as follows:

**"§351-11 Criminal injuries compensation commission.** There shall be a criminal injuries compensation commission [which] that shall be composed of three members to be appointed and be removable in the manner prescribed by section 26-34. One member of the commission shall be an attorney who has been admitted to practice before the supreme court of the State for at least five years. No officer or employee of the State or any political subdivision thereof shall be eligible for appointment to the commission. The commission is placed within the department of corrections for administrative purposes."

SECTION 5. Section 351-12, Hawaii Revised Statutes, is amended to read as follows:

**"§351-12 Tenure and compensation of members.** The term of office of each member of the criminal injuries compensation commission shall be four years

or until the member's successor is appointed except that (1) the terms of office of the members first taking office shall expire as designated by the governor at the time of the appointment, one on December 31, 1968, one on December 31, 1969, and one on December 31, 1970; and (2) any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed, shall be appointed for the remainder of the term. Each member of the commission shall be eligible for reappointment, subject to section 26-34. A vacancy in the commission shall not affect its powers. If any member of the commission is unable to act because of absence, illness, or other sufficient cause, the governor may make a temporary appointment, and [such] the appointee shall have all the powers and duties of a regular member of the commission for the period of the appointee's appointment.

Each member of the commission [except the chairman] shall be compensated at the rate of [\$50] \$100 per day for each day's actual attendance to the member's duties, provided such compensation shall not exceed a maximum of \$6,600 per year. [The chairman shall be compensated at the rate of \$55 per day for each day's actual attendance to the chairman's duties, provided such compensation shall not exceed a maximum of \$7,200 per year.] The members of the commission shall be paid their necessary [travelling] traveling and subsistence expenses incurred in the discharge of their duties."

SECTION 6. Section 351-13, Hawaii Revised Statutes, is amended to read as follows:

**"§351-13 Powers and procedures of commission.** Upon an application made to the criminal injuries compensation commission under this chapter, the commission shall fix a time and place for a hearing on [such] the application and shall cause notice thereof to be given to the applicant. The commission may hold [such] hearings, sit and act at [such] times and places, and take [such] testimony as the commission may deem advisable. Any two members shall constitute a quorum; but in [such] this case the concurring vote of the two members shall be necessary to take any action. Any member of the commission may administer oaths or affirmations to witnesses appearing before the commission. The commission shall have [such] powers of subpoena and compulsion of attendance of witnesses and production of documents and of examination of witnesses as are conferred upon a circuit court. Subpoenas shall be issued under the signature of the [chairman.] chairperson. The circuit court of any circuit in which a subpoena is issued or served or in which the attendance or production is required [may], upon the application of the commission, may enforce the attendance and testimony of any witness and the production of any document so subpoenaed. Subpoena and witness fees and mileage shall be the same as in criminal cases in the circuit courts, and shall be payable from funds appropriated for expenses of administration."

SECTION 7. Section 351-17, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any person aggrieved by an order or decision of the criminal injuries compensation commission on the sole ground that the order or decision was in excess of the commission's authority or jurisdiction, shall have a right of appeal to the [supreme court subject to chapter 602,] circuit court of the circuit in which the person resides; provided the appeal is filed within thirty days after service of an original or a certified copy of [such] the order or decision. Except as otherwise provided in this section, orders and decisions of the commission shall be conclusive and not subject to judicial review."

## ACT 177

SECTION 8. Section 351-31, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In the event any private citizen is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State after June 6, 1967, or any state resident is injured or killed by any act or omission of any other person after July 1, 1989, in another state not having a compensation program eligible for federal funding under 42 United States Code §10601, et seq., under which the state resident may receive compensation, which act or omission is within the description of the crimes enumerated in section 351-32, the criminal injuries compensation commission [may,] in its discretion, upon an application, may order the payment of compensation in accordance with this chapter:

- (1) To or for the benefit of the victim; [or]
- (2) To any person responsible for the maintenance of the victim, where that person has suffered pecuniary loss or incurred expenses as a result of the victim’s injury or death; [or]
- (3) In the case of the death of the victim, to or for the benefit of any one or more of the dependents of the deceased victim; or
- (4) To a parent of an adult deceased victim[,] or to an adult son or daughter of a deceased victim, where the parent[,] or adult son or daughter[,] has incurred expenses on account of hospital, medical, funeral, and burial expenses as a result of the victim’s injury and death.”

SECTION 9. Section 351-32, Hawaii Revised Statutes, is amended to read as follows:

**“§351-32 Violent crimes.** [(a)] The crimes to which part III of this chapter applies are the following and no other:

- (1) Murder in the first degree ([Hawaii Penal Code,] section 707-701)[,];
- (2) Murder in the second degree (section 707-701.5);
- [2] (3) Manslaughter ([Hawaii Penal Code,] section 707-702)[,];
- (4) Negligent homicide in the first degree (section 707-702.5);
- (5) Negligent homicide in the second degree (section 707-703);
- (6) Negligent injury in the first degree (section 707-705);
- (7) Negligent injury in the second degree (section 707-706);
- [3] (8) Assault in the first degree ([Hawaii Penal Code,] section 707-710)[,];
- [4] (9) Assault in the second degree ([Hawaii Penal Code,] section 707-711)[,];
- [5] (10) Assault in the third degree ([Hawaii Penal Code,] section 707-712)[,];
- [6] (11) Kidnapping ([Hawaii Penal Code,] section 707-720)[,];
- [7] (12) [Rape] Sexual assault in the first degree ([Hawaii Penal Code,] section 707-730)[,];
- [8] (13) [Rape] Sexual assault in the second degree ([Hawaii Penal Code,] section 707-731)[,];
- [9] (14) [Rape] Sexual assault in the third degree ([Hawaii Penal Code,] section 707-732)[,];
- [10] (15) [Sodomy in the first degree (Hawaii Penal Code,] Sexual assault in the fourth degree (section 707-733)[,]<sup>1</sup>
- (11) Sodomy in the second degree [(Hawaii Penal Code,] (section 707-734)[,];

- (12) Sodomy in the third degree [(Hawaii Penal Code,] (section 707-735),
- (13) Sexual abuse in the first degree (Hawaii Penal Code, (section 707-736)[, and];
- (14) Sexual abuse in the second degree (Hawaii Penal Code, (section 707-737)[.]; and
- (15) Abuse of family and household member (section 709-906).

[(b) For the purposes of this part, the operation of a motor vehicle, boat, or aircraft that results in an injury or death shall not constitute a crime, unless the injuries were intentionally inflicted through the use of such vehicle, boat, or aircraft.]”

SECTION 10. Section 351-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No order for the payment of compensation shall be made under this chapter unless the application has been made within eighteen months after the date of injury, death, or property damage[.]; provided that upon a showing of good cause, the commission may consider applications filed beyond this time period.”

SECTION 11. Section 351-34, Hawaii Revised Statutes, is repealed.

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

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

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

(Approved June 7, 1989.)

#### Notes

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

## ACT 178

H.B. NO. 1803

A Bill for an Act Relating to Public Utilities.

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

SECTION 1. Section 269-3, Hawaii Revised Statutes, is amended to read as follows:

**“§269-3 Employment of assistants.** (a) The chairman of the public utilities commission may appoint and employ such clerks, stenographers, agents, engineers, accountants, and other assistants for the public utilities commission as the chairman finds necessary for the performance of the commission's functions and define their powers and duties. The chairman may appoint and at pleasure dismiss a chief administrator, research assistants, and such hearings officers as may be necessary. Notwithstanding section 103-3, the chairman shall appoint one or more attorneys independent of the attorney general who shall act as attorneys for the commission and define their powers and duties and fix their compensation. The chief admin-

## **ACT 179**

istrator, research assistants, hearings officers, and attorneys shall be exempt from chapters 76 and 77. Other employees shall be appointed as may be needed by the chairman in accordance with chapters 76 and 77.

(b) Notwithstanding section 91-13, the commission may consult with its assistants appointed under authority of this section in any contested case or agency hearing concerning any issue of facts. Neither the commission nor any of its assistants shall in such a proceeding consult with any other person or party except upon notice and an opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law."

**SECTION 2.** New statutory material is underscored.

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

(Approved June 7, 1989.)

## **ACT 179**

H.B. NO. 1778

A Bill for an Act Relating to Restoration of Waikiki Beach.

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

**SECTION 1.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$1,000,000, or 0.043 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 2.** There is an urgent need to restore portions of Waikiki beach from the Waikiki aquarium to Fort DeRussey. Areas between the Queen's Surf groin and the Waikiki aquarium, Kuhio beach, and other areas have lost or are losing their sandy beach. Periodic sand replenishment and other measures are needed to restore and maintain Waikiki beach as one of the most important assets of the State and a key attraction for residents and visitors.

**SECTION 3.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000, or so much thereof as may be necessary for fiscal year 1989-1990, for planning and restoration of the sandy beach between the Waikiki aquarium and Fort DeRussey.

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

**SECTION 5.** This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

## ACT 180

H.B. NO. 744

A Bill for an Act Relating to Acupuncture Practitioners.

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

SECTION 1. Section 436E-4, Hawaii Revised Statutes, is amended to read as follows:

**“[§436E-4] Exemptions.** [(a) Any person licensed under chapters 448, 453, and 460, if certified by their respective boards as qualified to practice acupuncture by reason of formal training in acupuncture shall be exempt from this chapter.

(b)] A licensed acupuncturist of another state or country for demonstrations or lectures to be given at acupuncture or medical society meetings or at acupuncture schools shall be exempt from licensing procedures set forth in this chapter.”

SECTION 2. Chapter 436E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§436E- Certification.** Persons licensed under chapters 453 and 460 who desire to practice acupuncture may, in lieu of licensure under this chapter, be certified by their respective boards as qualified to practice acupuncture in accordance with rules to be adopted jointly by the board of acupuncture, the board of medical examiners, and the board of osteopathic examiners in accordance with chapter 91. The rules shall contain the certification procedure, criteria for certification, and the powers of the respective boards to remove the certification for cause.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 1990.

(Approved June 7, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 181

H.B. NO. 748

A Bill for an Act Relating to the Board of Medical Examiners.

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

SECTION 1. Chapter 453, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

**“§453- Renewal of certification.** Every person holding a certificate under this part shall reregister with the board no later than January 31 of each even-numbered year. Applicants for reregistration shall pay a renewal fee and provide evidence of compliance with the continuing education requirements set forth in the board's rules. Failure to reregister, including noncompliance with the continuing education requirements, shall constitute a forfeiture of the certificate which may only be restored upon written application for reregistration and payment to the board

## ACT 181

of a restoration fee. A certificate that has been forfeited for one renewal term shall be automatically terminated and cannot be restored, and a new application for certification shall be required.”

SECTION 2. Section 453-5.3, Hawaii Revised Statutes, is amended to read as follows:

**“§453-5.3 Physician assistant; certification required.** (a) The board of medical examiners shall require each person practicing medicine under the supervision of a physician, other than a person licensed under section 453-3, to be certified as a physician assistant. A person who is trained to do only a very limited number of diagnostic or therapeutic procedures under the direction of a physician shall not be deemed a practitioner of medicine and therefore does not require certification under this section.

(b) The board shall establish medical educational and training standards with which a person applying for certification as a physician assistant shall comply. The standards shall be at least equal to recognized national education and training standards for physician assistants.

(c) Upon satisfactory proof of compliance with the required medical educational and training standards, the board may grant certification to the person upon the person's satisfactory completion of a national certifying examination approved by the board.

(d) The board shall approve temporary certification of an applicant under this section if the applicant has graduated from a board approved training program within twelve months of the date of application and has never taken a national certifying examination approved by the board but otherwise meets the requirements of this section, has filed a complete application with the board, and has paid all required fees. If the applicant fails to apply for, or to take, the next succeeding examination or fails to pass the examination or fails to receive a certificate, all privileges under this section shall automatically cease upon written notification sent to the applicant by the board. A temporary certificate may be issued only once to each person.

(e) Prior to practicing under temporary certification, holders of temporary certificates shall notify the board in writing of any and all supervising physicians under whom they will be performing services.

(f) The board shall establish the degree of supervision required by the supervising physician when a physician assistant performs a service within the practice of medicine. A physician who does not supervise a physician assistant's services at the degree required by the board shall be deemed to have engaged in professional misconduct.

(g) The certification of a physician assistant shall be subject to revocation, limitation, or suspension under section 453-8 and an application for certification may be denied for the same reasons.

(h) The board shall establish the application procedure, medical, educational, and training standards, examination requirement, if any, and degrees of supervision by rule.

(i) Every person holding a certificate under this section shall reregister with the board no later than January 31 of each even-numbered year and pay a renewal fee. Failure to reregister shall constitute a forfeiture of the certificate which may only be restored upon written application for registration and payment to the board of a restoration fee.

(j) A certificate that has been forfeited for one renewal term shall be automatically terminated and cannot be restored, and a new application for certification shall be required.”

SECTION 3. Section 453-6, Hawaii Revised Statutes, is amended to read as follows:

**“§453-6 Fees; expenses.** No applicant shall be examined under this chapter until the applicant has paid to the board of medical examiners application, examination, and license fees. The board may provide separate fees for licensure by endorsement and for limited and temporary licenses. Every person holding a license under this chapter shall [re-register] reregister with the board [biennially in each even-numbered year, not] no later than January 31, of each even-numbered year and for such registration shall pay a renewal fee. At the time of [re-registration,] reregistration, the physician or surgeon shall present to the board evidence of compliance with a program of continuing medical education adopted by the board. Failure to [re-register] reregister and present such evidence shall constitute a forfeiture of license, which may be restored only upon written application therefor and payment to the board of a restoration fee. A license that has been forfeited for one renewal term shall be automatically terminated and cannot be restored, and a new application for licensure shall be required. All such fees shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 and shall be deposited with the director of finance to the credit of the general fund.”

SECTION 4. Section 453-8, Hawaii Revised Statutes, is amended to read as follows:

**“§453-8 Revocation, limitation, suspension, or denial of licenses.** (a) Any license to practice medicine and surgery may be revoked, limited, or suspended by the board of medical examiners at any time in a proceeding before the board, or may be denied, for any one or more of the following acts or conditions on the part of the holder of such license or the applicant therefor:

- (1) Procuring, or aiding or abetting in procuring, a criminal abortion;
- (2) Employing any person to solicit patients for one's self;
- (3) Engaging in false, fraudulent, or deceptive advertising, including, but not limited to:
  - (A) Making excessive claims of expertise in one or more medical specialty fields;
  - (B) Assuring a permanent cure for an incurable disease; or
  - (C) Making any untruthful and improbable statement in advertising one's medical or surgical practice or business;
- (4) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or an habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;
- (5) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
- (6) Procuring a license through fraud, misrepresentation, or deceit or knowingly permitting an unlicensed person to perform activities requiring a license;
- (7) Professional misconduct, gross negligence, or manifest incapacity in the practice of medicine or surgery;
- (8) Incompetence or multiple instances of negligence, including, but not limited to, the consistent use of medical service which is inappropriate or unnecessary;
- (9) Conduct or practice contrary to recognized standards of ethics of the medical profession as adopted by the Hawaii Medical Association or the American Medical Association;

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- (10) Violation of the conditions or limitations upon which a limited or temporary license is issued;
- (11) Revocation, suspension, or other disciplinary action by another state or federal agency of a license, certificate, or medical privilege for reasons as provided in this section;
- (12) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of a physician, notwithstanding any statutory provision to the contrary;
- (13) Violation of chapter 329, uniform controlled substance act, or any rule adopted thereunder;
- (14) Failure to report to the board, in writing, any disciplinary decision issued against the licensee or the applicant in another jurisdiction within thirty days after the disciplinary decision is issued; or
- (15) Submitting to or filing with the board any notice, statement, or other document required under this chapter, which is false or untrue or contains any material misstatement or omission of fact.

(b) If any license is revoked, limited, suspended, or denied by the board for any act or condition listed in this section, the board shall notify the holder of, or the applicant for, the license in writing of the revocation, limitation, suspension, or denial. Any license to practice medicine and surgery which has been revoked under this section may be restored by the board.

(c) If disciplinary action related to the practice of medicine has been taken against the applicant in any jurisdiction that would constitute a violation under this section, or if the applicant reveals a physical or mental condition that would constitute a violation under this section, then the board may impose one or more of the following requirements as a condition for licensure:

- (1) Physical and mental evaluation of the applicant by a licensed physician approved by the board;
- (2) Probation, including such conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed physicians or surgeons;
- (3) Limitation of the license by restricting the fields of practice in which the licensee may engage;
- (4) Further education or training or proof of performance competency; and
- (5) Limitation of the medical practice of the licensee in any reasonable manner to assure the safety and welfare of the consuming public.”

SECTION 5. Section 453-32, Hawaii Revised Statutes, is amended to read as follows:

**“§453-32 Certification of emergency ambulance personnel.** The board of medical examiners shall certify individuals as qualified in emergency medical services upon application therefor; provided that the applicant for certification:

- (1) Holds a certificate from the National Registry of Emergency Medical Technicians, has satisfactorily passed a course of training in emergency medical services for emergency ambulance services personnel which shall be based on the national curriculum of the United States Department of Transportation and approved by the board, and meets other standards and qualifications, including passage of an examination, set by the board of medical examiners pertinent to the practice of emergency medical services in Hawaii;
- (2) Meets continuing education requirements which shall be set by the board of medical examiners; and

(3) Meets other qualifications set by the board of medical examiners. The board shall directly review the credentials of applicants and administer examinations required. Certification under this section shall be a prerequisite to the practice of emergency medical services as an employee of an emergency ambulance service.

The board of medical examiners shall provide standard application forms for the certification of emergency ambulance personnel and shall provide for the periodic renewal of such certification. The board of medical examiners shall assess a fee for such application, certification, and renewal. The board of medical examiners shall provide for the [lapsing,] revocation, suspension, or limitation of certification in the event an individual once certified under this section fails to maintain or meet requirements for continued certification, or for good cause shown."

SECTION 6. Section 463E-5, Hawaii Revised Statutes, is amended to read as follows:

**"§463E-5 Fees; expenses.** No applicant shall be examined under this chapter until the applicant has paid to the board of medical examiners application, examination, and license fees. The board may provide separate fees for licensure by endorsement and for limited and temporary licenses. Every person holding a license under this chapter shall reregister with the board [biennially in each even-numbered year, not] no later than January 31, and for registration shall pay a renewal fee. At the time of reregistration, the licensee shall provide written proof of a minimum of forty hours of postgraduate work or continuing education of podiatry taken during the previous biennium. Failure to reregister and present this proof shall constitute a forfeiture of the license, which may be restored only upon written application therefor and payment to the board of a restoration fee. A license that has been forfeited for one renewal term shall be automatically terminated and cannot be restored, and a new application for licensure shall be required. All fees shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 and shall be deposited with the director of finance to the credit of the general fund."

SECTION 7. Section 463E-6, Hawaii Revised Statutes, is amended to read as follows:

**"§463E-6 Revocation, suspension, or denial of license; sanctions.** (a) Any license to practice podiatry may be revoked or suspended by the board of medical examiners at any time in a proceeding before the board, or may be denied, for any one or more of the following acts or conditions on the part of the holder of the license or the applicant therefor:

- (1) Employing what is popularly known as a "capper" or "steerer";
- (2) Obtaining any fee on the assurance that manifestly incurable disease can be permanently cured;
- (3) Willfully betraying a professional secret;
- (4) Advertising one's podiatrist business with any untruthful and improbable statement;
- (5) False or fraudulent advertising;
- (6) Procuring a license through fraud, misrepresentation, or deceit, or knowingly permitting an unlicensed person to perform activities requiring a license;
- (7) Violation of section 453-2;

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- (8) Professional misconduct or gross negligence or manifest incapacity in the practice of podiatry;
  - (9) Engaging in the practice of podiatry other than as defined in section 463E-1;
  - (10) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effect;
  - (11) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
  - (12) Incompetence or multiple instances of negligence, including, but not limited to, the consistent use of medical service which is inappropriate or unnecessary;
  - (13) Revocation, suspension, or other disciplinary action by another state or federal agency of a license or practice privilege for reasons as provided in this section;
  - (14) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of a podiatrist, notwithstanding any statutory provision to the contrary;
  - (15) Violation of chapter 329, uniform controlled substance act, or any rule adopted thereunder;
  - (16) Failure to report to the board, in writing, any disciplinary action taken against the licensee in another jurisdiction within thirty days after the disciplinary action becomes final; or
  - (17) Submitting to or filing with the board any notice, statement, or other document required under this chapter, which is false or untrue or contains any material misstatement or omission of fact.
- (b) In addition to or in lieu of revoking or suspending a license to practice podiatry, the board may impose one or more of the following actions:
- (1) Place the licensee on probation, including such conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed podiatrists;
  - (2) Limit the license by restricting the field of practice in which the licensee may engage;
  - (3) Fine the licensee, including assessment against the licensee of the cost of the disciplinary proceedings. Any fine imposed by the board after a hearing in accordance with chapter 91 shall be no less than \$500 and no more than \$5,000 for each violation, exclusive of the costs of the disciplinary proceedings;
  - (4) Temporarily suspend the license for not more than thirty days without a hearing, when the board finds the practice of the licensee probably constitutes an immediate and grave danger to the public; or
  - (5) Require further education or training or require proof of performance competency.
- (c) If disciplinary action related to the practice of podiatric medicine taken against the applicant in any jurisdiction that would constitute a violation of this section, or if the applicant reveals a physical or mental condition that would constitute a violation under this section, then the board may impose one or more of the following requirements as a condition of licensure:
- (1) Physical and mental evaluation of the applicant by a licensed physician approved by the board;
  - (2) Probation, including such conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed podiatrists;

- (3) Limitation of the license by restricting the field of practice in which the licensee may engage;
- (4) Further education or training or proof of performance competency; and
- (5) Limitation of the podiatric practice of the licensee in any reasonable manner to assure the safety and welfare of the consuming public."

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

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

(Approved June 7, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 182**

H.B. NO. 917

A Bill for an Act Relating to Nursing.

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

SECTION 1. Act 212, Session Laws of Hawaii 1988, is amended by amending sections 1, 2, and 3 to read as follows:

"SECTION 1. There is growing evidence that the supply of licensed nurses working in the State does not meet the present demand. As of February 1987 there were over five hundred vacancies in health care agencies throughout the State, and it had been estimated that the number of vacancies would increase to eight hundred by 1988 and nine hundred in 1989.

Serious implications arise due to the shortage of nurses in the State. Insufficient staffing together with increased patient acuity and occupancy has a detrimental effect on the quality of nursing care. Long working hours for existing nurses affect their stamina and performance. One major hospital in Hawaii has had to close a substantial number of its surgical beds due in part to a lack of nursing staff. It is expected that other hospitals will face similar closures if the nursing shortage is not corrected. To compensate for the shortage, hospitals have found it necessary to ask nurses to work overtime and to recruit short-term contract nurses from the mainland. Such actions translate to increased medical care costs but with a detrimental effect in the quality of care for the people of Hawaii. All indications are that this shortage will continue in virtually all medical care areas where nurses are needed.

Hawaii's rapidly growing population requires that something be done to alleviate Hawaii's growing nursing shortage. By 1990, the department of business and economic development projects that the resident population in our State will increase to 1,138,400 with another eleven per cent increase to 1,267,800 by the year 2000. The elderly population is also showing [a] significant growth. This group is known to utilize the health care system more than any other age group. The United States Bureau of the Census predicts that the number of frail and elderly eighty-five years and older will grow from 2.7 million in 1985 to 4.9 million in the year 2000. By then, fifty per cent of direct care in-hospital facilities will be devoted to caring for the elderly. In Hawaii, a projected total of 168,900 individuals will be sixty years and older by the year 1990. In fact, the people of the State are known to have the longest life expectancy in the country.

Recognizing this pressing nursing shortage, the legislature finds that there is a need for a program which would immediately increase the number of licensed nurses in the State. There are many graduate nurses in Hawaii working as licensed practical nurses, nurses [aids,] aides, ward clerks, doctor's secretaries, and other similar nursing related work, who have not yet passed the written examination required [for] by the commission on graduates of foreign nursing schools, or the written examination required by the state board of nursing, or both. The time demands of their occupation and other socioeconomic pressures prevent them from otherwise being able to prepare adequately for the licensing examinations. With some concerted assistance from the private sector and the State, these graduate nurses may be able to pass the written examinations and become licensed nurses. Certain hospitals in the State have indicated a willingness to assist and accommodate their qualified employees by maintaining their employment status and salary while participating in a program operated by the State to improve test taking skills and to prepare them for the nursing license examinations. These hospitals, along with state government-operated hospitals, could serve as valuable resources in the planning and development of a nursing license preparation program by the State.

The legislature therefore finds that it is desirable to establish and to test the effectiveness of a program designed to improve test taking skills of graduate nurses to enable them [successfully] to pass the required written examinations. Review and training courses are to be held for four to six months and shall commence four to six months prior to the dates that the nursing license examinations are to be offered.

The purpose of this Act is to provide for [such a pilot program to be operated by the department of health,] the continuation and expansion of the "Operation Nightingale" program being operated by the department of health, which shall include the provision of classroom facilities, books and review material, instructors, and such other equipment and personnel necessary and accessory for the program. [The effect of this program will be to offer an expeditious solution to Hawaii's nursing shortage.]

SECTION 2. Nursing license examination preparation program established. There is established within the department of health a [pilot] program to be called "Operation Nightingale". The department of health shall design[ ,] and operate [with the assistance of the University of Hawaii,] a review and training course to enable graduates of nursing schools to pass the written examination required for the commission on graduates of foreign nursing schools, or the written examination required by the state board of nursing, or both. The department of health shall provide or contract for the provision of review and training courses for:

- (1) Registered nurses who have not recently been employed as nurses to facilitate their return to active participation in the nursing profession;
- (2) Graduates of nursing schools preparing for the examination required by the state board of nursing; and
- (3) Graduates of foreign nursing schools preparing for the examination required by the state board of nursing and the examination required by the commission on graduates of foreign nursing schools.

The department shall provide or contract for the provision of other alternative programs that the director of health finds necessary to assist residents of the State seeking to enter the field of nursing.

The department of health shall develop or contract for the development of refresher courses and specialty programs for nurses wishing to work in shortage areas such as obstetrics, surgery, intensive care, and emergency room care.

These programs shall provide instruction to qualified individuals. Classes may be [conducted on a full time basis during daytime hours on weekdays] provided

at times the director of health finds necessary, including evenings or weekends.  
The duration of each course may be tailored to meet the needs of the community  
as well as the health care providers. Classes may be held at Leahi Hospital or at  
such other [site] sites as the department of health may deem appropriate.

Additionally, the department of health shall establish requirements and procedures for the selection of candidates for the [pilot] program. Candidate selection and an appeals process for candidates not selected shall be [made through] conducted by a committee [comprised] consisting of the director of health or a designated representative, the president of the University of Hawaii or a designated representative, a representative of the Hawaii nurses association, and a representative selected by the director of health from each of the [hospitals within the State.] medical facilities participating in the program. Any vacancy on the committee shall be filled in the same manner in which the original position was filled.

Members of the committee shall serve without compensation and shall be reimbursed for necessary expenses incurred in the performance of their duties.

SECTION 3. Duration of program; reporting requirement. The nursing license examination preparation [pilot] program shall operate [for two years.] through fiscal year 1990-1991. The department of health shall submit to the legislature not later than twenty days prior to the convening of the regular [session] sessions of [1989] 1990 and 1991 a report of the performance of the [pilot] program and any other matter which may be relevant."

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

SECTION 3. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

## ACT 183

H.B. NO. 1188

A Bill for an Act Relating to Juvenile Justice.

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

SECTION 1. The purpose of this Act is to amend section 571D-1, Hawaii Revised Statutes, by increasing the membership of the juvenile justice interagency board.

SECTION 2. Section 571D-1, Hawaii Revised Statutes, is amended to read as follows:

**"§571D-1 Juvenile justice interagency board.** There is established within the department of the attorney general for administrative purposes the juvenile justice interagency board, consisting of [eleven] thirteen voting members which shall include a police chief of one of the counties, the prosecuting attorney of a county, [a representative] two representatives from a private social service [agency.] agencies, and two additional members, all appointed by the governor as provided in section 26-34, and the superintendent of education, the public defender, the direction<sup>1</sup> of the Center for Youth Research at the University of Hawaii, the director of corrections, the director of health, the director of human services, and the senior judge of the first circuit family court as ex officio members. The composition of the board shall include a resident member from each county in the State.

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The attorney general shall designate the executive secretary of the board.”

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

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

(Approved June 7, 1989.)

### **Note**

1. So in original.

## **ACT 184**

H.B. NO. 1825

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

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

SECTION 1. Section 88-122, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The actuarial valuations made for years ending June 30, [1987 and 1988,] 1989 and 1990, shall be based on an eight per cent investment yield rate and such tables and factors as are adopted by the board of trustees for actuarial valuations of the system.”

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

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

(Approved June 7, 1989.)

## **ACT 185**

H.B. NO. 1827

A Bill for an Act Relating to Transportation of Hazardous Materials, Hazardous Waste, and Etiologic Agents.

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

SECTION 1. The legislature finds that the safe and proper transportation of hazardous materials and hazardous waste by motor carrier in commerce is dependent upon a cooperative and uniform enforcement effort undertaken by the federal and state government. Also, the legislature recognizes that there is a distinct possibility that shippers and motor carriers may not be cognizant of the fact that any size or type of motor vehicle used to transport hazardous materials, hazardous substances, or hazardous waste in commerce in the State of Hawaii is subject to inspection in accordance with the rules adopted by the State of Hawaii. It is the purpose of this part and the policy of this State to protect the public health and safety and the environment from improper, inadequate, unsound, or unsafe methods that could degrade or severely impact on the safe and proper transportation and handling of hazardous materials, hazardous substances, and hazardous waste on public highways, streets, or property; to permit the nature of hazardous materials

involved in a transportation incident to be readily identifiable to emergency response personnel; to promote uniformity of federal and state laws and regulations regarding the safe transportation of hazardous materials, hazardous substances, and hazardous waste; and administer and enforce the safe transportation of hazardous materials, hazardous substances, and hazardous waste by motor carrier in the State.

SECTION 2. Chapter 286, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### **"PART . TRANSPORTATION OF HAZARDOUS MATERIALS, HAZARDOUS WASTE, AND ETIOLOGIC AGENTS**

**§286- Definitions.** As used in this part, unless the context otherwise requires:

"Etiologic agent" means a viable microorganism, or its toxin, which causes or may cause human disease.

"Extremely hazardous substance" means for transportation purposes, chemicals transported in commerce that could cause serious health effects following short-term exposure from accidental releases and which are listed in part 355 of title 40 of the Code of Federal Regulations.

"Hazardous material" means a substance or material, including a hazardous substance, which has been determined by the United States Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

"Hazardous materials incident" means an occurrence or likely occurrence or potential of a spill, release, leakage, dumping, or loss of control of an extremely hazardous substance, hazardous substance, hazardous material, hazardous waste, or etiologic agent during the course of transportation in commerce including loading, unloading, or temporary storage.

"Hazardous substance" means for transportation purposes, shipments of particular quantities of hazardous substances that are significant enough to be a substantial threat to public health and the environment, and which are listed in part 172 of title 49 of the Code of Federal Regulations.

"Hazardous waste" means any material designated in part 261 of title 40, of the Code of Federal Regulations and which are subject to the hazardous waste manifest requirements of part 262 of title 40, Code of Federal Regulations.

"Transportation-related release" means a release of a hazardous material, hazardous substance, extremely hazardous substance, hazardous waste, or etiologic agent that occurs during the course of transportation in commerce including storage incidental to transportation while under active shipping papers or manifests and which has not reached the ultimate consignee.

**§286- General powers.** (a) The department of transportation may regulate the transportation of hazardous materials, hazardous wastes, hazardous substances, and etiologic agents by motor carrier in commerce.

(b) The department shall annually adopt the hazardous materials regulations established by the United States Department of Transportation and published in title 49 of the Code of Federal Regulations, parts 107, 171 to 173, inclusive, and parts 177 and 178. All other rules adopted by the State and political subdivisions thereof shall be consistent therewith.

(c) Any hazardous material, including hazardous substances and hazardous wastes, which meets the federal and state criteria of a hazardous material must be handled and transported according to the appropriate requirements of the federal hazardous materials regulations and the additional requirements in this part.

**§286- Scope.** (a) The federal rules establish minimum standards and must be complied with when transporting a hazardous material, hazardous waste, hazardous substance, or etiologic agent by motor carrier in commerce.

(b) For purpose of clarity and conformance with the rules established for describing hazardous materials on shipping papers and simplicity in hazardous materials incident reporting, hazardous substances and extremely hazardous substances as previously defined, shall be reported as hazardous materials.

(c) Transport shall be deemed to include any operation incidental to the whole course of carriage by motor carrier from shippers point of origin to final destination.

(d) No person shall transport any hazardous material, hazardous waste, hazardous substance, or etiologic agents outside the confines of the person's facility or other location of storage or use, or offer or deliver any hazardous materials, hazardous wastes, hazardous substances, or etiologic agents to a motor carrier for transportation in commerce, nor shall any motor carrier accept any hazardous materials, hazardous wastes, hazardous substances, or etiologic agents for transport, without compliance with the applicable requirements of the hazardous materials rules adopted by the department, including those relating to packaging of hazardous materials, hazardous wastes, hazardous substances, and etiologic agents, marking and labeling of packages, preparation and carriage of shipping papers or manifests, handling, loading and unloading packages, placarding of the transporting vehicle, inspection of motor carrier vehicles, and motor carrier accident and hazardous materials incident reporting.

(e) No person in the course of transportation in commerce, shall spill, dump, deposit, or cause the release of a hazardous material, hazardous waste, hazardous substance, or etiologic agent upon a public highway, street, or the surrounding or connecting property, to include but not be limited to, storm drains, gutters, waterways, canals, lakes, and ocean shorelines, without immediately taking action to stop the spread of the material or remove the same or cause the same to be removed. If such person fails to comply with this subsection, the governmental agency responsible for the maintenance of the highway, street, or property on which the material was deposited may remove such materials and collect, by civil action, if necessary, the actual cost of the removal operation and repair of damage to the affected facility or property from the person responsible as stated in this subsection.

(f) Owners or operators of a facility from which there is a transportation-related release are subject to the hazardous materials transportation incident reporting requirements of this part.

(g) A copy of any written report required under this part shall be submitted to the director of transportation within fifteen days of the reported incident.

**§286- Inspections.** (a) Any shipment or transport of hazardous materials, hazardous wastes, or hazardous substances, by motor vehicle in commerce of which vehicle placarding or a shipping paper or manifest is required by the hazardous materials regulations adopted by the State, is subject to inspection by persons appointed by the director of transportation to enforce the safe transportation of hazardous materials, hazardous wastes, and hazardous substances in commerce and by those state and county officers charged with the enforcement of laws and ordinances adopted pursuant to this part.

(b) All carriers and persons that use a highway or street to transport hazardous materials, hazardous wastes, hazardous substances, or etiologic agents in commerce shall afford the director of transportation, persons designated by the director, and those persons designated by the county executive officers, reasonable opportunity to enter and inspect freight containers, and motor vehicles, to review and document deficiencies on shipping papers and manifests, and to inspect other places incidental

to the transshipment of hazardous materials, hazardous wastes, hazardous substances, and etiologic agents by motor carrier vehicles.

**§286- Hazardous materials transportation incident reporting.** (a) Any employee of the motor carrier, the driver, handlers and loaders, and any employees of state and county governments shall report incidents involving hazardous materials, hazardous wastes, and etiologic agents as follows:

- (1) Upon becoming aware of or observing the potential or actual spill, leakage, or loss of control of a hazardous material, hazardous waste, or hazardous substance, shall immediately, or as soon as possible, notify the nearest police or fire department and make a report of the situation. This incident reporting requirement does not relieve a carrier or shipper of the responsibility to notify the United States Department of Transportation of certain hazardous materials incidents.
  - (2) Whenever an etiologic agent shipment is lost, stolen, or suspected or known to be leaking from its containment packaging, shall immediately, or as soon as possible, notify the state department of health, and the Center for Disease Control in Atlanta, Georgia, and make a report of the situation.
- (b) Whenever possible, the incident report should include the name and telephone number of the person calling in the report, the name of the carrier, type of vehicle involved, injuries or fatalities connected with the incident, if any, the location and time of the incident, the duration of a chemical release into the environment, if known, a description of hazards involved to include the chemical name or identity of any substance released, hazardous materials classification, markings, and information on labels and placards affixed on packages, containers or vehicles, and emergency actions taken including evacuation to minimize hazardous effects to public health, safety, and property.

**§286- Routes.** The intrastate shipment of explosives of any quantity that would require placarding of the transporting motor vehicle by the rules adopted pursuant to this part, shall not take place without first giving the police department and the fire department of the county in which the explosives are to be transported a forty-eight hour minimum advance notice. This advance notice shall be in writing and indicate the quantity and type of explosive material being shipped, the date and time of the shipment, and the route over which the explosive shipment will travel. This provision does not apply to the military during the period of a civil defense emergency proclaimed by the President or the governor.

**§286- Penalty.** (a) Any person who violates this part or any rule adopted pursuant to this part shall be subject to a civil penalty of not more than \$10,000 for each violation. Each day the violation continues shall constitute a separate offense. An action to impose or collect the penalty provided in this section shall be considered a civil action.

(b) Any person who wilfully violates this part shall be subject to a criminal penalty of not more than \$25,000 for each violation, imprisonment for a term not to exceed five years, or both."

SECTION 3. Part X of chapter 286, Hawaii Revised Statutes, is repealed.

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

(Approved June 7, 1989.)

ACT 186

H.B. NO. 1887

A Bill for an Act Relating to Industrial Loan Companies.

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

SECTION 1. Chapter 408, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§408- Loan solicitation office.** (a) A licensed industrial loan company may establish a loan solicitation office upon the prior written approval of the commissioner. Applications shall be submitted by letter and shall be accompanied by a \$250 application fee. Approvals are site specific, nontransferable and shall be void upon the sale, assignment, or discontinuance of industrial loan company operations, or the revocation of the industrial loan company license. A licensee shall notify the commissioner prior to any voluntary discontinuance of a loan solicitation office.

- (1) A “loan solicitation office” means an office established at a specific location separate and apart from a branch office. It should be enclosed or separately partitioned from those parts of the premises in which other business activities are conducted and staffed only by qualified and trained employees of the licensee. A loan solicitation office may only engage in the following activities:
    - (A) Soliciting loans on behalf of the licensed industrial loan company; or
    - (B) Collecting loan payments made by the licensed industrial loan company.
  - (2) An office is not deemed to be a loan solicitation office if the office:
    - (A) Processes loan applications at that location;
    - (B) Closes loans at the location; or
    - (C) Disburses loan proceeds out of its own account at that location.
- (b) In determining whether approval shall be granted, the commissioner may consider the following:
- (1) Good standing and financial condition of the licensee;
  - (2) The proposed location of the loan solicitation office;
  - (3) Whether the loan solicitation office can be supervised adequately and is under the direct control of a designated officer of the industrial loan company; and
  - (4) Whether the licensee has presented evidence satisfactory to the commissioner that the loan solicitation office will be staffed only by qualified and trained employees of the licensee.

In issuing approvals, the commissioner may impose conditions regarding the identification and conduct of the loan solicitation office.

- (c) No licensee may establish a loan solicitation office outside of the State.
- (d) A loan solicitation office shall be subject to examinations in accordance with this chapter. Records, books, and original loan documents must be maintained at the main office of the licensee in the State.
- (e) The commissioner may withdraw his approval upon finding that:
  - (1) The licensee is conducting activities beyond what was approved by the commissioner without the prior approval of the commissioner;
  - (2) The loan solicitation office has not actively engaged in conducting loan solicitation office activities for six months or more;
  - (3) The licensee has violated this section; or

- (4) There exists any cause which would have clearly warranted the commissioner to refuse to issue the original approval."

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

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

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

(Approved June 7, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 187**

S.B. NO. 661

A Bill for an Act Relating to the Commission on the Handicapped.

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

SECTION 1. Chapter 348E, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**"COMMISSION ON [THE HANDICAPPED] PERSONS WITH DISABILITIES"**

SECTION 2. Section 348E-1, Hawaii Revised Statutes, is amended to read as follows:

**"[§348E-1] Definitions.** As used in this chapter, unless the context clearly requires otherwise:

"Commission" means the commission on [the handicapped.] persons with disabilities.

"Members" means the members of the commission on [the handicapped.] persons with disabilities."

SECTION 3. Section 348E-2, Hawaii Revised Statutes, is amended to read as follows:

**"§348E-2 Commission on [the handicapped.] persons with disabilities.** There is established the commission on [the handicapped] persons with disabilities within the department of health for administrative purposes, to be composed of fifteen members to be appointed by the governor for staggered terms subject to section 26-34. The members of the commission shall include at least nine persons [who are either handicapped persons representative of] with various [handicapping] disabling conditions, parents, or guardians of [handicapped] persons[.] with disabilities. The directors of health, human services, labor and industrial relations, personnel services, transportation, the comptroller, the superintendent of education, and the president of the University of Hawaii or their representatives shall be ex officio nonvoting members. The members appointed shall include at least one resident from the counties of Honolulu, Hawaii, Maui, and Kauai. Eight voting

members shall constitute a quorum to do business and a concurrence of the majority of the voting members of the quorum shall be necessary to validate any act of the commission.

The members shall serve without compensation but shall be reimbursed their necessary and reasonable expenses incurred in the performance of their duties, including travel expenses. The [chairman] chairperson shall be elected annually by the members; provided that only nongovernmental members shall be elected [chairman;] chairperson; and provided further than no member may serve as [chairman] chairperson for more than two consecutive years."

SECTION 4. Section 348E-3, Hawaii Revised Statutes, is amended to read as follows:

"[§348E-3] **Powers, duties, functions of the commission.** The commission shall have and perform the following powers, duties, and functions:

- (1) Serve as a central coordinative clearinghouse of public and private activities relating to [the handicapped] persons with disabilities and as repository and disseminator of activities and information relating to [the handicapped.] persons with disabilities.
- (2) Review and assess the problems and needs, and the availability, of adequate services and resources for [the handicapped] persons with disabilities in the State with regard but not limited to employment, education, health, social services, recreation, civil rights, public facilities, housing, vocational training and rehabilitation, and other matters pertinent to the well-being and independence of [the handicapped.] persons with disabilities.
- (3) Conduct research, studies, [and other appropriate] data collection, and planning activities designed to provide additional information on [the handicapped] persons with disabilities, with particular reference to specific needs of [the handicapped] persons with disabilities, and to publicize the results thereof[.], to the extent that these functions do not duplicate or supplant activities provided by other federal, state, or county agencies.
- (4) Advise and make recommendations to the State and the counties on matters relating to [the handicapped,] persons with disabilities, and on matters which affect [the handicapped,] persons with disabilities, including legislative matters.
- (5) Develop short- and long-term goals in fulfilling the needs of [the handicapped,] persons with disabilities, to be undertaken by the commission in facilitating the coordination of services and programs for [the handicapped.] persons with disabilities.
- (6) Educate the public and [the handicapped] persons with disabilities on the problems, needs, potentials, and rights of [the handicapped] persons with disabilities through affirmative public education programs.
- (7) Seek improvements in existing systems to recognize specific needs of [the handicapped.] persons with disabilities.
- (8) Serve as public advocate of [the handicapped.] persons with disabilities.
- (9) Seek and receive funds and other forms of assistance from public and private sources to be used in providing improved circumstances for [the handicapped] persons with disabilities in Hawaii.
- (10) Initiate and maintain contact with public and private, local and national organizations, agencies, and individuals generally engaging in activities relating to [the handicapped,] persons with disabilities, or oth-

erwise interested in the general or specific well-being of [the handicapped.] persons with disabilities.

- (11) Administer funds allocated for its work, including disbursement and allocation of funds which may be available from public and private sources; provided that such disbursement and allocation shall be consistent with specific requirements thereof, or in the absence of designated requirements, consistent with the purpose of this chapter. The commission may require, in its discretion, matching participation by the recipients of disbursements and allocations hereunder."

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

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

(Approved June 7, 1989.)

## ACT 188

S.B. NO. 1190

A Bill for an Act Relating to Real Estate Appraisal.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### **“CHAPTER REAL ESTATE APPRAISERS**

**§ -1 Findings and purpose.** The legislature finds that the regulation of real estate appraisers is reasonably necessary to protect consumers. It is the purpose of this chapter to provide a mechanism whereby review and evaluation may be performed to determine the best method to implement regulation of appraisers.

**§ -2 Real estate appraiser program.** There is established a real estate appraiser program within the department of commerce and consumer affairs, to be administered by the director of commerce and consumer affairs.

**§ -3 Powers and duties of the director.** The director shall have the following powers and duties:

- (1) To grant permission to practice as a real estate appraiser in this State pursuant to this chapter and the rules adopted pursuant thereto;
- (2) To adopt, amend, or repeal rules as the director finds necessary to effectuate fully this chapter;
- (3) To enforce this chapter and rules adopted pursuant thereto; and
- (4) To discipline a real estate appraiser for any cause prescribed by this chapter or for any violation of the rules and refuse to grant a person permission to practice as a real estate appraiser for any cause that would be grounds for disciplining a real estate appraiser."

SECTION 2. The director of commerce and consumer affairs, with the assistance of interested groups, shall conduct a review and evaluation for the purpose of reporting to the legislature:

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- (1) Recommendations for a statutory mechanism for the regulation of real estate appraisers to include either a registration, certification, or licensure scheme;
- (2) Recommendations on the requirements minimally necessary to regulate real estate appraisers, including but not limited to the substantive areas of application, examination, issuance and renewal requirements, disciplinary provisions, and standards of practice;
- (3) A recommendation for staffing requirements to implement and administer the real estate appraiser program;
- (4) A recommendation for a transition timetable for the implementation of the regulation of real estate appraisers; and
- (5) Any relevant recommendations or considerations necessary for the legislature to address fully the question of diligent and effective regulation of real estate appraisers.

SECTION 3. The department shall submit a report of its findings and recommendations to the legislature not less than twenty days prior to the convening of the regular session of 1990.

SECTION 4. This Act shall take effect on July 1, 1990; provided that Section 2 and Section 3 shall take effect upon this Act's approval.

(Approved June 7, 1989.)

## ACT 189

S.B. NO. 1427

A Bill for an Act Relating to Public Utilities.

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

SECTION 1. Section 269-16, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) From every order made by the commission under [the provisions of] this chapter [which] that is final[,] or, if preliminary, is of the nature defined by section 91-14(a), an appeal shall lie to the supreme court subject to chapter 602 only by a person aggrieved in the contested case hearing provided for under this section in the manner and within the time provided by chapter 602, and by the rules of court. The commission [shall] may elect to be a party to all matters from which an order of the commission is appealed, and the commission [shall] may file [the] appropriate responsive briefs or pleadings [defending all such orders.] in the appeal; provided that where there was no adverse party in the case below or in cases where there is no adverse party to the appeal, the commission shall be a party to all matters in which an order of the commission is appealed and shall file the appropriate responsive briefs or pleadings in defending all such orders. The [designation] appearance of the commission as a party in appellate proceedings in no way limits the participation of persons otherwise qualified to be parties on appeal. The appeal shall not of itself stay the operation of the order appealed from, but the court may stay the order after a hearing upon a motion therefor[,] and may impose [such] conditions [as] it [may deem] deems proper as to giving a bond and keeping the necessary accounts or otherwise in order to secure a restitution of the excess charges, if any, made during the pendency of the appeal in case the order appealed from should be sustained, reversed, or modified in whole or in part.”

SECTION 2. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the

legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$150,000, or 0.0064 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

**SECTION 3.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000, or so much thereof as may be necessary for fiscal year 1989-1990, for a comprehensive study which shall include but not be limited to the following areas of consumer concern as they relate to local measured service in telecommunications: (1) the impacts on residential consumers' cost of telephone service and telephone calling patterns; (2) the impacts on public service agencies who utilize telephone communications to provide services; (3) the impacts on business cost of telephone service and telephone calling patterns; (4) the potential for repression of usage; (5) the potential alternatives to local measured service; and (6) other effects of the implementation of local measured service on various subscriber groups.

**SECTION 4.** The sum appropriated in section 3 of this Act shall be expended by the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs for the purposes of section 2 of this Act.

**SECTION 5.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 6.** The provisions of sections 1 and 2 of this Act shall take effect upon approval of this Act. The provisions of sections 3 and 4 of this Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

## ACT 190

S.B. NO. 1469

A Bill for an Act Relating to Directors and Officers Liability.

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

**SECTION 1.** Chapter 415, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§415- Limitation of liability of directors; shareholder approval required.** (a) A corporation shall have the power to eliminate or limit the personal liability of its directors in any action brought by the shareholders or the corporation for monetary damages against any director of the corporation for a breach of fiduciary duty as a director, provided that:

- (1) The elimination or limitation shall be authorized, directed, or provided for, and approved by the shareholders of the corporation, in:
  - (A) The articles of incorporation of the corporation;
  - (B) Any duly adopted amendment of the articles of incorporation; or
  - (C) Any bylaw of the corporation, or amendment to the bylaws; and
- (2) The provision eliminating or limiting the personal liability of a corporation's directors shall be adopted upon the affirmative vote of the holders of two-thirds of the shares represented at the shareholder's

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meeting and having voting power; provided that the vote also constitutes a majority of the shares having voting power.

(b) A corporation shall not have the power to eliminate or limit the personal liability of a director:

- (1) For any breach of the director's duty of loyalty to the corporation or its shareholders;
- (2) For any act or omission of the director not performed in good faith, or which involves intentional misconduct or knowing violation of law, or which constitutes a wilful or reckless disregard of the director's fiduciary duty;
- (3) For the director's wilful or negligent violation of any provision of this chapter regarding payment of dividends or stock purchase or redemption; or
- (4) For any transaction from which the director received an improper benefit.

(c) The shareholders of the corporation shall receive written notice of any proposal by the corporation to eliminate or limit the personal liability of the directors under subsection (a), and the corporation shall submit the written notice and the written proposal, if any, to the director of the department of commerce and consumer affairs. The department may adopt guidelines as to the form of the written notice which is to be sent to the shareholders notifying them of the proposal to eliminate or limit the personal liability of the directors.

(d) No provision pursuant to subsection (a)(1) shall be authorized by the corporation to eliminate or limit the liability of directors for acts, omissions, or causes of action occurring, accruing, or arising prior to the effective date of this section."

SECTION 2. Section 415-35, Hawaii Revised Statutes, is amended to read as follows:

**"§415-35 Board of directors.** (a) All corporate powers shall be exercised by or under authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors except as may be otherwise provided in this chapter or the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. At least one member of every board of directors shall be a resident of this State. If there is no such director who is a member of the board, the board may not function except to elect a new director who is a resident of this State. Directors need not be shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

(b) A director shall perform the director's duties as a director, including the director's duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In determining the best interests of the corporation, a director, in addition to considering the interests of the corporation's shareholders, may consider, in the director's discretion, any of the following factors:

- (1) The interests of the corporation's employees, customers, suppliers and creditors;
- (2) The economy of the State and the nation;
- (3) Community and societal considerations, including, without limitation, the impact of any action upon the communities in or near which the corporation has offices or operations; and
- (4) The long-term as well as short-term interests of the corporation and its shareholders, including, without limitation, the possibility that these interests may be best served by the continued independence of the corporation.

(c) In performing the director's duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

- (1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (2) Counsel, public accountants, or other persons as to matters which the director reasonably believes to be within [such] that person's professional or expert competence; or
- (3) A committee of the board upon which the director does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence;

provided that the director shall not be considered to be acting in good faith if the director has or should have knowledge concerning the matter in question that would cause such reliance to be unwarranted. A director who so performs the director's duties shall have no liability by reason of being or having been a director of the corporation.

(d) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the director's dissent shall be entered in the minutes of the meeting or unless the director shall file the director's written dissent to the action with the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. The right to dissent shall not apply to a director who voted in favor of the action."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved June 7, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 191**

S.B. NO. 1565

A Bill for an Act Relating to Sentencing.

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

SECTION 1. The legislature finds that intra-family sexual assault against children is a crime which has a traumatic and devastating effect on the family. In

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certain cases, treatment and counseling for the offender may be an appropriate alternative sentence or condition of sentencing to help rehabilitate the offender and maintain the family unit.

The purpose of this Act is to create a unit within the adult probation division of the circuit court for the supervision, monitoring, assessment, and treatment of intra-family sex offenders so that these services will be available as an alternative sentence or as a condition of sentencing where appropriate.

**SECTION 2.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$200,000 or 0.0085 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 3.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$200,000, or so much thereof as may be necessary for fiscal year 1990-1991, to create a unit within the adult probation division of the circuit court for the supervision, monitoring, assessment, and treatment of intra-family sexual assault offenders as an alternative sentence or a condition of sentence. Funds may be used to hire necessary staff.

**SECTION 4.** The sums appropriated shall be expended by the judiciary for the purposes of this Act.

**SECTION 5.** This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

## ACT 192

S.B. NO. 1799

A Bill for an Act Relating to the Uniform Information Practices Act (Modified).

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

**SECTION 1.** Chapter 92F, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**“§92F-15.5 Alternative method to appeal a denial of access.** (a) When an agency denies a person access to a government record, the person may appeal the denial to the office of information practices in accordance with rules adopted pursuant to section 92F-42(12). A decision to appeal to the office of information practices for review of the agency denial shall not prejudice the person’s right to appeal to the circuit court after a decision is made by the office of information practices.

(b) If the decision is to disclose, the office of information practices shall notify the person and the agency, and the agency shall make the record available. If the denial of access is upheld, in whole or in part, the office of information practices shall, in writing, notify the person of the decision, the reasons for the decision, and the right to bring a judicial action under section 92F-15(a).”

**SECTION 2.** Chapter 92F, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**"§92F-27.5 Alternative method to appeal a denial of access.** (a) When an agency denies an individual access to that individual's personal record, the individual may appeal the denial to the office of information practices in accordance with rules adopted pursuant to section 92F-42(12). A decision to appeal to the office of information practices for review of the agency denial shall not prejudice the individual's right to appeal to the circuit court after a decision is made by the office of information practices.

(b) If the decision is to disclose, the office of information practices shall notify the individual and the agency, and the agency shall make the record available. If the denial of access is upheld, in whole or in part, the office of information practices shall, in writing, notify the individual of the decision, the reasons for the decision, and the right to bring a judicial action under section 92F-27."

SECTION 3. Section 92F-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A person aggrieved by a denial of access to a government record may bring an action against the agency at any time within two years after the agency denied to compel disclosure."

SECTION 4. Section 92F-18, Hawaii Revised Statutes, is amended to read as follows:

**"[§]92F-18[] Agency implementation.** (a) Each agency shall:

- (1) Issue instructions and guidelines necessary to effectuate this chapter; and
- (2) Take steps to assure that all its employees and officers responsible for the collection, maintenance, use, and dissemination of government records are informed of the requirements of this chapter.

(b) Each agency shall compile a public report describing the records it routinely uses or maintains[.] using forms prescribed by the office of information practices. The public reports shall be filed with the office of information practices [and] on or before July 1, 1991. The public reports shall include:

- (1) The name and location of each set of records;
- (2) The authority under which the records are maintained;
- (3) The categories of individuals for whom records are maintained;
- (4) The categories of information or data maintained in the records;
- (5) The categories of sources of information in the records;
- (6) The categories of uses and disclosures made of the records;
- (7) The agencies and categories of persons outside of the agency which routinely use the records;
- (8) The records routinely used by the agency which are maintained by[.];
- (A) Another agency; or
- (B) A person other than an agency;
- (9) The policies and practices of the agency regarding storage, retrievability, access controls, retentions, and disposal of the information maintained in records;
- (10) The title, business address, and business telephone number of the agency officer or officers responsible for the records;
- (11) The agency procedures whereby an individual may request access to records; and

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- (12) The number of written requests for access within the preceding year, the number denied, the number of lawsuits initiated against the agency under this part, and the number of suits in which access was granted.

(c) Each agency shall supplement or amend its public report, or file a new report, on or before July 1 of each subsequent year, to ensure that the information remains accurate and complete. Each agency shall file the supplemental, amended, or new report with the office of information practices, which shall make the reports available for public inspection.”

SECTION 5. Chapter 92F, Hawaii Revised Statutes, is amended by amending the title of Part III to read:

### **“PART III. DISCLOSURE [OR] OF PERSONAL RECORDS”**

SECTION 6. Section 92F-25, Hawaii Revised Statutes, is amended to read as follows:

**“[§92F-25] Access and correction; Correction and amendment; review procedures.** (a) Not later than thirty business days after receipt of a request for review of an agency refusal to allow [access to, or] correction or amendment of[,] a personal record, the agency shall make a final determination.

(b) If the agency refuses upon final determination to allow [access to, or] correction or amendment of[,] a personal record, the agency shall so state in writing and:

- (1) Permit, whenever appropriate, the individual to file in the record a concise statement setting forth the reasons for the individual’s disagreement with the refusal of the agency to correct or amend it; and
- (2) Notify the individual of the applicable procedures for obtaining appropriate judicial remedy.”

SECTION 7. Section 92F-26, Hawaii Revised Statutes, is amended to read as follows:

**“[§92F-26] Rules.** [Each agency] The office of information practices shall adopt rules, under chapter 91, establishing procedures necessary to implement or administer this part[.]

Such procedures and rules, subject to the direction of and review by the attorney general in the case of state agencies and by the corporation counsel or county attorney of each county in the case of county agencies, shall be uniform, insofar as practicable, respectively, among state agencies and among the county agencies of each county[.], which the agencies shall adopt, insofar as practicable, in order to ensure uniformity among state and county agencies.”

SECTION 8. Section 92F-27, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

**“(e)** An action may be brought in the circuit court where the complainant resides, the complainant’s principal place of business is situated, or the complainant’s relevant personal record is situated. No action shall be brought later than two years after [the date of the cause of action, which shall be the date of the last written communication to the agency requesting compliance.] notification of the agency denial, or where applicable, the date of receipt of the final determination of the office of information practices.”

SECTION 9. Section 92F-41, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There shall be within the department of the attorney general, for administrative purposes only, an office of information practices."

SECTION 10. Section 92F-42, Hawaii Revised Statutes, is amended to read as follows:

**"[§92F-42] Powers and duties of the office of information practices.**

[a] The director of the office of information practices:

- (1) Shall, upon request, review and rule on an agency denial of access to information or records, or an agency's granting of access; provided that any review by the office of information practices shall not be a contested case under chapter 91 and shall be optional and without prejudice to rights of judicial enforcement available under this chapter;
- (2) Upon request by an agency, shall provide and make public advisory guidelines, opinions, or other information concerning that agency's functions and responsibilities;
- (3) Upon request by any person, may provide advisory opinions or other information regarding that person's rights and the functions and responsibilities of agencies under this chapter;
- (4) May conduct inquiries regarding compliance by an agency and investigate possible violations by any agency;
- (5) May examine the records of any agency for the purpose of paragraph (4) and seek to enforce that power in the courts of this State;
- (6) May recommend disciplinary action to appropriate officers of an agency;
- (7) Shall report annually to the governor and the state legislature on the activities and findings of the office of information practices, including recommendations for legislative changes;
- (8) Shall receive complaints from and actively solicit the comments of the public regarding the implementation of this chapter;
- (9) Shall review the official acts, records, policies, and procedures of each agency;
- (10) Shall assist agencies in complying with the provisions of this chapter;
- (11) Shall inform the public of the following rights of an individual and the procedures for exercising them:
  - (A) The right of access to records pertaining to the individual;
  - (B) The right to obtain a copy of records pertaining to the individual;
  - (C) The right to know the purposes for which records pertaining to the individual are kept;
  - (D) The right to be informed of the uses and disclosures of records pertaining to the individual;
  - (E) The right to correct or amend records pertaining to the individual; and
  - (F) The individual's right to place a statement in a record pertaining to that individual;
- (12) Shall adopt rules that set forth an [internal] administrative appeals structure which provides for (A) agency procedures for processing records requests; (B) a direct appeal from the division maintaining the record; and (C) time limits for action by agencies;
- (13) Shall adopt rules that set forth the fees and other [changes] charges that may be imposed for searching, reviewing, or segregating disclosureable records, as well as to provide for a waiver of such fees when the public interest would be served;

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- (14) Shall adopt rules which set forth uniform standards for the records collection practices of agencies; [and]
- (15) Shall adopt rules that set forth uniform standards for disclosure of records for research purposes;
- [15)] (16) Shall have standing to appear in cases where the provisions of this chapter are called into question[.]; and
- (17) Shall adopt, amend, or repeal rules pursuant to chapter 91 necessary for the purposes of this chapter.”

SECTION 11. Each agency, as defined in Chapter 92F, Hawaii Revised Statutes, shall file its public report describing the records it routinely uses or maintains, in accordance with section 92F-18, Hawaii Revised Statutes; provided that each agency shall have filed with the office of information practices twenty-five per cent of its public report forms on or before September 30, 1990, fifty per cent on or before December 31, 1990, seventy-five per cent on or before March 31, 1991 and one hundred per cent on or before July 1, 1991.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 13. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 193

S.B. NO. 1823

A Bill for an Act Relating to Travel Agencies.

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

SECTION 1. Section 468K-1.5, Hawaii Revised Statutes, is amended to read as follows:

**“§468K-1.5 Powers and duties of the director.** The director shall have the following powers and duties:

- (1) [Adopt,] To adopt, amend, and repeal rules in accordance with chapter 91 to carry out the purposes of this chapter;
- (2) [Issue,] To issue and renew[, terminate, and revoke licenses;] licenses pursuant to this chapter;
- (3) To fine any licensee, or suspend or revoke any license, for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant any license for any cause which would be grounds for revocation or suspension of a license;
- [3)] (4) [Establish] To establish fees; and
- [4)] (5) [Do] To do all things necessary to carry out the functions, powers, and duties set forth in this chapter.”

SECTION 2. Section 468K-3, Hawaii Revised Statutes, is amended to read as follows:

**“§468K-3 Travel agency recovery fund; use of fund; fees.** There shall be established and maintained a travel agency recovery fund from which any person

aggrieved by an act, omission of material fact, representation, transaction, or conduct of a licensee, that is in violation of this chapter or its adopted rules, or which constitutes an unfair or deceptive act or practice in violation of section 480-2, may recover, by order of [the circuit court or district court of the county where the violation occurred,] a court of competent jurisdiction within the State, an amount of not more than \$8,000 for damages sustained as a result of the act, representation, transaction, or conduct of each licensee. Recovery from the fund shall be limited to the actual damages suffered by the claimant, including court costs and fees as set by law, and reasonable [attorney] attorneys' fees as determined by the court.

The director shall appoint three trustees, all of whom shall be licensed under this chapter, to maintain the travel agency recovery fund. The terms of the trustees shall be four years[,]; provided that the terms of the initial trustees shall be two, three, and four years, respectively. The director may remove any trustee for good cause.

Every travel agency shall pay at the time of original licensure a nonrefundable fee of \$50 for deposit in the travel agency recovery fund.

Every sales representative shall pay at the time of original licensure a non-refundable fee of \$25 for deposit in the travel agency recovery fund."

**SECTION 3.** Section 468K-5, Hawaii Revised Statutes, is amended by amending subsections (b), (c), (d), (e), and (f) to read as follows:

(b) When any person aggrieved commences an action for a judgment which may result in collection from the travel agency recovery fund, the person aggrieved shall notify the trustees in writing to [this] that effect at the [time of the] commencement of the action. The trustees shall have the right to intervene in and defend any action.

(c) When any person aggrieved recovers a valid judgment in [any circuit court or district court of the county where the violation occurred] a court of competent jurisdiction within the State against any licensee for any act, omission of a material fact, representation, transaction, or conduct which is in violation of this chapter or its adopted rules, or which constitutes an unfair or deceptive act or practice in violation of section 480-2, which occurred after January 1, 1981, the person aggrieved may, upon the termination of all proceedings, including reviews and appeals in connection with the judgment, [file a verified claim in the court in which the judgment was entered and, upon ten days' written notice to the trustees, may] apply to the court in which the judgment was entered for an order directing payment out of the travel agency recovery fund, of the amount unpaid upon the judgment, subject to the limitations stated in this section[.]; provided that the trustees must be given ten days' written notice of the hearing on the application.

(d) When the office of consumer protection obtains a consent judgment pursuant to section 480-22, in any circuit court where the violation occurred, against any licensee for any act, omission of a material fact, representation, transaction, or conduct which is in violation of this chapter or its adopted rules, or which constitutes an unfair or deceptive act or practice in violation of section 480-2, which occurred after January 1, 1981, the office of consumer protection upon the finality of the consent judgment under section 480-22, [may file a verified claim in the court in which the consent judgment was entered and, upon ten days' written notice to the trustees,] may apply to the court in which the consent judgment was entered for an order directing payment out of the travel agency recovery fund, of the amount unpaid upon the consent judgment, subject to the limitations stated in this section[.]; provided that the trustees must be given ten days' written notice of the hearing on the application. The trustees shall have the right to intervene in and defend any application to the court for an order directing payment out of the travel agency recovery fund.

## ACT 193

(e) The court shall proceed upon the application for an order directing payment out of the travel agency recovery fund in a summary manner, and, upon the hearing of the application, the person aggrieved shall be required to show[:] that the person:

- (1) [He or she is] Is not a spouse of the judgment debtor, or the personal representative of the judgment debtor's spouse;
- (2) [He or she has] Has complied with all the requirements of this section;
- (3) [He or she has] Has obtained a judgment as set out in subsections (c), (d), or (g), stating the amount of the judgment and the amount owing on the judgment at the date of the application;
- (4) [He or she has] Has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets[,] liable to be sold or applied in satisfaction of the judgment; and
- (5) [That by] By the search required by this section, [he or she] has discovered no personal or real property or other assets at the time of the application liable to be sold or applied, or [that he or she] has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied[,] and [that he or she] has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.

(f) The court shall make an order directed to the trustees requiring payment from the travel agency recovery fund of whatever sum it shall find to be payable upon the claim, pursuant to the provisions of and in accordance with the limitations contained in this section, if the court is satisfied, upon the hearing of the truth of all matters required to be shown by the person aggrieved by subsection (e), that the person aggrieved has fully pursued and exhausted all remedies [available to the person aggrieved] for recovering the amount awarded by the judgment of the court. Upon a showing that the licensee is a debtor under the United States Bankruptcy Code[,] (11 U.S.C. §101, et seq.), as amended, the person aggrieved shall have complied with the requirements stated in subsection (e)[, paragraphs] (4) and (5)[,] and shall be deemed to have fully pursued and exhausted all remedies available to the person aggrieved for recovering the amount which may be awarded by the court."

SECTION 4. Section 468K-7.3, Hawaii Revised Statutes, is amended to read as follows:

**"[§468K-7.3] Revocation, [or] suspension, or denial of license.** (a) The director may refuse to issue a license under this chapter, revoke any license issued under this chapter, or suspend the right of a travel agency or sales representative to use the license for violations of this chapter or its adopted rules, including:

- (1) Making any statement, either orally or in writing, in connection with a sale or offer to sell travel services which has the tendency or capacity to mislead or deceive;
- (2) Omitting any material fact in connection with a sale or offer to sell travel services;
- (3) Failing to perform any term or condition of a contract for travel services, whether the term or condition was made in writing or orally by the travel agency or sales representative;

- (4) Failing to make a refund in a timely manner to a person with whom the travel agency or sales representative has contracted for travel services; provided that all refunds shall be made within thirty days from the day (A) The refund is requested in writing, or (B) the travel agency or sales representative has recovered the amount to be refunded or has obtained appropriate credits from the ultimate provider of travel service transportation carrier, or other source not including travel service wholesaler, whichever is later; provided further that the travel agency or sales representative shall exercise reasonable diligence in recovering or obtaining the amounts or credits;
  - (5) Acting in participation or concert with any person who violates this chapter or its adopted rules;
  - (6) Making any statement that a travel agency or sales representative is recommended, endorsed, or approved by the department; provided that a licensee may state that it is licensed by the department;
  - (7) Committing any other conduct in connection with a sale or offer to sell travel services which constitutes fraudulent or dishonest dealings; [and]
  - (8) Violating section 480-2 in connection with a sale or offer to sell travel services[.];
  - (9) Misrepresenting a material fact in any application for issuance or renewal of a license; and
  - (10) Failing to satisfy any judgment arising from services or materials rendered in the conduct of business as a travel agency or sales representative.
- (b) The director may refuse to issue a license under this chapter to, revoke a license issued under this chapter of, or suspend the right to use a license issued under this chapter of any person who has been an officer, director, or partner of a corporation or partnership whose license hereunder is revoked or suspended; provided that a license may be denied, revoked, or suspended under this subsection only if the person participated in the acts or omissions which caused the revocation or suspension of the corporation's or partnership's license."

SECTION 5. Section 468K-9, Hawaii Revised Statutes, is amended to read as follows:

**"§468K-9 Subrogation to rights of creditor.** When, upon the order of the court, the trustees have paid from the travel agency recovery fund any sum to the judgment creditor, the trustees shall be subrogated to [all of] the rights of the judgment creditor to the extent of the amount of the payment, and the judgment creditor shall assign [all his or her] the judgment creditor's right, title, and interest in the judgment to the trustees [and any] in the amount of that payment from the trustees. Any amount and interest so recovered by the trustees on the judgment shall be deposited to the credit of the travel agency recovery fund."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 7, 1989.)

## ACT 194

### ACT 194

S.B. NO. 1825

A Bill for an Act Relating to Disasters.

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

SECTION 1. Section 127-11, Hawaii Revised Statutes, is amended to read as follows:

**"§127-11 Major disaster fund.** The director shall submit requests to the legislature to appropriate from the general revenues of the State sufficient moneys as may be necessary for expenditure by or under the direction of the governor for immediate relief in the event of the occurrence of any major disaster in any part of the State; provided that:

- (1) [the] The governor may not expend in excess of [\$750,000] \$1,000,000 for immediate relief of any single major disaster[.]; and
- (2) Provided further that in addition to the funds in paragraph (1), an additional \$1,000,000 shall be available solely for the purpose of matching federal disaster relief funds when these funds become available following a presidential disaster declaration.

In expending the moneys, the governor may allot any portion thereof to any agency, office, or employee, federal, state, or county, for the more speedy and efficient relief of the conditions created by the disasters. The governor may determine whether a major disaster contemplated by this section has occurred, and any determination shall be conclusive."

SECTION 2. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$1,500,000, or 0.064 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,500,000, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$1,500,000, or so much thereof as may be necessary for fiscal year 1990-1991, to carry out the purposes of this Act. The sums appropriated shall be expended by the department of defense.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

### ACT 195

S.B. NO. 1871

A Bill for an Act Relating to the Insurance Code.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**“§431:4-106.5 Membership in mutual or subscriber in reciprocal insurers; no personal liability of representative.** Any person may make application to enter into agreement for and hold policies or contracts in or with and be a member or subscriber of any domestic, foreign, or alien mutual or reciprocal insurer. Any officer, representative, or trustee, receiver, or legal representative of any such member or policyholder shall be recognized as acting for or on its behalf for the purpose of such contracts or membership, but shall not be personally liable upon the contract by reason of acting in such representative capacity.”

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**“§431:8-300 Exemptions from surplus lines law.** This part shall not apply to reinsurance or to the following insurance when placed by a licensed general agent of this State:

- (1) Ocean marine insurance;
- (2) Insurance on subjects located, resident, or to be performed wholly outside this State, or on vehicles or aircraft owned and principally garaged outside this State; or
- (3) Insurance of aircraft or cargo of such aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of such aircraft.”

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**“§431:10A-310 Filing requirements for advertising.** (a) Every insurer, nonprofit medical indemnity or hospital service association, health maintenance organization, or other entity providing medicare supplement insurance or benefits in this State upon reasonable request from the commissioner shall provide a copy of any medicare supplement advertisement intended for use in this State whether through written, radio, or television medium to the commissioner for review.

(b) If the commissioner finds the advertisement to be in violation of any provision of the insurance code or any rule, the commissioner shall order the insurer, nonprofit medical indemnity or hospital service association, or health maintenance organization to cease and desist use of the advertisement pursuant to section 431:2-201 and section 431:2-202.

(c) In conjunction with a cease and desist order issued pursuant to subsection (b), the commissioner may order the insurer, nonprofit medical indemnity or hospital service association, or health maintenance organization to refund to the insured the premium paid for the medicare supplement policy. Any refund of an amount paid by the insured for the medicare supplement insurance shall be paid within fifteen days to the person entitled thereto; provided that by rule the commissioner may prescribe an amount below which no refund need be made.”

SECTION 4. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part 3 of article 10A to be designated and to read as follows:

**“§431:10A-311 Penalties.** In addition to any other applicable penalties for violations of the insurance code, pursuant to section 431:2-203, the commissioner may require insurers violating any provision of this part or rules adopted pursuant to this part to cease marketing or selling any medicare supplement policy in this State which is related directly or indirectly to a violation or may require such insurer to take such actions as are necessary to comply with the provisions of this part, or both.”

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SECTION 5. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**“§431:10A-312 Severability.** If any provision of this part or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the part and the application of such provision to other persons or circumstances shall not be affected thereby.”

SECTION 6. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**“§431:14-105.5 Standing to intervene in rate-filing and rate-making proceedings.** In any workers’ compensation insurance rate-filing and rate-making proceeding before the commissioner under article 14, an insured who is covered by workers’ compensation insurance shall have the right to intervene and participate as a party in interest.”

SECTION 7. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 19 to be appropriately designated and to read as follows:

**“§431:19- Confidential treatment.** All nonpublic financial information of a captive insurance company and of its parent or its member organizations, or a risk retention captive insurance company, disclosed to the commissioner pursuant to section 431:19-102 shall be given confidential treatment and shall not be made public by the commissioner, except to insurance departments of other states, without the prior written consent of the captive insurer or parent company or member organization or risk retention captive insurer to which it pertains. In the event the commissioner determines that the interest of the policyholders, shareholders, or the public will be served by making the information public, then after giving the captive insurance company and its parent or member organizations or risk retention captive insurer which would be affected thereby three days notice of intent, the commissioner may make public all or any part thereof in such manner as the commissioner deems appropriate.

For purposes of this section, “nonpublic financial information” means information regarding a person’s financial condition that prior to disclosure to the commissioner pursuant to section 431:19-102 is not a public record as defined in rule 1001(5) of section 626-1. In the case of a person whose equity securities are collectively owned and held by thirty-six or more persons, “nonpublic financial information” does not include financial information disclosed to owners and holders of equity securities. As used herein, equity securities means:

- (1) A share in a corporation, whether or not transferable or denominated a “stock”, or similar security evidencing an ownership interest in the person;
- (2) Interest of a limited partner in a limited partnership;
- (3) Interest of a partner in a partnership, including a joint venture; or
- (4) A warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in (1), (2), or (3).”

SECTION 8. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**“§431:20-110.5 Dividends.** A title insurer shall not pay any dividends except from profits remaining on hand after retaining unimpaired assets aggregating in value an amount equal to the sum of the following:

- (1) The aggregate par value of the shares of its capital stock, issued and outstanding, including treasury shares;
- (2) The amount set apart as the title insurance reinsurance reserve; and
- (3) A sum sufficient to pay all liabilities for expenses and taxes, all losses reported or in course of settlement, and all other indebtedness, without impairment of the amount required to be set apart as the title insurance reinsurance reserve.”

SECTION 9. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**“§432:1-204 Foreign societies.** Any foreign society subject to this article shall not be excused or relieved from compliance with this article by reason of the nonresidence of its members. Upon a showing to the satisfaction of the commissioner that it is impracticable and would work a hardship to comply with section 432:1-202(b) the commissioner shall permit the society to qualify in this respect upon its appointment of a resident agent, in the same manner and subject to the same conditions as are provided for in the case of foreign corporations under the general laws on corporations. Section 432:1-202(b) shall likewise be applicable to the agent.”

SECTION 10. Section 431:2-209, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Five years after conclusion of transactions to which they relate, the commissioner may destroy any correspondence, claim files, working papers of examinations of insurers, reports of examination by insurance supervisory officials of other states, void or obsolete filings relating to rates, foreign or alien insurers' annual statements and valuation reports, license applications, cards, expired bonds, records of hearings, investigations, and any similar records, documents, or memoranda now or hereafter in the commissioner's possession.”

SECTION 11. Section 431:2-214, Hawaii Revised Statutes, is amended to read as follows:

**“§431:2-214 The commissioner’s education and training fund.** (a) The commissioner may establish a separate fund designated as the commissioner’s education and training fund.

(b) This fund may be used to compensate or reimburse staff and personnel of the insurance division for education and training. Upon approval by the commissioner, staff and personnel may be compensated or reimbursed for:

- (1) Actual travel expenses in amounts customary for these expenses;
- (2) A reasonable living expense allowance at a rate customary for these expenses;
- (3) Per diem compensation at a [rate customary for these compensation;] customary rate; and
- (4) Any fees or charges necessary to attend educational and training conferences, workshops, seminars, and any other event of this nature.

(c) Any person receiving a reimbursement or compensation from the commissioner’s education and training fund shall submit to the commissioner for approval a detailed account of all expenses and compensation necessarily incurred on account of any education and training for the insurance division.

[(d) Every rate filing shall be accompanied by a fee as designated in sections 431:14-104 and 431:14-205. This fee shall be credited to the commissioner’s education and training fund.]”

## ACT 195

SECTION 12. Section 431:2-302, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In lieu of making the commissioner’s examination, the commissioner may accept a full report of the last recent examination of a foreign or alien insurer certified to by the insurance supervisory official of the state, province, or country of domicile or the state of entry into the United States. A certified copy of the annual report of the directors and statement of accounts approved by the British Board of Trade in London in accordance with the British Assurance Companies’ Act may be acceptable to the commissioner in the absence of other British insurance supervisory officials’ examination.”

SECTION 13. Section 431:3-205, Hawaii Revised Statutes, is amended to read as follows:

**“§431:3-205 Funds required of new insurers.** Subject to section 431:3-203(a)(2), to qualify to transact any one class of insurance, an insurer, not existing and authorized in this State on [December 31, 1987,] July 1, 1988, shall:

- (1) Deposit in a federally insured financial institution within the State, paid-up capital stock in the case of a stock insurer, or unimpaired surplus if (A) a reciprocal insurer, or (B) a mutual insurer which does not seek to qualify upon the basis of applications and premiums collected as provided in sections 431:4-303 to 431:4-307, in an amount not less than show<sup>1</sup> in the applicable Schedule “A”;
- (2) Maintain this deposit at all times while the insurer is licensed and transacting insurance in [the] this State; and
- (3) Secure the approval of the commissioner before making withdrawals from [this designated] the depository.

### Schedule “A”

Class of Insurance	Amount Required
Life	\$ 600,000
Disability	450,000
Property	750,000
Marine and Transportation	1,000,000
Vehicle	1,000,000
General Casualty	1,500,000
Surety	1,000,000
Title	400,000”

SECTION 14. Section 431:4-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) A domestic stock insurer may decrease its capital stock by:
- (1) Vote of not less than seventy-five per cent of the holders of the shares of stock outstanding and entitled to vote; and
  - (2) Filing a certificate [that such vote occurred, executed in the same manner as the section 416-65 certificate, and] executed in the same manner as provided in section 415-58, that such vote occurred, upon which filing[,] the decrease in capital is effective.”

SECTION 15. Section 431:4-504, Hawaii Revised Statutes, is amended to read as follows:

**“§431:4-504 Merger or conversion of reciprocal insurer.** (a) A domestic reciprocal insurer, upon affirmative vote of not less than two-thirds of the subscribers

who vote upon such merger pursuant to such notice as may be approved by the commissioner and with approval of the commissioner of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

(b) Every new reciprocal insurer formed by merger shall assume and succeed to all of the obligations and liabilities of the respective merging reciprocal insurers and shall be held liable to pay and discharge all such debts and liabilities and perform such obligations in the same manner as if they had been incurred or contracted by it, but the subscribers of the predecessor reciprocal insurers shall continue subject to all the liabilities, claims, and demands which shall then exist, or which may thereafter accrue against them, or any of them, by reason of any liabilities and obligations incurred by them, or on their behalf as the subscribers before the date of merger.

[(b)] (c) Such a stock or mutual insurer shall be subject to the same capital requirements and shall have the same rights as a like domestic insurer transacting like classes of insurance.

[(c)] (d) The commissioner shall not approve:

- (1) Any plan for a merger or conversion which is inequitable to subscribers, or
- (2) Any plan for a conversion to a stock insurer which does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to the subscriber's interest in the reciprocal insurer, as determined in accordance with section 431:4-424, and a reasonable length of time within which to exercise the right."

SECTION 16. Section 431:6-301, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to the foregoing, an insurer may invest any of its funds in obligations issued or guaranteed by the Inter-American Development Bank, the International Bank for Reconstruction and Development [or], the Asian Development Bank[.] or the African Development Bank."

SECTION 17. Section 431:7-303, Hawaii Revised Statutes, is amended to read as follows:

**“§431:7-303 Securities eligible for deposit.** All deposits shall consist of cash or other assets comprised of securities which are eligible for the investment of the funds of insurers under section 431:6-301 representing public obligations, and section 431:6-302[,] representing corporate obligations."

SECTION 18. Section 431:8-102, Hawaii Revised Statutes, is amended to read as follows:

**“§431:8-102 Definitions.** As used in this article: [(a)] [Authorized insurer] “Authorized insurer” means an insurer holding a valid certificate of authority to transact an insurance business in this State.

[(b)] [Surplus lines broker] “Surplus lines broker” means any general agent licensed under section [431:3-308] 431:8-310 to place insurance on risks resident, located, or to be performed in this State with unauthorized insurers.

[(c)] [Surplus lines insurance] “Surplus lines insurance” means any insurance on risks resident, located or to be performed in this State, procured from or placed with an unauthorized insurer in accordance with part III of this article.

[(d)] [Unauthorized insurer] “Unauthorized insurer” means an insurer not holding a valid certificate of authority to transact an insurance business in [Hawaii.] this State."

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SECTION 19. Section 431:8-201, Hawaii Revised Statutes, is amended to read as follows:

**“§431:8-201 Transacting insurance business without certificate of authority prohibited.** It shall be unlawful for any insurer to transact an insurance business in this State, as defined in section 431:1-215, without a certificate of authority[; provided, however], except that this section shall not apply to:

- (1) The lawful transaction of surplus lines insurance;
- (2) The lawful transaction of reinsurance by insurers;
- (3) Transactions in this State involving a policy lawfully solicited, written, and delivered outside of this State covering only subjects of insurance not resident, located, or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such policy;
- (4) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses;
- (5) Transactions in this State involving group life and group accident and sickness or blanket accident and sickness insurance or group annuities where the master policy of such groups was lawfully issued and delivered in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business;
- (6) Transactions in this State involving any policy of insurance or annuity contract issued prior to [July 1, 1988;] and
- (7) Transactions in this State involving [insurance on vessels, craft or hulls, cargos, marine builder's risks, marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.] ocean marine insurance.”

SECTION 20. Section 431:8-202, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) This section does not apply to:

- (1) Transactions for which a certificate of authority to do business is not required of an insurer under the insurance laws of this State; and
- (2) The property and operation of aircraft engaged in interstate or foreign commerce[; and]
- (3) Those transactions exempted from the application of section 431:8-201].”

SECTION 21. Section 431:8-205, Hawaii Revised Statutes, is amended to read as follows:

**“§431:8-205 Insurance independently procured; duty to report and pay tax.** (a) Nothing in this part shall prohibit a person from independently procuring, continuing, or renewing insurance from an insurer which is not authorized to transact insurance in this State.

[(a)] (b) Each insured who in this State procures or continues or renews insurance with an unauthorized insurer on a risk located or to be performed in whole or in part in this State, other than insurance procured through a surplus lines broker pursuant to part III of this article shall, within sixty days after the date the insurance was so procured, continued, or renewed, file a written report of the same with the commissioner, upon forms prescribed by the commissioner, showing:

- (1) The name and address of the insured or insureds;
- (2) The name and address of the insurer;
- (3) The subject of the insurance;
- (4) A general description of the coverage;
- (5) The amount of premium currently charged therefor; and
- (6) Such additional pertinent information as is reasonably requested by the commissioner.

[(b)] (c) Gross premiums charged for the insurance, less any return premiums, are subject to a tax at the rate of 4.68 per cent. At the time of filing the report required in subsection [(a),] (b), the insured shall pay the tax to the commissioner.

[(c)] (d) If an independently procured policy covers risks or exposures only partially located or to be performed in this State, the tax payable shall be computed on the portion of the premium properly attributable to the risks or exposures located or to be performed in this State.

[(d)] (e) Delinquent taxes [hereunder] shall bear interest at the rate of ten per cent per annum.

[(e)] (f) This section does not abrogate or modify, and shall not be construed or deemed to abrogate or modify, any provision of section 431:8-202 or any other provision of this code.

[(f)] (g) This section shall not apply to life insurance, accident and sickness insurance, or annuities."

SECTION 22. Section 431:8-317, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The commissioner may suspend or revoke any surplus lines broker's license:

- (1) For failure to file [an] the annual statement required by section 431:8-313 or to pay the tax [as] required by [section 431:8-313 through section 431:8-316] section 431:8-315;
- (2) For failure to maintain an office in this State, or to keep records, or to allow the commissioner to examine such surplus lines broker's records as provided in this article;
- (3) For removal of office accounts and records from this State during the period in which such accounts are required to be maintained under this article;
- (4) For failure to maintain the bond required by section 431:8-310; or
- (5) For any of the causes for which a general agent's license may be suspended or revoked under article 9."

SECTION 23. Section 431:9-102, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) General agent means any person appointed under section 431:3-203(b)(1) and authorized by the insurer to perform all of the following acts in this State:

- (1) Solicit applications for insurance;
- (2) Collect premiums on insurance applied for or effectuated;
- (3) Appoint subagents and solicitors;
- (4) Arrange insurance on subjects located, resident, or to be performed wholly outside this State [in] with an authorized insurer for which the agent is not licensed;

## ACT 195

- (5) In accordance with the provisions of article 8, arrange insurance on subjects located, resident, or to be performed wholly outside this State [in] with an [authorized] unauthorized insurer; and
- (6) Any other lawful acts pursuant to this article."

SECTION 24. Section 431:10A-203, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10A-203 Standard provisions.** Every policy of group or blanket disability insurance shall contain in substance the following provisions, or provisions which in the opinion of the commissioner are more favorable to the individuals insured, or at least as favorable to such individuals and more favorable to the policyholder. No such policy of group or blanket disability insurance shall contain any provision relative to notice or proof of loss, or to the time for paying benefits, or to the time within which suit may be brought upon the policy, which in the opinion of the commissioner is less favorable to the individuals insured than would be permitted by the standard provisions required for individual disability insurance policies.

- (1) Representations. There shall be a provision that:
  - (A) All statements, made by the policyholder or by the individuals insured, shall be deemed to be representations and not warranties;
  - (B) No statement, made in the application by the policyholder, shall be used in any contest unless a copy of the application, if any, of the policyholder shall be attached to the policy when issued;
  - (C) No statement made by any individual insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such individual or to the individual's beneficiary, if any; and
  - (D) A misrepresentation, unless it is made with actual intent to deceive or unless it materially affects either the acceptance of the risk or the hazard assumed by the insurer, shall not prevent a recovery on the policy.
- (2) Certificates. There shall be a provision that the insurer shall issue to the policyholder for delivery to each insured employee or member, an individual certificate setting forth in summary form a statement of the essential features of the insurance coverage, and to whom the benefits are payable. If family members are insured, only one certificate need be issued for each family. This section shall not apply to blanket disability insurance policies.
- (3) Additional insureds. There shall be a provision that to the group originally insured may be added, from time to time, eligible new employees, members or dependents, as the case may be, in accordance with the terms of the policy.
- (4) Age limitations. There shall be a provision specifying:
  - (A) The ages, if any, to which the insurance provided shall be limited;
  - (B) The ages, if any, for which additional restrictions are placed on benefits; and
  - (C) The additional restrictions placed on the benefits at such ages.
- (5) Payment of premiums. There shall be a provision that all premiums due under the policy shall be remitted by the employer or employers of the persons insured, by the policyholder or by some other designated person acting on behalf of the association or group insured, to the insurer on or before the due date thereof within such grace period as may be specified therein."

SECTION 25. Section 431:10A-301, Hawaii Revised Statutes, is amended by amending the definition of "medicare supplement policy" to read:

- "(3) Medicare supplement policy means a group or individual policy of disability insurance or a subscriber contract of a nonprofit medical indemnity or hospital service association or health maintenance organization which is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare by reason of age. The term does not include:
  - (A) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations<sup>1</sup> or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations[, or];
  - (B) A policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if such association:
    - (i) Is composed of individuals all of whom are actively engaged in the same profession, trade or occupation;
    - (ii) Has been maintained in good faith for purposes other than obtaining insurance; and
    - (iii) Has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members[.]; or
  - (C) Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of this part or rule adopted thereunder, or issued to employees or members as additions to franchise plans in existence on the effective date of the applicable rule."

SECTION 26. Section 431:10A-304, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The commissioner shall issue reasonable rules to establish specific standards for the [policy] provisions[.] of medicare supplement policies. Such standards shall be in addition to and in accordance with applicable laws of this State, including the provisions of part I of this article, and may cover, but shall not be limited to:

- (1) Terms of renewability;
- (2) Initial and subsequent conditions of eligibility;
- (3) Nonduplication of coverage;
- (4) Probationary periods;
- (5) Benefit limitations, exceptions and reductions;
- (6) Elimination periods;
- (7) Requirements for replacement;
- (8) Recurrent conditions; and
- (9) Definition of terms."

SECTION 27. Section 431:10A-305, Hawaii Revised Statutes, is amended to read as follows:

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### **“§431:10A-305 Minimum standards for benefits[.] and claims payment.**

The commissioner shall issue reasonable rules to establish minimum standards for benefits and claims payment under medicare supplement policies.”

SECTION 28. Section 431:10A-306, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10A-306 Loss ratio standards.** (a) Medicare supplement policies shall be expected to return to policyholders benefits which are reasonable in relation to the premium charged. The commissioner shall issue reasonable rules to establish minimum standards for loss ratios of medicare supplement policies on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For the purposes of rules issued under this section, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be regarded as individual policies.

(b) No entity shall provide compensation to its agents or other producers which is greater than the renewal compensation which would have been paid on an existing medicare supplement policy if the existing policy is replaced by another medicare supplement policy with the same company where the new policy benefits are substantially similar to the benefits under the old medicare supplement policy and the old policy was issued by the same insurer or insurer group.”

SECTION 29. Section 431:10A-308, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10A-308 Notice of free examination.** Medicare supplement policies or certificates[, other than those issued pursuant to direct response solicitation,] shall have a notice prominently printed on the first page stating in substance that the applicant shall have the right to return the policy or certificate within [ten] thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. [Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare by reason of age shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason.] Any refund made pursuant to this section shall be paid directly to the applicant by the insurer in a timely manner.”

SECTION 30. Section 431:10C-103, Hawaii Revised Statutes, is amended by amending the definition of “no-fault benefits” to read:

- “(10) (A) No-fault benefits, sometimes referred to as personal injury protection benefits, with respect to any accidental harm means:
  - (i) All appropriate and reasonable expenses necessarily incurred for medical, hospital, surgical, professional, nursing, dental, optometric, ambulance, prosthetic services, [its] products and accommodations furnished, and x-ray. The foregoing expenses may include any nonmedical remedial care and treatment rendered in accordance with the

- teachings, faith, or belief of any group which depends for healing upon spiritual means through prayer;
- (ii) All appropriate and reasonable expenses necessarily incurred for psychiatric, physical, and occupational therapy and rehabilitation;
  - (iii) Monthly earnings loss measured by an amount equal to the lesser of:
    - (I) \$900 a month; or
    - (II) The monthly earnings for the period during which the accidental harm results in the inability to engage in available and appropriate gainful activity[.];
  - (iv) All appropriate and reasonable expenses necessarily incurred as a result of such accidental harm, including, but not limited to:
    - (I) Expenses incurred in obtaining services in substitution of those that the injured or deceased person would have performed not for income but for the benefit of the person or the persons' family up to \$800 a month;
    - (II) Funeral expenses not to exceed \$1,500; and
    - (III) Attorney's fees and costs to the extent provided in section [431:10C-208(a);] 431:10C-211(a);
- [Provided] provided that the term, when applied to a no-fault policy issued at no cost under the provisions of section [431: 10C-422(2)(B),] 431:10C-410(3)(A), shall not include benefits under items (i), (ii), and (iii) for any person receiving public assistance benefits.
- (B) No-fault benefits shall be subject to:
- (i) An aggregate limit of \$15,000 per person or such person's survivor where each applicable policy provides only the basic no-fault coverage; or
  - (ii) An aggregate limit of the expanded limits where the insured has contracted for it under an optional additional coverage."

SECTION 31. Section 431:10C-104, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any person who violates the provisions of this section shall be subject to the provisions of section [431:10C-118(a).] 431:10C-117(a)."

SECTION 32. Section 431:10C-109, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Notwithstanding the provisions of this section, the imposition of criminal sanctions under section [431:10C-118] 431:10C-117 shall not be precluded."

SECTION 33. Section 431:10C-111, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10C-111 [Restriction against cancellation or renewal.] Rejection of applications, cancellation, and nonrenewal of policies: when prohibited, when permitted.** (a) An insurer may not cancel or refuse to renew a no-fault policy, including required optional additional insurance meeting the provisions of section 431:10C-302, once issued except when:

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- (1) The license of the principal operator to operate the type of motor vehicle is suspended or revoked; or
- (2) Premium payments for the policy are not made after reasonable demand therefor.

(b) An insurer may refuse to renew optional additional coverage in excess of that which the insurer is required to make available to the insured under section 431:10C-302 where the insured is a member of a class set forth in section [431:10C-408(b)(1)(A) or (B)] 431:10C-407(b)(1)(A) or (B) at the time of the refusal to renew.

(c) In any case of cancellation or refusal to renew, the insurer shall continue all no-fault and optional-additional<sup>1</sup> coverages in force, to the date of expiration or for thirty days following notice, whichever date occurs first.

(d) An insurer may reject or refuse to accept additional applications for, or refuse to renew no-fault policies:

- (1) If the commissioner determines that the financial soundness of the insurer would be impaired by the writing of additional policies of insurance; or
- (2) The insurer ceases to write any new policies of insurance of any kind in this State.

[[(d)] (e) Within fifteen days of a cancellation and the return of the no-fault card or a signed affidavit stating the card was lost or stolen, the insurer shall refund the pro rata unearned portion, if any, of any prepaid premiums. Premiums shall be considered "earned" as provided in section 431:10C-109.]

**SECTION 34.** Section 431:10C-120, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any insurer, any general agent, agent, solicitor, or representative of an insurer who violates subsection (a) shall be subject to the provisions of section [431:10C-117(e).] 431:10C-117(c)."

**SECTION 35.** Section 431:10C-121, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In the event section [431:10C-308(a) through (c)] 431:10C-306(a) through (c) is held constitutionally invalid, then it is the intent of the legislature that the following sections only shall be voided:

- (1) 431:10C-104,
- (2) 431:10C-105,
- (3) 431:10C-120,
- (4) 431:10C-303,
- (5) 431:10C-304, and
- (6) 431:10C-305.

It shall be conclusively presumed that the legislature would have enacted the remainder of this article without such invalid or unconstitutional provision."

**SECTION 36.** Section 431:10C-401, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A joint underwriting plan is established consisting of all insurers authorized to write and engage in writing [automobile] motor vehicle insurance in this State[.], except those insurers writing motor vehicle insurance exclusively under section 431:10C-106."

**SECTION 37.** Section 431:11-102, Hawaii Revised Statutes, is amended by amending the definition of "control" to read as follows:

“Control” (including controlling, controlled by, and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

- (1) Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten per cent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by section [431:11-105(i)] 431:11-105(k) that control does not in fact exist.<sup>1</sup>
- (2) The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific finds<sup>1</sup> of fact to support the commissioner’s determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.”

SECTION 38. Section 431:11-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person other than the issuer shall make a tender offer or a request or invitation for tenders[,] of, or enter into any agreement to exchange securities, or seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, the person, directly or indirectly (by conversion or by exercise of any right to acquire), would be in control of the insurer[. No], and no person shall enter in an agreement to merge with or otherwise to acquire control of a domestic insurer or any person or any person controlling a domestic insurer unless, at the time any offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer, and the insurer has sent to its shareholders, a statement containing the information required by subsection (b) and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner hereinafter prescribed.”

SECTION 39. Section 431:16-214, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 431:16-208. Nothing in subsection (b) shall limit the duty of the association to render a report of its activities under section [431:16-215.] 431:2-304(b).”

SECTION 40. Section 431:19-102, Hawaii Revised Statutes, is amended to amend subsection (b) to read as follows:

“(b) No captive insurance company shall do any insurance business in this State unless:

- (1) It first obtains from the commissioner a license authorizing it to do insurance business in this State;
- (2) Its board of directors holds at least one meeting each year in this State;

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- (3) It maintains its principal place of business in this State; and
- (4) It appoints a resident [registered broker or] agent to accept service of process and to otherwise act on its behalf in this State. Whenever the [registered broker or] agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the commissioner shall be an agent of such captive insurance company upon whom any process, notice,<sup>1</sup> or demand may be served."

SECTION 41. Section 431:19-108, Hawaii Revised Statutes, is amended to read as follows:

**"§431:19-108 Examinations and investigations.** (a) At least once a year, and whenever the commissioner determines it to be prudent, the commissioner, or a designated agent, shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this article. The commissioner, upon application, may enlarge the one-year period to three years; provided that the captive insurance company is subject to a comprehensive annual audit during that period of a scope satisfactory to the commissioner by independent auditors approved by the commissioner. [The expenses and charges of the examination shall be paid to the State by the company or companies examined and the director of finance shall issue warrants for the proper charges incurred in all examinations.]

(b) The powers, authorities, and duties relating to examinations vested in and imposed upon the commissioner under section 431:2-301 through section 431:2-307 of the code are extended to and imposed upon the commissioner in respect to examinations of captive insurance companies."

SECTION 42. Section 431:4-425, Hawaii Revised Statutes, is repealed.

SECTION 43. Section 431:10-213, Hawaii Revised Statutes, is repealed.

SECTION 44. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 45. This Act shall take effect upon its approval.

(Approved June 7, 1989.)

### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

## ACT 196

S.B. NO. 2004

A Bill for an Act Relating to Encouraging Small Business Innovation and Research.

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

SECTION 1. The legislature finds that the federal small business innovation research (SBIR) program provides awards of up to \$50,000 for research, and that a recipient of a first phase award may compete for a second phase award of up to \$500,000 to develop a concept further and to demonstrate the commercial viability of the innovation. Other states, such as Ohio, Michigan, and Pennsylvania have

established complementary grants for first phase awardees to enhance their competitiveness and increase their prospects for winning second phase awards.

The legislature finds that complementary grants will increase the competitiveness of small businesses in Hawaii and enhance their prospects for bringing second phase awards of federal funds into the State.

SECTION 2. Chapter 206M, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§206M- Annual reports.** The development corporation shall report annually to the legislature twenty days prior to the convening of the session on the impact of the program on:

- (1) Increasing the awareness of the federal small business innovation research program and the number of companies submitting proposals to federal agencies;
- (2) Increasing the number of phase I awards received by Hawaii businesses under the small business innovation research program; and
- (3) Increasing the number of phase I to phase II conversions by Hawaii businesses.”

SECTION 3. Section 206M-15, Hawaii Revised Statutes, is amended to read as follows:

**“[§206M-15] High technology research and development fund.** (a)

There is established the high technology research and development fund into which shall be deposited all moneys as may be appropriated by the legislature or as may be contributed or accrued to the development corporation to fund high technology research and development projects, and from which the development corporation may fund high technology research and development projects under agreements with any [State] state or county agency or other organizations[.], including high technology companies. In making any expenditure under this section, the development corporation shall analyze each funding request to determine whether the project to be undertaken will be economically viable and beneficial to the State.

(b) The development corporation may provide grants of 50 per cent of the federal grant up to \$25,000 to each business in Hawaii that receives a federal small business innovation research phase I grant or contract from any participating federal agency during calendar year 1989 or subsequent years subject to the availability of funds.

(c) The development corporation shall adopt rules pursuant to chapter 91 that will:

- (1) Specify the qualifications for eligibility of grant applicants;
- (2) Establish priorities in determining eligibility in the event that insufficient funds are available to fund otherwise qualified applicants; and
- (3) Give preference to all qualified businesses that received a single award in one calendar year over multiple award grantees.

The development corporation may adopt any other rules pursuant to chapter 91 necessary for the purposes of this section.”

SECTION 4. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$250,000, or 0.011 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

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SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000, or so much thereof as may be necessary for fiscal year 1989-1990, for the high technology research and development fund.

The sum appropriated shall be expended by the high technology development corporation for the purposes of this Act.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 197**

S.B. NO. 645

A Bill for an Act Relating to State Officers and Employees Excluded from Collective Bargaining and Making Appropriations and other Adjustments.

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

### **PART I**

SECTION 1. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$4,859,050 or 0.21 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

### **PART II**

SECTION 2. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the 1989-1991 and 1991-1993 fiscal bienniums, the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

<u>FUND</u>	<u>FY 1989-90</u>	<u>FY 1990-91</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
General	\$4,202,225	\$7,854,330	\$4,727,015	\$4,210,731
Special	\$ 490,983	\$ 849,878	\$ 428,475	\$ 378,273
Federal	\$ 115,362	\$ 195,215	\$ 132,813	\$ 117,714
Other	\$ 90,851	\$ 103,183	\$ 90,871	\$ 93,035

SECTION 3. Funds appropriated or authorized by this Part shall be expended by the director of finance in the respective fiscal years for the purposes of this Part.

### **PART III**

SECTION 4. There are appropriated or authorized from the sources of funding indicated below to Administrative Director Services (JUD 201) the follow-

ing sums, or so much thereof as may be necessary, to fund for the 1989-1991 and 1991-1993 fiscal bienniums, the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, by the chief justice for officers and employees excluded from collective bargaining:

FUND	<u>FY 1989-90</u>	<u>FY 1990-91</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
General	\$526,340	\$884,912	\$675,562	\$624,753
Special	\$ 190	\$ 635	\$ 840	\$ 840

SECTION 5. The sums appropriated or authorized by this Part shall be expended by the chief justice in the respective fiscal years for the purposes of this Part.

#### **PART IV**

SECTION 6. There are appropriated out of the general revenues of the State of Hawaii to the legislative agencies indicated below, the following sums, or so much thereof as may be necessary, to fund for fiscal year 1989-1990, the salary increases for officers and employees in these agencies excluded from collective bargaining:

	<u>FY 1989-90</u>
Office of the Legislative Auditor	\$63,580
Ethics Commission	\$ 8,597
Legislative Reference Bureau	\$43,705
Ombudsman	\$14,603

SECTION 7. The sums appropriated by this Part shall be expended by the respective heads of the legislative agencies.

#### **PART V**

SECTION 8. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 9. Funds appropriated or authorized by this Act which are not expended or encumbered by June 30, 1990, June 30, 1991, June 30, 1992, and June 30, 1993, of the respective fiscal years shall lapse as of those dates.

SECTION 10. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

#### **ACT 198**

S.B. NO. 653

A Bill for an Act Relating to Board of Education.

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

SECTION 1. Section 296-5, Hawaii Revised Statutes, is amended to read as follows:

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**"§296-5 Compensation; expenses.** Members shall be allowed:

- (1) Compensation at the rate of [\$50] \$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 such board meetings or official business shall require a member to leave the island upon which the member resides."

SECTION 2. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that appropriations contained in this Act will cause the State general fund expenditure ceiling for fiscal year 1989-1990, to be exceeded by \$60,000, or 0.0026 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$60,000, or so much thereof as may be necessary for fiscal year 1989-1990, to carry out the purposes of this Act. The sum appropriated shall be expended by the department of education.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

## ACT 199

S.B. NO. 678

A Bill for an Act Relating to the Transient Accommodations Tax Registration.

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

SECTION 1. Section 237D-4, Hawaii Revised Statutes, is amended to read as follows:

**"§237D-4 Certificate of registration.** [No later than seven days before January 1, 1987, each] (a) Each operator as a condition precedent to engaging or continuing in the business of furnishing transient accommodations shall register with the director the name and address of each place of business within the State subject to this chapter. The operator shall [pay the sum of \$1 for each registration,] make a one-time payment as follows:

- (1) \$5 for each registration for transient accommodations consisting of one to five units; and
- (2) \$15 for each registration for transient accommodations consisting of six or more units;

upon receipt of which the director shall issue a certificate of registration in such form as the director determines, attesting that the registration has been made. The registration shall not be transferable and shall be valid only for the operator in whose name it is issued and for the transaction of business at the place designated therein. The registration, or in lieu thereof a notice stating where the registration may be inspected and examined, shall at all times be conspicuously displayed at

the place for which it is issued. [Any person commencing business as an operator after January 1, 1987, shall register and obtain a certificate of registration before commencing business. Each certificate of registration shall expire on December 31 next succeeding the date of its issuance.] Acquisition of additional units after payment of the one-time fee shall not result in additional fees. Any person registering or holding a certificate of registration under this chapter before January 1, 1990, shall pay a one-time registration fee according to the schedule in this subsection on or before January 31, 1990, as a condition precedent to engaging or continuing in business.

(b) The registration provided for by this section shall be effective until canceled in writing. Any application for the reissuance of a previously canceled registration identification number after December 31, 1989, shall be regarded as a new registration application and shall be subject to the payment of the one-time registration fee in subsection (a). The director may revoke or cancel any license issued under this chapter for cause as provided by rule under chapter 91.

(c) If the license fee is paid, the department shall not refuse to issue a registration or revoke or cancel a registration for the exercise of a privilege protected by the first amendment of the Constitution of the United States, or for the carrying on of interstate or foreign commerce, or for any privilege the exercise of which, under the Constitution and laws of the United States, cannot be restrained on account of nonpayment of taxes, nor shall section 237D-14 be invoked to restrain the exercise of such a privilege, or the carrying on of such commerce.

(d) Any person who may lawfully be required by the State, and who is required by this chapter, to register as a condition precedent to engaging or continuing in the business of furnishing transient accommodations subject to taxation under this chapter, who engages or continues in the business without registering in conformity with this chapter, shall be guilty of a misdemeanor. Any director, president, secretary, or treasurer of a corporation who permits, aids, or abets such corporation to engage or continue in business without registering in conformity with this chapter, shall likewise be guilty of a misdemeanor. The penalty for the misdemeanors shall be that prescribed by section 231-34 for individuals, corporations, or officers of corporations, as the case may be, for violation of that section."

SECTION 2. Section 237D-14, Hawaii Revised Statutes, is amended to read as follows:

**"[§237D-14] Collection by suit; injunction.** The department of taxation may collect taxes due and unpaid under this chapter, together with all accrued penalties, by action in assumpsit or other appropriate proceedings in the circuit court of the judicial circuit in which the taxes arose. After delinquency shall have continued for sixty days, or if any person lawfully required so to do under this chapter shall fail to apply for and secure a certificate as provided by this chapter for a period of sixty days after the first date when the person was required under this chapter to secure the certificate, [or if any person lawfully required so to do under this chapter shall fail to apply for and secure, on or before April 1, or shall fail to maintain in effect, a renewal of a certificate as provided by this chapter,] the department may proceed in the circuit court of the judicial circuit in which the transient accommodations are taxed, to obtain an injunction restraining the further furnishing of transient accommodations until full payment shall have been made of all taxes and penalties and interest due under this chapter, or until such certificate is secured, or both, as the circumstances of the case may require."

SECTION 3. Section 237D-5, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

## **ACT 200**

SECTION 5. This Act shall take effect on January 1, 1990; except that sections 2 and 3 of this Act shall take effect on July 1, 1990.

(Approved June 7, 1989.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 200**

S.B. NO. 690

A Bill for an Act Relating to Public Contracts.

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

SECTION 1. Section 103-22, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In all cases of expenditures of public money that is more than \$4,000 but less than \$8,000, a call for informal bids shall be published at least once in a newspaper of general circulation printed and published within the State; provided that:

- (1) In the case of public works or repairs and maintenance of buildings, roads, and other site improvements where the expenditure is more than \$4,000 but less than \$15,000, a call for informal bids shall be published at least once in a newspaper of general circulation printed and published within the State; and
- (2) In the case of the repair of publicly owned or leased heavy equipment, automotive equipment, [and] sewage treatment plants, utility lines, and for emergency roadway work, [where] in which the expenditure is more than \$4,000 but less than \$10,000, the expenditure may be made without public advertisement for sealed tenders or a call for [ ] informal[] bids.

For the purposes of this subsection, “emergency roadway work” means roadway or structural repairs requiring immediate attention to protect the safety and welfare of motorists, pedestrians, or neighboring residents, or safeguard highway facilities and adjoining properties.”

SECTION 2. Act 229, Session Laws of Hawaii 1987, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect upon its approval; provided that on July 1, [1989,] 1991, this Act shall be repealed and section 103-22, Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the approval of this Act.”

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

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

(Approved June 7, 1989.)

## ACT 201

S.B. NO. 819

A Bill for an Act Relating to Labeling.

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

SECTION 1. Section 486-26, Hawaii Revised Statutes, is amended to read as follows:

**“§486-26 Hawaii-made products.** No person shall keep, offer, display [or], expose for sale, or solicit for the sale of any item, product, souvenir, or any other merchandise which is labeled “made in Hawaii” or which by any other means misrepresents the origin of the item as being from any place within the State, which has not been manufactured, assembled, [or] fabricated, or produced within the State and which has not had at least [twenty-five] fifty-one per cent of its wholesale value added by manufacture, assembly, [or] fabrication, or production within the State.”

SECTION 2. Chapter 486, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§486- “Island fresh” milk.** (a) No person shall keep, offer, display, expose for sale, or solicit for the sale of any processed milk or milk product which is labeled with the term “island fresh”, or like terms, or which by any other means misrepresents the origin of the item as being from any place within the State unless the processed milk or milk product has been at least ninety per cent produced in the State.

(b) It shall be unlawful for any person to sell or offer to sell to a consumer, or expose for sale to a consumer, any processed milk or milk product for human consumption which has been at least ninety per cent produced within the State, without providing notice to the consumer that the processed milk or milk product has been locally produced. The notice shall be made by displaying on a conspicuous area on the principal display panels of the carton or container a label or sign printed in bold face or other distinctive type stating that the product is “island fresh” or using another similar term.

(c) For the purpose of this section:

“Carton” or “container” means a package containing processed milk or milk products.

“Consumer” means any person who purchases processed milk or milk products.

“Processed milk or milk product” means processed fresh milk and fresh milk products.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on October 1, 1989.

(Approved June 7, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

ACT 202

S.B. NO. 864

A Bill for an Act Relating to Health Clubs.

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

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

**“§486N- Payment of contract price.** Every health club contract in excess of one year in duration shall provide that the contract price be paid by an installment plan, whereby no more than twenty per cent of the contract price can be paid as the initial payment, and the balance of the contract price shall be paid in equal monthly amounts over the remaining term of the contract. The health club shall be entitled to charge interest on the overdue unpaid balance of any monthly installment subsequent to the initial payment. The interest charged on the contract shall comply with chapter 478.”

SECTION 2. Section 486N-1, Hawaii Revised Statutes, is amended to read as follows:

**“[§486N-1] Definitions.** As used in this chapter, unless the context otherwise requires:

“Business day” means any calendar day on which the health club is open for inspection and use by the buyer, except Saturdays, Sundays, and state or federal holidays.

“Buyer” means a natural person who enters into a health club contract.

“Contract price” means the price for the purchase of a membership in a health club or for services offered by a health club or for use of the facilities of a health club. Contract price does not include the cost of financing or late charges or penalties.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Health club” means any person operating a business organized for profit, offering facilities or services for the maintenance or development of physical fitness or well being through physical exercise. Each location at which the facilities or services are offered shall be deemed a separate health club.

“Health club contract” means a contract for membership in a health club, or for services offered by a health club, or for use of facilities of a health club, for a period longer than seven days.

“Social and recreational facilities” means those portions of the facilities of a health club devoted primarily to dining and entertaining.”

SECTION 3. Section 486N-8, Hawaii Revised Statutes, is amended to read as follows:

**“[§486N-8] Duration of contracts.** (a) Every health club contract shall specify the duration of the contract. [Health club contracts shall not have a duration longer than thirty-six months and shall not] The unexpired, aggregate term of any health club contract or contracts and any extensions or renewals thereof shall at no time exceed thirty-six months per buyer. In no case shall a health club contract be measured by the life of the buyer or the life of the health club.

[(b) A buyer may be given an option to renew the contract; provided that the buyer pays a reasonable consideration of not less than ten per cent of the cash price of the original contract.]

**(b) A health club contract may not contain an automatic renewal clause."**

SECTION 4. Section 486N-10, Hawaii Revised Statutes, is amended to read as follows:

**"[§486N-10] Preoperative requirements.** (a) No health club shall be considered fully operative until substantially all of the equipment and services listed in accordance with section 486N-9 are actually available for use by buyers.

(b) Every health club contract shall provide that the health club will be fully operative on a specified date no later than one year after the contract is signed by the buyer.

(c) If the health club is not fully operative at the time that the buyer signs the health club contract, the buyer shall have until midnight of the fifth business day after the day on which the buyer receives notice by mail that the health club is fully operative to cancel the contract in accordance with section 486N-6.

(d) All moneys received by a health club pursuant to a health club contract prior to the health club being fully operative shall be placed in an escrow account separate and apart from any account maintained by or for the health club's personal use or for use in the construction or operation of the health club or for the payment or benefit of employees of the health club.

The escrow account shall:

- (1) Be established in a bank, savings and loan association, or a trust company authorized to do business in the State under an escrow arrangement or corporation licensed as an escrow depository under chapter 449.
- (2) Provide that the purpose of the account is to protect the buyer in the event that the health club fails to be fully operative within one year following the advancement of any money by the buyer. Any buyer who has advanced moneys on deposit in the escrow account may maintain an action to recover all moneys advanced or may maintain a representative action to close the account and to release such moneys pro rata to all buyers similarly situated if such health club facility is not fully operative within one year of the advancement of any money by the buyer.
- (3) Be closed and released by the escrow agent to the health club only upon the health club becoming fully operative.

Within fifteen business days of a request in the State, or thirty days for out-of-state requests, a statement of the escrow account shall be furnished to buyers who have advanced funds or obligations.

**(e) In lieu of the escrow provisions required by this section, the health club may maintain a fidelity bond issued by a surety company authorized to do business in this State, the principal sum of which shall be at all times at least as great as the greater of the total amount of prepayment received for all health club contracts entered into prior to the health club being fully operative, or \$50,000.**

The bond required by this section shall be in favor of the State for the benefit of any buyer who is damaged by the health club's violation of law, or the health club's failure to comply with its contractual obligations to its buyers. Any buyer claiming against the bond may maintain an action at law against the health club and the surety; provided that the aggregate liability of the surety to all buyers for breaches of the conditions of the bond shall in no event exceed the amount of the bond.

The bond shall be in effect from the date that the health club commences the sale of health club contracts and shall be continuously maintained until two years from the date that the health club is fully operative.]"

## ACT 203

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

SECTION 6. This Act shall take effect on July 1, 1989, but shall not affect any binding health club contract which existed prior to such effective date.

(Approved June 7, 1989.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 203

S.B. NO. 967

A Bill for an Act Relating to Real Estate Licenses.

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

SECTION 1. Section 467-9.5, Hawaii Revised Statutes, is amended to read as follows:

**“§467-9.5 Prerequisites for written examination.** No person shall be eligible for the written examination unless:

- (1) The person is of the age of majority;
- (2) The person applying for the real estate [salesman] salesperson examination has satisfactorily completed a course on real estate principles or its equivalent, approved or accredited by the real estate commission;
- (3) The person applying for the real estate broker examination has satisfactorily completed a course for real estate brokers, or its equivalent, approved or accredited by the real estate commission;
- (4) The person applying for the real estate broker examination (A) [has previously been] is licensed as [a] an active or inactive Hawaii real estate [salesman,] salesperson, and (B) has [previously] been engaged in the real estate business as a licensed Hawaii real estate [salesman] salesperson for a minimum period of two years on a full-time basis and has practical experience in the real estate field as determined by the commission. The commission may waive all or a portion of the two years' experience, if the person has had other experience or education in [the selling or management of] real estate, which, in the opinion of the commission, is equivalent to two years' experience to be established by detailed explanatory affidavit or in such other manner as may be determined by the commission.

Each person shall certify on the application for examination that the prerequisites set forth above have been or will be satisfied prior to the date of examination. The examination score of any person who has taken the written examination without having satisfied the prerequisites set forth above shall be voided."

SECTION 2. Section 467-14, Hawaii Revised Statutes, is amended to read as follows:

**“§467-14 Revocation and suspension of licenses.** The real estate commission may revoke any license issued under this chapter, or suspend the right of the licensee to use the license, for any of the following causes:

- (1) Making any misrepresentation concerning any real estate transaction;
- (2) Making any false promises concerning any real estate transaction of a character likely to mislead another;
- (3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;
- (4) Without first having obtained the written consent so to do of both parties involved in any real estate transaction, acting for both the parties in connection with the transaction, or collecting or attempting to collect commissions or other compensation [for] the licensee's services from both of such parties;
- (5) When the licensee, being a real estate salesperson, accepts any commission or other compensation for the performance of any of the acts enumerated in the definition set forth in section 467-1 of real estate salesperson from any person, copartnership, or corporation other than the salesperson's employer or the broker with whom the salesperson associates or, being a real estate broker or salesperson, compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate salesperson, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than the salesperson's employer or the broker with whom the salesperson is associated;
- (7) Failing, within a reasonable time, to account for any moneys belonging to others which may be in the possession or under the control of the licensee;
- (8) Any other conduct constituting fraudulent or dishonest dealings;
- (9) When the licensee, being a copartnership, permits any member of the copartnership who does not hold a real estate broker's license to actively participate in the real estate brokerage business thereof or permits any employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
- (10) When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage business thereof or permits any officer or employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
- (11) When the licensee, being a real estate salesperson, fails to file with the commission a written statement setting forth the name of the real estate broker by whom the licensee is employed or with whom the licensee is associated;
- (12) When the licensee fails to obtain on the contract between the parties to the real estate transaction confirmation of who the broker represents;
- (13) Violating this chapter, chapter 484, 514A, 514E, or 515, or the rules adopted pursuant thereto;
- (14) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided that notwithstanding paragraph (5), a licensed broker may pay a commission to:
  - (A) A licensed broker of another state, territory, or possession of the United States if such broker does not conduct in this State any of the negotiations for which a commission is paid;
  - (B) A broker lawfully engaged in brokerage activity under the laws of a foreign country if such broker does not conduct in this State any of the negotiations for which a commission is paid; or

- (C) A travel agency that in the course of business as a travel agency or sales representative, arranges for compensation the rental of transient vacation rental; provided that for purposes of this paragraph "travel agency" means any sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination of such, which for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services, including an air or ocean carrier;
- (15) Commingling the money or other property of the licensee's principal with the licensee's own;
- (16) Converting other people's moneys to the licensee's own use;
- (17) The licensee is adjudicated insane or incompetent; and
- (18) Failing to ascertain and disclose all material facts concerning every property for which the licensee accepts the agency, so that the licensee may fulfill the licensee's obligation to avoid error, misrepresentation, or concealment of material facts; provided that for the purposes of this paragraph, the fact that an occupant has AIDS[,] or AIDS Related Complex (ARC) or has been tested for HIV (human immunodeficiency[ ]) virus infection shall not be considered a material fact[ ]; and
- (19) When the licensee obtains or causes to be obtained, directly or indirectly, any licensing examination or licensing examination question for the purpose of disseminating the information to future takers of the examination for the benefit or gain of the licensee.

Disciplinary action may be taken by the commission whether the licensee is acting as a real estate broker, or salesperson, or on the licensee's own behalf.

No licensee shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years."

SECTION 3. Section 467-18, Hawaii Revised Statutes, is amended to read as follows:

**"§467-18 Statute of limitation; recovery from fund.** (a) No action for a judgment which subsequently results in an order for collection from the real estate recovery fund shall be started later than two years from the accrual of the cause of action thereon. When any aggrieved person commences action for a judgment which may result in collection from the real estate recovery fund, the aggrieved person shall notify the real estate commission in writing to this effect at the time of the commencement of such action. The commission may intervene in and defend any such action.

(b) When any aggrieved person recovers a valid judgment in any circuit or district court where the violation occurred against any real estate broker, or real estate [salesman,] salesperson, upon the grounds of fraud, misrepresentation, or deceit, which occurred on or after January 1, 1968, the aggrieved person may, upon the termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon ten days written notice to the commission, may apply to the court for an order directing payment out of the real estate recovery fund, of the amount unpaid upon the judgment, subject to the limitations stated in this section. For any cause of action occurring prior to January 1, 1968, the aggrieved person must proceed against the existing bond covering the license which was in force prior to the establishment of the real estate recovery fund.

(c) The court shall proceed upon the application in a summary manner, and, upon the hearing thereof, the aggrieved person shall be required to show:

- (1) The person is not a spouse of debtor, or the personal representative of such spouse.
  - (2) The person has complied with all the requirements of this section.
  - (3) The person has obtained a judgment as set out in subsection (b) of this section, stating the amount thereof and the amount owing thereon at the date of the application.
  - (4) The person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment.
  - (5) That by such search the person has discovered no personal or real property or other assets liable to be sold or applied, or that the person has discovered certain of them, describing them, owned by the judgment debtor and liable to be so applied, and that the person has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized.
- (d) The court shall make an order directed to the commission requiring payment from the real estate recovery fund of whatever sum it finds to be payable upon the claim, pursuant to and in accordance with the limitations contained in this section, if the court is satisfied, upon the hearing, of the truth of all matters required to be shown by the aggrieved person by subsection (c) of this section and that the aggrieved person has fully pursued and exhausted all remedies available to the person for recovering the amount awarded by the judgment of the court.
- (e) Should the commission pay from the real estate recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker or real estate [salesman], salesperson, the license of the broker or [salesman] salesperson shall be automatically terminated upon the issuance of a court order authorizing payment from the real estate recovery fund. No such broker or [salesman] salesperson shall be eligible to receive a new license until the expiration of at least two years from the effective date of the termination of the license and until the broker or [salesman] salesperson has repaid in full, plus interest at the rate provided for in section 478-3, the amount paid from the real estate recovery fund on the broker's or [salesman's] salesperson's account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.
- (f) If, at any time, the money deposited in the real estate recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the commission, shall, when sufficient money has been deposited in the real estate recovery fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of six per cent a year."

SECTION 4. Section 467-20, Hawaii Revised Statutes, is amended to read as follows:

**"§467-20 False statement.** It shall be unlawful for any person or the person's agent to file with the real estate commission, or the testing service agency designated by the real estate commission, any notice, statement, or other document required under this chapter, which is false or untrue or contains any material misstatement of fact [and]. Any violation of this section shall constitute a misdemeanor[.] punishable pursuant to sections 706-640 or 706-663, or both, and not pursuant to section 467-26."

## ACT 204

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

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

(Approved June 7, 1989.)

## ACT 204

S.B. NO. 1175

A Bill for an Act Relating to Massage.

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

SECTION 1. Section 452-1, Hawaii Revised Statutes, is amended to read as follows:

**“§452-1 Definitions.** For the purpose of this chapter, the following definitions shall be adopted:

“Board” means the board of massage therapy created under this chapter.

“Massage” [or “massaging”], “massage therapy”, and “Hawaiian massage” commonly known as lomilomi, means any method of treatment [or therapy] of the superficial soft parts of the body, consisting of rubbing, stroking, [tapping,] ta-potement, pressing, shaking, or kneading with the hands, feet, [or] elbow, or arms, and whether or not aided by any mechanical or electrical apparatus, appliances, or supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments, or other similar preparations commonly used in this practice. Any mechanical or electrical apparatus used as described in this chapter shall be approved by the United States Food and Drug Administration.

“Massage establishment” means premises occupied and used for the purpose of practicing massage[;] therapy or massage therapy training; provided that when any massage establishment is situated in any building used for residential purposes, the massage establishment premises shall be set apart and shall not be used for any other purpose.

“Massage therapist” means any person who engages in the occupation or practice of massage for compensation.

“Massage therapist apprentice” means any person who engages in the occupation or practice of massage [for compensation] under the direct supervision of a sponsoring massage therapist[.] who is employed by or registered with an approved massage establishment.

“Massage therapist student” means any person who engages in the study or practice of massage therapy who is under the direct supervision of the teacher in a school setting.

“Out-call massage service” means any business which engages in or carries on the practice of massage, not at a fixed location but at a location designated by the customer, client, or service.”

SECTION 2. Section 452-2, Hawaii Revised Statutes, is amended to read as follows:

**“§452-2 License required.** (a) It is unlawful for any person in the State to engage in or attempt to engage in the occupation or practice of massage for compensation without a current massage therapist license [or massage therapist apprentice permit] issued pursuant to this chapter.

(b) A massage therapist apprentice who has a permit, or a massage therapist student under the direct supervision of a teacher in a massage school setting, is

also permitted to engage in or attempt to engage in the occupation or practice of massage.”

SECTION 3. Section 452-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Board members affiliated with any school teaching massage or any apprenticeship or other massage therapy training program shall disclose that affiliation and shall at all times adhere to the provisions of chapter 84 and the interpretations of that chapter by the state ethics commission.”

SECTION 4. Section 452-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The board shall adopt rules pursuant to chapter 91 relating to massage therapist apprenticeship and training including rules establishing qualifications for apprenticeship permits and training programs and the requirements to be met by massage therapist apprentices prior to taking the massage therapist license examination.”

SECTION 5. Section 452-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The executive secretary of the board shall determine the sufficiency of the preliminary qualifications of applicants for admission to examination and licensing.

- (1) A nonrefundable application fee shall be paid to the board at the time of the application.
- (2) The examination fee shall be refunded only if the applicant is found not qualified to take the license examination.
- (3) An applicant for examination shall have completed academic training in anatomy, physiology, structural kinesiology, and the theory and demonstration of massage, which is not confined to any specific system or method of massage[ , ] therapy, spent at least six months as a massage therapist apprentice[ , ] or massage therapist student in a school approved by the board, and met all other requirements set for apprentices or students by the board pursuant to section 452-6(c).”

SECTION 6. Section 452-16, Hawaii Revised Statutes, is amended to read as follows:

“**§452-16 Renewal of license; fees.** Massage therapist, massage establishment, and out-call massage service licenses shall expire on June 30 of each even-numbered year following the date of issuance unless renewed for the next biennium. These licenses may be renewed by filing an application therefor, accompanied by a renewal fee. The application shall be made between May 1 and June 30 of each even-numbered year. Failure to apply for renewal as provided in this section shall constitute a forfeiture of the license as of the date of expiration. Any license so forfeited may be restored within one year after expiration upon the filing of an application in the same manner and payment, in addition to all delinquent fees, of a penalty fee. Thereafter, the license shall not be restored unless the regular examination [for applicants is again taken and passed.] and all requirements for the examination including training have been met.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

## **ACT 205**

SECTION 8. This Act shall take effect upon its approval.

(Approved June 7, 1989.)

## **ACT 205**

S.B. NO. 1230

A Bill for an Act Relating to Motor Vehicle Repairs.

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

SECTION 1. Section 437B-23.5, Hawaii Revised Statutes, is amended to read as follows:

**"[ ]§437B-23.5[ ] Apprentices and helpers.** It shall be unlawful for any motor vehicle mechanic apprentice/trainee or motor vehicle mechanic helper to assist a motor vehicle repair dealer or motor vehicle mechanic unless the apprentice or helper works under the direct supervision of a registered or certified motor vehicle repair dealer or motor vehicle mechanic. All motor vehicle mechanic apprentices/trainees and motor vehicle helpers shall be assigned to and shall be the responsibility of a registered or certified motor vehicle mechanic, provided that each registered or certified mechanic shall have assigned to the mechanic not more than a total of five apprentices/trainees or helpers. In the event that a motor vehicle mechanic, who is assigned one or more motor vehicle mechanic apprentices/trainees or motor vehicle helpers, is terminated from employment, the motor vehicle repair dealer shall have thirty days to replace the motor vehicle mechanic in order to reassign the apprentices/trainees or helpers."

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

SECTION 3. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

## **ACT 206**

S.B. NO. 1805

A Bill for an Act Making an Appropriation for Rental Assistance.

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

SECTION 1. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$15,000,000, or 0.64 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii, the sum of \$15,000,000, or so much thereof as may be necessary for fiscal year 1989-1990, to be paid into the rental assistance revolving fund created under section 201E-132, Hawaii Revised Statutes.

SECTION 3. The sums appropriated shall be expended by the housing finance and development corporation for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1989.

(Approved June 7, 1989.)

## ACT 207

S.B. NO. 1813

A Bill for an Act Relating to the Insurance Code.

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

SECTION 1. Section 431:2-307, Hawaii Revised Statutes, is amended to read as follows:

**“§431:2-307 Insurance examiners’ revolving fund.** (a) The commissioner may establish a separate fund designated as the insurance examiners’ revolving fund.

(b) The funds shall be used to compensate independent contractor examiners. Independent contractor examiners may be reimbursed or compensated for:

- (1) Actual travel expenses in amounts customary for such expenses and approved by the commissioner;
- (2) A reasonable living expense allowance at a rate customary for such expense and approved by the commissioner; and
- (3) Per diem compensation at a rate customary for such compensation as approved by the commissioner.

(c) The funds may also be used to reimburse insurance division staff examiners for the following expenses necessarily incurred on account of an examination and the examiners’ education and training:

- (1) Actual travel expenses in amounts customary for such expenses and approved by the commissioner;
- (2) A reasonable living expense allowance at a rate customary for such expenses and approved by the commissioner; and
- (3) Any fee or tuition necessary to attend educational and training conferences, workshops, seminars, and any similar event of this nature.

(d) The funds may also be used for other expenses relating to examinations of insurance companies.

[[(c)] (e) All persons receiving any reimbursement or compensation from the insurance examiners’ revolving fund shall submit to the commissioner for approval a detailed account of all expenses and compensation necessarily incurred [on account of an examination]. Persons shall not receive or accept any additional emolument on account of an examination. [Any] In the case of an examination, any reimbursement or compensation made by the fund and approved by the commissioner shall be charged to the person being examined by the commissioner and all receipts shall be credited to the fund.

[[(d)] (f) Moneys in the insurance examiners’ revolving fund shall not revert to the general fund.

[[(e)] (g) Each authorized insurer shall deposit at a time determined by the commissioner the sum of \$200 with the commissioner to be credited to the insurance examiners’ revolving fund.”

SECTION 2. Section 431:3-206, Hawaii Revised Statutes, is amended to read as follows:

**“§431:3-206 Additional funds required, new insurers.** In addition to the paid-up capital stock or unimpaired surplus as required under section 431:3-205 and section 431:3-208, the following insurers shall possess when first authorized:

- (1) In the case of domestic stock or reciprocal insurers not existing and authorized in this State on [December 31, 1987,] July 1, 1988, or domestic mutual insurers not existing and authorized in this State on [December 31, 1987,] July 1, 1988, which qualify upon the basis of possession of surplus in lieu of applications and premiums collected as provided in section 431:4-303 to section 431:4-307, bona fide additional surplus equaling in amount not less than fifty per cent of the capital stock or surplus otherwise required for the class or classes of insurance proposed to be transacted; or
- (2) In the case of foreign and alien insurers which have been insurers for less than five years[,] except if as a result of a reorganization (including a merger, corporate acquisition, or formation of a subsidiary), bona fide additional surplus in an amount not less than fifty per cent of the capital stock or surplus otherwise required for the class or classes of insurance which the insurer is authorized to transact in its domicile.”

SECTION 3. Section 431:4-120, Hawaii Revised Statutes, is amended to read as follows:

**“§431:4-120 Subsequent financing.** (a) No domestic insurer, insurance holding corporation, stock corporation for financing operations of a mutual insurer, or attorney-in-fact corporation of a reciprocal insurer shall solicit or receive funds in exchange for any new issue of its corporate securities, other than through a stock dividend, until it has applied to the commissioner for, and has been granted, a solicitation permit, after:

- (1) It has received a certificate of authority, if an insurer, or
- (2) It has completed its initial organization and financing, if a corporation other than an insurer.

(b) The commissioner shall issue a solicitation permit unless the commissioner finds that:

- (1) The funds proposed to be secured are excessive in amount for the purpose intended,
- (2) The proposed securities or the manner of their distribution are inequitable, or
- (3) The issuance of the securities would jeopardize the interests of policyholders or the holders of other securities of the insurer or corporation.

(c) A solicitation permit shall contain such terms and be issued upon such conditions as the commissioner may reasonably specify or require, and shall expire when the new issue of corporate securities has been completed.

(d) A solicitation permit shall limit the portion of funds received on account of such new issue of corporate securities which may be used for promotion and sales expenses for the new issue to such amount as the commissioner deems adequate, but in no event to exceed fifteen per cent of such funds as and when actually received.

(e) For purposes of this section, insurance holding corporation means any domestic corporation:

- (1) Which, directly or indirectly through one or more intermediaries, controls a domestic insurer; and
- (2) In which the total assets of the insurer, as reported in its most recent annual statement filed with the commissioner pursuant to section 431:3-301, is twenty per cent or more of the consolidated total assets of the corporation as reported in its most recent annual report to its owners. The annual report to owners shall be prepared in accordance with generally accepted accounting principles by a certified public accountant.”

SECTION 4. Section 431:4-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) A domestic stock insurer may increase its capital stock by[:]
- (1) Complying with section 416-64, except that the increase in capital is effective upon the payment of the increased capital in full; and
- (2) Filing a certificate with the commissioner that the increased capital has been paid in full in cash, upon which filing the increase in capital is effective. Such certification shall be filed:
  - (A) After filing of a certificate required by section 416-64; and
  - (B) Within a period prescribed by the commissioner.]

complying with section 415-58 and section 431:4-120. The increase in capital shall be effective upon the payment of the increased capital in full in cash.”

SECTION 5. Section 431:7-301, Hawaii Revised Statutes, is amended to read as follows:

**“§431:7-301 Deposits of insurers.** (a) The director of finance shall accept, when made through the commissioner, deposits of securities or funds by insurers as follows:

- (1) Deposits in amount as required to be made as prerequisite to a certificate of authority to transact insurance in this State.
  - (2) Deposits of insurers in amount as required to be made by the laws of other states as prerequisites for authority to transact insurance in such other states.
  - (3) Deposits in other additional amounts permitted to be made by this part.
- (b) This part shall apply to the deposits listed in this section unless expressly inconsistent with the provisions of article 3 of this code, in which case the provisions of article 3 shall prevail.”

SECTION 6. Section 431:8-211, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person, other than an insured, who in this State represents or aids an unauthorized insurer in violation of this part may [be found guilty of a misdemeanor, and] be subject to a fine not in excess of \$1,000.”

SECTION 7. Section 431:8-312, Hawaii Revised Statutes, is amended to read as follows:

**“§431:8-312 Records of surplus lines broker.** (a) Each licensed surplus lines broker shall keep in the broker's office in this State a full and true record of each surplus lines contract placed by the broker including a copy of the policy, certificate, cover note, or other evidence of insurance showing such of the following items as may be applicable:

- (1) Amount of the insurance and perils insured;
- (2) Brief description of the property insured and its location;
- (3) Gross premium charged;
- (4) Any return premium paid;
- (5) Rate of premium charged upon the several items of property;
- (6) Effective date of the contract, and the terms thereof;
- (7) Name and address of the insured;

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- (8) Name and address of the insurer;
- (9) Amount of tax and other sums to be collected from the insured; and
- (10) Any additional information required by the commissioner.

(b) For each contract of insurance placed by a surplus lines broker, the broker shall maintain a written statement as to the diligent efforts by the surplus lines broker or the general agent to place the insurance with authorized insurers.

(c) The record of each contract shall be kept open at all reasonable times to examination by the commissioner without notice for a period not less than five years following the termination of the contract.”

SECTION 8. Section 431:9-213, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any [person] individual so designated or empowered by a corporation or partnership must be a resident of this State[.] and may not be so empowered or designated by more than one corporation or partnership, except when the corporations or partnerships are affiliates of each other. As used herein, a corporation or partnership is an affiliate of another corporation or partnership if the same person, directly or indirectly through one or more intermediaries, controls both corporations or partnerships. As used herein, “control” and “controls” have the same meaning as in section 431:11-102.”

SECTION 9. Section 431:9-219, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner may license as a nonresident agent or broker for all classes of insurance an individual who is otherwise qualified under this article, but who is not a resident of or domiciled in this State, if by the laws of the state [or province], United States territory or possession, or country of the individual’s residence or domicile a similar privilege is extended to residents of this State.”

SECTION 10. Section 431:10-107, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10-107 Filing of certificate.** (a) Every insurer shall file with the commissioner a certificate signed by an officer of the insurer stating that the contract meets the minimum Flesch reading ease score required in section 431:10-104(1).

(b) Whenever the score is lower than the minimum allowed under section 431:10-104(1), the insurer shall file the certificate [shall indicate] indicating the lower score and [request] requesting the contract be approved under section 431:10-108. The insurer shall file with the certificate a copy of the contract and additional information necessary to support its request. Each filing requesting an approval pursuant to section 431:10-108 shall be accompanied by a \$20 fee payable to the commissioner, which fee shall be deposited in the commissioner’s education and training fund.

(c) In determining the accuracy of any certificate, the commissioner may require the insurer to submit a copy of the contract and any additional information.”

SECTION 11. Section 431:10A-302, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10A-302 Applicability.** [This part shall apply to disability insurance policies and group contracts and individual subscriber contracts of a nonprofit medical indemnity or hospital service association, which are delivered or issued

for delivery in this State on or after the date specified in rules adopted by the commissioner in accordance with those sections.]

Notwithstanding anything to the contrary contained in this part, this part shall apply to:

- (1) A medicare supplement policy issued and delivered to a person domiciled in this State;
- (2) A medicare supplement policy issued and delivered to a person not domiciled in this State but pursuant to which a certificate is issued and delivered to a person domiciled in this State; and
- (3) Any certificate delivered to a person domiciled in this State which is issued pursuant to a medicare supplement policy.

The commissioner shall have all rights and powers with respect to the group or master policy and certificate issued pursuant to the medicare supplement policy as if the group or master policy was issued and delivered to a person domiciled in this State.”

SECTION 12. Section 431:10B-108, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10B-108 Filing, approval, and withdrawal of forms and premium rates.** (a) All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders delivered or issued for delivery in this State and the schedules of premium rates pertaining thereto shall be filed with the commissioner for approval. Each filing shall be accompanied by a \$20 fee payable to the commissioner, which fee shall be deposited in the commissioner's education and training fund. Forms and rates so filed shall be approved at the expiration of forty-five days after filing, unless earlier approved or disapproved by the commissioner. The commissioner by written notice to the insurer, within the forty-five day period, may extend the period for an additional thirty days.

(b) The commissioner, within the waiting period or any extension thereof after the filing of<sup>1</sup> the policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders and premium rates, shall disapprove any form or any premium rates if:

- (1) The benefits provided are not reasonable in relation to the premium charge; or
- (2) The form contains provisions which are unjust, unfair, inequitable, misleading, deceptive, or encourage misrepresentation of the coverage, or are contrary to any provision of the code or of any rule adopted thereunder.

(c) The benefits provided by the policy form shall not be deemed reasonable in relation to the premium charged or to be charged if the ratio of losses incurred to premiums earned is not at least sixty per cent. [In the determination of the reasonableness of the relation of benefits and premiums consistent with a sixty per cent loss ratio, the commissioner may establish a common authorized premium rate for similar or substantially similar coverage by class of creditor. The commissioner may approve a higher rate than the common rate where a creditor's experience under a specific policy form reasonably indicates an ultimate loss ratio higher than sixty per cent, but the commissioner shall limit the use of the higher rate to those creditors whose experience was the basis of the approval of the higher rates. The commissioner shall require insurers to file the information as the commissioner deems necessary to determine that this standard is met every two years, or more often in the commissioner's discretion, on forms recommended by the National Association of Insurance Commissioners for that purpose. Upon giving notice as is required by law, the commissioner may withdraw approval of any form including

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the rate set forth therein, on the ground that a reasonable relation of benefits to<sup>1</sup> the rate set forth therein, on the ground that a reasonable relation of benefits to premiums no longer exists, or may approve a higher or lower rate if justified by experience.

The commissioner shall adopt a rate that shall be deemed acceptable as satisfying this standard without any actuarial or statistical filing.] The commissioner may adopt by rules prima facie acceptable premium rates that shall reasonably be expected to produce a sixty per cent loss ratio. The prima facie rates shall be usable without actuarial or statistical justification when filed together with an otherwise acceptable policy form. The rules shall specify the plans of benefits to which the premium rates shall apply.

[d) The commissioner shall adopt by rules prima facie acceptable premium rates, except as set forth below, which shall be usable without statistical justification when filed together with an otherwise acceptable policy form submission. The rates shall produce or shall reasonably be expected to produce a ratio of losses incurred to premiums earned of at least sixty per cent. The rules shall specify the plans of benefits to which the premium rates apply.

(e) (d) The commissioner shall approve deviations to rates higher than the prima facie acceptable rates upon filing of reasonable evidence that loss experience for a creditor or a class of creditors exceeds the average loss experience used to determine the [established] prima facie rates [and shall base the commissioner's determination on the sixty per cent loss ratio standard.] if the commissioner determines the use of the higher rates will result in a ratio of claims incurred to premiums earned that is not less than sixty per cent. Except where the deviated rate exceeds [sixty cents per \$100 initial insurance per year] the prima facie rate for reducing term credit life insurance and its actuarial equivalent for other forms of credit life insurance, a reasonable variance from the sixty per cent loss ratio standard may be required. The deviation may be limited to the debtors or creditors whose experience was the statistical basis for the filing.

(e) Whenever the commissioner determines it to be prudent, the commissioner may require insurers to file information as the commissioner deems necessary to determine whether the approved deviation from prima facie rates is still justified. If the commissioner determines the insurer's loss experience no longer justifies a deviation from the prima facie rates, then, upon giving notice as required in subsection (g), the commissioner shall disapprove the deviation and any form including the rate set forth therein.

(f) Credit life insurance policies for which premium rates vary by individual ages or by age brackets shall be filed as provided in this section. The commissioner shall approve or disapprove the filings in accordance<sup>1</sup> the sixty per cent loss ratio standard and the other applicable provisions of law.

(g) If the commissioner notifies the insurer that the form or premium rate is disapproved, it shall be unlawful thereafter for the insurer to issue or use the form or premium rate. In the notice, the commissioner shall specify the reason for the commissioner's disapproval and state that a hearing will be granted within twenty days after request in writing by the insurer. No policy, certificate of insurance, or notice of proposed insurance, nor any application, endorsement, or rider, or premium rate, shall be issued or used until the expiration of [thirty] forty-five days after it has been so filed, unless the commissioner gives the commissioner's prior written approval.

(h) The commissioner at any time after hearing held not less than twenty days after written notice to the insurer, may withdraw the commissioner's approval of a form or premium rate on any ground set forth in subsection (b). The written notice of the hearing shall state the reason for the proposed withdrawal.

- (i) It shall be unlawful for the insurer to issue or use forms or premium rates after the effective date of their withdrawal.
- (j) If a group policy of credit life insurance or credit disability insurance:
  - (1) Has been delivered in this State before July 1, 1969, or
  - (2) Has been or is delivered in another state before or after July 1, 1969, the insurer shall be required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this State as specified in subsections (b) and (e) of section 431:10B-107. The forms shall be approved by the commissioner if:
    - (i) They conform with the requirements specified in those subsections;
    - (ii) They are accompanied by a certification in a form satisfactory to the commissioner that the substance of the forms are in substantial conformity with the master policy; and
    - (iii) The schedules of premium rates applicable to the insurance evidenced by the certificate or notice are not in excess of the insurer's schedules of premium rates filed with and approved by the commissioner;

provided the premium rate in effect on existing group policies may be continued until the first policy anniversary date following July 1, 1969.

- (k) Any order or final determination of the commissioner under this section shall be subject to chapter 91."

SECTION 13. Section 431:10C-203, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10C-203 Rate filings.** (a) [Every] At least thirty days before an insurer proposes its filing to become effective, the insurer shall file with the commissioner every manual of classification, rule, rate, rating plan, designation of rating territories, or standard for motor vehicle insurance [at least thirty days before the proposed effective date of the filing.] which it proposes to use. Each filing shall indicate the proposed effective date of the filing and the character and extent of the coverage contemplated.

**(b) An insurer shall not implement a rate pursuant to a proposed rate filing until the effective date of the filing unless the insurer requests in writing and receives authorization from the commissioner to implement the rate filing prior to the expiration of the thirty-day period.**

**[c] (c)** The commissioner also may accept from an advisory organization basic standards, manuals of classification, territories, endorsements, forms, and other materials, not dealing with rates, for reference filings by insurers.

**[d] (d)** Each filing shall be accompanied by a \$20 fee payable to the commissioner, which fee shall be deposited in the commissioner's education and training fund.

**[e] (e)** A filing and any supporting information shall be open to the<sup>1</sup> public<sup>1</sup> upon filing with the commissioner."

SECTION 14. Section 431:11-104, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- "(d) (1) The commissioner shall approve any merger or other acquisition of control referred to in subsection (a) unless, after a public hearing thereon, the commissioner finds that:
  - (A) After the change of control, the domestic insurer referred to in subsection (a) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

- (B) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly therein;
  - (C) The financial condition of any acquiring party might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;
  - (D) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;
  - (E) The competence, experience, and integrity of those persons who would control the operation of the insurer would not be in the interest of policyholders of the insurer and [of the public to permit the merger or other acquisition of control; or] not in the public interest; or
  - (F) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.
- (2) The public hearing referred to in [item] paragraph (1) shall [be held] commence within [thirty] sixty days after the statement required by subsection (a) is filed, except that the hearing may commence within such additional time as agreed to by the commissioner, the acquiring party and the person to be acquired, and at least twenty days notice [thereof] of the scheduled public hearing shall be given by the commissioner to the person filing the statement. Not less than seven days notice of the public hearing shall be given by the person filing the statement to the insurer and to any other persons as may be designated by the commissioner. The insurer shall give notice to its security holders. The commissioner shall make a determination within thirty days after the conclusion of the hearing. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected thereby shall have the right to present evidence, examine and cross examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in chapter 91. All discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.
- (3) The commissioner may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control."

SECTION 15. Section 431:19-101, Hawaii Revised Statutes is amended by amending the definition of "association" to read as follows:

"(2) Association means any legal association of individuals, corporations, partnerships, or associations, except labor organizations, [that has been in continuous existence for at least one year,] the number of<sup>1</sup> organizations of which collectively:

- (A) Own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer,<sup>1</sup> or

- (B) Have complete voting control over an association captive insurance company incorporated as a mutual insurer."

SECTION 16. Section 431:8-303, Hawaii Revised Statutes, is repealed.

SECTION 17. Section 431:8-304, Hawaii Revised Statutes, is repealed.

SECTION 18. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 19. This Act shall take effect upon its approval.

(Approved June 7, 1989.)

**Notes**

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

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S.B. NO. 1814

A Bill for an Act Relating to Insurance for Motorcycles and Motor Scooters.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be designated and to read as follows:

**"ARTICLE 10G  
MOTORCYCLE AND MOTOR SCOOTER INSURANCE**

**PART I. GENERAL PROVISIONS**

**§431:10G-101 Definitions.** As used in this article:

“Accidental harm” means bodily injury, death, sickness, or disease caused by a motorcycle or motor scooter accident to a person.

“Injury” means accidental harm not resulting in death.

“Motor scooter” has the meaning prescribed by section 286-2.

“Motorcycle” has the meaning prescribed by section 286-2.

“Motor scooter accident” means an accident arising out of the operation, maintenance, or use of a motor scooter, but not involving a motor vehicle.

“Motorcycle accident” means an accident arising out of the operation, maintenance, or use of a motorcycle, but not involving a motor vehicle.

“Owner” means a person who holds the legal title to a motorcycle or motor scooter; except that when a motorcycle or motor scooter is the subject of a security agreement or lease with a term of not less than one year, with the debtor or lessee having the right of possession, the term owner shall mean the debtor or lessee. Whenever transfer of title to a motorcycle or motor scooter occurs, the seller shall be considered the owner until delivery of the executed title to the buyer. Upon delivery of the executed title, the buyer holding the equitable title shall be considered the owner.

“Person” means, when appropriate to the context, not only individuals, but corporations, firms, associations, and societies.

**§431:10G-102 Conditions of operation and registration of motorcycles and motor scooters.** No person shall drive a motorcycle or motor scooter upon

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any public street, road, or highway of this State at any time unless such motorcycle or motor scooter is insured at all times under a liability policy as provided in section 431:10G-301.

**§431:10G-103 Motorcycle or motor scooter self-insurance.** The motorcycle or motor scooter insurance required by section 431:10G-102 may be satisfied by any owner of a motorcycle or motor scooter if:

- (1) Such owner provides proof of qualifications as a self-insurer, and a surety bond or other securities affording security substantially equivalent to that afforded under a policy meeting the requirements of section 431:10G-301 and providing coverage at all times for the entire motorcycle or motor scooter registration period, as determined and approved by the commissioner under rules; and
- (2) The commissioner is satisfied that in case of injury, death, or property damage, any claimant would have the same rights against such owner as the claimant would have had if a policy meeting the requirements of section 431:10G-301 had been applicable to such motorcycle or motor scooter.

**§431:10G-104 Prerequisites for obtaining coverage.** Any person seeking to obtain the liability coverage required by this part after the effective date of this section, shall first:

- (1) Have obtained a valid motorcycle or motor scooter license; or
- (2) Have obtained a valid motorcycle or motor scooter learner's permit and have taken and passed a motorcycle education course approved by the department of transportation.

**§431:10G-105 Tort liability.** (a) With respect to accidental harm incurred in or arising out of a motorcycle accident or motor scooter accident, tort liability is not abolished.

(b) Any owner or operator of a motorcycle or motor scooter involved in a motor vehicle accident as defined in section 431:10C-103(9) and who incurs accidental harm as defined in section 431:10C-103(1), including such person's representative or legal guardian, shall not have a cause of action in tort except in the following circumstances:

- (1) Death occurs to the owner or operator in such a motor vehicle accident;
- (2) Injury occurs to the owner or operator which consists, in whole or in part, in a significant permanent loss of use of a part or function of the body; or
- (3) Injury occurs to the owner or operator which consists of a permanent and serious disfigurement which results in subjection of the owner or operator to mental or emotional suffering; or
- (4) Injury occurs to the owner or operator in a motor vehicle accident in which the amount paid or accrued exceeds the medical-rehabilitative limit established in section 431:10C-308 for expenses provided in section 431:10C-103(10)(A) and (B); provided that the expenses paid shall be presumed to be reasonable and necessary in establishing the medical-rehabilitative limit.

**§431:10G-106 Verification of insurance.** Every insurer shall issue to each of its insureds a proof of insurance card for each motorcycle or motor scooter for which a liability policy under this section is written. The proof of insurance card shall show the following:

- (1) Name, make, year, and factory or serial number of the motorcycle or motor scooter; provided that insurers of five or more motorcycles or motor scooters which are under common registered ownership and used in the regular course of business shall not be required to indicate the name, make, year, and the factory or serial number of each motorcycle or motor scooter;
- (2) Policy number;
- (3) Names of the insured and the insurer; and
- (4) Effective dates of coverage including the expiration date.

The proof of insurance card shall be carried on the person operating the insured motorcycle or motor scooter at all times and shall be exhibited to a law enforcement officer upon demand.

**§431:10G-107 Drivers' education fund underwriters' fee.** (a) The commissioner shall assess and levy upon each insurer, and self-insurer, a drivers' education fund underwriters' fee of \$2 a year on each motorcycle or motor scooter insured by each insurer or self-insurer. This fee shall be due and payable in full on an annual basis by means and at a time to be determined by the commissioner.

(b) The commissioner shall deposit these fees into a special drivers' education fund account.

(c) The fees deposited for each fiscal year shall be distributed to and expended by the University of Hawaii community college employment training office for the operation of a drivers' education program for operators of motorcycles or motor scooters.

**§431:10G-108 Penalties.** Any person who violates this article shall be subject to a citation by the police and shall be subject to a nonsuspendable fine of not less than \$100 nor more than \$1,000, thirty days imprisonment, a one year driver's license suspension, or any combination thereof, for each violation.

**§431:10G-109 Rules.** The commissioner may adopt rules pursuant to chapter 91 necessary for the purposes of this article.

## PART II. RATES AND ADMINISTRATION

### **§431:10G-201 Making of motorcycle and motor scooter insurance rates.**

(a) All premium rates for motorcycle and motor scooter insurance shall be made in accordance with the following provisions:

- (1) Rates shall not be excessive, inadequate, or unfairly discriminatory;
- (2) Due consideration shall be given to:
  - (A) Past and prospective loss experience within and outside this State, catastrophe hazards, if any, reasonable margin for profit, and contingencies, dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers;
  - (B) Past and prospective expenses both country-wide and those specially applicable to this State in the sale and administration of motorcycles and motor scooters insurance; and
  - (C) Investment income from reserves, unearned insurance premiums, and other unearned proceeds received on account of motorcycle and motor scooter insurance sold, and all other factors that may be deemed relevant, if they are established to have a probable effect upon losses, expense, or rates, such as but not limited to types of vehicles, occupations, and involvement in past accidents;

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- (3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any insurer or group with respect to any class of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable; and
- (4) Risks may be grouped by classifications for the establishing of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. The standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(b) Except to the extent necessary to meet the provisions of subsection (a)(4), uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

(c) After the effective date of this section, each insurer of a motorcycle or motor scooter shall provide a fifteen per cent reduction off premium charges each insurer assesses for each new and renewal policy for liability coverage issued pursuant to this article if the applicant has successfully completed a motorcycle education course approved by the department of transportation.

**§431:10G-202 Rate filings.** (a) Every insurer shall file with the commissioner every manual of classification, rule, rate, rating plan, designation of rating territories, or standard for motorcycle or motor scooter insurance which it proposes to use. Every filing shall state the proposed effective date of the filing and the character and extent of the coverage contemplated.

(b) The commissioner also may accept from an advisory organization basic standards, manuals of classification, territories, endorsements, forms, and other materials, not dealing with rates, for reference filings by insurers.

(c) Each filing shall be accompanied by a \$20 fee payable to the commissioner, which fee shall be deposited in the commissioner's education and training fund.

(d) A filing and any supporting information shall be open to the public upon filing with the commissioner.

**§431:10G-203 Rate review: request by aggrieved party.** (a) Any person aggrieved by the application as to such person of any classification, rule, standard, rate, or rating plan made, followed, or adopted by an insurer may make written request to the commissioner to review such application and grant the relief requested. If the commissioner finds that probable cause for the complaint exists or that the complaint charges a violation of this article, the commissioner shall conduct a hearing on the complaint according to the procedure set forth in section 431:14-118.

(b) If, after a hearing conducted pursuant to subsection (a), the commissioner finds that the complainant is entitled to relief or that any classification, rule, standard, rate, rating territory, or rating plan violates this article, the commissioner shall issue an order granting the complainant's claim for relief or prohibiting the insurer from using such classification, rule, standard, rate, rating territory, or rating plan. The order shall contain the commissioner's findings of fact and conclusions of law, including a specification of the respects in which a violation of this article exists and specifying a reasonable time period within which the insurer shall comply with the terms of the order. Any such order shall be subject to judicial review in the manner provided in chapter 91.

**§431:10G-204 Rate review: rate methods in noncompliance with article.**

(a) If the commissioner has good cause to believe that a classification, rule, standard, rate, rating territory, or rating plan made, followed, or adopted by an insurer does not comply with the requirements of this article, the commissioner shall, unless the commissioner has good cause to believe that such noncompliance is wilful, give notice in writing to each insurer, stating in what manner and to what extent such noncompliance is alleged to exist and specifying a reasonable time, not less than ten days thereafter, within which such noncompliance may be corrected. Notices under this subsection shall be confidential as between the commissioner and the parties unless a hearing is held as provided in subsection (b).

(b) If the commissioner has good cause to believe such noncompliance to be wilful, or if, within the period prescribed by the commissioner in the notice given under subsection (a), the insurer does not:

- (1) Correct the noncompliance specified by the commissioner; or
- (2) Establish to the satisfaction of the commissioner that such noncompliance does not exist,

then the commissioner may proceed with a hearing which shall be subject to the hearing procedure provided in section 431:14-118.

**§431:10G-206 Rate administration.** Except as otherwise provided in this article, the commissioner shall implement and evaluate motorcycle and motor scooter insurance rates in compliance with article 14.

### PART III. COVERAGES AND RIGHTS

**§431:10G-301 Required motorcycle and motor scooter policy coverage.**

(a) An insurance policy covering a motorcycle or motor scooter shall provide insurance to pay, on behalf of the owner or any operator of the insured motorcycle or motor scooter, sums which the owner or any operator may legally be obligated to pay for injury, death, or damage to the property of others, except property owned by, being transported by, or in the charge of the insured which arise out of the ownership, operation, maintenance, or use of the motorcycle or motor scooter:

- (1) Liability coverage of not less than \$35,000 for all damages arising out of accidental harm sustained by any one person as a result of any one accident applicable to each person sustaining accidental harm; and
- (2) Liability coverage of not less than \$10,000 for all damages arising out of injury to or destruction of property including motorcycles or motor scooters and including the loss of use thereof, but not including property owned by, being transported by, or in the charge of the insured, as a result of any one accident.

(b) At the option of the owner, each insurer shall:

- (1) Offer medical payment coverage up to \$15,000 to pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, and dental services, and necessary ambulance, hospital, professional nursing, and funeral services;
- (2) Offer an income disability plan; and
- (3) Offer liability coverage in excess of the minimum coverages required by this section."

SECTION 2. Section 431:10C-106, Hawaii Revised Statutes, is amended to read as follows:

**"§431:10C-106 Specialty insurers not prohibited.** [(a) Nothing in this article shall prevent an insurer from offering no-fault insurance policies for only motor vehicles with fewer than four wheels.

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(b)] Nothing in this article shall prevent an insurer from offering no-fault policies for only U-drive motor vehicles.”

SECTION 3. Section 431:10C-115, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10C-115 Driver’s<sup>1</sup> education fund underwriters’ fee.** (a) The commissioner shall assess and levy upon each insurer, and self-insurer, a drivers’ education fund underwriters’ fee of \$2 a year on each motor vehicle insured by each insurer or self-insurer. This fee is due and payable in full on an annual basis by means and at a time to be determined by the commissioner.

(b) The commissioner shall deposit [these] the fees into a special drivers’ education fund account.

(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 superintendent of education to support the drivers’ education program administered by the department of education for high school students[;

Provided that all fees received under subsection (a), which are derived from motorcycles, motor scooters or similar vehicles, shall be expended by the University of Hawaii community college employment training office for the operation of a drivers’ education program for operators of motorcycles, motor scooters or similar vehicles].

(d) The commissioner shall make all necessary rules and regulations for the execution of this section and the distribution of this fund.”

SECTION 4. Section 431:10C-305, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- (a) (1) A claim for no-fault benefits for accidental harm of a person who is not an occupant of any motor vehicle involved in [an] a motor vehicle accident may be made against the no-fault insurer of any involved vehicle[; provided that this subsection shall not apply to any operator of a motorcycle or motor scooter as defined in section 286-2].
- (2) The no-fault insurer against whom the claim is asserted shall process and pay the claim as if wholly responsible, but the insurer shall thereafter be entitled to recover from the no-fault insurer of all other involved vehicles proportionate contribution for the benefits paid and the cost of processing the claim.”

SECTION 5. Section 431:10C-408, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A person, or such person’s legal representative, shall be disqualified from receiving benefits through the plan if:

- (1) Such person is disqualified for criminal conduct under section 431:10C-305(d) from receiving the no-fault benefits; or
- (2) Such person was:
  - (A) The owner or registrant of [an uninsured or insured] the motor vehicle at the time of [its] the motor vehicle’s involvement in the accident out of which such person’s accidental harm arose; [or]

- (B) The operator or any passenger of such a vehicle at such time with reason to believe that such vehicle was an uninsured motor vehicle; [or]
- (C) The owner, [or] operator, or passenger of a motorcycle or motor scooter as defined in section 286-2[.]; or
- (D) A pedestrian incurring accidental harm arising out of a motorcycle accident or a motor scooter accident, as defined in section 431:10G-101.

SECTION 6. Article 10C, Part V of Chapter 431, Hawaii Revised Statutes, is repealed.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 7, 1989.)

**Note**

1. So in original.

**ACT 209**

S.B. NO. 1818

A Bill for an Act Relating to the Contractors Recovery Fund.

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

SECTION 1. Section 444-26, Hawaii Revised Statutes, is amended to read as follows:

**"§444-26 Contractors recovery fund; use of fund; person injured; fees.**

The contractors license board is authorized and directed to establish and maintain a contractors recovery fund from which any person injured by an act, representation, transaction, or conduct of a duly licensed contractor, which is in violation of the provisions of this chapter or the regulations promulgated pursuant thereto, may recover by order of the circuit court or district court of the judicial circuit where the violation occurred, an amount of not more than \$12,500 per contract, regardless of the number of persons injured under the contract, for damages sustained by the act, representation, transaction, or conduct. Recovery from the fund shall be limited to the actual damages suffered by the claimant, including court costs and fees as set by law, and reasonable attorney fees as determined by the court; provided that recovery from the fund shall not be awarded to persons injured by an act, representation, transaction, or conduct of a contractor whose license was in an inactive status at time of the injury.

For purposes of this chapter, "person injured" or "injured person" means and is limited to owners or lessees of private residences, including condominium or cooperative units, who have contracted with a duly licensed contractor for the construction of improvements or alterations to their own private residences and owners or lessees of real property who contract with a duly licensed contractor for the construction of their own private residences on their real property.

[Every contractor, when renewing the contractor's license in 1974, shall pay in addition to the contractor's license renewal fee, a fee of \$50 for deposit in the contractors recovery fund.] On or after May 1, 1974, when any person makes

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application for a contractors license the person shall pay, in addition to the person's original license fee, a fee of \$150 for deposit in the contractors recovery fund. In the event that the contractors license board does not issue the license, this fee shall be returned to the applicant."

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

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

(Approved June 7, 1989.)

## **ACT 210**

S.B. NO. 1948

A Bill for an Act Relating to Professional Engineers, Architects, Surveyors and Landscape Architects.

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

**SECTION 1.** The purpose of this Act is to implement some of the findings and recommendations made by the legislative auditor in the auditor's "Sunset Evaluation Update Report" regarding chapter 464, Hawaii Revised Statutes, which regulates the practices of engineering, architecture, surveying, and landscape architecture. The legislature agrees with the auditor's findings that while chapter 464 should be reenacted, chapter 464 should among other things, be amended to clarify terminology, provide for consistency in penalties and appeals, and change requirements for board membership. The good character and reputation requirement for licensure has been replaced with a provision that a person is not eligible for licensure if he or she does not possess a history of honesty, truthfulness, financial integrity, and fair dealing.

**SECTION 2.** Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

**"§26H-4 Repeal dates.** (a) The following chapters are hereby repealed effective December 31, 1989:

- (1) Chapter 444 (Contractors License Board)
- (2) Chapter 448E (Board of Electricians and Plumbers)
- [3] Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)
- [4] (3) Chapter 466 (Board of Public Accountancy)
- [5] (4) Chapter 467 (Real Estate Commission)
- [6] (5) Chapter 439 (Board of Cosmetology)
- [7] (6) Chapter 454 (Mortgage Brokers and Solicitors)
- [8] (7) Chapter 454D (Mortgage and Collection Servicing Agents)

(b) The following chapter and sections are hereby repealed effective December 31, 1990:

- (1) Chapter 466J (Board of Radiologic Technology)
- (2) Sections 321-13 to 321-15 (midwives, laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, tattoo artists, electrologists, and sanitarians)

(c) The following chapters are hereby repealed effective December 31, 1991:

- (1) Chapter 447 (Dental Hygienists)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 457 (Board of Nursing)
- (4) Chapter 458 (Board of Dispensing Opticians)
- (5) Chapter 460J (Pest Control Board)
- (6) Chapter 462A (Pilotage)
- (7) Chapter 438 (Board of Barbers)
- (8) Chapter 468K (Travel Agencies)
- (d) The following chapters are hereby repealed effective December 31, 1992:
  - (1) Chapter 448H (Elevator Mechanics Licensing Board)
  - (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
  - (3) Chapter 457B (Board of Examiners of Nursing Home Administrators)
  - (4) Chapter 460 (Board of Osteopathic Examiners)
  - (5) Chapter 461 (Board of Pharmacy)
  - (6) Chapter 461J (Board of Physical Therapy)
  - (7) Chapter 463E (Podiatry)
- (e) The following chapters are hereby repealed effective December 31, 1993:
  - (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
  - (2) Chapter 437B (Motor Vehicle Repair Industry Board)
  - (3) Chapter 440 (Boxing Commission)
  - (4) Chapter 446 (Debt Adjusters)
  - (5) Chapter 436E (Board of Acupuncture)
- (f) The following sections are hereby repealed effective December 31, 1993:
  - (1) Sections 445-21 to 38 (Auctions)
  - (2) Sections 445-131 to 136 (Pawnbrokers)
  - (3) Sections 445-171 to 172 (Secondhand Dealers)
  - (4) Sections 445-231 to 235 (Scrap Dealers)
- (g) The following chapters are hereby repealed effective December 31, 1994:
  - (1) Chapter 441 (Cemetery and Funeral Trusts)
  - (2) Chapter 443B (Collection Agencies)
  - (3) Chapter 452 (Board of Massage)
  - (4) Chapter 455 (Board of Examiners in Naturopathy)
  - (5) Chapter 459 (Board of Examiners in Optometry)
  - (6) Chapter 442 (Board of Chiropractic Examiners)
  - (7) Chapter 373 (Commercial Employment Agencies)
  - (8) Chapter 448 (Board of Dental Examiners)
  - (9) Chapter 465 (Board of Psychology)
- (10) Chapter 468E (Speech Pathology and Audiology)
- (h) The following chapter is hereby repealed effective December 31, 1995:
  - (1) Chapter 464 (Professional Engineers, Architects, Surveyors and Landscape Architects)
- [[(h)] (i) The following chapters are hereby repealed effective December 31, 1997:
  - (1) Chapter 463 (Board of Private Detectives and Guards)
  - (2) Chapter 471 (Board of Veterinary Examiners)."

SECTION 3. Section 464-1, Hawaii Revised Statutes, is amended by amending the definition of "landscape architect" to read as follows:

" "Landscape architect" means a person who holds oneself out as able to perform professional services such as consultation, investigation, reconnaissance, research, design, preparation of drawings and specifications, and observation of construction where the dominant purpose of the services is:

## ACT 210

- (1) The preservation and enhancement of land uses and natural land features;
- (2) The location and construction of aesthetically pleasing and functional approaches for structures, roadways, and walkways; and
- (3) The design for equestrian trails, plantings, landscape irrigation, landscape lighting, and landscape grading.

This practice shall include the location, arrangement, and design of tangible objects and features as are incidental and necessary to the purposes outlined herein. Nothing herein shall preclude a duly [registered] licensed landscape architect from planning the development of land areas and elements used thereon or from performing any of the services described in this section in connection with the settings, approaches, or environment for buildings, structures, or facilities; provided that nothing in this chapter shall empower a landscape architect [registered] licensed under this chapter from practicing or offering to practice architecture or engineering in any of its various recognized branches."

SECTION 4. Section 464-2, Hawaii Revised Statutes, is amended to read as follows:

**"§464-2 [Registration] Licensing of practicing engineers, etc.** In order to safeguard life, health, and property, no person except those exempted by sections 464-3 and 464-5 shall practice professional engineering, architecture, land surveying or landscape architecture in the State unless the person is duly [registered] licensed under this chapter."

SECTION 5. Section 464-3, Hawaii Revised Statutes, is amended to read as follows:

**"§464-3 Persons exempt from [registration.] licensure.** The following shall be exempted from this chapter:

- (1) Persons practicing professional engineering, architecture, land surveying or landscape architecture solely as officers or employees of the United States;
- (2) Persons practicing professional engineering, architecture, land surveying or landscape architecture solely as officers or employees of the State or any political subdivision thereof on May 2, 1923, and thereafter only until the expiration of the terms of office or employment of such persons."

SECTION 6. Section 464-4, Hawaii Revised Statutes, is amended to read as follows:

**"§464-4 Public works.** The State and the political subdivisions thereof and the officers thereof, respectively, shall not engage in the construction of any public work involving professional engineering, architecture, or landscape architecture for which the plans, specifications, and estimates have not been made nor supervised by and the construction of which is not observed by a professional engineer, architect, or landscape architect duly [registered] licensed hereunder; provided that nothing in this section shall apply to any public work involving professional engineering, architecture, or landscape architecture wherein the expenditure therefor does not exceed the sum of \$15,000. All land surveys involving property boundaries for public purposes or plans thereof shall be made or supervised by a [registered] licensed land surveyor."

SECTION 7. Section 464-5, Hawaii Revised Statutes, is amended to read as follows:

**“§464-5 Limitation upon application of chapter.** Nothing in this chapter shall prevent any person from engaging in engineering, architectural, or landscape architectural work and undertakings upon property owned or exclusively controlled or possessed by that person, or from hiring any person to do the work and undertakings, unless the work and undertakings involve the safety or health of the public, nor shall anything in this chapter prevent any person from engaging in land surveying upon property owned or exclusively controlled or possessed by that person or from hiring any person to do the work, unless the work involves a common boundary.

Nothing in this chapter shall be construed as applying to the business conducted in this State by any agriculturist, horticulturist, tree expert, arborist, forester, gardenshop operator, nurseryman or landscape nurseryman, gardener, landscape gardener, landscape contractor, landscape designer, landscape consultant, garden or lawn caretaker, or cultivator of land, as these terms are generally used, except that no person shall use the designation “landscape architect”, “landscape architectural”, or “landscape architecture” unless [registered] licensed under the provisions of this chapter.

All engineering work, architectural work, and landscape architectural work in which the public safety or health is involved shall be designed by and the construction observed by a duly [registered] licensed professional engineer, architect, or landscape architect, respectively.”

SECTION 8. Section 464-6, Hawaii Revised Statutes, is amended to read as follows:

**“§464-6 Board of [registration of] professional engineers, etc., members; appointment; tenure; qualifications.** There shall be a state board of [registration of] professional engineers, architects, surveyors, and landscape architects herein-after called “the board”, to be appointed by the governor in the manner prescribed in section 26-34. The board shall consist of fourteen members, including at least [three] four professional engineers, three professional architects, [three] two professional surveyors, two professional landscape architects, and three public members. Each county shall be represented by at least one member who is a resident of the county. Each member shall hold over after the expiration of the member’s term until the member’s successor is duly appointed and qualified.

Each member shall have been a resident of the State for at least three years. A member representing the profession shall have been engaged in the practice of the member’s profession for at least [nine] five years immediately preceding the date of the member’s appointment. Members of the board shall serve without pay, except the secretary, who shall be allowed such compensation as the board may fix with the approval of the governor. Any member of the board, however, who incurs expenses in connection with the preparation and grading of examination papers shall be reimbursed for [such] those expenses with the approval of the board.

The department of commerce and consumer affairs shall employ, subject to chapters 76 and 77, a secretary and such other clerical help as are necessary for the proper performance of the board’s work and may make any reasonable expenditures which are necessary to carry out the functions of the board.”

SECTION 9. Section 464-7, Hawaii Revised Statutes, is amended to read as follows:

**“§464-7 Powers and duties of board; secretary; records.** The board is entitled to the services of the attorney general in connection with its affairs, and may compel the attendance of witnesses upon subpoena, administer oaths, take testimony, and do all other things necessary and proper to carry out this chapter in

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all matters within its jurisdiction. It shall adopt and have an official seal and make, subject to chapter 91 and with the approval of the governor and the director of commerce and consumer affairs, rules for the performance of its duties and the carrying on of its business and the enforcement of this chapter. It shall be provided with suitable office quarters by the State and shall hold at least two regular meetings during each year. It shall have a chairman, a vice-chairman, and a secretary, and a quorum shall consist of not less than six members.

All fees and other moneys received by the board shall be deposited by the director of commerce and consumer affairs with the director of finance to the credit of the general fund.

The board shall keep a record of its proceedings and all applicants for [registration] licensure as [engineer, architect, surveyor, or landscape architect,] engineers, architects, surveyors, or landscape architects, the date of application, name, age, educational and other qualifications, place of business and residence, whether or not an examination was required, and whether or not the applicant was [registered] licensed and a certificate issued to the applicant and the date of the action. The records shall be *prima facie* evidence of all matters therein contained."

SECTION 10. Section 464-8, Hawaii Revised Statutes, is amended to read as follows:

**"§464-8 Qualifications for [registration.] licensure.** (a) No person shall be eligible for [registration] licensure as a professional engineer unless:

- (1) The person is the holder of an unexpired [certificate of registration] license issued to the person by any jurisdiction, domestic or foreign, in which the requirements for [registration] licensure at the time the person was first [registered] licensed were of a standard satisfactory to the board; provided that if the board is in doubt as to whether the standards were satisfactory, or as to whether the holder was required to fully comply with them, it shall require that the holder successfully pass a written examination, prescribed by the board and designed to test the holder's knowledge, skill, and competency in the profession of engineering; [or]
- (2) The person is the holder of a masters degree in engineering from an institution of higher education approved by the board; is a graduate of a school or college approved by the board as of satisfactory standing and has completed an engineering curriculum of four years or more; has had three years of full-time lawful experience in engineering work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of engineering; [or]
- (3) The person is the holder of a masters degree in engineering from an institution of higher education approved by the board; has had four years of full-time lawful experience in engineering work of a character satisfactory to the board, a part-time experience which the board finds to be the equivalent thereof; and has successfully passed a written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of engineering; [or]
- (4) The person is a graduate of a school or college approved by the board as of satisfactory standing, and has completed an engineering curriculum of four years or more; has had four years of full-time lawful

experience in engineering work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of engineering; [or]

- (5) The person is a graduate of a school or college approved by the board as of satisfactory standing, and has completed an engineering technology or arts and science curriculum of four years or more; has had eight years of full-time lawful experience in engineering work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of engineering; or
- (6) The person has had twelve years of full-time lawful experience in engineering work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of engineering.

(b) No person shall be eligible for [registration] licensure as a professional architect unless:

- (1) The person is the holder of an unexpired [certificate of registration] license issued to the person by any jurisdiction, domestic or foreign, in which the requirements for [registration] licensure at the time the person was first [registered] licensed were of a standard satisfactory to the board; provided that if the board is in doubt as to whether the standards were satisfactory, or as to whether the holder was required to fully comply with them, it shall require that the holder successfully pass a written examination, prescribed by the board and designed to test the holder's knowledge, skill, and competency in the profession of architecture; [or]
- (2) The person is the holder of a masters degree in architecture from an institution of higher education approved by the board; is a graduate of a school or college approved by the board as of satisfactory standing and has completed an architectural curriculum of five years or more; has had two years of full-time lawful experience in architecture work of a character satisfactory to the board; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture; [or]
- (3) The person is a graduate of a school or college approved by the board as of satisfactory standing, and has completed an architectural curriculum of five years; has had three years of full-time lawful experience in architecture work of a character satisfactory to the board; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture; [or]
- (4) The person is a graduate of a school or college approved by the board as of satisfactory standing and has completed an architectural curriculum of four years or a pre-architecture or arts and science curriculum of four years or more; has had five years of full-time lawful experience in architecture work of a character satisfactory to the board; and has successfully passed a professional written examination, prescribed by

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- the board and designed to test the person's knowledge, skill, and competency in the profession of architecture; [or]
- (5) The person is a graduate of a community college or other technical training school approved by the board as of satisfactory standing, and has completed an architectural technology curriculum of two years or more; has had eight years of full-time lawful experience in architecture work of a character satisfactory to the board; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture; or
- (6) The person has had eleven years of full-time lawful experience in architecture work of a character satisfactory to the board; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of architecture.
- (c) No person shall be eligible for [registration] licensure as a professional land surveyor unless:
- (1) The person is the holder of an unexpired [certificate of registration] license issued to the person by any jurisdiction, domestic or foreign, in which the requirements for [registration] licensure at the time the person was first [registered] licensed were of a standard satisfactory to the board; provided that if the board is in doubt as to whether the standards were satisfactory, or as to whether the holder was required to fully comply with them, it shall require that the holder successfully pass a written examination, prescribed by the board and designed to test the holder's knowledge, skill, and competency in the profession of land surveying; [or]
- (2) The person is a graduate of a school or college approved by the board as of satisfactory standing, and has completed a geo-science, civil engineering, or general engineering curriculum of four years or more; has had three years of full-time lawful experience in land surveying of a character satisfactory to the board; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of land surveying; [or]
- (3) The person is a graduate of a school or college approved by the board as of satisfactory standing, and has completed a civil engineering technology (survey option) curriculum of two years or more or arts and sciences curriculum of four years or more; has had seven years of full-time lawful experience in land surveying of a character satisfactory to the board; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of land surveying; or
- (4) The person has had eleven years of full-time lawful experience in land surveying of a character satisfactory to the board; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of land surveying.
- (d) No person shall be eligible for [registration] licensure as a professional landscape architect unless:
- (1) The person is the holder of an unexpired [certificate of registration] license issued to the person by any jurisdiction, domestic or foreign, in which the requirements for [registration] licensure at the time the person was first [registered] licensed were of a standard satisfactory

- to the board; provided that if the board is in doubt as to whether the standards were satisfactory, or as to whether the holder was required to fully comply with them, it shall require that the holder successfully pass a written examination, prescribed by the board and designed to test the holder's knowledge, skill, and competency in the profession of landscape architecture; [or]
- (2) The person is the holder of a masters degree in landscape architecture from an institution of higher education approved by the board; is a graduate of a school or college approved by the board as of satisfactory standing and has completed a landscape architectural curriculum of four years or more; has had two years of full-time lawful experience in landscape architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of landscape architecture; [or]
  - (3) The person is a graduate of a school or college approved by the board as of satisfactory standing, and has completed a landscape architectural curriculum of four years or more; has had three years of full-time lawful experience in landscape architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of landscape architecture; [or]
  - (4) The person is a graduate of a school or college approved by the board as of satisfactory standing, and has completed a pre-landscape architecture or arts and science curriculum of four years or more; has had five years of full-time lawful experience in landscape architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a professional written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of landscape architecture; or
  - (5) The person has had twelve years of full-time lawful experience in landscape architecture work of a character satisfactory to the board, or part-time experience which the board finds to be the equivalent thereof; and has successfully passed a written examination, prescribed by the board and designed to test the person's knowledge, skill, and competency in the profession of landscape architecture.

In addition to the foregoing requirements, the board [may], in its discretion, may also require additional proof that the applicant is competent to practice professionally, and whenever the board is not fully satisfied from the results of an examination that any applicant is competent to practice professionally, it may give the applicant a further examination or examinations.

No person shall be eligible for [registration] licensure as a professional engineer, architect, land surveyor, or landscape architect [who is not of good character and reputation] if the person does not possess a history of honesty, truthfulness, financial integrity, and fair dealing."

SECTION 11. Section 464-9, Hawaii Revised Statutes, is amended to read as follows:

**“§464-9 Applications for and certificates of [registration;] licensure; renewal; fees.** (a) Application for [registration] licensure shall be made upon blanks

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to be furnished by the board and shall be signed and sworn to by the applicant. With each application there shall be paid to the board an application fee, the fee to be nonreturnable after the application has been entered in the records of the board.

For each examination, or repetition thereof in whole or in part as shall be limited or permitted by the rules of the board, the candidate shall pay to the board an examination fee; provided where the candidate is eligible to take only that part of the examination pertaining to engineering fundamentals the candidate shall pay the appropriate fee. The fee paid shall not be refundable; provided if a candidate after having paid the fee is unable for any reason beyond the candidate's control to participate in the examination, the board may extend the time of the candidate's participation to the next regular examination date and credit the candidate the amount of the fee paid.

(b) Upon qualifying for [registration,] licensure, the applicant shall pay a [registration] license fee, and upon receipt thereof by the board shall thereupon be [registered] licensed as a professional engineer, architect, land surveyor or landscape architect, and shall receive a certificate thereof from the board signed by the chairman and secretary. Every person [registered] licensed who, as an individual or as a member of a firm or corporation, conducts an office or other place of business for the practice of the profession shall display the original certificate in a conspicuous manner, in the principal office or place of business.

(c) Every [certificate of registration] license expires on April 30 of each even-numbered year following its issuance and becomes invalid after that date unless renewed. The secretary of the board, at least one month in advance of the date of expiration of the [certificate of registration,] license, shall mail a notice to every person [registered] licensed under this section giving the date of expiration and the amount required for the renewal thereof. The fee for renewal and all other fees in this chapter shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. [Certificates of registration] Licenses which have expired for failure to pay renewal fees on or before the date required in this subsection may be reinstated within one year of the expiration date upon payment of a fee for each renewal [certificate]. Any person who fails to reinstate the person's [certificate of registration] license within one year of the date of its expiration shall reapply for [registration.] licensure.

SECTION 12. Section 464-10, Hawaii Revised Statutes, is amended to read as follows:

**"§464-10 [Suspension] Licensees; suspension or revocation of [certificates;] licenses; fines; hearings.** The board may revoke, [or] suspend, or refuse to renew the [certificate of registration] license of any [person hereunder] licensee who is found guilty of any fraud or deceit in obtaining the [certificate] license or of gross negligence, incompetency, or misconduct in the practice of the profession or who is convicted of violating this chapter or the rules of the board. Any person may prefer charges in writing with the executive secretary of the board against any person holding a [certificate.] license.

In every case where it is proposed to [revoke or suspend the certificate of registration,] impose any penalty under this section, the board shall give the [person] licensee concerned notice and hearing in conformity with chapter 91. The notice shall be given in writing by registered or certified mail with return receipt requested at least fifteen days before the hearing.

In all proceedings before it, the board and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses, as

are possessed by circuit courts. In case of disobedience by any person of any order of the board, or of any member thereof, or of any subpoena issued by it, or by a member, or the refusal of any witness to testify to any matter regarding which the person may be questioned lawfully, any circuit judge, on application by the board, or a member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.

Any [person] licensee who violates this chapter or the rules adopted pursuant thereto [shall] may also be fined not less than \$500 nor more than \$1,000 per violation [and each]. Each day of violation or failure to comply shall constitute a separate offense."

SECTION 13. Section 464-11, Hawaii Revised Statutes, is amended to read as follows:

**"§464-11 Contents of certificates; use of seal mandatory when.** Each certificate of [registration] licensure issued hereunder shall bear the date of the original [registration] license and shall specify whether the person to whom it is issued is authorized by the board to practice professional engineering, architecture, land surveying or landscape architecture.

In the case of a certificate issued to a person authorizing the person to practice professional engineering, the certificate shall furthermore indicate the major branch or branches of engineering in which the person has especially qualified.

Every [registered person] licensee may use a seal or rubber stamp of the design authorized by the board bearing the<sup>1</sup> licensee's name and the words ["registered"] licensed professional engineer", ["registered"] licensed architect", ["registered"] licensed land surveyor", or ["registered"] licensed landscape architect", or otherwise as may be authorized by the board.

All plans, specifications, maps, and reports prepared by or under the supervision of a [registered] licensed engineer, architect, surveyor, or landscape architect shall be stamped with such seal or stamp when filed with public officials. It shall be unlawful for anyone to seal or stamp any document with such seal or stamp after the [certificate] license [of the registrant named thereon] has expired or has been revoked or suspended unless such [certificate] license has been renewed or reissued.

No official of the State nor of any political subdivision thereof, charged with the enforcement of laws or ordinances relating to the construction or alteration of buildings or structures, shall accept or approve any plans or specifications that are not stamped with the seal of a [registered] licensed architect [holding an unexpired certificate] or with the seal of a [registered] licensed engineer [holding a certificate on which has been indicated that the engineer] who has qualified in the structural engineering branch, unless the building or structure, for which the plans or specifications are submitted is exempted from this chapter, and no map or survey shall be filed in the land court unless stamped with the seal of a [registered] licensed land surveyor."

SECTION 14. Section 464-12, Hawaii Revised Statutes, is amended to read as follows:

**"§464-12 Corporations and partnerships.** A corporation or copartnership may engage in the practice of professional engineering, architecture, surveying or landscape architecture in the State, provided the person or persons connected with the corporation or copartnership directly in charge of the professional work is duly [registered] licensed hereunder, and provided further that the name or names of such person or persons has or have been filed with the board by the corporation or copartnership."

## ACT 210

SECTION 15. Section 464-14, Hawaii Revised Statutes, is amended to read as follows:

**“§464-14 [Violations;] Unlicensed activity; penalties.** Any person who practices, offers to practice, or holds oneself out as authorized and qualified to practice professional engineering, architecture, land surveying, or landscape architecture in the State, except as provided in sections 464-3 and 464-5; or who uses the title “engineer”, “architect”, “land surveyor” or “landscape architect”, or any title, sign, card, or device to indicate that such person is practicing professional engineering, architecture, land surveying or landscape architecture, or is a professional engineer, architect, land surveyor or landscape architect, without having first [registered] acquired a license in accordance with this chapter and without having a valid unexpired [certificate of registration;] license; or who uses or attempts to use as the person’s own the seal, [or the] certificate [of registration] or license of another, or who falsely impersonates any duly [registered] licensed practitioner hereunder, or who uses or attempts to use an expired, suspended, or revoked [certificate of registration; or any firm or corporation which advertises that it will furnish architectural, engineering or landscape architectural services in the making of plans or specifications or in the construction of any building or other structure, without first having complied with section 464-12; or any firm or corporation which furnishes or offers to furnish architectural, engineering or landscape architectural services for the construction of any building, structure, project, or utility in the State, without first having complied with section 464-12; or any person or firm who violates any of the provisions of this chapter] license shall be fined not more than \$500 or imprisoned not more than one year, or both.”

SECTION 16. Section 464-16, Hawaii Revised Statutes, is amended to read as follows:

**“[§464-16[] Appeal to circuit court.** An applicant who has been refused a license [and], every licensee whose license has been suspended, revoked, or not renewed, and any person against whom any penalty has been imposed under section 464-10, may appeal the board’s decision to the circuit court of the circuit in which the applicant [or], licensee, or person resides in the manner provided in chapter 91.”

SECTION 17. The board of registration of professional engineers, architects, surveyors and landscape architects shall undertake a study to determine optimal requirements for professional experience, both in addition to and in lieu of relevant academic education, for qualification to take the required examinations. The board shall submit a report of its findings and recommendations to the legislature no later than twenty days prior to the convening of the Regular Session of 1990.

The board and the department of commerce and consumer affairs shall study the idea of assigning responsibility for the four professions to two boards, one governing engineers and land surveyors, and the other governing architects and landscape architects. The board and the department shall submit a report of their findings and recommendations to the legislature no later than twenty days prior to the convening of the Regular Session of 1990.

SECTION 18. This Act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 20.** This Act shall take effect upon its approval; provided that no person serving on the board of professional engineers, architects, surveyors, and landscape architects as of the effective date of this Act shall be removed from such position because of amendments made in Section 8 of this Act; provided further that any appointment of a new member made to comply with the provisions of Section 8 of this Act shall be made immediately upon the expiration of the term of the appropriate incumbent.

(Approved June 7, 1989.)

**Note**

1. So in original.

**ACT 211**

H.B. NO. 920

A Bill for an Act Relating to a Department of Public Safety.

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

**SECTION 1.** The purpose of this Act is to consolidate all public safety functions and employees of state government into a department of public safety. This will ensure better organization and coordination of public safety functions, allow for standardized training, and establish a "career ladder" for public safety employees.

This Act establishes a department of public safety to be effective upon approval of this Act. Effective July 1, 1990, the functions and employees of the department of corrections, the office of the sheriff and security personnel in the judiciary, and the state law enforcement office (except for executive security functions and employees) and the narcotics enforcement division of the department of the attorney general are to be transferred to the new department. Effective July 1, 1991, the law enforcement and security functions and employees of the department of transportation shall be transferred to the new department. The director of public safety shall report to the legislature, no later than twenty days before the convening of the Regular Session of 1991, the director's recommendations regarding the transfer to the department of public safety of all other public safety functions and employees of the State.

This Act also provides that in the interim between the Act's approval and July 1, 1990, a management team shall be selected by the governor, with necessary staff hired by the governor, to develop the appropriate transitional plans, rework position descriptions, review personnel classifications, develop an organizational structure, prepare a proposed budget, and attend to other administrative details so that the new department of public safety can become initially operational on July 1, 1990.

**SECTION 2.** Chapter 26, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§26- Department of public safety.** (a) The department of public safety shall be headed by a single executive to be known as the director of public safety.

(b) The department of public safety shall be responsible for the formulation and implementation of state policies and objectives for correctional, security, law enforcement, and public safety programs and functions, for the administration and maintenance of all correctional facilities and services, for the service of process, and for the security of state buildings.

## ACT 211

(c) Effective July 1, 1990, the Hawaii paroling authority and the criminal injuries compensation commission are placed within the department of public safety for administrative purposes only.

(d) Effective July 1, 1990, the functions and authority heretofore exercised by the department of corrections relating to adult and juvenile corrections and the intake service centers; the functions and authority heretofore exercised by the judiciary relating to the sheriff's office and judiciary security personnel; and the functions and authority heretofore exercised by the department of the attorney general relating to state law enforcement officers and narcotics enforcement agents with the narcotics enforcement division shall be transferred to the department of public safety.

(e) Effective July 1, 1991, the functions and authority heretofore exercised by the director of transportation and the department of transportation related to law enforcement, including those pertaining to parking at its facilities and security, shall be transferred to the department of public safety."

SECTION 3. Section 26-4, Hawaii Revised Statutes, is amended to read as follows:

**"§26-4 Structure of government.** Under the supervision of the governor, all executive and administrative offices, departments, and instrumentalities of the state government and their respective functions, powers, and duties shall be allocated among and within the following principal departments which are hereby established:

- (1) Department of personnel services (Section 26-5)
- (2) Department of accounting and general services (Section 26-6)
- (3) Department of the attorney general (Section 26-7)
- (4) Department of budget and finance (Section 26-8)
- (5) Department of commerce and consumer affairs (Section 26-9)
- (6) Department of taxation (Section 26-10)
- (7) University of Hawaii (Section 26-11)
- (8) Department of education (Section 26-12)
- (9) Department of health (Section 26-13)
- (10) Department of human services (Section 26-14)
- (11) Department of land and natural resources (Section 26-15)
- (12) Department of agriculture (Section 26-16)
- (13) Department of Hawaiian home lands (Section 26-17)
- (14) Department of business and economic development (Section 26-18)
- (15) Department of transportation (Section 26-19)
- (16) Department of labor and industrial relations (Section 26-20)
- (17) Department of defense (Section 26-21)
- (18) Department of corrections (Section 26-14.5)
- (19) Department of public safety (Section 26- )"

SECTION 4. Effective July 1, 1990, section 26-4, Hawaii Revised Statutes, as amended by section 3 of this Act, is amended to read as follows:

**"§26-4 Structure of government.** Under the supervision of the governor, all executive and administrative offices, departments, and instrumentalities of the state government and their respective functions, powers, and duties shall be allocated among and within the following principal departments which are hereby established:

- (1) Department of personnel services (Section 26-5)
- (2) Department of accounting and general services (Section 26-6)

- (3) Department of the attorney general (Section 26-7)
- (4) Department of budget and finance (Section 26-8)
- (5) Department of commerce and consumer affairs (Section 26-9)
- (6) Department of taxation (Section 26-10)
- (7) University of Hawaii (Section 26-11)
- (8) Department of education (Section 26-12)
- (9) Department of health (Section 26-13)
- (10) Department of human services (Section 26-14)
- (11) Department of land and natural resources (Section 26-15)
- (12) Department of agriculture (Section 26-16)
- (13) Department of Hawaiian home lands (Section 26-17)
- (14) Department of business and economic development (Section 26-18)
- (15) Department of transportation (Section 26-19)
- (16) Department of labor and industrial relations (Section 26-20)
- (17) Department of defense (Section 26-21)
- (18) Department of [corrections (Section 26-14.5)]
- (19) Department of] public safety (Section 26-\_\_\_\_)"

SECTION 5. Effective July 1, 1990, section 26-52, Hawaii Revised Statutes, is amended to read as follows:

**"§26-52 Department heads and executive officers.** The salaries of the following state officers shall be as follows:

- (1) Effective January 1, 1986, the salary of the superintendent of education shall be \$76,000 a year.
- (2) The salary of the president of the University of Hawaii shall be set by the board of regents, but shall not exceed \$95,000 a year.
- (3) Effective January 1, 1986, the salaries of all department heads or executive officers of the departments of accounting and general services, agriculture, attorney general, budget and finance, commerce and consumer affairs, [corrections,] Hawaiian home lands, health, human services, labor and industrial relations, land and natural resources, personnel services, public safety, business and economic development, taxation, and transportation shall be \$68,400 a year.
- (4) Effective January 1, 1986, the salary of the adjutant general shall be \$68,400 a year. If the salary is in conflict with the pay and allowance fixed by the tables of the regular army or air force of the United States, the latter shall prevail."

SECTION 6. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **"CHAPTER PUBLIC SAFETY**

**§ -1 Definitions.** Whenever used in this chapter, unless the context otherwise requires:

"Department" means the department of public safety.

"Director" means the director of public safety.

**§ -2 Director of public safety; powers and duties.** The director of public safety shall administer the public safety programs of the department of public safety and shall be responsible for the formulation and implementation of state goals and objectives for correctional and law enforcement programs. In the administration of these programs, the director may:

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- (1) Preserve the public peace, prevent crime, detect and arrest offenders against the law, protect the rights of persons and property, and enforce and prevent violation of all laws and administrative rules of the State as the director deems to be necessary or desirable or upon request, to assist other state officers or agencies that have primary administrative responsibility over specific subject matters or programs;
- (2) Train, equip, maintain, and supervise the force public safety officers, including law enforcement and correctional personnel, and other employees of the department;
- (3) Serve process both in civil and criminal proceedings;
- (4) Perform other duties as may be required by law;
- (5) Adopt, pursuant to chapter 91, rules that are necessary or desirable for the administration of public safety programs; and
- (6) Enter into contracts in behalf of the department and take all actions deemed necessary and appropriate for the proper and efficient administration of the department.

**§ -3 Deputy directors; appointment.** The director shall appoint, without regard to chapters 76 and 77, three deputy directors to serve at the director's pleasure. Unless otherwise assigned by the director, one deputy director shall oversee the correctional programs and facilities of the department, one deputy director shall oversee the law enforcement programs of the department, and one deputy director shall oversee administration of the department.

**§ -4 Appointment of employees with police powers and other employees.** (a) The director may appoint employees to be public safety officers who shall have all of the powers of police officers; provided that the director may establish and assign the employees to positions or categories of positions that may have differing titles, specific duties, and limitations upon the exercise of police powers.

(b) The director may appoint other personnel necessary to carry out the functions of the department."

SECTION 7. The title of chapter 353, Hawaii Revised Statutes, is amended effective July 1, 1990, to read as follows:

### **“CHAPTER 353 [DEPARTMENT OF] CORRECTIONS”**

SECTION 8. Effective July 1, 1990, sections 334-74, 351-11, 355-4, 355-5, 571-48, 571D-1, 706-604, 706-656, 706-667, 706-670.5, 706-672, and 832-23; and chapters 352 and 353, Hawaii Revised Statutes, are amended by replacing all references to the “department of corrections” with the “department of public safety” and by replacing all references to the “director of corrections” with the “director of public safety.”

SECTION 9. Effective July 1, 1990, chapter 354, Hawaii Revised Statutes, is amended by replacing all references to the “department of social services and housing” with references to the “department of public safety” and by replacing all references to the “director of social services” with references to “director of public safety.”

SECTION 10. Effective July 1, 1990, sections 21-8, 21-17, 26-7, 26-9, 26-24, 28-11, 47-10, 52-36, 76-16, 88-51, 105-54, 134-11, 134-51, 143-1, 143-7, 183D-11, 187A-14, 231-25, 281-108, 281-111, 286-52, 286-52.5, 321-1, 322-

6, 325-9, 325-80, 326-35, 326-36, 326-37, 326-38, 346-4.5, 353-11, 360-5, 360-14, 383-71, 438-5, 445-37, 482E-4, 485-6, 487-10, 501-42, 501-171, 501-218, 521-78, 576D-11, 578-4, 584-6, 587-33, 603-29, 604-6.2, 606-14, 607-2, 607-4, 607-8, 633-8, 634-11, 634-12, 634-21, 634-22, 651-1, 651-33, 651-37, 651-51, 653-6, 654-2, 655-2, 657-13, 660-16, 666-11, 666-21, 803-23, 803-34, 803-35, 804-14, 804-18, 804-41, 805-1, 806-71, and 832-23, Hawaii Revised Statutes, are amended by replacing all references to "sheriff", "sheriffs", or "office of the sheriff", with references to the director of public safety or the department of public safety, as appropriate.

**SECTION 11.** Effective July 1, 1990, section 26-14.5, Hawaii Revised Statutes, is repealed.

**SECTION 12.** Effective July 1, 1990, section 28-11.5, Hawaii Revised Statutes, is repealed.

**SECTION 13.** Effective July 1, 1990, section 353-2, Hawaii Revised Statutes, is repealed.

**SECTION 14.** Effective July 1, 1990, section 353-3, Hawaii Revised Statutes, is repealed.

**SECTION 15.** Effective July 1, 1990, section 353-4, Hawaii Revised Statutes, is repealed.

**SECTION 16.** Effective July 1, 1990, sections 601-31, 601-32, 601-33, 601-34, 601-35, 601-36, 601-37, and 601-38, Hawaii Revised Statutes, are repealed.

**SECTION 17.** Effective July 1, 1990, section 601-51, Hawaii Revised Statutes, is repealed.

**SECTION 18. Plans and preparation for transfers.** The governor shall appoint a management team and may hire necessary staff, who shall be exempt from chapters 76 and 77, Hawaii Revised Statutes, to develop the appropriate transition plans, rework position descriptions, revise personnel classifications, develop an organizational structure, prepare a proposed budget, and attend to other administrative details so that the new department of public safety can be initially operational by July 1, 1990.

**SECTION 19.** The director of public safety shall report to the legislature, no later than twenty days before the convening of the Regular Session of 1991, the director's recommendations regarding the transfer to the department of public safety of all other public safety functions and employees of the State.

**SECTION 20. Transfer of personnel.** All officers and employees of the judiciary, department of the attorney general, department of corrections, and department of transportation whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to state personnel laws and this Act, including any person commissioned or otherwise authorized by the chief justice to engage in the service of process on a full-time salaried basis and whose commission shall continue until terminated for good cause.

No officer or employee of the State having tenure who is transferred by this Act shall suffer any loss of salary, seniority, prior service credit, vacation, sick

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leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

In the event that an office or position held by an officer or employee having tenure is abolished and the officer, employee, or position is not transferred to the department of public safety by this Act, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position of the State for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

Any employee who, prior to this Act, was exempt from civil service and may be transferred as a consequence of this Act, shall continue to retain the employee's exempt status and shall not be appointed to a civil service position because of this Act. Employees who may be transferred by this Act and who are receiving entitlements, benefits, or privileges in accordance with chapter 77, but not chapter 76, Hawaii Revised Statutes, shall continue to receive only those entitlements, benefits, or privileges received under chapter 77, Hawaii Revised Statutes, after such transfer.

**SECTION 21. Transfers of records, equipment, appropriations, authorizations and other property.** All appropriations, records, equipment, files, supplies, contracts, books, papers, documents, maps, computer software and data, authorizations and other property, both real and personal, heretofore made, used, acquired, or held by the department, office, board, commission, or agency in the exercise of the functions and programs transferred by this Act shall be transferred to the department of public safety when the functions or programs are so transferred.

**SECTION 22. Prosecutions and civil actions.** No offense committed and no penalty or forfeiture incurred under the law shall be affected by this Act; provided that whenever any punishment, penalty, or forfeiture is mitigated by any provision of this Act, such provision may be extended and applied to any judgment pronounced after the passage of this Act. No suit or prosecution pending at the time this Act takes effect shall be affected by this Act. The right of any administrative officer whose function is transferred by this Act to the department of public safety, to institute proceedings for prosecution for an offense or an action to recover a penalty or forfeiture shall be vested in the director of public safety or the director's designee.

**SECTION 23. Appeals.** The right of appeal from administrative actions or determinations as provided by law shall not be impaired by this Act.

Except as otherwise provided by this Act, wherever a right of appeal from administrative actions or determinations is provided by law to or from any officer, board, department, bureau, commission, administrative agency, or instrumentality of the State which, or any of the programs of which, is transferred by this Act to the department of public safety, the right of appeal shall lie to or from the department of public safety when the transfer is made. The right of appeal shall exist to the same extent and in accordance with the applicable procedures that are in effect immediately prior to the effective date of this Act.

If the provisions of the preceding paragraph relating to appeals cannot be effected by reason of abolishment, splitting, or shifting of functions or otherwise, the right of appeal shall lie to the circuit court of the State pursuant to the Hawaii Rules of Civil Procedure.

**SECTION 24. Federal aid, bond obligations; not impaired.** It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor is authorized and empowered to modify the strict provisions of this Act, but shall promptly report any such modifications with his reasons therefor to the legislature at its next session thereafter for review by the legislature.

**SECTION 25. Revision of existing statutes.** The revisor of statutes may incorporate into the Hawaii Revised Statutes, any of the provisions contained in this Act. The revisor of statutes shall substitute the appropriate department of public safety reference in all existing statutes where a department, board, commission, agency, program, or organizational segment is transferred to the department of public safety if such existing statutory language has not been amended by this Act.

**SECTION 26. Amendment of conflicting laws.** All laws and parts of laws heretofore enacted which are in conflict with the provisions of this Act are hereby amended to conform herewith. All Acts passed during this Regular Session of 1989, whether enacted before or after the passage of this Act, shall be amended to conform to this Act, unless such Acts specifically provide that the Act relating to a "department of public safety" is being amended. Amendments made to sections of the Hawaii Revised Statutes that are amended by this Act as of a future effective date shall include amendments made after the approval of this Act and before the effective date of the amendments made by this Act, to the extent that the intervening amendments may be harmonized with the amendments made by this Act.

**SECTION 27.** In accordance with section 9 of article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$400,000 or 0.017 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to achieve the purposes of this Act.

**SECTION 28.** There is hereby appropriated out of the general revenues of the State of Hawaii the sum of \$400,000, or so much thereof as may be necessary, for fiscal year 1989-1990, to carry out the purposes of section 18 of this Act. The sum appropriated shall be expended by the office of the governor.

**SECTION 29.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

**SECTION 30.** This Act shall take effect upon its approval, except that specific provisions of this Act shall take effect as otherwise specified in this Act.

(Approved June 7, 1989.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Environmental Quality.

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

**SECTION 1.** The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **"CHAPTER AIR POLLUTION"**

### **PART I. DEFINITIONS AND GENERAL PROVISIONS**

**§ -1 Definitions.** As used in this chapter, unless the context otherwise requires:

"Air pollution" means the presence in the outdoor air of substances in quantities and for durations which endanger human health or welfare, plant or animal life, or property or which unreasonably interfere with the comfortable enjoyment of life and property throughout the State and in such areas of the State as are affected thereby, but excludes all aspects of employer-employee relationships as to health and safety hazards. These substances include, but are not limited to smoke, charred paper, dust, soot, grime, carbon, noxious acids, fumes, gases, odors, particulate matter, or any combination of these.

"Complaint" means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule or order adopted pursuant to this chapter.

"Department" means the department of health.

"Director" means the director of health.

"Emission" means the act of releasing or discharging air pollutants into the ambient air from any source.

"Fugitive dust" means uncontrolled emission of solid airborne particulate matter from any source other than combustion.

"Party" means each person or agency named as party or properly entitled to be a party in any court or agency proceeding.

"Permit" means written authorization from the director to discharge waste, or to construct, modify, or operate any air pollution source. A permit authorizes the grantee to cause, emit, or discharge waste or air pollution in a manner or amount, or to do any act, not forbidden by this chapter or by rules adopted under this chapter, but requiring review by the department.

"Person" means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

"Pollution" means air pollution.

"Variance" means special written authorization from the director to cause, emit, or discharge waste or air pollution in a manner or in an amount in excess of applicable standards, or to do an act that deviates from the requirements of rules adopted under this chapter.

"Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substances, including radioactive substances, whether treated or not, which may pollute or tend to pollute the atmosphere of this State.

**§ -2 Administration.** The department shall administer this chapter through the director. The director may delegate to any person such power and authority

vested in the director by this chapter as the director deems reasonable and proper for the effective administration of this chapter, except the power to make rules.

**§ -3 Duties, rules, powers, appointment of hearings officers.** (a) In addition to any other power or duty prescribed by law and in this chapter, the director shall prevent, control, and abate air pollution in the State. In the discharge of this duty the director may make, amend, and repeal state rules controlling and prohibiting air pollution. All rules shall be adopted pursuant to chapter 91. Any person heard at the public hearing shall be given written notice of the action taken by the department with respect to the rules.

(b) In addition to other specific powers provided in this chapter, the director may appoint, without regard to chapters 76 and 77, hearings officers to conduct public participation activities including public hearings and public informational meetings.

**§ -4 Permits; procedures for.** (a) An application for any permit required under this chapter shall be in a form prescribed by the director.

(b) The department may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary in order for it to determine whether the proposed installation, alteration, or use will be in accord with applicable rules and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines that such will be in the public interest; provided that the permit may be subject to such reasonable conditions as the director may prescribe. The director, on application, shall renew a permit from time to time for a term not exceeding five years if the director determines that such is in the public interest. The director shall not deny an application for the issuance or renewal of a permit without affording the applicant an opportunity for a hearing in accordance with chapter 91.

The director, on the director's own motion or the application of any person may modify, suspend, or revoke any permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, the director determines that:

- (1) There is a violation of any condition of the permit; or
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts; or
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; or
- (4) Such is in the public interest.

In determining the public interest, the director shall consider the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the action be implemented, the alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented, and any other factors which the director may by rule prescribe; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

(d) The director shall ensure that the public receive notice of each application for a major source permit to control air pollution. The director may hold a public hearing before ruling on an application for a permit to control air pollution if the director determines such public hearing to be in the public interest.

(e) No applicant for a modification or renewal of a permit shall be held in violation of this chapter during the pendency of the applicant's application provided

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that the applicant acts consistently with the permit previously granted, the application and all plans, specifications, and other information submitted as a part thereof.

**§ -5 Variances.** (a) Every application for a variance shall be made on forms furnished by the department and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to applicable standards, and such other information as the department may by rule prescribe.

(b) Each application for a variance shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information submitted with the application, such additional information as may be submitted upon the request of the department, and the effect or probable effect upon the air quality standards established pursuant to this chapter.

(c) Whenever an application for a variance is approved, the department shall issue a variance authorizing the emission or discharge of pollutant in excess of applicable standards. No variance shall be granted by the department unless the application and the supporting information clearly show that:

- (1) The continuation of the function or operation involved in the discharge of air pollution occurring or proposed to occur by the granting of the variance is in the public interest as defined in section -4;
- (2) The emission or discharge occurring or proposed to occur does not substantially endanger human health or safety; and
- (3) Compliance with the applicable standards or rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(d) Any variance or renewal thereof shall be granted within the requirements of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, control, or abatement of the air pollution involved, it shall be only until the necessary means for prevention, control, or abatement become practicable and subject to the taking of any substitute or alternate measures that the department may prescribe. No renewal of a variance granted under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the air pollution involved.
- (2) The director may issue a variance for a period not exceeding five years.
- (3) Every variance granted under this section shall include conditions requiring the grantee to perform air or discharge sampling and report the results of such sampling to the department.

(e) Any variance granted pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial granting of a variance; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance; and provided further that the renewal, and the variance issued in pursuance thereof, shall provide for emission or discharge not greater than that attained pursuant to the terms of the immediately preceding variance at its expiration. No renewal shall be granted except on application therefor. Any such application shall be made at least one hundred eighty days prior to the expiration of the variance. The director shall act on an application for renewal within one hundred eighty days of the receipt of such application.

(f) The director may afford a hearing in accordance with chapter 91 in relation to an application for the issuance, renewal, or modification of a variance.

(g) No variance granted pursuant to this chapter shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.

(h) Any application for a variance, submitted pursuant to this chapter, shall be subject to the public participation requirements listed below.

(1) Public notices of every completed application for a variance shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed emission, discharge, or other proposed activity. Procedures for the circulation of public notices shall include at least the following:

- (A) Notice shall be circulated within the geographical areas of the proposed emission, discharge, or other proposed activity; such circulation shall include publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;
  - (B) Notice shall be mailed to any person or group upon request; and
  - (C) The director shall add the name of any person or group upon request to a mailing list to receive copies of notices for all variance applications within the State or within a certain geographical area.
- (2) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written reviews with respect to the variance application and the tentative determinations of the department, if any. The period for comment may be extended at the discretion of the director.
- (3) The contents of public notice of applications for variances shall include at least the following:
- (A) Name, address, and phone number of agency issuing the public notice;
  - (B) Name and address of each applicant;
  - (C) Brief description of each applicant's activities or operations which result in the emission, discharge, or other activity described in the variance application (e.g., rock crushing plant, municipal waste treatment plant, raw sugar factory, or pineapple cannery);
  - (D) A short description of the location of each emission or discharge indicating whether such emission or discharge is new or existing;
  - (E) A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by paragraph (2), and any other means by which interested persons may influence or comment upon those determinations; and
  - (F) Address and phone number of state agency premises at which interested persons may obtain further information and inspect a copy of the variance applications and supporting and related documents.
- (4) The director may hold a public hearing if, after reviewing the comments submitted under paragraph (2), the director determines that a public hearing is warranted. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed emission, discharge, or other proposed activity, or other appropriate area, at the discretion of the director.
- (5) The director shall hold a public hearing when revising the state implementation plan required by the Federal Clean Air Act, and the amendments thereto, and the regulations promulgated thereunder.

**§ -6 Inspection of premises.** The director, in accordance with law, may enter and inspect any building or place to investigate an actual or suspected source of air pollution, to ascertain compliance or noncompliance with this chapter, any rule or standard adopted by the department pursuant to this chapter, or any permit or other approval granted by the department pursuant to this chapter, and to make reasonable tests in connection therewith. No confidential information secured pursuant to this section by any official or employee of the department within the scope and course of the official's or employee's employment in the prevention, control, or abatement of air pollution shall be disclosed by the official or employee except as it relates directly to air pollution and then, only in connection with the official's or employee's official duties and within the scope and course of the official's or employee's employment.

**§ -7 Enforcement.** (a) If the director determines that any person is violating this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, the director:

(1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.

(2) May require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

(3) May impose penalties as provided in section -9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter after having been served notice of violation, the director:

(1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with this chapter, any rule adopted pursuant to this chapter, or the conditions of any permit or variance issued pursuant to this chapter.

(2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.

(3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.

(4) May impose penalties as provided in section -9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(c) If the director determines that the person has violated an accepted schedule, an order issued under this section, any rule adopted pursuant to this chapter, any condition of a permit or variance issued pursuant to this chapter, or has continued to violate this chapter, the director shall impose penalties by sending a notice in

writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

(d) Any order issued under this chapter shall become final, unless not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

(e) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the violation or discharges involved, or for the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or discharges.

(f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to recover the civil penalty which shall be a government realization.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

(g) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

**§ -8 Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to the public health and safety is or will be caused by discharge of waste or any combination of discharges of waste, which requires immediate action, the director, with the approval of the governor and without public hearing, may order any person causing or contributing to the discharge of waste to immediately reduce or stop such discharge or emission or the director may take any and all other actions as may be necessary. Such order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director.

(b) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

**§ -9 Penalties.** (a) Violation of the vehicular smoke emission rules adopted by the department pursuant to this chapter shall constitute a violation as defined in section 701-107 and shall be enforceable by police officers. The fine for this

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violation shall be not less than \$25 nor more than \$2,500 for each separate offense. Each day of violation shall constitute a separate offense.

(b) Violation of the open burning control rules adopted by the department pursuant to this chapter shall constitute a violation as defined in section 701-107 and shall be enforceable by any duly authorized police officer or employee of the department. The fine for this violation shall not exceed \$10,000 for each separate offense. Each day of violation shall constitute a separate offense.

(c) Any person who violates this chapter, any rule adopted pursuant to this chapter, other than vehicular smoke emission control and open burning control rules, or any condition of a permit or variance issued pursuant to this chapter, shall be fined not more than \$10,000 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection, other than the penalty imposed for violations of vehicular smoke emission and open burning rules, shall be considered a civil action.

(d) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle that the officer or employee is authorized to enter and inspect shall be fined not more than \$500. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

**§ -10 Citation.** Any person who commits a violation of the vehicular smoke emission rules and open burning control rules adopted by the department pursuant to this chapter may be issued a summons or citation for such violation by any person authorized to enforce such rules, hereinafter referred to as enforcement officer. The summons or citation shall be printed in the form hereinafter described, warning such person to appear and answer to the charge against the person at a certain place and at a time within seven days after the issuance of such summons or citation.

The summons or citation shall be designed to provide for all necessary information. The form and content of such summons or citation shall be adopted or prescribed by the district courts.

The original of a summons or citation shall be given to the purported violator and the other copy or copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution of the original and any other copies.

Summons and citations shall be consecutively numbered and the carbon copy or copies of each shall bear the same number.

In the event any person fails to comply with a summons or citation issued to such person, the enforcement officer shall cause a complaint to be entered against such person and secure the issuance of a warrant for the person's arrest. Failure to comply with a summons or citation is a misdemeanor.

**§ -11 Administrative penalties.** In addition to any other administrative or judicial remedy provided by this chapter, or by rules adopted pursuant to this chapter, the director is authorized to impose by order the penalties specified in section -9(c). Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such request, the civil penalty was imposed, and that the penalty remains unpaid.

**§ -12 Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.

**§ -13 Appeal.** If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of a cease and desist order will not be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

**§ -14 Fees.** The director may establish reasonable fees for the issuance of permits and variances, to cover the cost of issuance thereof, and for the implementation and enforcement of the terms and conditions of permits and variances (not including court costs or other costs associated with any formal enforcement action). The fees shall be deposited to the credit of the general fund.

**§ -15 Public records; confidential information; penalties.** Air pollution permit applications and reports on air pollution emissions submitted to the department shall be made available for inspection by the public during established office hours unless such reports contain information of a confidential nature concerning secret processes or methods of manufacture. Any officer, employee, or agent of the department acquiring confidential information from the inspection authorized by section -6 who divulges information except as authorized in this chapter or except as ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or of any rule or standard adopted pursuant to this chapter shall be fined not more than \$1,000.

**§ -16 Nonliability of department personnel.** Notwithstanding any other law to the contrary, no member, officer, or employee of the department shall be criminally liable or responsible under this chapter for any acts done by the member, officer, or employee in the performance of the member's, officer's, or employee's duties; provided that this section shall not apply to violations of section -15.

**§ -17 Other action not barred.** No existing civil or criminal remedy for any wrongful action which is a violation of any statute or any rule of the department or the ordinance of any county shall be excluded or impaired by this chapter.

**§ -18 Enforcement by state and county authorities.** All state and county health authorities and police officers shall enforce this chapter and the rules, orders, and permits of the department.

**§ -19 Other powers of department not affected.** The powers, duties, and functions vested in the department under this chapter shall not be construed to affect in any manner the powers, duties, and functions vested in the department under any other law.

**§ -20 Effect of laws, ordinances, and rules.** (a) All laws, ordinances, and rules inconsistent with this chapter shall be void and of no effect.

(b) Any county may adopt ordinances and rules governing any matter relating to air pollution control which is not governed by a rule of the department adopted

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pursuant to this chapter; provided that any county ordinance or rule relating to air pollution control shall be void and of no effect as to any matter regulated by a rule of the department upon the adoption thereof.

**§ -21 Priority in courts.** All actions brought pursuant to this chapter or pursuant to the rules adopted under this chapter or pursuant to the conditions of a permit issued under this chapter shall in the discretion of the court receive priority in the courts of the State.

## **PART II. AIR POLLUTION CONTROL**

**§ -30 Prohibition.** No person, including any public body, shall engage in any activity which causes air pollution without first securing approval in writing from the director.

**§ -31 Powers and duties; specific.** The director may:

- (1) Establish ambient air quality standards for the State as a whole or for any part thereof;
- (2) Establish by rule the control of open burning, fugitive dust, and visible emissions;
- (3) Establish by rule the control of vehicular smoke emission and require the installation, use, and proper maintenance of air pollution control equipment for motor vehicles;
- (4) Establish and carry out a program of inspection and testing of all modes of transportation except aircraft, to enforce compliance with applicable emission limitations when necessary and practicable, and to control or limit the operation of motor vehicular and other modes of transportation when the director finds pursuant to standards established by rules such modes of transportation are producing or pose an immediate danger of producing unacceptable levels of air pollution or when such control is necessary to meet applicable ambient air quality standards.
- (5) Establish by rule other specific areas for control of air pollution, thereby allowing for varying conditions.

**§ -32 Permits; requirement.** The director may require private persons or agencies or governmental agencies engaged or desiring to engage in operations which result or may result in air pollution to secure a permit prior to installation or operation or continued operation. The director shall refuse to issue the permit unless it appears that the operations would be in compliance with the rules of the department and the state ambient air quality standards. The director may also require the persons or agencies to submit plans and file reports containing information relating to location, size of outlet, height of outlet, rate incurred at emission and composition of discharge and such other matters relative to air pollution as the department shall prescribe to be filed.

**§ -33 Recordkeeping and monitoring requirements.** The director may require the owner or operator of any emission source to:

- (1) Establish and maintain such records;
- (2) Make such reports;
- (3) Install, use, and maintain such monitoring equipment or methods;
- (4) Sample such emission; and
- (5) Provide such other information as the department may require.

**§ -34 Complaints; hearings; appointment of masters.** The director may:

- (1) Receive or initiate complaints on air pollution, hold hearings in connection with air pollution, and institute legal proceedings in the name of the State for the prevention, control, or abatement of air pollution; and
- (2) Appoint a master or masters to conduct investigations and hearings.

**§ -35 Research, educational, and training programs.** The director may:

- (1) Conduct and supervise research programs for the purpose of determining the causes, effects, hazards or means to monitor or abate sources of air pollution;
- (2) With the approval of the governor, cooperate with, and receive money from, the federal government, or any political subdivision of the State or from private sources for the study and control of air pollution; and
- (3) Conduct and supervise statewide educational and training programs on air pollution prevention, control, and abatement, including the preparation and distribution of information relating to air pollution."

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

## **“CHAPTER WATER POLLUTION**

### **PART I. DEFINITIONS AND GENERAL PROVISIONS**

**§ -1 Definitions.** As used in this chapter, unless the context otherwise requires:

“Coastal waters” means all waters surrounding the islands of the State from the coast of any island to a point three miles seaward from the coast, and, in the case of streams, rivers, and drainage ditches, to a point three miles seaward from their point of discharge into the sea and includes those brackish waters, fresh waters, and salt waters that are subject to the ebb and flow of the tide.

“Complaint” means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule or order adopted pursuant to this chapter.

“Department” means the department of health.

“Director” means the director of health.

“Drainage ditch” means that facility used to carry storm runoff only.

“Effluent” means any substance discharged into state waters, publicly owned treatment works, or sewerage systems, including, but not limited to, sewage, waste, garbage, feculent matter, offal, filth, refuse, any animal, mineral, or vegetable matter or substance, and any liquid, gaseous, or solid substances.

“Effluent sources” include, but are not limited to, sewage outfalls, refuse systems and plants, water systems and plants, industrial plants, and contributors to publicly owned treatment works or sewerage systems.

“Individual wastewater system” means a facility which disposes of treated or untreated domestic wastewater generated from dwelling units or other sources generating domestic wastewater of similar volume and strength such as: (1) developments of a density not greater than one dwelling unit per 5,000 square feet of ultimate development; (2) developments with buildings other than dwellings but involving the generation of domestic wastewater at a rate of less than 400 gallons per day per 5,000 square feet of ultimate development; or (3) multifamily dwelling units developed and constructed pursuant to section 46-15.1 and chapters 356, 359 and 201E, subject to the approval of the director. Individual wastewater systems include, but are not limited to, cesspools, septic tanks, and household aerobic units.

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“Industrial user” means a source of water pollutants into a publicly owned treatment works from any nondomestic source regulated under section 307(b), (c), or (d) of the Federal Water Pollution Control Act.

“New source” means any source of water pollution the construction of which is commenced after the adoption of rules prescribing a standard of performance which will be applicable to such source.

“Party” means each person or agency named as party or properly entitled to be a party in any court or agency proceeding.

“Permit” means written authorization from the director to discharge waste or to construct, modify, or operate any water pollution source. A permit authorizes the grantee to cause or discharge waste or water pollution in a manner or amount, or to do any act, not forbidden by this chapter or by rules adopted under this chapter, but requiring review by the department.

“Person” means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

“Pollution” means water pollution.

“Sewerage system” means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

“Standard of performance” means a standard for the control of the discharge of water pollutants which reflects the greatest degree of effluent reduction which the director determines to be achievable through application of the best demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of water pollutants.

“State waters” means all waters, fresh, brackish, or salt, around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as a part of a water pollution control system are excluded.

“Treatment works” means any plant or other facility used for the purpose of controlling water pollution.

“Variance” means special written authorization from the director to cause or discharge waste or water pollution in a manner or in an amount in excess of applicable standards, or to do an act that deviates from the requirements of rules adopted under this chapter.

“Waste” means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute the waters of this State.

“Wastewater” means any liquid waste, whether treated or not, and whether animal, mineral, or vegetable including agricultural, industrial, and thermal wastes.

“Water pollutant” means dredged spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, cellar dirt and industrial, municipal, and agricultural waste.

“Water pollution” means:

- (1) Such contamination or other alteration of the physical, chemical, or biological properties of any state waters, including change in temperature, taste, color, turbidity, or odor of the waters, or
- (2) Such discharge of any liquid, gaseous, solid, radioactive, or other substances into any state waters,

as will or is likely to create a nuisance or render such waters unreasonably harmful, detrimental, or injurious to public health, safety, or welfare, including harm, detriment, or injury to public water supplies, fish and aquatic life and wildlife, rec-

reational purposes and agricultural and industrial research and scientific uses of such waters or as will or is likely to violate any water quality standards, effluent standards, treatment and pretreatment standards, or standards of performance for new sources adopted by the department.

**§ -2 Administration.** The department shall administer this chapter through the director. The director may delegate to any person such power and authority vested in the director by this chapter as the director deems reasonable and proper for the effective administration of this chapter, except the power to make rules.

**§ -3 Board membership.** Notwithstanding any law to the contrary, no individual, board, or body of this State which grants permits required under this chapter shall be or include, as a member, any person who receives or has during the previous two years received, a significant portion of the person's income directly or indirectly from permit holders or applicants for a permit; provided that for the purposes of this section, no agency, board, or body of the State shall be considered a permit holder or applicant for a permit.

**§ -4 Duties; rules.** In addition to any other power or duty prescribed by law and in this chapter, the director shall prevent, control, and abate water pollution in the State. In the discharge of this duty, the director may adopt rules pursuant to chapter 91 necessary for the purposes of this chapter. Any person heard at the public hearing shall be given written notice of the action taken by the department with respect to the rules.

**§ -5 Rules; specific.** The director may establish by rule, water quality standards, effluent standards, treatment and pretreatment standards, and standards of performance for specific areas and types of discharges in the control of water pollution, thereby allowing for varying local conditions.

**§ -6 Permits; procedures for.** (a) An application for any permit required under this chapter shall be in a form prescribed by the director.

(b) The department may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary in order for it to determine whether the proposed installation, alteration, or use will be in accord with applicable rules and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines that such will be in the public interest; provided that the permit may be subject to such reasonable conditions as the director may prescribe. The director, on application, shall renew a permit from time to time for a term not exceeding five years if the director determines that such is in the public interest. The director shall not deny an application for the issuance or renewal of a permit without affording the applicant an opportunity for a hearing in accordance with chapter 91.

The director, on the director's own motion or the application of any person may modify, suspend, or revoke any permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, the director determines that:

- (1) There is a violation of any condition of the permit; or
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts; or
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; or

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(4) Such is in the public interest.

The director shall ensure that the public receive notice of each application for a permit to control water pollution. The director may hold a public hearing before ruling on an application for a permit to control water pollution if the director determines such public hearing to be in the public interest.

In determining the public interest, the director shall consider the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the action be implemented, the alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented, and any other factors which the director may by rule prescribe; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

(d) No applicant for a modification or renewal of a permit shall be held in violation of this chapter during the pendency of the applicant's application so long as the applicant acts consistently with the permit previously granted, the application and all plans, specifications, and other information submitted as part thereof.

**§ -7 Variances.** (a) Every application for a variance shall be made on forms furnished by the department and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and such other information as the department may by rule prescribe.

(b) Each application for a variance shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information submitted with the application, such additional information as may be submitted upon the request of the department, and the effect or probable effect upon the water quality standards established pursuant to this chapter.

(c) Whenever an application is approved, the department shall issue a variance authorizing the discharge of water pollutant in excess of applicable standards. No variance shall be granted by the department unless the application and the supporting information clearly show that:

- (1) The continuation of the function or operation involved in the discharge of waste occurring or proposed to occur by the granting of the variance is in the public interest as defined in section -6;
- (2) The discharge occurring or proposed to occur does not substantially endanger human health or safety; and
- (3) Compliance with the rules or standards from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(d) Any variance or renewal thereof shall be granted within the requirements of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, control, or abatement of the water pollution involved, it shall be only until the necessary means for prevention, control, or abatement become practicable and subject to the taking of any substitute or alternate measures that the department may prescribe. No renewal of a variance granted under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the water pollution involved.

- (2) The director may issue a variance for a period not exceeding five years.
- (3) Every variance granted under this section shall include conditions requiring the grantee to perform discharge or effluent sampling and report the results of such sampling to the department.

(e) Any variance granted pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial granting of a variance; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance; and provided further that the renewal, and the variance issued in pursuance thereof, shall provide for discharge not greater than that attained pursuant to the terms of the immediately preceding variance at its expiration. No renewal shall be granted except on application therefor. Any such application shall be made at least one hundred eighty days prior to the expiration of the variance. The director shall act on an application for renewal within one hundred eighty days of the receipt of such application.

(f) The director may afford a hearing in accordance with chapter 91 in relation to an application for the issuance, renewal, or modification of a variance.

(g) No variance granted pursuant to this chapter shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.

(h) Notwithstanding any provision in this section, no variance shall be granted or renewed pursuant to this chapter with respect to any discharge of water pollutants or wastes that is in violation of the requirements of the Federal Water Pollution Control Act and the amendments thereto.

(i) Any application for a variance, submitted pursuant to this chapter, shall be subject to the public participation requirements listed below.

- (1) Public notices of every completed application for a variance shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge or other proposed activity. Procedures for the circulation of public notices shall include at least the following:
  - (A) Notice shall be circulated within the geographical areas of the proposed discharge or other proposed activity; such circulation shall include publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;
  - (B) Notice shall be mailed to any person or group upon request; and
  - (C) The director shall add the name of any person or group upon request to a mailing list to receive copies of notices for all variance applications within the State or within a certain geographical area.
- (2) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written reviews with respect to the variance application and the tentative determinations of the department, if any. The period for comment may be extended at the discretion of the director.
- (3) The contents of public notice of applications for variances shall include at least the following:
  - (A) Name, address, and phone number of agency issuing the public notice;
  - (B) Name and address of each applicant;
  - (C) Brief description of each applicant's activities or operations which result in the discharge or other activity described in the variance application (e.g., rock crushing plant, municipal waste treatment plant, raw sugar factory, or pineapple cannery);

- (D) A short description of the location of each discharge indicating whether such discharge is new or existing;
  - (E) A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by paragraph (2) of this subsection and any other means by which interested persons may influence or comment upon those determinations; and
  - (F) Address and phone number of state agency premises at which interested persons may obtain further information and inspect a copy of the variance applications and supporting and related documents.
- (4) The director may hold a public hearing if, after reviewing the comments submitted under paragraph (2), the director determines that a public hearing is warranted. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed discharge or other proposed activity, or other appropriate area, at the discretion of the director.

**§ -8 Inspection of premises.** (a) The director, in accordance with law may enter and inspect any building or place to investigate an actual or suspected source of water pollution, to ascertain compliance or noncompliance with this chapter, any rule or standard adopted by the department pursuant to this chapter, or any permit or other approval granted by the department pursuant to this chapter, and to make reasonable tests in connection therewith.

(b) The director may require any permittee or holder of a variance or person subject to pretreatment requirements to permit the director or the director's authorized representative upon the presentation of the director's or representative's credentials:

- (1) To enter upon permittee's or variance holder's premises or premises of a person subject to pretreatment requirements in which an effluent source is located or in which any records are required to be kept under the terms and conditions of the permit or variance or pretreatment requirements;
  - (2) To inspect any monitoring equipment or method required in the permit or variance or by pretreatment requirements; and
  - (3) To sample any discharge of water pollutants or effluent.
- (c) No confidential information secured pursuant to this section by any official or employee of the department within the scope and course of the official's or employee's employment in the prevention, control, or abatement of water pollution shall be disclosed by the official or employee except as it relates directly to water pollution and then, only in connection with the official's or employee's official duties and within the scope and course of the official's or employee's employment.

**§ -9 Enforcement.** (a) If the director determines that any person is violating this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.
- (2) May require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

- (3) May impose penalties as provided in section -30 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.
- (b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter after having been served notice of violation, the director:
  - (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter.
  - (2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.
  - (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.
  - (4) May impose penalties as provided in section -30 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.
- (c) If the director determines that the person has violated an accepted schedule, an order issued under this section, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter, or has continued to violate this chapter, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.
- (d) Any order issued under this chapter shall become final, unless not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.
- (e) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the violation or discharges involved, or for the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or discharges.

(f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to recover the civil penalty which shall be a government realization.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

(g) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

**§ -10 Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to the public health and safety is or will be caused by the discharge of waste or any combination of discharges of waste which requires immediate action, the director, with the approval of the governor and without public hearing, may order any person causing or contributing to the discharge of waste to immediately reduce or stop such discharge or the director may take any and all other actions as may be necessary. Such order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director.

(b) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

**§ -11 Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.

**§ -12 Appeal.** If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of a cease and desist order will not be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

**§ -13 Fees.** The director may establish reasonable fees for the issuance of permits and variances to cover the cost of issuance thereof and for the implementation and enforcement of the terms and conditions of permits and variances (not including court costs or other costs associated with any formal enforcement action). The fees shall be deposited to the credit of the general fund.

**§ -14 Public records; confidential information; penalties.** Reports submitted to the department on discharges of waste shall be made available for inspection by the public during established office hours unless such reports contain information of a confidential nature concerning secret processes or methods of manufacture. Any officer, employee, or agent of the department acquiring confidential information from the inspection authorized by section -8 who divulges information except as authorized in this chapter or except as ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or of any rule or standard adopted pursuant to this chapter shall be fined not more than \$1,000.

**§ -15 Nonliability of department personnel.** Notwithstanding any other law to the contrary, no member, officer, or employee of the department shall be criminally liable or responsible under this chapter for any acts done by the member, officer, or employee in the performance of the member's, officer's, or employee's duties; provided that this section shall not apply to violations of section -14.

**§ -16 Other action not barred.** No existing civil or criminal remedy for any wrongful action which is a violation of any statute or any rule of the department or the ordinance of any county shall be excluded or impaired by this chapter.

**§ -17 Enforcement by state and county authorities.** All state and county health authorities and police officers shall enforce this chapter and the rules and orders of the department.

**§ -18 Other powers of department not affected.** The powers, duties, and functions vested in the department under this chapter shall not be construed to affect in any manner the powers, duties, and functions vested in the department under any other law.

**§ -19 Effect of laws, ordinances, and rules.** (a) All laws, ordinances, and rules inconsistent with this chapter shall be void and of no effect.

(b) Any county may adopt ordinances and rules governing any matter relating to water pollution control which is not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to water pollution control shall be void and of no effect as to any matter regulated by a rule of the department upon the adoption thereof except as provided in subsection (c).

(c) Any county desiring to administer its own laws, ordinances, and rules on the design, construction, and operation of sewerage and treatment facilities may submit to the director a full and complete description of the program it proposes to establish and administer under county law. In addition, the county shall submit a statement from its corporation counsel or county attorney that the laws of the county provide adequate authority and the standards are equal to or more stringent than the standards of the department to carry out the described program. The director shall approve each such submitted program unless the director determines that either adequate authority does not exist or the proposed standards are less stringent than those of the department.

**§ -20 Priority in courts.** All actions brought pursuant to this chapter or pursuant to the rules adopted under this chapter shall in the discretion of the court receive priority in the courts of the State.

## PART II. PENALTIES

**§ -30 Civil penalties.** (a) Any person who violates this chapter or any rule shall be fined not more than \$10,000 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle that the officer or employee is authorized to enter and inspect shall be fined not more than \$5,000. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

**§ -31 Administrative penalties.** In addition to any other administrative or judicial remedy provided by this chapter, or by rules adopted under this chapter,

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the director is authorized to impose by order the penalties specified in section - 30. Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator. In any judicial proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

### **§ -32 Negligent violations.** Any person who:

- (1) Negligently violates this chapter or any rule adopted by the department pursuant to this chapter, or any condition or in a permit issued under this chapter or any requirement imposed in a pretreatment program under this chapter; or
- (2) Negligently introduces into a sewerage system or into a publicly owned treatment works any water pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under this chapter;

shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this section, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment of not more than two years, or by both.

### **§ -33 Knowing violations.** Any person who:

- (1) Knowingly violates this chapter or any rule adopted by the department pursuant to this chapter, or any condition in a permit issued under this chapter or any requirement imposed in a pretreatment program; or
- (2) Knowingly introduces into a sewerage system or into a publicly owned treatment works any water pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under this chapter;

shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than three years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this section, punishment shall be by a fine of not more than \$100,000 per day of violation, or by imprisonment of not more than six years, or by both.

**§ -34 Knowing endangerment.** (a) Any person who knowingly violates this chapter or any rule adopted by the department pursuant to this chapter, or any condition in a permit issued under this chapter, and who knows at that time that the violation places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than fifteen years, or both.

(b) A person which is an organization, upon conviction of violating this section, shall be subject to a fine of not more than \$1,000,000. If a conviction of a person is for a violation committed after a first conviction of such person under

this section, the maximum punishment shall be doubled with respect to both fine and imprisonment.

(c) For the purpose of this section, in determining whether a defendant who is an individual knew that the individual's conduct placed another person in imminent danger of death or serious bodily injury:

- (1) The person is responsible only for actual awareness or actual belief that the person possessed; and
- (2) Knowledge possessed by a person other than the defendant but not by the defendant may not be attributed to the defendant; except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself or herself from relevant information.

(d) It is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

- (1) An occupation, a business, or a profession; or
- (2) Medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent; and such defense may be established under this section by a preponderance of the evidence.

(e) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such terms includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(f) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

**§ -35 False statements.** Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this section, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or by both.

**§ -36 Treatment of single operational upset.** For the purpose of this part, a single operational upset which leads to simultaneous violations of more than one water pollutant parameter shall be treated as a single violation.

**§ -37 Responsible corporate officer as "person".** For the purpose of this chapter, the term "person" means, in addition to the definition contained in section -1, any responsible corporate officer.

**§ -38 Hazardous substance defined.** For the purpose of this part, the term "hazardous substance" means:

- (1) Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, as amended (FWPCA);

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- (2) Any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980;
- (3) Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress);
- (4) Any toxic pollutant listed under section 307(a) of the FWPCA; and
- (5) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

### PART III. WATER POLLUTION CONTROL

**§ -50 Prohibition.** (a) No person, including any public body, shall discharge any water pollutant into state waters, or cause or allow any water pollutant to enter state waters except as in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director.

(b) No person, including any public body, shall knowingly establish, extend, or alter any system of drainage, sewage, or water supply, or undertake any project in sewage outfall areas where there may be a possibility of alteration of currents depended upon for dilution without first securing approval in writing from the director.

(c) No person, including any industrial user, shall discharge any water pollutant or effluent into a publicly owned treatment works or sewerage system in violation of:

- (1) A pretreatment standard established by the department or the publicly owned treatment works; or
- (2) A pretreatment condition in a permit issued by the department or a publicly owned treatment works.

**§ -51 Affirmative duty to report discharges.** (a) Any person who has caused an unlawful discharge under section -50(a) has an affirmative duty to report the incident to the director within twenty-four hours of the discharge.

(b) Upon notification, the department may investigate the incident or report and may assess the adequacy of the corrective action taken by the person responsible for the discharge. If the department finds that the corrective actions taken are inadequate to protect the environment or the public health or safety, the department may prescribe additional actions to be taken and the time in which such actions must be taken.

(c) Any person who fails to report an unlawful discharge or who fails to execute corrective actions as prescribed by the department shall be subject to a fine for each day in which the violation occurs in an amount necessary for the cleanup expenses, but in no event shall such fine exceed \$10,000 for each day of violation. Legal interest shall accrue from the first day of violation.

**§ -52 Testing of water and aquatic and other life.** The director may test any water and aquatic and other life that has been subjected to an oil spill or any other form of water pollution and assess the environmental effects of the pollution, including its effects on:

- (1) The quality of the receiving water; and
- (2) Aquatic and other life.

If the department determines that the effects are such that it would be hazardous to consume the aquatic or other life, the department shall immediately notify the

public of that hazard through the news media and by posting warning signs in the areas where the water and shoreline contain aquatic or other life that would be hazardous to consume.

**§ -53 Certifying agency.** The director may act as a certifying agency, as defined in 40 C.F.R. 121.1(e) (1985).

**§ -54 Treatment works; construction grants; advances; state revolving fund.** (a) The director may make grants or loans to any state or county agency of state funds as authorized and appropriated by the legislature for the construction of necessary treatment works and for other projects intended for wastewater reclamation or waste management by other than conventional means to prevent or to control the discharge of untreated or inadequately treated sewage or other waste into any state waters. The director shall coordinate the granting of state funds with available federal funds for the same purpose. No grant or loan shall be made for any project unless:

- (1) The project conforms with the state water pollution control plan;
- (2) The project is certified by the director as entitled to priority over other eligible projects on the basis of financial as well as water pollution control needs; and
- (3) In the case of treatment work, the application for the grant or loan contains reasonable assurances that the applicant will provide for the proper and efficient operation and maintenance of the treatment works after its construction.

(b) If the federal funds are not immediately available, the director may advance the federal share of the planning and design cost to the county or state agency, subject to the following provisions:

- (1) The director shall enter into a contract with the applicant specifying the conditions of the advance; and
- (2) The advances made by the State to the county or state agency shall be reimbursed to the State immediately upon the receipt from the federal government of the advanced funds or within one year after the completion of project construction.

(c) There is established in the state treasury a fund to be known as the water pollution control revolving fund solely for the purpose of receiving federal and state funds to provide financial assistance to governmental agencies for the planning, design, and construction of treatment works owned by a governmental agency in accordance with Title VI of the Water Quality Act of 1987, Public Law 100-4, and implementation of management programs established under sections 319 and 320 of the Water Quality Act of 1987; provided that:

- (1) The director may enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept capitalization grants which shall be deposited into the revolving fund;
- (2) The financial assistance which may be provided to governmental agencies by the revolving fund shall be limited to loans, loan guarantees, and bond guarantees;
- (3) The revolving fund shall be established, maintained, and credited with loan repayments and the fund balance shall be available in perpetuity for its stated purpose;
- (4) The director may make and condition loans from the fund as required by state or federal law. Such loans shall:
  - (A) Be made at or below market interest rates;

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- (B) Require annual payments of principal and interest with repayment commencing not later than one year after completion of the project for which the loan is made; and
- (C) Be fully amortized not later than twenty years after project completion;
- (5) The director shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for appropriate accounting periods of payments and disbursements received and made by the revolving fund and for fund balances at the beginning and end of the accounting period;
- (6) The director may enter into any necessary or required agreement and give or make any necessary or required assurance or certification with any person to receive payments or grants or to make or provide any financial assistance in conformance with Title VI of the Water Quality Act of 1987;
- (7) No loan from the revolving fund shall be made unless the loan recipient establishes a dedicated source of revenue for the repayment of such loans; and
- (8) The director may adopt rules pursuant to chapter 91 necessary for the purposes of this section, including but not limited to, penalties for default of loan repayments.

**§ -55 Recordkeeping and monitoring requirements.** The director may require:

- (1) Complete and detailed plans or reports, on existing works, systems, or plants, and of any proposed addition to, modification of, or alteration of any such works, system, or plant which contains the information requested by the director in the form prescribed by the director. Such plans or reports shall be made by a competent person acceptable to the director and at the expense of such applicant or owner; and
- (2) The owner or operator of any effluent source or any discharger of effluent to:
  - (A) Establish and maintain records;
  - (B) Make reports;
  - (C) Install, use, and maintain monitoring equipment or methods;
  - (D) Sample effluent and state waters; and
  - (E) Provide such other information as the department may require.

**§ -56 Complaints; hearings; appointment of masters.** The director may:

- (1) Receive or initiate complaints of water pollution, hold hearings in connection with water pollution, and institute legal proceedings in the name of the State for the prevention, control, or abatement of water pollution; and
- (2) Appoint a master or masters to conduct investigations and hearings.

**§ -57 Public participation activities; appointment of hearings officers.** The director may appoint, without regard to chapters 76 and 77, hearings officers to conduct public participation activities, including public hearings and public informational meetings.

**§ -58 Consultation and advice.** The director may consult with and advise:

- (1) Any person engaged or intending to be engaged in any business or undertaking whose waste, sewage, or drainage is polluting or may tend to pollute state waters; and

- (2) Persons intending to alter or to extend any system of drainage, sewage, or water supply.

**§ -59 Research, educational, and training programs.** The director may:

- (1) Conduct and supervise research programs for the purpose of determining the causes, effects, and hazards of water pollution, the quality of the receiving water and the means to monitor the quality of water, or to effect the proper disposal of sewage, drainage, and waste;
- (2) With the approval of the governor, cooperate with, and receive money from the federal government, or any political subdivision of the State or from private sources for the study and control of water pollution; and
- (3) Conduct and supervise state educational and training programs on water pollution prevention, control, and abatement, including the preparation and distribution of information relating to water pollution.

**§ -60 Annual reports.** The director may publish annual reports on the quality of the state waters, which annual report shall include, but not be limited to:

- (1) A description of sampling programs and quality control methods procedures;
- (2) Statistical analysis and interpretation of the data on an annual basis by specific points (monitoring stations);
- (3) Discussion of the results of these analyses to the extent that the implications can be understood by the general public;
- (4) Recommendations for the modification of the water quality monitoring program to enhance its effectiveness for maintaining high standards of water quality in the State; and
- (5) A note of any significant changes in the quality of state waters."

SECTION 3. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **"CHAPTER NOISE POLLUTION"**

### **PART I. DEFINITIONS AND GENERAL PROVISIONS**

**§ -1 Definitions.** As used in this chapter, unless the context otherwise requires:

"Complaint" means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule or order adopted pursuant to this chapter.

"Department" means the department of health.

"Director" means the director of health.

"Excessive noise" means the presence of sound as measured by standard testing devices as established by the noise rules adopted by the department of a volume or in quantities and for durations which endangers human health, welfare or safety, animal life, or property or which unreasonably interferes with the comfortable enjoyment of life and property in the State or in such areas of the State as are affected thereby.

"Party" means each person or agency named as party or properly entitled to be a party in any court or agency proceeding.

"Off-hour roadwork" means any roadway construction between the hours of 6pm and 7am, which would require a variance from the committee on noise rules in the department of health.

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“Permit” means written authorization from the director to construct, modify, or operate any excessive noise source. A permit authorizes the grantee to cause or emit excessive noise in a manner or amount, or to do any act, not forbidden by this chapter or by rules adopted under this chapter, but requiring review by the department.

“Person” means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

“Pollution” means excessive noise.

“Variance” means special written authorization from the director to cause or emit excessive noise in a manner or in an amount in excess of applicable standards, or to do an act that deviates from the requirements of rules adopted under this chapter.

“Vehicle” means any device in, upon, or by which any person or property is or may be transported or drawn, including boats and ships.

**§ -2 Administration.** The department shall administer this chapter through the director. The director may delegate to any person such power and authority vested in the director by this chapter as the director deems reasonable and proper for the effective administration of this chapter, except the power to make rules.

**§ -3 Duties, rules, powers, appointment of hearings officers.** (a) In addition to any other power or duty prescribed by law and in this chapter, the director shall prevent, control, and abate noise pollution in the State. In the discharge of this duty, the director may make, amend, and repeal state rules controlling and prohibiting noise pollution. All rules shall be adopted pursuant to chapter 91. Any person heard at the public hearing shall be given written notice of the action taken by the department with respect to the rules.

(b) In addition to other specific powers provided in this chapter, the director may appoint without regard to chapters 76 and 77, hearings officers to conduct public participation activities including public hearings and public informational meetings.

**§ -4 Permits; procedures for.** (a) An application for any permit required under this chapter shall be in a form prescribed by the director.

(b) The department may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary in order for it to determine whether the proposed installation, alteration, or use will be in accord with applicable rules and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines that such will be in the public interest; provided that the permit may be subject to such reasonable conditions as the director may prescribe. The director, on application, shall renew a permit from time to time for a term not exceeding five years if the director determines that such is in the public interest. The director shall not deny an application for the issuance or renewal of a permit without affording the applicant an opportunity for a hearing in accordance with chapter 91.

The director, on the director's own motion or the application of any person, may modify, suspend, or revoke any permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, the director determines that:

- (1) There is a violation of any condition of the permit; or

- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts; or
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted emission; or
- (4) Such is in the public interest.

The director shall ensure that the public receive notice of each application for a permit to control water or hazardous waste pollution. The director may hold a public hearing before ruling on an application for a permit to control water or hazardous waste pollution if the director determines such public hearing to be in the public interest.

In determining the public interest, the director shall consider the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the action be implemented, the alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented, and any other factors which the director may by rule prescribe; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

(d) The failure of the director to act on an application for the issuance of a permit or an application by a permit holder for the modification or renewal thereof within one hundred eighty days of the receipt of such application shall be deemed a grant of such application provided that the applicant acts consistently with the application and all plans, specifications, and other information submitted as a part thereof.

(e) No applicant for a modification or renewal of a permit shall be held in violation of this chapter during the pendency of the applicant's application provided that the applicant acts consistently with the permit previously granted, the application and all plans, specifications, and other information submitted as a part thereof.

**§ -5 Variances.** (a) Every application for a variance shall be made on forms furnished by the department and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and such other information as the department may by rule prescribe.

(b) Each application for a variance shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information submitted with the application, such additional information as may be submitted upon the request of the department, and the effect or probable effect upon the noise level standards established pursuant to this chapter.

(c) Whenever an application is approved, the department shall issue a variance authorizing the emission of noise in excess of applicable standards. No variance shall be granted by the department unless the application and the supporting information clearly show that:

- (1) The continuation of the function or operation involved in the emission occurring or proposed to occur by the granting of the variance is in the public interest as defined in section -4;
- (2) The emission occurring or proposed to occur does not substantially endanger human health or safety; and
- (3) Compliance with the rules or standards from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(d) Any variance or renewal thereof shall be granted within the requirements of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

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- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, control, or abatement of the excessive noise involved, it shall be only until the necessary means for prevention, control, or abatement become practicable and subject to the taking of any substitute or alternate measures that the department may prescribe. No renewal of a variance granted under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the excessive noise involved.
- (2) The director may issue a variance for a period not exceeding five years.
- (3) Every variance granted under this section shall include conditions requiring the grantee to perform noise sampling and report the results of such sampling to the department.
- (e) Any variance granted pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial granting of a variance; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance; and provided further that the renewal, and the variance issued in pursuance thereof, shall provide for emission not greater than that attained pursuant to the terms of the immediately preceding variance at its expiration. No renewal shall be granted except on application therefor. Any such application shall be made at least one hundred eighty days prior to the expiration of the variance. The director shall act on an application for renewal within one hundred eighty days of the receipt of such application.
  - (f) The director may afford a hearing in accordance with chapter 91 in relation to an application for the issuance, renewal, or modification of a variance.
  - (g) No variance granted pursuant to this chapter shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.
- (h) Any application for a variance, submitted pursuant to this chapter, shall be subject to the public participation requirements listed below.
  - (1) Public notices of every completed application for a variance, except an application for off-hour road work, shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed emission. Procedures for the circulation of public notices shall include at least the following:
    - (A) Notice shall be circulated within the geographical areas of the proposed emission; such circulation shall include publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;
    - (B) Notice shall be mailed to any person or group upon request; and
    - (C) The director shall add the name of any person or group upon request to a mailing list to receive copies of notices for all variance applications within the State or within a certain geographical area.
  - (2) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written reviews with respect to the variance application and the tentative determinations of the department, if any. The period for comment may be extended at the discretion of the director.
  - (3) The contents of public notice of applications for variances shall include at least the following:

- (A) Name, address, and phone number of agency issuing the public notice;
  - (B) Name and address of each applicant;
  - (C) Brief description of each applicant's activities or operations which result in the emission described in the variance application (e.g., rock crushing plant, municipal waste treatment plant, raw sugar factory, or pineapple cannery);
  - (D) A short description of the location of each emission indicating whether such emission is new or existing;
  - (E) A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by paragraph (2), and any other means by which interested persons may influence or comment upon those determinations; and
  - (F) Address and phone number of state agency premises at which interested persons may obtain further information and inspect a copy of the variance applications and supporting and related documents.
- (4) The director may hold a public hearing if, after reviewing the comments submitted under paragraph (2), the director determines that a public hearing is warranted. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed emission or other appropriate area, at the discretion of the director.

**§ -6 Inspection of premises.** The director, in accordance with law, may enter and inspect any building or place to investigate an actual or suspected source of excessive noise, to ascertain compliance or noncompliance with this chapter, any rule or standard adopted by the department pursuant to this chapter, or any permit or other approval issued by the department pursuant to this chapter, and to make reasonable tests in connection therewith. No confidential information secured pursuant to this section by any official or employee of the department within the scope and course of the official's or employee's employment in the prevention, control, or abatement of excessive noise shall be disclosed by the official or employee except as it relates directly to excessive noise and then, only in connection with the official's or employee's official duties and within the scope and course of the official's or employee's employment.

**§ -7 Enforcement.** (a) If the director determines that any person is violating this chapter, violating any rule adopted pursuant to this chapter, or violating any condition of a permit or variance issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.
- (2) May require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.
- (3) May impose penalties as provided in section -9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter after having been served notice of violation, the director:

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- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with the provisions of this chapter, the provisions of any rule adopted pursuant to this chapter, or the conditions of a permit or variance issued pursuant to this chapter.
  - (2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.
  - (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.
  - (4) May impose penalties as provided in section -9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.
- (c) If the director determines that the person has violated the provisions of an accepted schedule, has violated an order issued under this section, or has continued to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.
- (d) Any order issued under this chapter shall become final, unless no later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.
- (e) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the violation or discharges involved, or for the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or discharges.
- (f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to recover the civil penalty which shall be a government realization.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

(g) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

**§ -8 Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to the public health and safety is or will be caused by excessive noise, which requires immediate action, the director, with the approval of the governor and without public hearing, may order any person causing or contributing to the excessive noise to immediately reduce or stop such emission, or the director may take any and all other actions as may be necessary. Such order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director.

(b) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

**§ -9 Penalties.** (a) Violation of the vehicular noise control rules adopted by the department pursuant to this chapter shall constitute a violation as defined in section 701-107 and shall be enforceable by police officers. The fine for this violation shall be not less than \$25 nor more than \$2,500 for each separate offense. Each day of violation shall constitute a separate offense.

(b) Any person who violates this chapter, any rule adopted pursuant to this chapter, other than vehicular noise control rules, or any permit or variance issued pursuant to this chapter, shall be fined not more than \$10,000 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection, other than the penalty imposed for violations of vehicular noise control rules, shall be considered a civil action.

(c) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle that the officer or employee is authorized to enter and inspect shall be fined not more than \$500. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

**§ -10 Citation.** Any person who commits a violation of the noise control rules adopted by the department pursuant to this chapter may be issued a summons or citation for such violation by any person authorized to enforce such rules, hereinafter referred to as enforcement officer. The summons or citation shall be printed in the form hereinafter described, warning such person to appear and answer to the charge against the person at a certain place and at a time within seven days after the issuance of such summons or citation.

The summons or citation shall be designed to provide for all necessary information. The form and content of such summons or citation shall be adopted or prescribed by the district courts.

The original of a summons or citation shall be given to the purported violator and the other copy or copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution of the original and any other copies.

Summons and citations shall be consecutively numbered and the carbon copy or copies of each shall bear the same number.

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In the event any person fails to comply with a summons or citation issued to such person, the enforcement officer shall cause a complaint to be entered against such person and secure the issuance of a warrant for the person's arrest. Failure to comply with a summons or citation is a misdemeanor.

**§ -11 Administrative penalties.** In addition to any other administrative or judicial remedy provided by this chapter, or by rules adopted under this chapter, the director is authorized to impose by order the penalties specified in section -9(b). Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

**§ -12 Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.

**§ -13 Appeal.** If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of a cease and desist order will not be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

**§ -14 Fees.** The director may establish reasonable fees for the issuance of permits and variances to cover the cost of issuance thereof and for the implementation and enforcement of the terms and conditions of permits and variances (not including court costs or other costs associated with any formal enforcement action). The fees shall be deposited to the credit of the general fund.

**§ -15 Public records; confidential information; penalties.** Reports submitted to the department on the emission of excessive noise shall be made available for inspection by the public during established office hours unless such reports contain information of a confidential nature concerning secret processes or methods of manufacture. Any officer, employee, or agent of the department acquiring confidential information from the inspection authorized by section -6 who divulges information except as authorized in this chapter or except as ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or of any rule or standard adopted pursuant to this chapter shall be fined not more than \$1,000.

**§ -16 Nonliability of department personnel.** Notwithstanding any other law to the contrary, no member, officer, or employee of the department shall be criminally liable or responsible under this chapter for any acts done by the member, officer, or employee in the performance of the member's, officer's, or employee's duties; provided that this section shall not apply to violations of section -15.

**§ -17 Other action not barred.** No existing civil or criminal remedy for any wrongful action which is a violation of any statute or any rule of the department or the ordinance of any county shall be excluded or impaired by this chapter.

**§ -18 Enforcement by state and county authorities.** All state and county health authorities and police officers shall enforce this chapter and the rules and orders of the department.

**§ -19 Other powers of department not affected.** The powers, duties, and functions vested in the department under this chapter shall not be construed to affect in any manner the powers, duties, and functions vested in the department under any other law.

**§ -20 Effect of laws, ordinances, and rules.** (a) All laws, ordinances, and rules inconsistent with this chapter shall be void and of no effect.

(b) Any county may adopt ordinances and rules governing any matter relating to excessive noise control which is not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to excessive noise control shall be void and of no effect as to any matter regulated by a rule of the department upon the adoption thereof.

**§ -21 Priority in courts.** All actions brought pursuant to this chapter or pursuant to the rules adopted under this chapter shall in the discretion of the court receive priority in the courts of the State.

## PART II. NOISE CONTROL

**§ -30 Prohibition.** No person, including any public body, shall engage in activity which produces excessive noise without first securing approval in writing from the director[.]; provided that this section shall not apply to any school activity which is approved by school authorities. For purposes of this section, "school activity" means a public or private school function for students up through the twelfth grade which is approved by the school principal or an authorized representative. These activities shall be limited to the hours of 7:00 a.m. to 10:00 p.m.<sup>1</sup>

**§ -31 Rules; specific.** The director may establish by rule:

- (1) The control of vehicular noise; and
- (2) Other specific areas for control of excessive noise, thereby allowing for varying conditions.

**§ -32 Complaints; hearings; appointment of masters.** The director may:

- (1) Receive or initiate complaints of excessive noise, hold hearings in connection with excessive noise, and institute legal proceedings in the name of the State for the prevention, control, or abatement of excessive noise; and
- (2) Appoint a master or masters to conduct investigations and hearings.

**§ -33 Research, educational, and training programs.** The director may:

- (1) Conduct and supervise research programs for the purpose of determining the causes, effects, and hazards of excessive noise and the means whereby noise may be monitored, controlled, or abated;
- (2) With the approval of the governor, cooperate with, and receive money from, the federal government, or any political subdivision of the State or from private sources for the study and control of excessive noise; and
- (3) Conduct or commission and supervise state educational and training programs on noise prevention, control, and abatement, including the preparation and distribution of information relating to excessive noise and its effect on people."

**SECTION 4.** The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **“CHAPTER SOLID WASTE POLLUTION”**

### **PART I. DEFINITIONS AND GENERAL PROVISIONS**

**§ -1 Definitions.** As used in this chapter, unless the context otherwise requires:

“Complaint” means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule or order adopted pursuant to this chapter.

“Department” means the department of health.

“Director” means the director of health.

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste onto any land or water so that such solid waste, or any constituent thereof, may enter the environment, be emitted into the air, or discharged into any water, including ground waters.

“Incineration” means the treatment of solid waste by burning in a furnace designed for the purpose wherein solid waste is essentially reduced to ash, carbon dioxide, and water vapor.

“Open dump” means a disposal site that is operating in nonconformance with applicable standards, relevant permit conditions, rules, or this chapter.

“Party” means each person or agency named as party or properly entitled to be a party in any court or agency proceeding.

“Permit” means written authorization from the director to construct, modify, and operate any solid waste disposal system or any component of any solid waste disposal system. A permit authorizes the grantee to construct, modify, and operate any solid waste disposal system in a manner or amount, not forbidden by this chapter, or by rules adopted pursuant to this chapter but requiring review by the department.

“Person” means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust estate, or any other legal entity.

“Pollution” means solid waste pollution.

“Sanitary landfill” means a land site on which engineering principles are utilized to bury deposits of solid waste without creating a nuisance or hazard to public health or safety.

“Solid waste” means garbage, refuse, and other discarded materials, including solid, liquid, semi-solid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations, sludge from waste treatment plants and water supply treatment plants, and residues from air pollution control facilities and community activities, but does not include solid or dissolved materials in domestic sewage or other substances in water sources such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows, or other common water pollutants.

“Solid waste disposal system” means a system for the storage, treatment, transfer, or disposal of solid waste.

“Variance” means special written authorization from the director to do an act that deviates from applicable standards or from the requirements of rules adopted under this chapter.

“Waste” means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated

or not, which may pollute or tend to pollute the atmosphere, lands or waters of this State.

**§ -2 Administration.** The department shall administer this chapter through the director. The director may delegate to any person such power and authority vested in the director by this chapter as the director deems reasonable and proper for the effective administration of this chapter, except the power to make rules.

**§ -3 Duties; rules; appointment of hearings officers.** (a) In addition to any other power or duty prescribed by law and in this chapter, the director shall prevent, control, and abate solid waste pollution in the state. In the discharge of this duty, the director may make, amend, and repeal state rules controlling and prohibiting solid waste. All rules shall be adopted pursuant to chapter 91. Any person heard at the public hearing shall be given written notice of the action taken by the department with respect to the rules.

(b) In addition to other specific powers provided in this chapter, the director may appoint without regard to chapters 76 and 77, hearings officers to conduct public participation activities including public hearings and public informational meetings.

**§ -4 Permits; procedures for.** (a) An application for any permit required under this chapter shall be in a form prescribed by the director.

(b) The department may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary in order for it to determine whether the proposed installation, alteration, or use will be in accord with applicable rules and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines that such will be in the public interest; provided that the permit may be subject to such reasonable conditions as the director may prescribe. The director, on application, shall renew a permit from time to time for a term not exceeding five years if the director determines that such is in the public interest. The director shall not deny an application for the issuance or renewal of a permit without affording the applicant an opportunity for a hearing in accordance with chapter 91.

The director, on the director's own motion or the application of any person, may modify, suspend, or revoke any permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, the director determines that:

- (1) There is a violation of any condition of the permit; or
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts; or
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted disposal; or
- (4) Such is in the public interest.

The director shall ensure that the public receive notice of each application for a permit to control water or hazardous waste pollution. The director may hold a public hearing before ruling on an application for a permit to control water or hazardous waste pollution if the director determines such public hearing to be in the public interest.

In determining the public interest, the director shall consider the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the action be implemented, the alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and

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irrecoverable commitments of resources which would be involved in the proposed action should it be implemented, and any other factors which the director may by rule prescribe; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

(d) The failure of the director to act on an application for the issuance of a permit or an application by a permit holder for the modification or renewal thereof within one hundred eighty days of the receipt of such application, except for all federally delegated permit programs, shall be deemed a grant of such application provided that the applicant acts consistently with the application and all plans, specifications, and other information submitted as a part thereof.

(e) No applicant for a modification or renewal of a permit shall be held in violation of this chapter during the pendency of the applicant's application provided that the applicant acts consistently with the permit previously granted, the application and all plans, specifications, and other information submitted as a part thereof.

**§ -5 Variances.** (a) Every application for a variance shall be made on forms furnished by the department and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to applicable standards, and such other information as the department may by rule prescribe.

(b) Each application for a variance shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information submitted with the application, such additional information as may be submitted upon the request of the department, and the effect or probable effect upon the standards established pursuant to this chapter.

(c) Whenever an application for a variance is approved, the department shall issue a variance authorizing the disposal of solid waste in nonconformance with applicable standards or rules. No variance shall be granted by the department unless the application and the supporting information clearly show that:

- (1) The continuation of the function or operation involved in the disposal occurring or proposed to occur by the granting of the variance is in the public interest as defined in section -4;
- (2) The disposal occurring or proposed to occur does not substantially endanger human health or safety; and
- (3) Compliance with the applicable standards or rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(d) Any variance or renewal thereof shall be granted within the requirements of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, control, or abatement of the solid waste pollution involved, it shall be only until the necessary means for prevention, control, or abatement become practicable and subject to the taking of any substitute or alternate measures that the department may prescribe. No renewal of a variance granted under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the solid waste pollution involved.
- (2) The director may issue a variance for a period not exceeding five years.
- (3) Every variance granted under this section may be subject to such conditions as the director may prescribe.

(e) Any variance granted pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which

would be appropriate on initial granting of a variance; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance; and provided further that the renewal, and the variance issued in pursuance thereof, shall provide for a variance not greater than that attained pursuant to the terms of the immediately preceding variance at its expiration. No renewal shall be granted except on application therefor. Any such application shall be made at least one hundred eighty days prior to the expiration of the variance. The director shall act on an application for renewal within one hundred eighty days of the receipt of such application.

(f) The director may afford a hearing in accordance with chapter 91 in relation to an application for the issuance, renewal, or modification of a variance.

(g) No variance granted pursuant to this chapter shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.

(h) Any application for a variance submitted pursuant to this chapter, shall be subject to the public participation requirements listed below.

(1) Public notices of every completed application for a variance shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed disposal or other proposed activity. Procedures for the circulation of public notices shall include at least the following:

- (A) Notice shall be circulated within the geographical areas of the proposed disposal or other proposed activity; such circulation shall include publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;
- (B) Notice shall be mailed to any person or group upon request; and
- (C) The director shall add the name of any person or group upon request to a mailing list to receive copies of notices for all variance applications within the State or within a certain geographical area.

(2) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written reviews with respect to the variance application and the tentative determinations of the department, if any. The period for comment may be extended at the discretion of the director.

(3) The contents of public notice of applications for variances shall include at least the following:

- (A) Name, address, and phone number of agency issuing the public notice;
- (B) Name and address of each applicant;
- (C) Brief description of each applicant's activities or operations which result in the disposal or other activity described in the variance application;
- (D) A short description of the location of each disposal or activity indicating whether such disposal or activity is new or existing;
- (E) A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by paragraph (2) of this subsection and any other means by which interested persons may influence or comment upon those determinations; and
- (F) Address and phone number of state agency premises at which interested persons may obtain further information and inspect a copy of the variance applications and supporting and related documents.

- (4) The director may hold a public hearing if, after reviewing the comments submitted under paragraph (2), the director determines that a public hearing is warranted. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed disposal or other proposed activity, or other appropriate area, at the discretion of the director.

**§ -6 Inspection of premises.** The director, in accordance with law, may enter and inspect any facility, building, or place to investigate an actual or suspected source of solid waste pollution, to ascertain compliance or noncompliance with this chapter or any rule or standard adopted by the department pursuant to this chapter, any permit or variance issued by the department pursuant to this chapter, and to make reasonable tests in connection therewith. No confidential information secured pursuant to this section by any official or employee of the department within the scope and course of the official's or employee's employment in the prevention, control, or abatement of solid waste pollution shall be disclosed by the official or employee except as it relates directly to solid waste pollution and then, only in connection with the official's or employee's official duties and within the scope and course of the official's or employee's employment.

**§ -7 Enforcement.** (a) If the director determines that any person is violating this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.
  - (2) May require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.
  - (3) May impose penalties as provided in section -9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.
- (b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter after having been served notice of violation, the director:
- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with the provisions of this chapter, the provisions of any rule adopted pursuant to this chapter, or the conditions of any permit or variance issued pursuant to this chapter.
  - (2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.
  - (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.

(4) May impose penalties as provided in section -9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(c) If the director determines that the person has violated an accepted schedule, an order issued pursuant to this section, any rule adopted pursuant to this chapter, any condition of a permit or variance issued pursuant to this chapter, or has continued to violate this chapter, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

(d) Any order issued under this chapter shall become final, unless not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

(e) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the violation or disposals involved, or for the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or disposals.

(f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to recover the civil penalty which shall be a government realization.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

(g) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

**§ -8 Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to the public health and safety is or will be caused by a discharge of solid waste or any combination of discharges of waste, which requires immediate action, the director, with the approval of the governor and without public hearing, may order any person causing or contributing to the disposal of solid waste or discharge of other waste to immediately reduce or stop such disposal or the director may take any and all other actions as may be necessary. Such order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director.

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(b) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

**§ -9 Penalties.** (a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle which the officer or employee is authorized to enter and inspect shall be fined not more than \$500. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

**§ -10 Administrative penalties.** In addition to any other administrative or judicial remedy provided by this chapter, or by rules adopted under this chapter, the director is authorized to impose by order the penalties specified in section -9(a). Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

**§ -11 Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.

**§ -12 Appeal.** If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of a cease and desist order will not be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

**§ -13 Fees.** The director may establish reasonable fees for the issuance of permits and variances to cover the cost of issuance thereof and for the implementation and enforcement of the terms and conditions of permits and variances (not including court costs or other costs associated with any formal enforcement action). The fees shall be deposited to the credit of the general fund.

**§ -14 Public records; confidential information; penalties.** Solid waste management permit applications and reports on the disposal or management of solid waste submitted to the department shall be made available for inspection by the public during established office hours unless such reports contain information of a confidential nature concerning secret processes or methods of manufacture. Any

officer, employee, or agent of the department acquiring confidential information from the inspection authorized by section -6 who divulges information except as authorized in this chapter or except as ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or of any rule or standard adopted pursuant to this chapter shall be fined not more than \$1,000.

**§ -15 Nonliability of department personnel.** Notwithstanding any other law to the contrary, no member, officer, or employee of the department shall be criminally liable or responsible under this chapter for any acts done by the member, officer, or employee in the performance of the member's, officer's, or employee's duties; provided that this section shall not apply to violations of section -14.

**§ -16 Other action not barred.** No existing civil or criminal remedy for any wrongful action which is a violation of any statute or any rule of the department or the ordinance of any county shall be excluded or impaired by this chapter.

**§ -17 Enforcement by state and county authorities.** All state and county health authorities and police officers shall enforce this chapter and the rules, orders, and permits of the department.

**§ -18 Other powers of department not affected.** The powers, duties, and functions vested in the department under this chapter shall not be construed to affect in any manner the powers, duties, and functions vested in the department under any other law.

**§ -19 Effect of laws, ordinances, and rules.** (a) All laws, ordinances, and rules inconsistent with this chapter shall be void and of no effect.

(b) Any county may adopt ordinances and rules governing any matter relating to solid waste management which is not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to solid waste management shall be void and of no effect as to any matter regulated by a rule of the department upon the adoption thereof.

**§ -20 Priority in courts.** All actions brought pursuant to this chapter or pursuant to the rules adopted under this chapter or pursuant to the conditions of a permit issued under this chapter shall in the discretion of the court receive priority in the courts of the State.

## PART II. SOLID WASTE CONTROL

**§ -30 Prohibition.** (a) No person, including any public body, shall engage in the operation of an open dump, without first securing approval in writing from the director.

(b) No person, including any public body, shall operate a solid waste disposal system without first securing approval in writing from the director.

**§ -31 Rules; specific.** The director may establish by rule the criteria for siting design, construction, financial responsibility, manifest, and operation of solid waste treatment, storage, transport, and disposal systems.

**§ -32 Plans and reports.** The director may require complete and detailed plans or reports on existing solid waste disposal systems and of any proposed addition to, modification of, or alteration of any such systems which contain the information requested by the director in the form prescribed by the director. The

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plans or reports shall be made by a competent person acceptable to the director and at the expense of such applicant or owner.

**§ -33 Appointment of masters.** The director may appoint a master or masters to conduct investigations and hearings.

**§ -34 Consultation and advice.** The director may consult with and advise any person engaged or intending to be engaged in the management of solid waste.

**§ -35 Research, educational, and training programs.** The director may:

- (1) Conduct and supervise research programs for the purpose of determining the sources of solid waste, effects, and hazards of pollution associated with disposal systems;
- (2) With the approval of the governor, cooperate with, and receive money from the federal government or any political subdivision of the State, or from private sources for the study and control of solid waste pollution; and
- (3) Conduct and supervise state educational and training programs on solid waste disposal systems, including the preparation and distribution of information relating to solid waste pollution.

**§ -36 Solid waste recycling for agricultural purposes; encouraged.** The director shall encourage the recycling of solid wastes, including animal wastes and industrial wastes, for agricultural purposes. The use of treated sludge effluent for fertilizer and other agricultural purposes shall also be encouraged."

SECTION 5. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **"CHAPTER HAZARDOUS WASTE**

### **PART I. PREAMBLE**

**§ -1 Legislative policy; program priorities.** The legislature finds that hazardous waste must be managed in a manner that protects the health, safety, and welfare of the citizens of the State and protects and conserves the State's natural resources and environment. Accordingly, the hazardous waste management program of this State shall be a preventive as well as a regulatory program that gives priority to:

- (1) The provision of technical assistance to generators to ensure the safe and proper handling of hazardous waste;
- (2) The establishment of a public education program to promote awareness of what constitutes hazardous waste and the dangers of improper disposal of hazardous waste;
- (3) The promotion of hazardous waste minimization, reduction, recycling, exchange, and treatment as the preferred methods of managing hazardous waste, with disposal to be used only as a last resort when all other hazardous waste management methods are ineffective or unavailable; and
- (4) The coordination of hazardous waste management efforts among the counties of this State, taking into consideration the unique differences and needs of each county.

## PART II. DEFINITIONS AND GENERAL PROVISIONS

**§ -2 Definitions.** As used in this chapter, unless the context otherwise requires:

“Complaint” means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule or order adopted pursuant to this chapter.

“Department” means the department of health.

“Director” means the director of health or the director’s authorized agent.

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous or solid waste into or on any land or water so that hazardous or solid waste or any constituent thereof may enter the environment, be emitted into the air, or discharged into any waters, including groundwaters.

“Financial responsibility” means a trust fund, surety bond, insurance, corporate guarantee, or letter of credit provided by owners or operators of hazardous waste treatment, storage, and disposal facilities to assure proper closure, post closure, corrective action, and compensation for injuries to people or damage to property.

“Generator” means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this chapter.

“Hazardous waste” means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

- (1) Cause or significantly contribute to an increase in mortality or an increase in a serious irreversible or incapacitating reversible illness; or
- (2) Pose a substantial existing or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

“Hazardous waste management” means the systematic control over the generation, collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

“Hazardous waste management facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

“Manifest” means the form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of treatment, storage, or disposal.

“Operator” means the person responsible for the overall operation of a facility.

“Owner” means the person who owns the facility or part of the facility.

“Party” means each person or agency named as party or properly entitled to be a party in any court or agency proceeding.

“Permit” means written authorization from the director for the owner or operator of a proposed or existing hazardous waste management facility to engage in the treatment, storage, or disposal of hazardous waste. A permit authorizes the owner or operator to treat, store, or dispose of hazardous waste in a manner or amount, or to do any act, not forbidden by this chapter or by rules adopted under this chapter, but requiring review by the department.

“Person” means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

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“Pollution” means hazardous waste pollution.

“Solid waste” means garbage, refuse, and other discarded materials, including solid, liquid, semi-solid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations, sludge from waste treatment plants and water supply treatment plants, and residues from air pollution control facilities and community activities, but does not include solid or dissolved material in domestic sewage, irrigation return flows, or industrial discharges which are subject to permit under chapter.

“Storage” means the containment of hazardous waste, temporarily or for a period of years, in a manner which does not constitute disposal.

“Transporter” means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, water, or pipeline.

“Treatment” means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or render it nonhazardous, less hazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. This term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

**§ -3 Administration.** The department shall administer this chapter through the director. The director may delegate to any person such power and authority vested in the director by this chapter as the director deems reasonable and proper for the effective administration of this chapter, except the power to make rules.

**§ -4 Powers; rule-making; appointment of hearings officers.** (a) The director may make, amend, and repeal state rules controlling and prohibiting hazardous waste pollution. All rules shall be adopted pursuant to chapter 91. Any person heard at the public hearing shall be given written notice of the action taken by the department with respect to the rules.

(b) In addition to other specific powers provided in this chapter, the director may appoint without regard to chapters 76 and 77, hearings officers to conduct public participation activities including public hearings and public informational meetings.

**§ -5 Permits; procedures for.** (a) An application for any permit required under this chapter shall be in a form prescribed by the director.

(b) The department may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary in order for it to determine whether the proposed or existing installation, alteration, or use will be in accord with applicable rules and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines that such will be in the public interest; provided that the permit may be subject to such reasonable conditions as the director may prescribe. The director, on application, shall renew a permit from time to time for a term not exceeding five years if the director determines that such is in the public interest. The director shall not deny an application for the issuance or renewal of a permit without affording the applicant an opportunity for a hearing in accordance with chapter 91.

The director, on the director's own motion or the application of any person, may modify, suspend, or revoke any permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, the director determines that:

- (1) There is a violation of any condition of the permit; or
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts; or
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted hazardous waste management activity; or
- (4) Such is in the public interest.

The director shall ensure that the public receives notice of each application for a permit to control hazardous waste pollution. The director may hold a public hearing before ruling on an application for a permit to control hazardous waste pollution if the director determines such a public hearing to be in the public interest.

In determining the public interest, the director shall consider the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the action be implemented, the alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented, and any other factors which the director may by rule prescribe.

(d) No applicant for a modification or renewal of a permit shall be held in violation of this chapter during the pendency of the applicant's application so long as the applicant acts consistently with the permit previously granted, the application and all plans, specifications, and other information submitted as a part thereof.

**§ -6 Entry and inspection of premises.** The director, in accordance with law, may enter and inspect any building or place for the purposes of:

- (1) Investigating an actual or suspected source of hazardous waste pollution;
- (2) Monitoring for compliance or noncompliance with this chapter, any rule or standard adopted by the department, any permit, or any other approval granted by the department;
- (3) Conducting reasonable tests;
- (4) Taking samples; or
- (5) Copying records.

No confidential information secured pursuant to this section by any official or employee of the department within the scope and course of the official's or employee's employment in the prevention, control, or abatement of hazardous waste pollution shall be disclosed by the official or employee except as it relates directly to hazardous waste pollution and then, only in connection with the official's or employee's official duties and within the scope and course of the official's or employee's employment.

**§ -7 Enforcement.** (a) If the director determines that any person is violating this chapter, any rule adopted pursuant to this chapter, or violating any condition of a permit or variance issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.
- (2) May require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

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- (3) May impose penalties as provided in section -10 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.
- (b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter after having been served notice of violation, the director:
- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with the provisions of this chapter, the provisions of any rule adopted pursuant to this chapter, or the conditions of any permit or variance issued pursuant to this chapter.
  - (2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.
  - (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.
  - (4) May impose penalties as provided in section -10 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.
- (c) If the director determines that the person has violated an accepted schedule, an order issued under this section, any rule adopted pursuant to this chapter, any condition of a permit or variance issued pursuant to this chapter, or has continued to violate this chapter, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.
- (d) Any order issued under this chapter shall become final, unless not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.
- (e) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the violation or disposals involved, or for the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after hearing may prescribe the date or dates by which the violation or violations shall cease and may

prescribe timetables for necessary action in preventing, abating, or controlling the violation or disposals.

(f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to recover the civil penalty which shall be a government realization.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

(g) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

**§ -8 Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to the public health and safety is or will be caused by disposal of hazardous waste or any combination of disposals of hazardous waste, which requires immediate action, the director, with the approval of the governor and without public hearing, may order any person causing or contributing to the disposal of hazardous waste to immediately reduce or stop such disposal or the director may take any and all other actions as may be necessary. Such order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director.

(b) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

**§ -9 Penalties.** (a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) Any person who knowingly:

- (1) Transports any hazardous waste to a storage, treatment, or disposal facility which does not have a permit pursuant to section -5 to treat, store, or dispose of that particular hazardous waste;
- (2) Treats, stores, or disposes of hazardous waste without first having a permit pursuant to section -5; or
- (3) Makes a false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used, for purposes of compliance with this chapter, shall be subject to criminal penalties of not more than \$25,000 for each day of violation, or imprisonment, not to exceed one year, or both. If the conviction is for a violation committed after a first conviction, criminal punishment shall be by a fine of not more than \$50,000 for each day of violation, or by imprisonment for not more than two years, or both.

(c) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle which the officer or employee is authorized to enter and inspect shall be fined not more than \$10,000 for each separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

**§ -10 Administrative penalties.** In addition to any other administrative or judicial remedy provided by this chapter, or by rules adopted under this chapter, the director is authorized to impose by order the penalties specified in section -9(a). Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

**§ -11 Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance adopted pursuant to this chapter, without the necessity of a prior revocation of the permit or variance. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.

**§ -12 Appeal.** If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of a cease and desist order will not be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

**§ -13 Fees.** The director may establish reasonable fees for the issuance of permits and variances to cover the cost of issuance thereof and for the implementation and enforcement of the terms and conditions of permits and variances (not including court costs or other costs associated with any formal enforcement action). The fees shall be deposited to the credit of the general fund.

**§ -14 Public records; confidential information; penalties.** Reports submitted to the department on hazardous waste management shall be made available for inspection by the public during established office hours unless such reports contain information of a confidential nature concerning secret processes or methods of manufacture. Any officer, employee, or agent of the department acquiring confidential information from the inspection authorized by section -6 who divulges information except as authorized in this chapter or except as ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or of any rule or standard adopted pursuant to this chapter shall be fined not more than \$1,000.

**§ -15 Nonliability of department personnel.** Notwithstanding any other law to the contrary, no member, officer, or employee of the department shall be criminally liable or responsible under this chapter for any acts done by the member, officer, or employee in the performance of the member's, officer's, or employee's duties; provided that this section shall not apply to violations of section -14.

**§ -16 Intervention.** Subject to the approval of the court, any individual shall have the right to intervene in any civil action to enforce the provisions of this chapter provided the individual has an interest which is, or may be, adversely affected.

**§ -17 Other action not barred.** No existing civil or criminal remedy for any wrongful action which is a violation of any statute or any rule of the department or the ordinance of any county shall be excluded or impaired by this chapter.

**§ .-18 Enforcement by state and county authorities.** All state and county health authorities and police officers shall enforce this chapter and the rules and orders of the department.

**§ .-19 Other powers of department not affected.** The powers, duties, and functions vested in the department under this chapter shall not be construed to affect in any manner the powers, duties, and functions vested in the department under any other law.

**§ .-20 Effect of laws, ordinances, and rules.** (a) All laws, ordinances, and rules inconsistent with this chapter shall be void and of no effect.

(b) Any county may adopt ordinances and rules governing any matter relating to hazardous waste management which is not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to hazardous waste management shall be void and of no effect as to any matter regulated by a rule of the department upon the adoption thereof.

**§ .-21 Priority in courts.** All actions brought pursuant to this chapter or pursuant to the rules adopted under this chapter shall in the discretion of the court receive priority in the courts of the State.

### PART III. HAZARDOUS WASTE CONTROL

**§ .-30 Prohibition.** No person, including any federal agency, the State, or any of its political subdivisions, shall own, operate, or construct a hazardous waste management facility without first securing a permit issued by the director.

**§ .-31 Duties; rules.** In addition to any other power or duty prescribed by law and in this chapter, the director shall prevent, control, and abate hazardous waste pollution in this State. In the discharge of this duty the director may:

- (1) Adopt rules pursuant to chapter 91 necessary for the purposes of this chapter. Any person heard at the public hearing shall be given written notice of the action taken by the department with respect to the rules;
- (2) Administer and enforce this chapter, rules implementing this chapter, and orders and permits issued pursuant to this chapter;
- (3) Establish by rule a list of hazardous wastes and a set of characteristics for identifying hazardous wastes;
- (4) Prohibit land disposal of specified hazardous wastes;
- (5) Inventory sites and locations in the State where hazardous wastes have been stored or disposed of at any time; and
- (6) Promote industrial practices that minimize, recycle, reduce, avoid, or eliminate generation of hazardous waste.

**§ .-32 Standards for generators.** The director may establish by rule standards applicable to generators of hazardous waste identified under this chapter including, but not limited to, requirements regarding:

- (1) Obtaining an identification number;
- (2) Requiring a solid waste generator to determine whether the waste that that person has generated is hazardous waste;
- (3) Using appropriate containers for hazardous waste;
- (4) Packaging, labeling, marking, and placarding practices;
- (5) Transporting and international shipping of hazardous waste;

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- (6) Developing a manifest system to track movements of hazardous wastes to designated facilities; and
- (7) Submitting reports and recordkeeping practices.

**§ -33 Standards for transporters.** The director may establish by rule standards applicable to transporters of hazardous waste identified or listed under this chapter including, but not limited to, requirements regarding:

- (1) Obtaining an identification number;
- (2) Labeling practices;
- (3) Transporting hazardous waste;
- (4) Requiring action, including cleanup, if hazardous waste is discharged in transit;
- (5) Using the manifest properly; and
- (6) Submitting reports and recordkeeping practices.

**§ -34 Standards for treatment, storage, or disposal facilities.** The director may establish by rules standards applicable to owners and operators of facilities for treatment, storage, or disposal of hazardous waste, identified or listed under this chapter, including but not limited to, requirements regarding:

- (1) Obtaining an identification number;
- (2) Inspection, monitoring, submitting reports, and recordkeeping practices;
- (3) Using the manifest properly;
- (4) Designing, constructing, and locating of hazardous waste management facilities;
- (5) Developing contingency plans to minimize unanticipated damage from treatment, storage, or disposal of hazardous waste;
- (6) Maintaining and operating hazardous waste management facilities;
- (7) Determining qualifications as to ownership, continuity of operation, training for personnel, closure and post-closure requirements, and financial responsibility (including financial responsibility for corrective action); and
- (8) Issuing permits for hazardous waste management facilities.

**§ -35 Other rules.** The director may adopt other rules which are necessary to obtain and maintain authorization under the federal program.

**§ -36 Hazardous waste releases.** (a) The director may issue an order requiring the owner or operator of a hazardous waste management facility or site to monitor, test, analyze, and report, with respect to a site, in order to ascertain the nature and extent of any release of hazardous waste or hazardous waste constituent.

(b) Any person to whom the order is issued may be required to submit to the director within thirty days a proposal for carrying out the required monitoring, testing, analysis, and reporting.

(c) If the director determines that the owner or operator is not able to conduct monitoring, testing, and analysis in a satisfactory manner, the director may dictate the conduct of responsibility of the owner or operator.

(d) Whenever the director determines that there is or has been a release of hazardous waste or hazardous waste constituent into the environment from a hazardous waste management facility or site, the director may issue an order requiring corrective action to protect human health or environment, or the director may commence a civil action for appropriate relief, including a temporary or permanent injunction.

**§ -37 Complaints; hearings; appointment of masters.** The director may:

- (1) Receive or initiate complaints, hold hearings, and institute legal proceedings in the name of the State for prevention, control, or abatement of hazardous waste pollution; and
- (2) Appoint a master or masters to conduct investigations and hearings.

**§ -38 Public participation activities; appointment of hearings officers.**

The director may appoint, without regard to chapters 76 and 77, hearings officers to conduct public participation activities, including public hearings and public informational meetings.

**§ -39 Research programs.** The director may initiate, conduct, and support research, demonstration projects, and investigation, as the department's resources may allow, and coordinate state agency research programs pertaining to hazardous waste management.**§ -40 Receipt of funds for study and control of hazardous waste.** The director may cooperate with and receive money, with the approval of the governor, from the federal government, any political subdivision of the State, or from private sources for the study and control of hazardous waste.**§ -41 Technical assistance to generators.** (a) The department shall establish a technical assistance program for generators of hazardous waste in the State. The program shall be designed to assist generators in obtaining information concerning hazardous waste management:

- (1) To identify and apply methods of reducing the generation of hazardous wastes;
- (2) To facilitate improved management of hazardous waste and compliance with the department's requirements; and
- (3) For other similar purposes.

The program shall emphasize assistance to the smaller businesses and small quantity generators that have limited technical and financial resources for obtaining information, assessing hazardous waste management methods, and developing and applying hazardous waste reduction techniques. Information and techniques developed under this program shall be made available to all generators in the State.

(b) The assistance program shall include at least the following elements:

- (1) Outreach programs, including on-site consultation at locations where hazardous waste is generated, seminars, workshops, training programs, and other similar activities designed to assist generators in evaluating their hazardous waste generation and management practices, identifying opportunities for waste reduction and improved management, and identifying subjects that require additional information and research;
- (2) A program to assemble, catalog, and disseminate information about hazardous waste reduction and management methods, available commercial waste management facilities and consultant services, and regulatory programs;
- (3) Evaluation and interpretation of information needed by generators to improve their management of hazardous waste; and
- (4) Informational and technical research to identify alternative technical solutions that can be applied by specific generators to reduce the generation of hazardous waste.

(c) The program shall be coordinated with other public and private programs that provide management and technical assistance to smaller businesses and small

quantity generators, including any program operated by a public or private educational institution.

**§ -42 Public education program.** The department shall develop and implement a public education program, the objectives of which shall be to:

- (1) Develop increased public awareness of and interest in environmentally sound hazardous waste management methods;
- (2) Encourage better informed decisions on hazardous waste management issues by businesses, industries, local governments, and the public; and
- (3) Disseminate practical information concerning methods in which households, other institutions, and organizations can improve the management of hazardous waste.”

SECTION 6. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **“CHAPTER UNDERGROUND STORAGE TANKS**

### **PART I. DEFINITIONS AND GENERAL PROVISIONS**

**§ -1 Definitions.** As used in this chapter, unless the context otherwise requires:

“Complaint” means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule or order adopted pursuant to this chapter.

“Department” means the department of health.

“Director” means the director of health.

“Guarantor” means any person, other than the owner or the operator, who provides evidence of financial responsibility for the underground storage tank.

“Operator” means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

“Owner” means:

- (1) In the case of an underground storage tank in use or brought into use on or after May 19, 1986, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; and
- (2) In the case of an underground storage tank in use before May 19, 1986, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

“Party” means each person or agency named as a party or properly entitled to be a party in any court or agency proceeding.

“Permit” means written authorization from the director to install or operate an underground storage tank. A permit authorizes the owner or operator to install and operate an underground storage tank in a manner, or to do any act, not forbidden by this chapter or by rules adopted under this chapter, but requiring review by the department.

“Person” means an individual, trust, estate, firm, joint stock company, corporation (including a government corporation), partnership, association, commission, consortium, joint venture, commercial entity, the State, or a political subdivision of the State, the United States government, or any other legal entity.

“Petroleum” means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

“Regulated substance” means element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health, welfare, or the environment. The term includes:

- (1) Any substance defined in section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act); or
- (2) Petroleum; and
- (3) Any other substance as designated by the department.

“Release” includes, but is not limited to, any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water, or subsurface soils.

“Underground storage tank” means any one or combination of tanks (including pipes connected thereto) used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten percent or more beneath the surface of the ground. Exemptions from this definition and rules adopted under this chapter include:

- (1) Farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes;
- (2) Tank used for storing heating oil for consumptive use on the premises where stored;
- (3) Septic tank;
- (4) Pipeline facility (including gathering lines) regulated under:
  - (A) The Natural Gas Pipeline Safety Act of 1968, Public Law 90-481, as amended;
  - (B) The Hazardous Liquid Pipeline Safety Act of 1979, Public Law 96-129, as amended;
- (5) Surface impoundment, pit, pond, or lagoon;
- (6) Storm water or wastewater collection system;
- (7) Flow-through process tank;
- (8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; and
- (9) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

“Variance” means special written authorization from the director to own, install, or operate an underground storage tank in a manner deviating from applicable standards, or to do an act that deviates from the requirements of rules adopted under this chapter.

**§ -2 Administration.** The department shall administer this chapter through the director. The director may delegate to any person such power and authority vested in the director by this chapter as the director deems reasonable and proper for the effective administration of this chapter, except the power to make rules.

**§ -3 Powers; rule-making; appointment of hearings officers.** (a) The director may make, amend, and repeal state rules controlling and regulating underground storage tanks. All rules shall be adopted pursuant to chapter 91. Any person heard at the public hearing shall be given written notice of the action taken by the department with respect to the rules.

(b) In addition to other specific powers provided in this chapter, the director may appoint without regard to chapters 76 and 77, hearings officers to conduct public participation activities including public hearings and public informational meetings.

**§ -4 Permits; procedures for.** (a) An application for any permit required under this chapter shall be in a form prescribed by the department.

(b) The department may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary in order for it to determine whether the proposed installation, alteration, or use will be in accord with applicable rules and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines this to be protective of public health and the environment, provided that the permit may be subject to conditions as the director may prescribe. The director, on application, shall renew a permit from time to time for a term not to exceed five years if the director determines this to be protective of public health and the environment. The director shall not deny an application for the issuance or renewal of a permit without affording the applicant an opportunity for a hearing in accordance with chapter 91.

The director, on the director's own motion or the application of any person, may modify, suspend, or revoke any permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, the director determines that:

- (1) There is a violation of any condition of the permit; or
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts; or
- (3) There is a release or threatened release of regulated substances that the department deems to pose an imminent and substantial risk to public health and the environment.

(d) No applicant for a modification or renewal of a permit shall be held in violation of this chapter during the pendency of the applicant's application so long as the applicant acts in compliance with the permit previously granted, the application and all plans, specifications, and other information submitted as a part thereof.

**§ -5 Variances allowed.** Provisions under this chapter deemed more stringent than the federal rules established under Subtitle I of the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, may be varied by the department, when the variance results in an equivalent degree of public health and environmental protection and does not present a greater danger to public health and the environment.

**§ -6 Variances; procedures for.** (a) Every application for a variance shall be made on forms furnished by the department and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not fully conform to standards, and such other information as the department may by rule prescribe.

(b) Each application for a variance shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information submitted with the application, such additional information as may be submitted upon the request of the department, and the effect or probable effect upon the standards established pursuant to this chapter.

(c) Whenever an application is approved, the department shall issue a variance authorizing the installation or operation of an underground storage tank in a manner deviating from full compliance with applicable standards. No variance shall be granted by the department unless the application and the supporting information clearly show that:

- (1) The continuation of the function or operation involved in the installation or operation of an underground storage tank occurring or proposed to occur by the granting of the variance is protective of public health and the environment;

- (2) The installation or operation of an underground storage tank occurring or proposed to occur does not imminently and substantially endanger human health and the environment or the public's safety; and
- (3) Compliance with the rules or standards from which variance is sought would produce serious financial hardship to the owner and operator.
- (d) Any variance or renewal thereof shall be granted within the requirements of this section and for time periods and conditions consistent with the reasons thereof, and within the following limitations:
- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate storage of the regulated substance involved, it shall be only until the necessary means for storage becomes practicable and subject to the taking of any substitute or alternate measures that the department may prescribe. No renewal of a variance granted under this subsection shall be allowed without a thorough review of known and available means of storing the regulated substance involved.
- (2) The director may issue a variance for a period not exceeding five years.
- (3) Every variance granted under this section shall include conditions requiring the owner and operator to monitor for releases and report the results to the department.
- (e) Any variance granted pursuant to this section may be renewed from time to time on previous terms and conditions, subject to modifications, and for periods not exceeding five years at a time; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance; and provided further that the renewal, and the variance issued in pursuance thereof, shall provide for deviation from full compliance with applicable standards not greater than that attained pursuant to the terms of the immediately preceding variance at its expiration. No renewal shall be granted except on application therefor. Any such application shall be made at least one hundred eighty days prior to the expiration of the variance. The director shall act on an application for renewal within one hundred eighty days of the receipt of such application.
- (f) The director may afford a hearing in accordance with chapter 91 in relation to an application for the issuance, renewal, or modification of a variance.
- (g) No variance granted pursuant to this chapter shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law, including revocation of the variance.
- (h) Any application for a variance, submitted pursuant to this chapter, shall be subject to the public participation requirements listed below.
- (1) Public notices of every completed application for a variance shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed activity. Procedures for the circulation of public notices shall include at least the following:
- (A) Notice shall be circulated within the geographical areas of the proposed activity; such circulation shall include publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;
- (B) Notice shall be mailed to any person or group upon request; and
- (C) The director shall add the name of any person or group upon request to a mailing list to receive copies of notices for all variance applications within the State or within a certain geographical area.
- (2) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written comments with respect to the variance application

- and the tentative determinations of the department, if any. The period for comment may be extended at the discretion of the director.
- (3) The contents of public notice of applications for variances shall include at least the following:
- (A) Name, address, and phone number of agency issuing the public notice;
  - (B) Name and address of each applicant and other involved parties including the landowner, facility owner, underground storage tank owner, facility operator, and underground storage tank operator;
  - (C) Brief description of all applicant activities or operations which result in the activity described in the variance application (e.g., rock crushing plant, municipal waste treatment plant, raw sugar factory, or pineapple cannery);
  - (D) A short description of the location of each underground storage tank;
  - (E) A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by paragraph (2) of this subsection and any other means by which interested persons may influence or comment upon those determinations; and
  - (F) Address and phone number of state agency or other location at which interested persons may obtain further information and inspect a copy of the variance applications and supporting and related documents.
- (4) The director may hold a public hearing if, after reviewing the comments submitted under paragraph (2), the director determines that a public hearing is warranted. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed activity, or other appropriate area, at the discretion of the director.

**§ -7 Investigations; inspections; corrective action.** (a) For the purpose of developing or assisting in the development of any rule, conducting any study, taking any corrective action, or enforcing this chapter, any owner or operator of an underground storage tank, upon the request of any duly authorized representative of the department, shall furnish information relating to such tanks, including tank equipment and contents; conduct monitoring or testing; and permit the designated representative at all reasonable times to have access to, and to copy all records relating to such tanks.

(b) For the purpose of developing or assisting in the development of any rule, conducting any study, investigating an actual or suspected release, monitoring for compliance or noncompliance with this chapter, any rule or standard adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter, taking corrective action, or enforcing this chapter, any duly authorized representative of the department is authorized:

- (1) To enter at reasonable times any establishment or place;
- (2) To inspect and obtain samples from any person of any regulated substances contained in any underground storage tank;
- (3) To conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, or groundwater; and
- (4) To take corrective action.

Each inspection shall be commenced and completed with reasonable promptness.

(c) Any records, reports, or information obtained from any persons under this section shall be available to the public except as provided in this subsection.

Upon a showing satisfactory to the department that public disclosure of records, reports, or information, or a particular part thereof, to which the department representative has access under this section would divulge commercial or financial information entitled to protection under state or federal law, the department shall consider such information or a particular portion thereof to be confidential. No confidential information secured pursuant to this section by any official or employee of the department within the scope and cause of the official's or employee's employment in the prevention, control, or abatement of releases from underground storage tanks shall be disclosed by the official or employee with the following exception: the document or information may be disclosed to officers, employees, or authorized representatives of the State or of the United States, including local government entities, who have been charged with carrying out this chapter or Subtitle I of the Resource Conservation and Recovery Act, or when relevant in any proceeding under this chapter.

**§ -8 Enforcement.** (a) If the director determines that any person is violating this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.
- (2) May require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.
- (3) May impose penalties as provided in section -10 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, after having been served notice of violation, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with the provisions of this chapter, any rule adopted pursuant to this chapter, or the conditions of any permit or variance issued pursuant to this chapter.
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.
- (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.
- (4) May impose penalties as provided in section -10 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

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(c) If the director determines that any person has violated an accepted schedule, an order issued under this section, any rule adopted pursuant to this chapter, any condition of a permit or variance issued pursuant to this chapter, or has continued to violate this chapter, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

(d) Any order issued under this chapter shall become final, unless not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

(e) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the violation or release involved, or for the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after a hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or release.

(f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to recover the civil penalty which shall be a government realization.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

(g) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

**§ -9 Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to the public health and safety and the environment is or will be caused by a release or by the installation or operation of an underground storage tank, which requires immediate action, the director, with the approval of the governor and without public hearing, may order any person causing or contributing to the peril to immediately reduce or stop such release or activity or the director may take any and all other actions as may be necessary. Such order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director.

(b) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

**§ -10 Penalties.** (a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter shall be fined not more than \$10,000 for each tank for each day of violation. Each day of violation shall constitute a separate offense. Any person who fails to comply with an order issued under this chapter within the time specified in the order, shall be fined not more than \$25,000 for each day of continued non-compliance. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any building, place, site, facility, vehicle, or structure that the officer or employee is authorized to enter and inspect shall be fined not more than \$500 per day of denial, obstruction, or hindrance. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

**§ -11 Administrative penalties.** In addition to any other administrative or judicial remedy provided by this chapter, or by rules adopted under this chapter, the director is authorized to impose by order the penalties specified in section -10(a). Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

**§ -12 Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.

**§ -13 Appeal.** If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of a cease and desist order will not be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

**§ -14 Fees.** The director may establish reasonable fees for the registration of underground storage tanks, for the issuance, renewal, and modification of permits and variances to cover the cost of issuance thereof and for the implementation and enforcement of the terms and conditions of permits and variances including inspections and necessary site visits (not including court costs or other costs associated with any formal enforcement action), and for the review, evaluation, and approval of plans submitted regarding corrective action and site visit activities. The fees shall be deposited to the credit of the general fund.

**§ -15 Public records; confidential information; penalties for disclosure.** Reports and records submitted to the department on the ownership, installation, or operation of underground storage tanks shall be made available for in-

spection by the public during established office hours unless such reports contain information of a confidential nature concerning secret processes or methods of manufacture. Any officer, employee, or agent of the department acquiring confidential information from the inspection authorized by section -7 who knowingly and willfully divulges or discloses information except as authorized in this chapter or except as ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or of any rule or standard adopted pursuant to this chapter shall, upon conviction, be fined not more than \$5,000 or shall be imprisoned not to exceed one year, or both.

**§ -16 Nonliability of department personnel.** Notwithstanding any other law to the contrary, no member, officer, or employee of the department shall be criminally liable or responsible under this chapter for any acts done by the member, officer, or employee in the performance of the member's, officer's, or employee's duties; provided that this section shall not apply to violations of section -15.

**§ -17 Other action not barred.** No existing civil or criminal remedy for any wrongful action which is a violation of any statute or any rule of the department or the ordinance of any county shall be excluded or impaired by this chapter.

**§ -18 Enforcement by state and county authorities.** All state and county health authorities and police officers shall enforce this chapter and the rules and orders of the department.

**§ -19 Other powers of department not affected.** The powers, duties, and functions vested in the department under this chapter shall not be construed to affect in any manner the powers, duties, and functions vested in the department under any other law.

**§ -20 Effect of laws, ordinances, and rules.** (a) All laws, ordinances, and rules inconsistent with this chapter shall be void and of no effect.

(b) Any county may adopt ordinances and rules governing any matter relating to underground storage tanks which are not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to underground storage tanks shall be void and of no effect as to any matter regulated by a rule of the department upon the adoption thereof.

**§ -21 Priority in courts.** All actions brought pursuant to this chapter or pursuant to the rules adopted under this chapter shall in the discretion of the court receive priority in the courts of the State.

**§ -22 Public participation.** The director shall adopt state rules establishing public participation requirements regarding the state enforcement process.

## PART II. UNDERGROUND STORAGE TANK REGULATION

**§ -30 Notification requirements.** (a) The owner of an existing underground storage tank shall notify the department by December 31, 1989, of the existence of such tank and specify the age, size, type, location, and uses of such tank. Notice shall be made on an approved form of notice provided by the department.

(b) The owner of an existing underground tank taken out of operation between January 1, 1974, and May 19, 1986, shall notify the department by December 31, 1989, of the existence of the tank, unless the owner knows the tank subsequently

was removed from the ground. Notices shall include, to the extent known to the owner, at least the following specifications:

- (1) The date the tank was taken out of operation;
- (2) The age of the tank on the date taken out of operation;
- (3) The size, type, and location of the tank; and
- (4) The type and quantity of substances left stored in the tank on the date taken out of operation.

(c) Any owner who brings into use an underground storage tank after May 19, 1986, shall notify the department within thirty days after the installation of the tank, specifying the age, size, type, location, and uses of the tank.

(d) Subsections (a) to (c) shall not apply to tanks for which notice was given pursuant to section 103(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-516, as amended.

(e) The owner of an underground storage tank taken out of operation on or before January 1, 1974, is not required to notify the department.

(f) Any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner's notification requirements established under this section.

(g) Beginning on the effective date of this Act and for eighteen months thereafter, any person who deposits regulated substances into an underground storage tank shall notify the owner of such tank of the owners notification requirements established under this section.

**§ -31 Tank permit requirements and transfer of permit.** (a) No person shall install or operate an underground storage tank brought into use after the effective date of the new tank standards established in section -32 unless a permit is obtained from the department and upon payment of a fee.

(b) The department shall prepare a form which provides for the acceptance of the obligations of a transferred permit by any person who is to assume the ownership of an underground storage tank from the previous owner. That person shall complete the form accepting the obligations of the permit and submit the completed form within thirty days after the date of transfer of ownership of the underground storage tank.

**§ -32 New tank standards.** (a) The department shall adopt performance standards under chapter 91 which shall apply to underground storage tanks brought into use on or after the effective date of such standards. The performance standards for new underground storage tanks shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards.

(b) New tank construction standards shall include, but are not limited to the following specifications:

- (1) The tank will prevent releases of the stored regulated substances due to corrosion or structural failure for the operational life of the tank;
- (2) The tank is cathodically protected against corrosion, constructed of noncorrosive material, or steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of the stored regulated substance; and
- (3) The material used in the construction or lining of the tank is compatible with the substance to be stored.

**§ -33 Leak detection and record maintenance.** (a) The department shall adopt under chapter 91 standards of performance for maintaining a leak detection system, an inventory control system, and tank testing system, or a comparable system or method designed to identify releases in a manner consistent with the

protection of human health and the environment. In addition, the department shall adopt requirements for owners and operators to maintain records of any such monitoring, leak detection, inventory control, and tank testing system.

(b) The requirements for the leak detection and record maintenance system shall include, but are not limited to:

- (1) Directing the owner or operator of an underground storage tank to keep accurate regulated substance inventory records for the purpose of detecting leaks. Records shall be kept for each tank on each day a regulated substance is added to or withdrawn from the tank and shall include, as a minimum, a record of the amount of stored regulated substance withdrawn and received and the amount of stored regulated substance in the tank.
- (2) Inventory measurements shall be made by gauge or gauge stick or by readout from an automatic monitoring system.
- (3) Inventory records shall be maintained on a regular basis; provided that daily inventory records need not be maintained on those days when a tank is not used if such period does not exceed seven days.
- (4) Losses or gains from each day's inventory period shall be averaged for each five consecutive readings or once a week.
- (5) Records required to be maintained by the owners and operators, pursuant to this section, shall be retained for a minimum of two years.

**§ -34 Reporting of releases.** The department shall adopt under chapter 91 requirements for reporting regarding releases and corrective action taken in response to a release from an underground storage tank.

**§ -35 Corrective action.** The department shall adopt under chapter 91 requirements for taking corrective action in response to a release from an underground storage tank which should include at least the following:

- (1) Requirement that when a leak is found, the substances in the tank be emptied if emptying the substances does not present a greater danger to public health and the environment;
- (2) Requirement for the removal or proper closure of the tank, following the requirements established under section -37, or repair and testing of the tank before placing it back into operation;
- (3) Requirement that the owner and operator of the leaking underground storage tank restore the environment to a condition and quality acceptable to the department; and
- (4) Requirement to conduct public participation activities.

**§ -36 Financial responsibility.** (a) The department shall adopt under chapter 91 requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from operating an underground storage tank. Evidence of financial responsibility may be established by rule by any one, or any combination of the following: insurance, corporate guarantees, surety bond, letter of credit, or qualification as a self insurer, or any other method satisfactory to the department. In prescribing requirements under this subsection, the department may specify policy or other contractual terms, conditions, or defenses which are necessary or acceptable to establish evidence of financial responsibility.

(b) If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code, or if jurisdiction in any state or federal court cannot be obtained over an owner or operator likely to be solvent at the time

of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this subsection, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(c) The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this subsection. This subsection does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator, including, but not limited to, the liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or other applicable law.

(d) The department may establish the amount of required coverage for particular classes or categories of underground storage tanks containing petroleum, which shall not be less than \$1,000,000 for each occurrence with an appropriate aggregate requirement.

(e) The department may establish amounts lower than the amounts required by subsection (d) for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

(f) The department may consider the following factors in establishing the amount of coverage:

- (1) The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.
- (2) The likelihood of release from underground storage tanks in the class or category.
- (3) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.
- (4) The availability of methods of financial responsibility in amounts greater than the amount established by this section.
- (5) Such other factors as the department deems pertinent.

(g) The department may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks if the department determines that methods of financial responsibility satisfying the requirements of this section are not generally available for underground storage tanks in that class or category, and

- (1) Steps are being taken to form a risk retention group for such class of tanks; or
- (2) The State is taking steps to establish a fund to be implemented by the department or local agencies and departments for corrective action and compensation for such class of tanks.

The initial suspension by the department pursuant to this subsection may be for a period not to exceed 180 days. A determination to continue suspension may be made with respect to the same class or category at the end of such period, but only if substantial progress has been made in establishing a risk retention group, or the owners or operators in the class or category demonstrate, and the department

finds, that the formation of such a group is not possible and that the State is unable or unwilling to establish such a fund described in paragraph (2).

**§ -37 Underground storage tank closure requirements.** The department shall adopt under chapter 91 requirements for the closure of underground storage tanks, including the removal and disposal of underground tanks and pipings to prevent future releases of regulated substances into the environment.

### **PART III. DEPARTMENT RESPONSE PROGRAM FOR PETROLEUM RELEASES**

**§ -50 Definitions.** For the purpose of this part:

“Exposure assessment” means a determination regarding the extent of an individual’s exposure to, or potential for exposure to, petroleum from a release from an underground storage tank. This assessment shall be based on factors such as the nature and extent of contamination, the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community or communities within the likely pathways of exposure, a comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants, and any available recommended exposure or tolerance limits for such contaminants.

“Facility” means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

“Fund” means the leaking underground storage tank fund.

“Owner” means any person who falls within the definition of owner contained within part I of this chapter who does not participate in the management of an underground storage tank and is otherwise not engaged in petroleum production, refining, and marketing, but holds indicia of ownership primarily to protect a security interest in the tank.

**§ -51 Leaking underground storage tank fund.** (a) The department shall establish a revolving fund within the department which shall consist of moneys appropriated to the fund through federal grants, moneys appropriated to the fund by the legislature, moneys paid to the fund as a result of departmental compliance proceedings, moneys paid to the fund pursuant to court-ordered awards or judgments, moneys paid to the fund in court-approved or out-of-court settlements, and moneys given to the fund from other sources.

(b) Moneys from the fund shall be expended by the department for the sole purpose of corrective action activities in response to petroleum leaks from underground storage tanks in a manner consistent with this chapter.

(c) Moneys in the fund, which were appropriated to the fund through a federal grant and which have been collected by the department as part of its cost recovery efforts pursuant to section -53, may be paid to the federal government when such repayment is required by a condition in the relevant federal grant.

**§ -52 Corrective action.** (a) In the event of a petroleum release from an underground storage tank, which occurs prior to the adoption of rules for corrective action pursuant to section -35, the department may:

(1) Issue an order requiring the owner or operator of an underground storage tank to undertake corrective action as is necessary to protect human health and the environment and fixing a place and time, not

later than twenty-four hours thereafter, for a hearing to be held before the director; or

- (2) Undertake corrective action itself or by contract as is necessary to protect human health and the environment.

The department shall use moneys from the fund to pay for costs incurred in undertaking or compelling corrective action pursuant to this subsection.

The department shall assign priority in undertaking corrective actions, pursuant to this subsection, to cases in which the department cannot identify, within the time necessary to protect human health and the environment, a solvent owner or operator of the tank, or even if able to identify such a person, has cause to believe that the person cannot or will not properly undertake corrective action.

(b) In the event of a petroleum release from an underground storage tank which occurs after the adoption of rules for corrective action pursuant to section -35, the department may take all actions and issue such orders as are described in subsection (a) which are in conformity with such rules, provided, that, the department may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if the department finds such action to be necessary to protect human health and the environment and one or more of the following conditions exists:

- (1) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is:
  - (A) An owner or operator of the tank;
  - (B) Subject to such corrective action rules; and
  - (C) Capable of carrying out such corrective action properly;
- (2) Prompt action by the department is required to protect human health and the environment;
- (3) Anticipated costs of corrective action at a facility will exceed the amount of financial responsibility coverage required by the department and the class, category, or tanks from which the release occurred necessitate, in the opinion of the director, expenditures from the fund in order to assure effective corrective action; or
- (4) The owner or operator for the tank has failed or refused to comply with a federal order issued pursuant to sections 9003 and 9006 of the Resource Conservation and Recovery Act or with an order issued pursuant to this section or section -8 of this chapter to comply with the corrective action rules.

The department shall assign priority in undertaking corrective actions pursuant to this subsection and in issuing orders requiring owners or operators to undertake corrective actions, to those cases involving releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

(c) The department is authorized to issue orders to the owner or operator of an underground storage tank to comply with rules adopted under section -35.

(d) Corrective actions undertaken by the department may include the temporary or permanent relocation of residents and the provision of alternative household water supplies.

(e) In connection with the performance of any corrective action the department may undertake an exposure assessment. Corrective action to abate immediate hazards or reduce exposure shall not be delayed in order to complete any exposure assessment. The costs of any such assessment may be deemed to have been incurred in undertaking the corrective action.

(f) Except as provided in this subsection, in order to protect human life, at any facility whose owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established pursuant to section

-36 of this chapter the department shall expend no monies from the fund to clean up releases at such facility pursuant to subsections (a) and (b). At such facilities the department may use the authority provided in this chapter to order corrective action to clean up such releases. However, the department may use monies from the fund to take corrective action if necessary to protect human health at such facilities and shall seek full recovery of the costs of all such actions. Nothing in this subsection shall prevent the department from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.

**§ -53 Cost recovery.** (a) Whenever costs have been incurred by the department in the undertaking of corrective action or enforcement action with respect to the release of petroleum from an underground storage tank, the owner or operator of such tank shall be liable to the federal government or the department for such costs. The liability under this subsection shall be construed to be the standard of liability which obtains under section 311 of the Federal Water Pollution Control Act.

(b) In seeking cost recovery, the department may consider the amount of financial responsibility required to be maintained pursuant to section -36 of this chapter and the factors considered in establishing the amount of financial responsibility pursuant to section -36.

(c) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this section, to any other person, the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section. Nothing in this chapter shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person."

SECTION 7. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **"CHAPTER USED OIL TRANSPORT, RECYCLING, AND DISPOSAL**

### **PART I. DEFINITIONS AND GENERAL PROVISIONS**

**§ -1 Definitions.** As used in this chapter, unless the context otherwise requires:

"Complaint" means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule or order adopted pursuant to this chapter.

"Department" means the department of health.

"Director" means the director of health.

"Party" means each person or agency named as party or properly entitled to be a party in any court or agency proceeding.

"Permit" means written authorization from the director to discharge waste or to construct, modify, or operate any used oil management system. A permit authorizes the grantee to do any act, not forbidden by this chapter, or by rules adopted pursuant to this chapter, but requiring review by the department.

"Person" means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

**"Recycled oil"** means used oil that is reused or prepared for reuse as a petroleum product.

**"Specification fuel"** means recycled oil which meets specific standards that are set by the director. These standards, at a minimum, shall comply with those set by the federal Environmental Protection Agency for specification fuel.

**"Used oil"** means a petroleum-based oil which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

**"Used oil transporter"** means any person who transports more than five hundred gallons of used oil annually.

**§ -2 Administration.** The department shall administer this chapter through the director. The director may delegate to any person such power and authority vested in the director by this chapter as the director deems reasonable and proper for the effective administration of this chapter, except the power to make rules.

**§ -3 Rules; appointment of hearings officers.** (a) The director may make, amend, and repeal state rules, pursuant to chapter 91, necessary for the purposes of this chapter. Any person heard at the public hearing shall be given written notice of the action taken by the department with respect to the rules.

(b) In addition to other specific powers provided in this chapter, the director may appoint without regard to chapters 76 and 77, hearings officers to conduct public participation activities including public hearings and public informational meetings.

**§ -4 Permits; procedures for.** (a) An application for any permit required under this chapter shall be in a form prescribed by the director.

(b) The department may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary in order for it to determine whether the proposed installation, alteration, or use will be in accord with applicable rules and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines that such will be in the public interest; provided that the permit may be subject to such reasonable conditions as the director may prescribe. The director, on application, shall renew a permit from time to time for a term not exceeding five years if the director determines that such is in the public interest. The director shall not deny an application for the issuance or renewal of a permit without affording the applicant an opportunity for a hearing in accordance with chapter 91.

The director, on the director's own motion or the application of any person, may modify, suspend, or revoke any permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, the director determines that:

- (1) There is a violation of any condition of the permit; or
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts; or
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted activity; or
- (4) Such is in the public interest.

The director shall ensure that the public receive notice of each application for a permit to control water or hazardous waste pollution. The director may hold a public hearing before ruling on an application for a permit to control water or hazardous waste pollution if the director determines such public hearing to be in the public interest.

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In determining the public interest, the director shall consider the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the action be implemented, the alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented, and any other factors which the director may by rule prescribe; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

(d) The failure of the director to act on an application for the issuance of a permit or an application by a permit holder for the modification or renewal thereof within one hundred eighty days of the receipt of such application, shall be deemed a grant of such application provided that the applicant acts consistently with the application and all plans, specifications, and other information submitted as a part thereof.

(e) No applicant for a modification or renewal of a permit shall be held in violation of this chapter during the pendency of the applicant's application provided that the applicant acts consistently with the permit previously granted, the application and all plans, specifications, and other information submitted as a part thereof.

**§ -5 Inspection of premises; examination of records.** The director, in accordance with law, may enter and inspect any building, place, facility, storage tank, or vehicle and examine the records required under this chapter to investigate an actual or suspected source of used oil pollution, to ascertain compliance or noncompliance with this chapter, any rule or standard adopted by the department, pursuant to this chapter, or any permit or other approval granted by the department, and to make reasonable tests in connection therewith. No confidential information secured pursuant to this section by any official or employee of the department within the scope and course of the official's or employee's employment in the prevention, control, or abatement of used oil pollution, pursuant to this chapter, shall be disclosed by the official or employee except as it relates directly to the control of used oil pollution and then, only in connection with the official's or employee's official duties and within the scope and course of the official's or employee's employment.

**§ -6 Enforcement.** (a) If the director determines that any person is violating this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.
- (2) May require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.
- (3) May impose penalties as provided in section -8 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter, after having been served notice of violation, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with the provisions of this chapter, the provisions of any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter.
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.
- (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.
- (4) May impose penalties as provided in section -8 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(c) If the director determines that any person has violated an accepted schedule, an order issued under this section, any rule adopted pursuant to this chapter, any conditions of a permit issued pursuant to this chapter, or has continued to violate this chapter, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

(d) Any order issued under this chapter shall become final, unless not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

(e) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the violation or discharges involved, or for the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or discharges.

(f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to recover the civil penalty which shall be a government realization.

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In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

(g) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

**§ -7 Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the director determines that an imminent peril to the public health and safety is or will be caused by discharge of new, used, or recycled oil or any combination of discharges of waste, which requires immediate action, the director, with the approval of the governor and without public hearing, may order any person causing or contributing to the peril to immediately reduce or stop such discharge or activity or the director may take any and all other actions as may be necessary. Such order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director.

(b) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

**§ -8 Penalties.** (a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) Any person who wilfully or negligently violates this chapter, any rule adopted by the department pursuant to this chapter, or any condition of a permit issued pursuant to this chapter shall be punished by a fine of not more than \$5,000 for each violation or imprisonment for not more than one year, or both. If the conviction is for a violation committed after a first conviction, the violator shall be subject to a fine of not more than \$10,000 for each violation, or by imprisonment for not more than two years, or both.

(c) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any facility, place, storage tank, or vehicle that the officer or employee is authorized to enter and inspect shall be fined not more than \$500. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action.

**§ -9 Administrative penalties.** In addition to any other administrative or judicial remedy provided by this chapter, or by rules adopted under this chapter, the director is authorized to impose by order the penalties specified in section -8(a). Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

**§ -10 Injunctive relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent a violation of this

chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter, without the necessity of a prior revocation of the permit. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.

**§ -11 Appeal.** If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of a cease and desist order will not be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

**§ -12 Fees.** The director may establish reasonable fees for the issuance of permits to cover the cost of issuance thereof and for the implementation and enforcement of the terms and conditions of permits (not including court costs or other costs associated with any formal enforcement action). The fees shall be deposited to the credit of the general fund.

**§ -13 Public records; confidential information; penalties.** Oil management permit applications and reports on the management of used oil submitted to the department shall be made available for inspection by the public during established office hours unless such reports contain information of a confidential nature concerning secret processes or methods of manufacture. Any officer, employee, or agent of the department acquiring confidential information from the inspection authorized by section -5 who divulges information except as authorized in this chapter or except as ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or of any rule or standard adopted pursuant to this chapter shall be fined not more than \$1,000.

**§ -14 Nonliability of department personnel.** Notwithstanding any other law to the contrary, no member, officer, or employee of the department shall be criminally liable or responsible under this chapter for any acts done by the member, officer, or employee in the performance of the member's, officer's, or employee's duties; provided that this section shall not apply to violations of section -13.

**§ -15 Other action not barred.** No existing civil or criminal remedy for any wrongful action which is a violation of any statute or any rule of the department or the ordinance of any county shall be excluded or impaired by this chapter.

**§ -16 Enforcement by state and county authorities.** All state and county health authorities and police officers shall enforce this chapter and the rules, orders, and permits of the department.

**§ -17 Other powers of department not affected.** The powers, duties, and functions vested in the department under this chapter shall not be construed to affect in any manner the powers, duties, and functions vested in the department under any other law.

**§ -18 Effect of laws, ordinances, and rules.** (a) All laws, ordinances, and rules inconsistent with this chapter shall be void and of no effect.

(b) Any county may adopt ordinances and rules governing any matter relating to used oil transport, recycling, and disposal which is not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to used oil transport, recycling, and disposal shall be void and of

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no effect as to any matter regulated by a rule of the department upon the adoption thereof.

**§ -19 Priority in courts.** All actions brought pursuant to this chapter pursuant to the rules adopted under this chapter or pursuant to the conditions of a permit issued under this chapter shall in the discretion of the court receive priority in the courts of the State.

## PART II. USED OIL CONTROL

**§ -30 Prohibited acts.** (a) No new oil, used oil, or recycled oil shall be discharged into sewers, drainage systems, surface or ground waters, watercourses, or marine waters.

(b) No used oil transporter shall deliver used oil to any person with the knowledge that the oil will be improperly disposed of in violation of this chapter.

(c) No new oil, used oil, or recycled oil shall be discharged onto the ground without prior written approval from the department and the landowner.

(d) No used oil or recycled oil shall be burned as specification fuel without an analysis or other written information documenting that the used oil or recycled oil meets the standards for specification fuel as set forth by the director.

**§ -31 Permit required.** No person shall transport, market, or recycle used oil except specification fuel, without first obtaining a permit from the department. The director may require any person who generates and burns their own used oil as specification fuel to notify the department of their activity.

**§ -32 Used oil transport vehicles; identification required.** The department shall require used oil transporters to identify vehicles used for the transport of used oil.

**§ -33 Recordkeeping, sampling, and testing requirements.** (a) Transporters, marketers, recyclers, and burners of used oil shall keep a copy of each transaction or invoice received.

(b) Any person who sells used oil as specification fuel shall keep a copy of each analysis performed or other written information documenting that the used oil meets the standards for specification fuel as set forth by the director.

(c) The director may require any person who generates and burns the person's own used oil as specification fuel to keep a copy of each analysis performed or other written information documenting that the used oil meets the standards for specification fuel as set forth by the director.

(d) The persons described in subsections (a), (b), and (c) shall be required to maintain records relating to used oil which shall be retained for a period of three years and made available to the director upon request.

(e) Each used oil transporter shall provide a signed voucher to each person surrendering or accepting the used oil when used oil is picked up or delivered and shall keep a record of each voucher.

(f) The department may require persons who generate, transport, market, recycle, or burn used oil or specification fuel or accept used oil for final disposal to conduct sampling and testing and to keep and submit records.

**§ -34 Cooperation with other agencies.** The department shall coordinate its activities and functions under this chapter with the department of business and economic development and other state agencies to avoid duplication in reporting and information gathering."

SECTION 8. Chapter 342, Hawaii Revised Statutes, is repealed.

SECTION 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date. Rules that were adopted under the authority of chapter 342 shall remain in effect until they are replaced by rules adopted under the authority of the respective chapters being enacted in this Act. References in the new chapters to rules shall include rules adopted pursuant to chapter 342 until the rules adopted pursuant to chapter 342 are replaced by rules adopted under the respective new chapters.

SECTION 10. All acts passed by the legislature during this Regular Session of 1989, whether enacted before or after the effective date of this Act, shall be amended to conform with this Act unless such acts specifically provide that this Act is being amended.

SECTION 11. The Department of Health shall submit a progress report to the Legislature on any memorandum of understanding entered into between the Department of Health and the counties on the use of police officers to enforce the "open burning" provision found in section -9(b) of Part I of the new chapter on air pollution created by this Act.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved June 7, 1989.)

**Note**

1. So in original.

**ACT 213**

S.B. NO. 424

A Bill for an Act Relating to Social Workers.

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

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

**"CHAPTER  
SOCIAL WORKERS**

**§ -1 Definitions.** As used in this chapter:

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

**§ -2 Applicability.** A person engages in the practice of social work when that person performs services that involve the application of social work principles, techniques and methods to treat and prevent psychosocial dysfunction, disability, or impairment, including emotional and mental disorders. Social work services include consultation; assessment; diagnosis; treatment; client-centered advocacy; and case work management.

**§ -3 Registered social worker; use of title restricted.** Any person who meets the requirements of section -4 may register with the director as a registered

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social worker and shall have the right to use the title "Registered Social Worker." No other person shall use the title "Registered Social Worker" or use any other words, letters, signs or devices to indicate that the person is a registered social worker.

**§ -4 Registration requirements.** An applicant for registration as a registered social worker shall submit to the department written evidence, verified by oath or affirmation, that the applicant has received a master's degree in social work from a school of social work accredited by the Council on Social Work Education.

**§ -5 Denial of registration; hearing.** (a) No applicant shall be registered as a registered social worker if:

- (1) The applicant has been convicted of a crime and the basis of denial of registration falls within the exceptions provided in section 831-3.1;
- (2) The applicant has been declared mentally incompetent by any court and the decree has not since been dismissed; or
- (3) Proceedings brought against the applicant pursuant to section -6 resulted in findings of any of the causes listed in subsection -6(b).

(b) Any person whose application for registration has been denied shall be given notice and the opportunity for a hearing pursuant to chapter 91.

**§ -6 Discipline; complaints; grounds; proceedings; hearings.** (a) The director shall have the power to revoke, limit, condition or suspend any registration as a registered social worker and to fine or otherwise discipline a registered social worker for any violation of section -6(b).

(b) The department shall have the power to accept, investigate, prosecute, and hear complaints regarding any person, whether registered or not, who engages in the practice of social work or who uses the words "social work," or any variation or abbreviation thereof, in the person's title; regarding the following allegations:

- (1) Unfitness or incompetence by reason of negligence, habits, or other causes regardless of whether actual damage or damage to the public is established;
- (2) Habitual intemperance, addiction or dependency on alcohol or other habit-forming substances;
- (3) Mental incompetence resulting in an inability to practice social work;
- (4) Submitting to or filing with the department any application, notice, statement, or other document in procuring or attempting to procure registration as a registered social worker, which is false or untrue or contains any material misstatement of fact;
- (5) Using the title "registered social worker" or any designation tending to imply that the person is a registered social worker when the person is not in fact registered or the person's registration has been suspended or revoked;
- (6) Violation of the conditions or limitations upon which registration occurs;
- (7) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm an individual or the public in the course of professional services or activities;
- (8) Having disciplinary action taken against the social worker in another state;
- (9) Aiding or abetting an unregistered person, knowingly combining or conspiring with an unregistered person, allowing one's registration to be used by an unregistered person, or acting as agent or associate of an unregistered person to evade the use of title restrictions of this chapter;

- (10) Engaging in false or misleading advertising;
  - (11) Engaging in sexual conduct in connection with professional services or activities; or
  - (12) Revealing confidential information except as may be required by law.
- (c) In any proceeding under this section the person subject to the proceeding shall be given notice and the opportunity for a hearing in conformity with chapter 91.

**§ -7 Penalties.** (a) Any person against whom proceedings have been brought pursuant to section -6 which resulted in findings of any of the causes listed in subsection -6(b) may be assessed a fine of not less than \$100 nor more than \$5,000 for each offense.

(b) The director may bring civil proceedings to enjoin any person for any actions in violation of section -6(b).

**§ -8 Exemptions. This chapter shall not apply to:**

- (1) Licensed, registered, or certified professionals such as physicians, teachers, nurses, psychologists, and attorneys engaging in the practices of social work within the scope of their respective practices, provided they do not hold themselves out to the public as being social workers.
- (2) Any officer or employee of the United States while the officer or employee is engaged in the practice of social work, provided the practice falls within the course and scope of the officer or employee's official duties.
- (3) Any minister, priest, rabbi, or officer of any religious denomination who has been ordained or is authorized to perform official acts according to the practices of such denomination.
- (4) Any student pursuing a course of professional education accredited by the Council on Social Work Education."

SECTION 2. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The following chapters are hereby repealed effective December 31, 1992:

- (1) Chapter 448H (Elevator Mechanics Licensing Board)
- (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- (3) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- (4) Chapter 460 (Board of Osteopathic Examiners)
- (5) Chapter 461 (Board of Pharmacy)
- (6) Chapter 461J (Board of Physical Therapy)
- (7) Chapter 463E (Podiatry)
- (8) Chapter (Social Workers)."

SECTION 3. This Act shall take effect on January 1, 1990.

(Approved June 7, 1989.)

A Bill for an Act Relating to Medical Claim Conciliation.

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

SECTION 1. The legislature finds that it has become increasingly difficult to find physicians willing to serve on medical claims conciliation panels. The purpose of this Act is to increase the compensation of panel members.

## ACT 214

SECTION 2. Section 671-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A medical claim conciliation panel shall be formed for each claim filed pursuant to section 671-12 and after each panel renders its decision or the claim is otherwise disposed of it shall be disbanded. Each medical claim conciliation panel shall consist of one chairperson selected from among persons who are familiar with and experienced in the personal injury claims settlement process, one attorney licensed to practice in the courts of the State and experienced in trial practice, and one physician or surgeon licensed to practice under chapter 453 or chapter 460. The chairperson shall be appointed by the chief justice of the supreme court of Hawaii. The attorney shall be appointed by the chairperson from a list of not less than thirty-five attorneys experienced in trial practice submitted annually by the supreme court. The physician or surgeon shall be appointed by the chairperson from a list of not less than thirty-five physicians or surgeons licensed under chapter 453 submitted annually by the board of medical examiners or from a list of not less than eight physicians and surgeons licensed under chapter 460 submitted annually by the board of osteopathic examiners.

The chairperson shall preside at the meetings of the panel. The chairperson and all panel members shall be compensated at the rate of [\$100] \$300 per claim handled which will become payable when the decision of the panel is submitted and shall be paid allowances for travel and living expenses which may be incurred as a result of the performance of their duties on the panel. [Such] These costs shall be paid by the department of commerce and consumer affairs.

The office and meeting space, secretarial and clerical assistance, office equipment, and office supplies for the panel shall be furnished by the department.

The board of medical examiners and board of osteopathic examiners shall each prepare a list of physicians, surgeons, or physicians and surgeons, as the case may be, along with their respective specialties who shall then be considered consultants to the panel in their respective fields. Panel members may consult with other legal, medical, and insurance specialists. Any consultant called by the panel to appear before the panel shall be paid an allowance for travel and living expenses which may be incurred as a result of [such] the person's appearance before the panel. [Such] These costs shall be paid by the department."

SECTION 3. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$60,000, or 0.0026 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$60,000, or so much thereof as may be necessary for fiscal year 1989-1990, to carry out the purposes of this Act. The sum appropriated shall be expended by the department of commerce and consumer affairs.

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

SECTION 6. This Act shall take effect on July 1, 1989.

(Approved June 8, 1989.)

**ACT 215**

S.B. NO. 107

A Bill for an Act Relating to Declaration of National Emergency.

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

SECTION 1. The purpose of this Act is to replace obsolete military titles in section 134-34, Hawaii Revised Statutes, without changing the intent of the existing section.

SECTION 2. Section 134-34, Hawaii Revised Statutes, is amended to read as follows:

**“§134-34 National emergency, when.** A national emergency or crisis shall be deemed to have arisen when the governor[, the commanding general of the United States Army, Pacific, and the commandant of the 14th Naval District and Hawaiian Sea Frontier] and the senior United States military commander headquartered in the State or, in the absence of the commander, a duly designated representative have, in the exercise of their discretion, so determined.”

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

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

(Approved June 8, 1989.)

**ACT 216**

S.B. NO. 113

A Bill for an Act Relating to Tort Actions.

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

SECTION 1. Section 663-1.7, Hawaii Revised Statutes, is amended by amending the title and subsections (a), (b), and (c) to read as follows:

**“§663-1.7 Professional society; peer review committee; ethics committee; hospital or clinic quality assurance committee; no liability; exceptions.** (a) As used in this section, “professional society” or “society” means any association or other organization of persons engaged in the same profession or occupation, or a specialty within a profession or occupation, a primary purpose of which is to maintain the professional standards of the persons engaged in its profession or occupation or specialty practice; “peer review committee” means a committee created by a professional society, or by the medical or administrative staff of a licensed hospital or clinic, whose function is to maintain the professional standards established by the bylaws of the society, hospital, or clinic of the persons engaged in its profession or occupation, or area of specialty practice, or in its hospital or clinic; “ethics committee” means a committee that may be an interdisciplinary committee appointed by the administrative staff of a licensed hospital, whose function is to consult, educate, review, and make decisions regarding ethical questions, including decisions on life-sustaining therapy; and “hospital or clinic quality assurance committee” means an interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital or clinic, whose function is to monitor and evaluate patient care, and to identify, study, and correct deficiencies and seek improvements in the patient care delivery process.

## **ACT 217**

(b) There shall be no civil liability for any member of a peer review committee, ethics committee, or hospital or clinic quality assurance committee, or for any person who files a complaint with or appears as a witness before such committees, for any acts done in the furtherance of the purpose for which the peer review committee, ethics committee, or hospital or clinic quality assurance committee was established; provided that:

- (1) The member, witness, or complainant acted without malice; and
- (2) In the case of a member, the member was authorized to perform in the manner in which the member did.

(c) This section shall not be construed to confer immunity from liability upon any professional society, hospital, or clinic, nor shall it affect the immunity of any shareholder or officer of a professional corporation; provided that there shall be no civil liability for any professional society or hospital or clinic in communicating any conclusions reached by one of its peer review committees, ethics committee, or hospital or clinic quality assurance committees relating to the conformance with professional standards of any person engaged in the profession or occupation of which the membership of the communicating professional society consists, to a peer review committee, an ethics committee, or hospital or clinic quality assurance committee of another professional society or hospital or clinic whose membership is comprised of persons engaged in the same profession or occupation, or to a duly constituted governmental board or commission or authority having as one of its duties the licensing of persons engaged in that same profession or to a government agency charged with the responsibility for administering a program of medical assistance in which services are provided by private practitioners."

**SECTION 2.** New statutory material is underscored.

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

(Approved June 8, 1989.)

## **ACT 217**

S.B. NO. 156

A Bill for an Act Relating to Real Estate.

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

**SECTION 1.** Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

**"§26H-4 Repeal dates.** (a) The following chapters are hereby repealed effective December 31, 1989:

- (1) Chapter 444 (Contractors License Board)
  - (2) Chapter 448E (Board of Electricians and Plumbers)
  - (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)
  - (4) Chapter 466 (Board of Public Accountancy)
  - [5] Chapter 467 (Real Estate Commission)
  - [6] (5) Chapter 439 (Board of Cosmetology)
  - [7] (6) Chapter 454 (Mortgage Brokers and Solicitors)
  - [8] (7) Chapter 454D (Mortgage and Collection Servicing Agents)
- (b) The following chapter and sections are hereby repealed effective December 31, 1990:

- (1) Chapter 466J (Board of Radiologic Technology)
- (2) Sections 321-13 to 321-15 (midwives, laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, tattoo artists, electrologists, and sanitarians)
- (c) The following chapters are hereby repealed effective December 31, 1991:
  - (1) Chapter 447 (Dental Hygienists)
  - (2) Chapter 453 (Board of Medical Examiners)
  - (3) Chapter 457 (Board of Nursing)
  - (4) Chapter 458 (Board of Dispensing Opticians)
  - (5) Chapter 460J (Pest Control Board)
  - (6) Chapter 462A (Pilotage)
  - (7) Chapter 438 (Board of Barbers)
  - (8) Chapter 468K (Travel Agencies)
- (d) The following chapters are hereby repealed effective December 31, 1992:
  - (1) Chapter 448H (Elevator Mechanics Licensing Board)
  - (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
  - (3) Chapter 457B (Board of Examiners of Nursing Home Administrators)
  - (4) Chapter 460 (Board of Osteopathic Examiners)
  - (5) Chapter 461 (Board of Pharmacy)
  - (6) Chapter 461J (Board of Physical Therapy)
  - (7) Chapter 463E (Podiatry)
- (e) The following chapters are hereby repealed effective December 31, 1993:
  - (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
  - (2) Chapter 437B (Motor Vehicle Repair Industry Board)
  - (3) Chapter 440 (Boxing Commission)
  - (4) Chapter 446 (Debt Adjusters)
  - (5) Chapter 436E (Board of Acupuncture)
- (f) The following sections are hereby repealed effective December 31, 1993:
  - (1) Sections 445-21 to 38 (Auctions)
  - (2) Sections 445-131 to 136 (Pawnbrokers)
  - (3) Sections 445-171 to 172 (Secondhand Dealers)
  - (4) Sections 445-231 to 235 (Scrap Dealers)
- (g) The following chapters are hereby repealed effective December 31, 1994:
  - (1) Chapter 441 (Cemetery and Funeral Trusts)
  - (2) Chapter 443B (Collection Agencies)
  - (3) Chapter 452 (Board of Massage)
  - (4) Chapter 455 (Board of Examiners in Naturopathy)
  - (5) Chapter 459 (Board of Examiners in Optometry)
  - (6) Chapter 442 (Board of Chiropractic Examiners)
  - (7) Chapter 373 (Commercial Employment Agencies)
  - (8) Chapter 448 (Board of Dental Examiners)
  - (9) Chapter 465 (Board of Psychology)
  - (10) Chapter 468E (Speech Pathology and Audiology)
- (h) The following chapter is hereby repealed effective December 31, 1995:
  - (1) Chapter 467 (Real Estate Commission)
- [[(h)] (i) The following chapters are hereby repealed effective December 31, 1997:
  - (1) Chapter 463 (Board of Private Detectives and Guards)
  - (2) Chapter 471 (Board of Veterinary Examiners)."

SECTION 2. Sections 467-1, 467-1.5, 467-2, 467-3, 467-4, 467-7, 467-8, 467-9, 467-9.5, 467-11.5, 467-15.5, 467-16, 467-18, 467-25.5, 467-30, 383-7, 393-5, 485-1, 485-6, 514E-2.5, and 514E-10, Hawaii Revised Statutes, are amended by substituting the terms "salesperson", "salesperson's", or "salespersons" for

## ACT 218

“salesman”, “salesman’s”, or “salesmen”, respectively, wherever those terms appear.

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

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

(Approved June 8, 1989.)

## ACT 218

S.B. NO. 298

A Bill for an Act Relating to Mortgage Brokers and Solicitors.

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

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

**“§26H-4 Repeal dates.** (a) The following chapters are hereby repealed effective December 31, 1989:

- (1) Chapter 444 (Contractors License Board)
- (2) Chapter 448E (Board of Electricians and Plumbers)
- (3) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)
- (4) Chapter 466 (Board of Public Accountancy)
- (5) Chapter 467 (Real Estate Commission)
- (6) Chapter 439 (Board of Cosmetology)
- [7] Chapter 454 (Mortgage Brokers and Solicitors)
- (8) [7] Chapter 454D (Mortgage and Collection Servicing Agents)

(b) The following chapter and sections are hereby repealed effective December 31, 1990:

- (1) Chapter 466J (Board of Radiologic Technology)
- (2) Sections 321-13 to 321-15 (midwives, laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, tattoo artists, electrologists, and sanitarians)

(c) The following chapters are hereby repealed effective December 31, 1991:

- (1) Chapter 447 (Dental Hygienists)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 457 (Board of Nursing)
- (4) Chapter 458 (Board of Dispensing Opticians)
- (5) Chapter 460J (Pest Control Board)
- (6) Chapter 462A (Pilotage)
- (7) Chapter 438 (Board of Barbers)
- (8) Chapter 468K (Travel Agencies)

(d) The following chapters are hereby repealed effective December 31, 1992:

- (1) Chapter 448H (Elevator Mechanics Licensing Board)
- (2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- (3) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- (4) Chapter 460 (Board of Osteopathic Examiners)
- (5) Chapter 461 (Board of Pharmacy)
- (6) Chapter 461J (Board of Physical Therapy)

- (7) Chapter 463E (Podiatry)
- (e) The following chapters are hereby repealed effective December 31, 1993:
  - (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
  - (2) Chapter 437B (Motor Vehicle Repair Industry Board)
  - (3) Chapter 440 (Boxing Commission)
  - (4) Chapter 446 (Debt Adjusters)
  - (5) Chapter 436E (Board of Acupuncture)
- (f) The following sections are hereby repealed effective December 31, 1993:
  - (1) Sections 445-21 to 38 (Auctions)
  - (2) Sections 445-131 to 136 (Pawnbrokers)
  - (3) Sections 445-171 to 172 (Secondhand Dealers)
  - (4) Sections 445-231 to 235 (Scrap Dealers)
- (g) The following chapters are hereby repealed effective December 31, 1994:
  - (1) Chapter 441 (Cemetery and Funeral Trusts)
  - (2) Chapter 443B (Collection Agencies)
  - (3) Chapter 452 (Board of Massage)
  - (4) Chapter 455 (Board of Examiners in Naturopathy)
  - (5) Chapter 459 (Board of Examiners in Optometry)
  - (6) Chapter 442 (Board of Chiropractic Examiners)
  - (7) Chapter 373 (Commercial Employment Agencies)
  - (8) Chapter 448 (Board of Dental Examiners)
  - (9) Chapter 465 (Board of Psychology)
- (10) Chapter 468E (Speech Pathology and Audiology)
- (h) The following chapter is hereby repealed effective December 31, 1995:
  - (1) Chapter 454 (Mortgage Brokers and Solicitors)
- [(h)] (i) The following chapters are hereby repealed effective December 31, 1997:
  - (1) Chapter 463 (Board of Private Detectives and Guards)
  - (2) Chapter 471 (Board of Veterinary Examiners)."

SECTION 2. Chapter 454, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§454- Written agreements.** For any transaction between a mortgage broker or a mortgage solicitor and a borrower, the following requirements shall apply:

- (1) A mortgage broker and a mortgage solicitor shall comply with all provisions of the Real Estate Settlement Procedures Act, the Truth in Lending Act, and the Equal Credit Opportunity Act, as those laws currently exist or as they may be amended.
- (2) Any written commitment letter to make a mortgage loan with specified terms, including loan amount, interest rate, points, and payment terms, which is issued by a mortgage broker or solicitor and accepted by a borrower, must be honored by the mortgage broker or solicitor if the borrower has completely satisfied all of the conditions of the commitment in a timely manner and prior to the specified expiration date of the commitment.”

SECTION 3. Section 454-1, Hawaii Revised Statutes, is amended to read as follows:

**“§454-1 Definitions.** In this chapter unless the context or subject matter otherwise requires:

[(1)] “Person” means an individual, partnership, corporation, association, or other organization.

[(2)] "Mortgage loan" means a loan secured by a mortgage on real property.

[(3)] "Mortgage broker" means a person not exempt under section 454-2 who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly makes, negotiates, acquires, [or sells] or offers to make, negotiate, or acquire[, or sell] a mortgage loan[], but excluding transactions involving the sale or purchase of notes or bonds secured by mortgages which are subject to registration under chapter 485.] on behalf of a borrower seeking a mortgage loan.

[(4)] "Mortgage solicitor" means an individual not licensed as a mortgage broker who performs any of the functions set forth in [paragraph (3) of this section] the definition of mortgage broker and who is employed by a mortgage broker or whose business transactions are under the direction, control, or management of a mortgage broker.

[(5)] "Mortgage commissioner" or "commissioner" means the director of commerce and consumer affairs.

[(6)] "Licensee" means a person, whether mortgage broker or mortgage solicitor, licensed under this chapter.

[(7)] "License" means a license issued under this chapter.

[(8)] "Institutional investor" means and includes (a) banks, savings and loan institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit sharing trusts, any of the class of persons permitted to qualify as foreign lenders under section 207-11, or other financial institutions or institutional buyers, whether acting for themselves or as fiduciaries; (b) the United States or any foreign government, any state or territory thereof, or any agency or corporate or other instrumentality of the United States, a foreign government, or of any state, territory or political subdivision thereof."

SECTION 4. Section 454-2, Hawaii Revised Statutes, is amended to read as follows:

**"§454-2 Exemptions.** This chapter does not apply to the following:

- (1) Banks, trust companies, building and loan associations, pension trusts, credit unions, insurance companies, industrial loan companies, or federally licensed small business investment companies, authorized under any law of this State or of the United States to do business in the State;
- (2) A person making or acquiring a mortgage loan with one's own funds for one's own investment without intent to resell the mortgage loan;
- (3) A person licensed to practice law in the State, not actively and principally engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person's practice as an attorney; [and]
- (4) A person licensed as a real estate broker or salesman in the State, not actively engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person's practice as a real estate broker or salesman[.]; and
- (5) An institutional investor negotiating, entering into, or performing under a loan purchase agreement for its portfolio, for subsequent resale to other institutional investors, or for placement of the mortgages into pools or packaging them into mortgage-backed securities. As used in this subsection "loan purchase agreement" means an agreement or arrangement under which a bank, savings and loan, credit union, industrial loan company, or other financial institution registered to do business in the State of Hawaii agrees to sell mortgage loans or obtain funding therefor, with or without the transfer of servicing rights, to an institutional investor."

SECTION 5. Section 454-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Every person licensed as a mortgage broker shall deposit with the commissioner, prior to doing business, a bond in the amount of [\$15,000,] \$50,000, executed by the mortgage broker as principal and a surety company authorized to do business in the State as a surety. The bond shall be conditioned upon the faithful compliance of the broker with the provisions of this chapter. The bond shall run to the State for the benefit of any person injured by the wrongful act, default, fraud, or misrepresentation of the broker or the solicitors; provided that the aggregate liability of the surety shall, in no event, exceed the sum of the bond. The surety may cancel the bond by giving sixty days' notice in writing to the commissioner and shall thereafter be relieved of any liability for any breach of condition occurring after the effective date of cancellation. A mortgage broker's license shall not be in effect at any time when the bond is not in full force and effect. Only one bond shall be required of any person.”

SECTION 6. Section 454-3.5, Hawaii Revised Statutes, is repealed.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect upon its approval.

(Approved June 8, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 219**

S.B. NO. 311

A Bill for an Act Relating to Ethics.

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

SECTION 1. Chapter 84, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§84- Disclosure files; disposition.** (a) All financial disclosure statements filed by a legislator, employee, or delegate to a constitutional convention shall be maintained by the state ethics commission during the term of office of the legislator, employee, or delegate and for a period of three years thereafter. Upon the expiration of the three-year period, the financial disclosure statement and all copies thereof shall be destroyed or returned to the filer. The state ethics commission shall afford a legislator, employee, or delegate a reasonable opportunity to request return of his or her disclosure statement and copies thereof after the three-year period has run.

(b) Upon the expiration of three years after an election for which a candidate for state elective office or a constitutional convention has filed a financial disclosure statement, the state ethics commission shall destroy the candidate's financial disclosure statement and all copies thereof or return the statement and all copies thereof to the candidate. The state ethics commission shall afford a candidate a reasonable opportunity to request return of the candidate's disclosure statement and copies thereof after the three-year period has run.

(c) Financial disclosure statements provided for in section 84-17(d) shall cease to be public records once the three-year period provided for in paragraphs (a) or (b) above has run.

## ACT 220

(d) Nothing herein shall bar the state ethics commission from retaining a financial disclosure statement or copy of a financial disclosure statement that has become part of a charge case or advisory opinion request, or is part of an ongoing investigation."

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

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

(Approved June 8, 1989.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 220

S.B. NO. 592

A Bill for an Act Relating to Industrial Loan Companies.

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

SECTION 1. Section 408-14, Hawaii Revised Statutes, is amended to read as follows:

**"§408-14 Specific powers.** (a) Every industrial loan company, in addition to the powers exercisable by or conferred upon it under or by the general corporation law of the State, or by any other provision of this chapter, shall possess and may exercise the following powers:

- (1) To borrow money upon its own secured or unsecured notes;
- (2) To lend money upon individual credit or upon the security of comakers, personal endorsement, or the pledge or mortgage of real or personal property or choses in action, or upon any combination of such credit and security, and to contract for such interest, discount, or other consideration as is permitted by this chapter, and to sell or broker, loans or contracts, in whole or in part, to other lenders, and charge or retain a fee for the originating, selling, brokering, or servicing of such loans or contracts;
- (3) To discount, purchase, or otherwise acquire notes, installment contracts, warehouse receipts, or other choses in action;
- (4) To establish branches within the State with the prior written approval of the commissioner;
- (5) To finance purchases for others by taking title to merchandise temporarily and only for the purpose of securing loans entered into for the purchases;
- (6) To issue and sell certificates for the payment of money at any time, either fixed or uncertain, including without limitation evidences of thrift accounts as defined in and subject to chapter 408A, and to receive amounts invested therein in installments or otherwise, with or without allowance of interest on the investments; provided no company may issue the certificates or receive those amounts unless the company is a corporation organized and operating in good standing under the laws of this State. A company may, but need not, require an investor to subscribe to a certain amount of investment in such certificates, subject to minimum or maximum investments required by law or rules. Nothing herein shall be construed to authorize any industrial loan company to receive deposits or to create any liability due on demand; and

(7) To become the legal or beneficial owner of tangible personal property and other tangible property for the purpose of leasing such property, to obtain an assignment of a lessor's interest in a lease of such property, and to incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property.

[(b) The certificates in subsection (a), including the evidence of the thrift accounts, shall not be issued by any industrial loan company without receiving the prior written approval of the commissioner, and shall bear upon the face of the instrument the words, "THIS IS NOT A CERTIFICATE OF DEPOSIT."]

(c)] (b) Every industrial loan company that issues investment or thrift certificates or debentures to the public shall have the prior written approval of the commissioner and shall maintain at least the minimum capital requirement set forth for banks in the regulations of the Federal Deposit Insurance Corporation in Part 325, Subchapter B, Chapter III, Volume 12 of the Code of Federal Regulations.

This capital requirement shall be the minimum acceptable level for industrial loan companies whose overall financial condition is fundamentally sound, which are well-managed and which have no material or significant financial weaknesses. Where the commissioner determines that the financial history or condition, including off-balance sheet risk, managerial resources or the future earnings prospects of the company are not adequate or the company has a significant volume of assets classified substandard, doubtful or loss or otherwise criticized, the commissioner may determine that the minimum adequate amount of total capital or primary capital for that company is greater than the minimum standards stated in this section.

If the commissioner determines that an industrial loan company is operating with less than the minimum capital requirement, the commissioner shall serve upon the industrial loan company a written notice of intent to issue an order requiring the company to restore its capital to the minimum capital requirement within a specified time period. The notice of intent shall include the current total capital ratio, the basis upon which said ratio was calculated, the proposed capital injection, the proposed date for achieving the minimum capital requirement and any other relevant information concerning the decision to issue an order requiring the company to restore its capital to the minimum requirement. When deemed appropriate, specific requirements of a proposed plan for meeting the minimum capital requirement may be included in the notice. The notice of intent may require the industrial loan company to submit to the commissioner for review and approval a plan describing the means and timing by which the company shall achieve the minimum capital requirement.

Within fourteen days of receipt of the notice of intent, the company may file with the commissioner a written response, explaining why the order should not be issued, seeking modification of its proposed terms, or other appropriate relief. The company's response shall include any information, mitigating circumstances, documentation or other relevant evidence which supports its position, and may include a plan for attaining the minimum capital requirement.

After considering the company's response, the commissioner shall serve upon the company a written determination addressing the company's response and setting forth the commissioner's specific findings and conclusions in support of any decision to issue or not to issue the order. The order may be issued as originally proposed or in modified form. The order may direct the company to (1) achieve the minimum capital requirement by a certain date; (2) submit for approval and adhere to a plan for achieving the minimum capital requirement; (3) take other action as is necessary to achieve the minimum capital requirement; or (4) a combination of the above actions. If an order is to be issued, it may be served upon the company along with such final determination.

Any industrial loan company, upon a change in circumstances, may request the commissioner to reconsider the terms of an order and may propose changes in the plan under which the company is operating to meet the minimum capital requirement. The order and plan continue in effect while the request is pending before the commissioner.

All papers filed with the commissioner must be postmarked or received by the commissioner within the prescribed time limit for filing.

Failure by an industrial loan company to file a written response within the specified time period to the commissioner's notice of intent to issue an order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

Any order of the commissioner shall be reviewable upon appeal to the circuit court of the first judicial circuit as provided in chapter 91.

[(d)] [(c)] Every industrial loan company shall maintain and have on hand at all times a reserve composed of cash and other securities in an amount equal to the sum of seven per cent of its liabilities on outstanding certificates and debentures with an original term not exceeding one year and five per cent of its liabilities on outstanding certificates and debentures with an original term of one year or more. The reserve shall not be pledged.

This reserve shall be determined as of a particular date and shall be based upon the daily average of all outstanding certificates and debentures of the immediate preceding seven calendar days. During a succeeding seven calendar day period, the average daily balance of the reserve shall equal or exceed the reserve amount. At the end of the seven calendar day period, a new reserve amount shall be determined based upon the daily average of the immediate preceding seven calendar days and for the next succeeding seven calendar day period, the average daily balance of the reserve shall equal or exceed such new amount. Determination of reserve requirements shall be made on forms approved by the commissioner and shall be computed within two working days after the date of determination.

[(e)] [(d)] Upon any failure to maintain the minimum capital required in subsection [(c)] [(b)] the industrial loan company shall take the actions in paragraphs (1) and (3) [of this subsection], and upon any failure to maintain the reserve required in subsection [(d)], [(c)], the industrial loan company shall take the actions in paragraphs (1), (2) and (3) [of this subsection]:

- (1) Promptly take action to correct the deficiencies;
- (2) Cease making any loans or other advances or extensions of credit until the deficiencies are corrected; and
- (3) Notify the commissioner immediately, in case of any deficiency in the minimum capital requirement, and within two working days in case of any deficiency in the reserve requirement.

The commissioner, in writing, may direct specific directors and officers of any industrial loan company in violation of this section to take actions reasonably necessary to comply with this section.

[(f)] [(e)] Cash reserves shall be limited to cash in banks and on hand, bank or savings and loan certificates of deposit, direct United States, State, or county government securities, and passbook deposits in banks or savings and loans. The cash reserve shall at all times equal not less than fifty per cent of the reserve that is required by this section.

[(g)] [(f)] Other securities shall be limited to direct obligations of the United States government, State, or county, bankers acceptances approved by the commissioner, irrevocable lines of credit in a form acceptable to the commissioner, and securities listed on the New York stock exchange or the American stock exchange. Not more than twenty-five per cent of the total reserve of cash and other

security shall be held in securities listed on the New York stock exchange or the American stock exchange.”

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

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

(Approved June 8, 1989.)

**ACT 221**

S.B. NO. 621

A Bill for an Act Relating to Trade Secrets.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
TRADE SECRETS**

§ -1 **Short title.** This chapter may be cited as the Uniform Trades Secrets Act.

§ -2 **Definitions.** As used in this chapter, unless the context requires otherwise:

“Improper means” includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

“Misappropriation” means:

- (1) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
- (2) Disclosure or use of a trade secret of another without express or implied consent by a person who:
  - (A) Used improper means to acquire knowledge of the trade secret; or
  - (B) At the time of disclosure or use, knew or had reason to know that the person’s knowledge of the trade secret was:
    - (i) Derived from or through a person who had utilized improper means to acquire it;
    - (ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
    - (iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
  - (C) Before a material change of the person’s position, knew or has reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

“Person” means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

“Trade secret” means information, including a formula, pattern, compilation, program device, method, technique, or process that:

- (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

**§ -3 Injunctive relief.** (a) Actual or threatened misappropriation may be enjoined. Upon application to a circuit court of the State, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(b) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable. The alleged wrongful user shall bear the burden of proof of exceptional circumstances.

(c) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

**§ -4 Damages.** (a) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(b) If wilful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a).

**§ -5 Attorney's fees.** The court may award reasonable attorney's fees to the prevailing party if:

- (1) A claim of misappropriation is made in bad faith;
- (2) A motion to terminate an injunction is made or resisted in bad faith;  
or
- (3) Wilful and malicious misappropriation exists.

**§ -6 Preservation of secrecy.** In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

**§ -7 Statute of limitations.** An action for misappropriation must be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

**§ -8 Effect on other law.** (a) Except as provided in subsection (b) this chapter displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret.

(b) This chapter does not affect:

- (1) Contractual remedies, whether or not based upon misappropriation of a trade secret;
- (2) Other civil remedies that are not based upon misappropriation of a trade secret; or
- (3) Criminal remedies, whether or not based upon misappropriation of a trade secret.

**§ -9 Severability.** If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

SECTION 2. This Act does not apply to misappropriation occurring prior to its effective date. With respect to continuing misappropriation that began prior to its effective date, this Act also does not apply to the continuing misappropriation that occurs after the effective date.

SECTION 3. This Act shall take effect on July 1, 1989.

(Approved June 8, 1989.)

## ACT 222

S.B. NO. 625

A Bill for an Act Relating to Agricultural Loans.

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

SECTION 1. Section 155-5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The department of agriculture may insure up to ninety per cent of the principal balance of a loan, plus interest due thereon, made to a qualified farmer or qualified new farmer by a private lender who is unable to otherwise lend the applicant sufficient funds at reasonable rates; provided that at no time shall the aggregate amount of the State's liability, contingent or otherwise, on loans insured under this section and section 155-6 exceed \$10,000,000.

(b) Loans insured under this section shall be limited by the provisions of sections 155-9 through 155-13 for purposes of class "A" through class ["E",] "F".

SECTION 2. Section 155-6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The department of agriculture may provide funds for a share, not to exceed ninety per cent, of the principal amount of a loan made to a qualified farmer or qualified new farmer by a private lender who is unable otherwise to lend the applicant sufficient funds at reasonable rates where the qualified farmer or qualified new farmer is unable to obtain sufficient funds for the same purpose from the Farmers Home Administration.

(b) Participating loans under this section shall be limited by sections 155-9 to 155-13 for purposes of class "A" through class ["E",] "F", the department's share not to exceed the maximum amounts specified therefor."

## ACT 222

SECTION 3. Section 155-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department of agriculture may make loans directly to qualified farmers or qualified new farmers who are unable to obtain sufficient funds at reasonable rates from private lenders either independently or under sections 155-5 and 155-6, or from the Farmers Home Administration either directly or under section 155-7."

SECTION 4. Section 155-9, Hawaii Revised Statutes, is amended to read as follows:

**“§155-9 Classes of loans; purposes, terms, eligibility.** Loans made under this chapter shall be for the purposes and in accordance with the terms specified in classes "A" through "F" in the paragraphs following and shall be made only to applicants who meet the eligibility requirements specified therein and except as to class "B" loans to associations and class "E" loans, the eligibility requirements specified in section 155-10. The maximum amount of a loan for class "A", "C", "D",<sup>1</sup> and "F" loans to an individual applicant shall also apply to any loan application submitted by a partnership, corporation, or other entity, and for the purpose of determining whether the maximum loan amount to any individual will be exceeded, outstanding loans to any partnership, corporation, or other entity in which such individual has a legal or equitable interest in excess of twenty per cent shall be taken into account.

- (1) Class A: Farm ownership and improvement loans. To provide for:
  - (A) The purchase or improvement of farm land;
  - (B) The purchase, construction, or improvement of adequate farm dwellings, and other essential farm buildings; and
  - (C) The liquidation of indebtedness incurred for any of the foregoing purposes.

Such loans shall be for an amount not to exceed \$100,000 and for a term not to exceed forty years. To be eligible, the applicant shall (A) derive, or present an acceptable plan to derive, a major portion of the applicant's income from and devote, or intend to devote, most of the applicant's time to farming operations; (B) have or be able to obtain the operating capital, including livestock and equipment, needed to successfully operate the applicant's farm.

- (2) Class B: Soil and water conservation loans. To provide for:
  - (A) Soil conservation practices;
  - (B) Water development, conservation, and use;
  - (C) Drainage; and
  - (D) The liquidation of indebtedness incurred for any of the foregoing purposes.

Such loans shall be for an amount not to exceed \$35,000 to an individual or \$200,000 to an association and shall be for a term not to exceed twenty years for a loan to an individual and forty years to an association. To be eligible, an individual applicant shall have sufficient farm and other income to pay for farm operating and living expenses and to meet payments on the applicant's existing debts, including the proposed soil and water conservation loan. An association, to be eligible, shall be a nonprofit organization primarily engaged in extending services directly related to the purposes of the loan to its members, and at least sixty per cent of its membership shall meet the eligibility requirements specified in section 155-10.

- (3) Class C: Farm operating loans. To carry on and improve a farming operation, including:
- The purchase of farm equipment and livestock;
  - The payment of production and marketing expenses including materials, labor, and services;
  - The payment of living expenses; and
  - The liquidation of indebtedness incurred for any of the foregoing purposes.

Such loans shall be for an amount not to exceed \$100,000 and for a term not to exceed ten years. To be eligible, an applicant shall derive, or present an acceptable plan to derive, a major portion of the applicant's income from and devote, or intend to devote, most of the applicant's time to farming operations.

- (4) Class D: Emergency loans. To provide relief and rehabilitation to qualified farmers without limit as to purpose:
- In areas stricken by extraordinary rainstorms, windstorms, droughts, tidal waves, earthquakes, volcanic eruptions, and other natural catastrophes;
  - On farms stricken by livestock disease epidemics and crop blights;
  - On farms seriously affected by prolonged shipping and dock strikes;
  - During economic emergencies caused by overproduction, excessive imports, and the like; and
  - During other emergencies as determined by the board of agriculture.

The maximum amounts and period for such loans shall be determined by the board of agriculture; provided that the board shall require that any settlement or moneys received by qualified farmers as a result of an emergency declared under this section shall first be applied to the repayment of an emergency loan made under this chapter.

- (5) Class E: Loans to cooperatives and corporations. To provide credit to farmers' cooperative associations and corporations engaged in marketing, purchasing, and processing, and providing farm business services, including:
- Facility loans to purchase or improve land, building, and equipment for an amount not to exceed \$500,000 and a term not to exceed twenty years; and
  - Operating loans to finance inventories of supplies, warehousing, and shipping commodities, extension of consumer credit to justified farmer-members, and other normal operating expenses for an amount not to exceed \$300,000 and a term not to exceed three years.

To be eligible, a cooperative or corporation shall have at least seventy-five per cent of its board of directors and seventy-five per cent of its membership as shareholders who meet the eligibility requirements of section 155-10 and who devote most of their time to farming operations, and such facility loans shall be for an amount not to exceed \$500,000 or eighty per cent of the cost of the project, whichever is the lesser.

- (6) Class F: Loans for new farmer programs. To provide for costs of a new farm enterprise for qualified new farmers:
- Initial loans made under this class shall be for purposes and in accordance with the terms specified in classes "A" and "C" only, and shall be made only for full-time farming. Such loans shall

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- be made for an amount not to exceed \$100,000 or eighty-five per cent of the cost of the project, whichever is the lesser;
- (B) Any subsequent loan shall be made from classes (A) to (D), respectively, depending upon the purpose for which the loan funds are used; and
- (C) Borrowers shall comply with such special term loan agreements as may be required by the department and shall take such special training courses as the department deems necessary."

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

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

(Approved June 8, 1989.)

### Note

1. So in original.

## ACT 223

S.B. NO. 659

A Bill for an Act Relating to Licensure of Hospice Care Programs.

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

SECTION 1. Section 321-11, Hawaii Revised Statutes, is amended to read as follows:

**"§321-11 Subjects of health rules, generally.** The department of health pursuant to chapter 91 may adopt rules as it deems necessary for the public health and safety respecting:

- (1) Nuisances, foul or noxious odors, gases, vapors, waters in which mosquitoes breed or may breed, sources of filth, and causes of sickness or disease, within the respective districts of the State, and on board any vessel;
- (2) Adulteration and misbranding of food or drugs;
- (3) Location, air space, ventilation, sanitation, drainage, sewage disposal, and other health conditions of buildings, courts, construction projects, excavations, pools, watercourses, areas, and alleys;
- (4) Privy vaults and cesspools;
- (5) Fish and fishing;
- (6) Interments and dead bodies;
- (7) Disinterments of dead human bodies, including the exposing, disturbing, or removing of such bodies from their place of burial, or the opening, removing, or disturbing after due interment of any receptacle, coffin, or container holding human remains or a dead human body or a part thereof and the issuance and terms of permits for the aforesaid disinterments of dead human bodies;
- (8) Cemeteries and burying grounds;
- (9) Laundries, and the laundering and sterilization of all articles of linen and uniforms used by or in the following businesses and professions: barber shops, manicure shops, beauty parlors, restaurants, soda fountains, hotels, rooming and boarding houses, bakeries, butcher shops, public bathhouses, midwives, masseurs, and others in similar calling,

- public or private hospitals, and canneries and bottling works where foods or beverages are canned or bottled for public consumption or sale; provided that nothing in this chapter shall be construed as authorizing the prohibiting of such laundering and sterilization by those conducting any of such businesses or professions where the laundering or sterilization is done in an efficient and sanitary manner;
- (10) Hospitals, freestanding surgical outpatient facilities, skilled nursing facilities, intermediate care facilities, adult residential care homes, adult foster homes, special treatment facilities and programs, home health agencies, hospices, freestanding birthing facilities, adult day health centers, independent group residences, but excluding youth shelter facilities unless clinical treatment of mental, emotional, or physical disease or handicap is a part of the routine program or constitutes the main purpose of the facility, as defined in section 346-16 under "child care institution". For the purpose of this paragraph, "adult foster home" means a private home providing care on a twenty-four hour basis for not more than two developmentally disabled adults at any point in time who are unrelated to the foster family;
  - (11) Hotels, rooming houses, lodging houses, apartment houses, tenements, and residences for persons with developmental disabilities including, but not limited to, those built under federal funding;
  - (12) Laboratories;
  - (13) Any place or building where noisome or noxious trades or manufactures are carried on, or intended to be carried on;
  - (14) Milk;
  - (15) Poisons and hazardous substances, the latter term including, but not limited to, any substance or mixture of substances which (A) is corrosive, (B) is an irritant, (C) is a strong sensitizer, (D) is inflammable, or (E) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;
  - (16) Pig and duck ranches;
  - (17) Places of business, industry, employment, commerce, and processes, materials, tools, machinery, and methods of work done therein, and places of public gathering, recreation, or entertainment;
  - (18) Any restaurant, theater, market, stand, shop, store, factory, building, wagon, vehicle, or place where any food, drug, or cosmetic is manufactured, compounded, processed, extracted, prepared, stored, distributed, sold, offered for sale, or offered for human consumption or use;
  - (19) Foods, drugs, and cosmetics, and the manufacture, compounding, processing, extracting, preparing, storing, selling, and offering for sale or for consumption or use of any food, drug, or cosmetic;
  - (20) Devices as defined in section 328-1;
  - (21) Sources of ionizing radiation;
  - (22) Medical examination, vaccination, revaccination, and immunization of school children. No child shall be subjected to such medical examination, vaccination, revaccination, or immunization, whose parent or guardian shall in writing object thereto on grounds that such requirements are not in accordance with the religious tenets of an established church of which he is a member or adherent, but no such

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- objection shall be recognized when, in the opinion of the department, there is danger of an epidemic from any communicable disease;
- (23) Disinsectization of aircraft entering or within the State as may be necessary to prevent the introduction, transmission, or spread of disease or the introduction or spread of any insect or other vector of significance to health;
- (24) Fumigation. The process by which substances emit or liberate gases, fumes, or vapors which may be used for the destruction or control of insects, vermin, rodents, or other pests, which, in the opinion of the department, may be lethal, poisonous, noxious, or dangerous to human life;
- (25) Ambulances and ambulance equipment; and
- (26) Development, review, approval, or disapproval of management plans submitted pursuant to the Asbestos Hazard Emergency Response Act of 1986, Public Law 99-519.

The department may require such certificates, permits, or licenses as it may deem necessary to adequately regulate the conditions or businesses referred to in this section."

SECTION 2. Section 321-15.7, Hawaii Revised Statutes, is amended to read as follows:

**"§321-15.7 Penalty.** Any person who intentionally operates an adult residential care home or hospice without a license shall be guilty of a misdemeanor."

SECTION 3. New statutory material is underscored.

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

(Approved June 8, 1989.)

## ACT 224

S.B. NO. 691

A Bill for an Act Relating to Permits for State Small Boat Harbors.

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

SECTION 1. Section 266-21.1, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) After June 30, 1980, the department of transportation shall not renew or issue a permit to a person who is not the owner of the vessel which is moored or which the person desires to moor in a state small boat harbor. Any individual who is an owner of a vessel used for commercial purposes, including commercial fishing as a principal means of livelihood, and possesses a valid mooring permit or commercial permit or both, may, in accordance with the rules adopted by the department pursuant to chapter 91, transfer ownership of the vessel from personal ownership to corporate or other business ownership without terminating the right to moor or operate the vessel under the permit or permits. The existing permit or permits shall be reissued in the name of the transferee corporation or other business entity.

For the purposes of this section, "person" means any individual, firm, partnership, corporation, trust, association, joint venture, organization, institution, or any other legal entity, and "owner" includes the legal owner of a vessel where

there is no security interest held by anyone on the vessel, a buyer under a purchase money security interest, a debtor under any security interest, a demise charterer of a vessel, or a lessee or charterer of a vessel under a lease or charter which provides the lessee or charterer with exclusive right to possession of the vessel to the exclusion of the lessor or the person from whom the vessel is chartered. No permittee shall be allowed to moor a leased vessel in a berth unless the terms of the lease are set at fair market value. A "legal owner" includes a person who holds unencumbered title to a vessel or is a secured party under a security interest in the vessel. An owner who is issued a permit to moor a vessel in a state small boat harbor shall notify the department in writing of a transfer of interest or possession in the vessel within seven days of transfer.

Any person owning an interest in a corporation or other business entity possessing a valid commercial permit issued by the department may, in accordance with rules adopted by the department pursuant to chapter 91, transfer any or all stock or other interest to another person without terminating the right of the corporation or business entity to retain or renew its commercial permit or any other permit issued to it by the department; provided that the corporation or business entity has been engaged in the same commercial vessel activity, as defined in section 266-21, for a minimum of one year; and provided further that the seller shall pay the department a business transfer fee based on the passenger-carrying capacity of the vessels owned or operated by the corporation or business entity as provided by rules adopted by the department pursuant to chapter 91. Any person possessing a commercial permit shall be required to meet minimum revenue standards, as provided by rules adopted by the department pursuant to chapter 91, as a condition of retaining or renewing the commercial permit."

**SECTION 2.** New statutory material is underscored.

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

(Approved June 8, 1989.)

**ACT 225**

S.B. NO. 753

A Bill for an Act Relating to Lobbying.

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

**SECTION 1.** Section 97-1, Hawaii Revised Statutes, is amended by amending the definition of "expenditure" to read as follows:

"(4) "Expenditure" includes a payment, distribution, forgiveness of a loan, advance, deposit, or gift of money, or anything of value and includes a contract, promise, or agreement, whether or not enforceable, to make an expenditure. "Expenditure" also includes compensation or other consideration paid to a lobbyist for the performance of lobbying services. [It] "Expenditure" excludes the expenses of preparing written testimony and exhibits for a hearing before the legislature or an administrative agency."

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

## **ACT 226**

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

(Approved June 8, 1989.)

## **ACT 226**

S.B. NO. 754

A Bill for an Act Relating to Contracts.

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

SECTION 1. Section 84-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A state agency shall not enter into any contract with a legislator or an employee or with a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of [\$1,000] \$4,000 unless the contract has been awarded through an open, public process. A state agency may, however, enter into such contract without resort to a competitive bidding process when, in the judgment of the agency, the property or services should not, in the public interest, be acquired through competitive bidding; provided that written justification for the noncompetitive award of such contract shall be made a matter of public record and shall be filed with the state ethics commission at least ten days before such contract is entered into.

With respect to members of boards, commissions, and committees, this subsection shall apply only to contracts entered into between a business in which a member has a controlling interest and a state agency which has jurisdiction over the board, commission, or committee to which the member is appointed.”

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

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

(Approved June 8, 1989.)

## **ACT 227**

S.B. NO. 785

A Bill for an Act Relating to the Honolulu Symphony.

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

SECTION 1. Section 40-88, Hawaii Revised Statutes, is amended to read as follows:

**“§40-88 State of Hawaii endowment fund created.** (a) There shall be established as a separate fund of the Honolulu symphony trust created by the trust agreement dated December 5, 1986, a fund to be known as the State of Hawaii endowment fund, the income and capital gains from which fund shall be used for operations of the Honolulu symphony. The State of Hawaii endowment fund shall be subject to the restrictions that:

- (1) No part of the principal amount contributed to the fund by the State or by matching grants shall be used for operations of the Honolulu symphony;

- (2) Income and capital gains from the fund shall not be distributed for use in the operations of the Honolulu symphony during any period that the value of the fund shall be less than the principal amounts contributed to the fund; and
- (3) The amounts contributed to the fund by the State shall revert to the State to the extent that matching or other conditions to the grant of the funds are not met, and the fund also shall [also] be subject to additional restrictions as may be imposed with respect to transfers of funds in future legislation appropriating sums to be contributed to the fund.

(b) Matching conditions set forth in legislation appropriating funds to be contributed to the State of Hawaii endowment fund, including conditions in previous legislation appropriating sums for the fund, shall be satisfied to the extent that any of the following shall be received prior to the date by which the funds are to be matched:

- (1) Cash, including the United States dollar equivalent of foreign currency, on the date of its contribution to the fund;
- (2) Personal property, including securities and cash value of life insurance policies, and real property transferred to the symphony, valued by appraisal, market quotations or other generally accepted valuation methods as of a date on or about the date of contribution of the property to the fund; and
- (3) All portions of pledges that are payable not later than five full years following the date by which the funds contributed by the State are to be matched; provided that any sums appropriated by the State and matched by such pledges within the matching period shall revert to the general fund to the extent the sums appropriated by the State are not matched by actual payment of such pledges within the five-year period.

(c) In the event that any funds contributed by the State are to revert to the general fund of the State, pursuant to subsections (a)(3) or (b)(3), the amount of the reversion shall be equal to the principal amount of the funds contributed by the State that have not been matched, and no part of any interest, gains, or other earnings on said principal amount shall revert to the State.

(d) The aggregate principal sum in the fund shall be invested in accordance with the provisions of the Honolulu symphony trust in a manner intended to maximize the rate of return on investment of the fund consistent with the objective of preserving the principal amounts contributed to the fund. In the event of the termination of the Honolulu symphony trust, the principal amount of all contributions made by the State to the State of Hawaii endowment fund shall be distributed to the general fund of the State and any other amounts remaining in the State of Hawaii endowment fund shall be distributed in accordance with the provisions of the Honolulu symphony trust. An annual audit by an independent auditor covering the State of Hawaii endowment fund shall be submitted to the department of accounting and general services by the Honolulu symphony.”

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

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

(Approved June 8, 1989.)

## ACT 228

### ACT 228

S.B. NO. 869

A Bill for an Act Relating to the Insurance Code.

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

SECTION 1. Section 431:10-219, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10-219 Multi-peril policies, premiums stated separately.** [Insurers issuing multi-peril policies shall state separately] Each insurer issuing a multi-peril policy shall provide the policyholder with a written statement separately stating the premiums and the amounts of insurance or limits of liability for fire and allied lines, inland marine, general liability, crime and each optional coverage, and shall [attach a separate rate sheet to the policy. The rate sheet prescribed by the commissioner shall] state all pertinent rating factors including classifications, premium basis and rates used in the computation of the final premium. This section shall not apply to homeowners policies.”

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

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

(Approved June 8, 1989.)

### ACT 229

S.B. NO. 950

A Bill for an Act Relating to the Hawaii Paroling Authority.

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

SECTION 1. Section 353-63, Hawaii Revised Statutes, is amended to read as follows:

**“§353-63 Service of Hawaii paroling authority members compensation; expenses.** The chairperson of the Hawaii paroling authority shall serve on a full-time basis. The other two members shall serve on a part-time basis. Effective January 1, 1986, the annual salary of the chairperson shall be \$55,404. The compensation of each of the part-time members shall be eighty per cent of the hourly wage paid the chairperson. [For] Effective July 1, 1989, for each hour engaged in the official duties of the authority [from January 1, 1986], each part-time member of the authority [other than the chairperson] shall be paid an hourly wage at the percentage rate specified in this section based on the hourly wage paid the chairperson [effective January 1, 1986.]; provided that such compensation shall not exceed eighty per cent of the total regular working hours in a month; and provided further that such part-time members shall not be entitled to any vacation, sick leave, or other benefits except as provided in this section. All paroling authority members shall receive their necessary expenses for travel and incidentals which shall be paid from appropriations provided the authority for such purposes, on vouchers approved by the director of corrections.”

SECTION 2. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the

legislature has determined that appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$186,126, or 0.0079 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$16,000, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$16,500, or so much thereof as may be necessary for fiscal year 1990-1991, to provide for increased operating costs of the Hawaii paroling authority.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$170,126, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$182,844, or so much thereof as may be necessary for fiscal year 1990-1991, for the operations of the adult parole counseling and supervision program (DOC 413). The sums appropriated shall include converting to full-time positions one parole officer for Kauai county and one clerk-steno II for Hawaii county; four additional social worker IV positions, three for Oahu and one for Kona; one additional account clerk II for administration; and one additional position of clerk-steno II for Maui.

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

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 1989.

(Approved June 8, 1989.)

## ACT 230

S.B. NO. 959

A Bill for an Act Relating to Consumer Protection.

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

SECTION 1. Section 28-1, Hawaii Revised Statutes, is amended to read as follows:

**“§28-1 Appears for State.** [Except in those cases where the director of the office of consumer protection represents the State, the respective counties, and the general public as consumers, the] The attorney general shall appear for the State personally or by deputy, in all the courts of record, in all cases criminal or civil in which the State may be a party, or be interested, and may in like manner appear in the district courts in such cases.”

SECTION 2. Section 480-24, Hawaii Revised Statutes, is amended to read as follows:

**“§480-24 Limitation of actions.** (a) Any action to enforce a cause of action arising under this chapter shall be barred unless commenced within four years after the cause of action accrues, except as otherwise provided in subsection (b) and

## ACT 230

section 480-22. For the purpose of this section, a cause of action for a continuing violation is deemed to accrue at any time during the period of the violation.

(b) The following shall toll the time for commencement of actions by the State under this chapter if at any time:

- (1) Any cause of action arising under this chapter accrues against any person, the person is out of the State, the action may be commenced within the terms respectively limited, after the return of the person into the State, and if, after the cause of action has accrued, the person departs from and resides out of the State, the time of the person's absence shall not be deemed or taken as any part of the time limited for the commencement of the action.
- (2) Any cause of action arising under this chapter accrues against any person, the person has petitioned for relief under the bankruptcy code, the time during which the bankruptcy case is pending shall not be deemed or taken as any part of the time limited for the commencement of the action.
- (3) Any cause of action arising under this chapter accrues against any person, there is a criminal action pending which arises out of the same occurrence, the time during which the criminal action is pending shall not be deemed or taken as any part of the time limited for the commencement of the action. As used in this paragraph, a criminal action is pending until its final adjudication in the trial court."

SECTION 3. Section 487-14, Hawaii Revised Statutes, is amended to read as follows:

**“§487-14 Restitution.** (a) In any civil action brought by the director of the office of consumer protection to collect civil penalties or enjoin unlawful acts or practices, the court hearing the action may include in its orders or judgments such provisions as may be necessary to effect restitution to any person who is injured as a result of the unlawful acts and practices which are the subject of the action and who submits proof of entitlement to restitution in the prosecution of the action. Any person in whose favor restitution is ordered need not accept restitution, but the person's acceptance and full performance of restitution shall bar recovery by the person of any other damages in any action on account of the same acts or practices against the person making restitution.

(b) Whenever a corporation is ordered to pay restitution under subsection (a), the court hearing the action may include in its orders or judgments that the corporation and the individual directors, officers, or agents of the corporation who authorized, ordered, or had done, or participated in any of the unlawful acts and practices which caused, in whole or in part, injuries to any person, are jointly and severally liable for the payment or restitution.”

SECTION 4. Section 487-15, Hawaii Revised Statutes, is amended to read as follows:

**“§487-15 Injunction.** The director of commerce and consumer affairs or the office of the<sup>1</sup> consumer protection may bring civil proceedings to enjoin any violation of section 487-13(a)[.] or any other unlawful act or practice affecting consumers, trade, or commerce.”

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

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

(Approved June 8, 1989.)

**Note**

1. "The" should be underscored.

**ACT 231**

S.B. NO. 963

A Bill for an Act Relating to Temporary Dental Licensure.

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

**SECTION 1.** Section 448-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The board of dental examiners may issue without examination to any resident or nonresident otherwise qualified to be examined a temporary license to practice dentistry in the employment of the State or any county, or any legally incorporated eleemosynary dispensary or infirmary, private school, or welfare center. The temporary license shall authorize the person to whom the license is issued to practice dentistry exclusively while engaged in that employment and shall be in force until[:] the earliest of the following occurs:

- (1) The date the person leaves the employment authorized under the temporary license;
- (2) The three hundred [sixty-fifth] ninety-sixth calendar day following the date of issuance of the temporary license;
- (3) The date on which the [person takes] results of the licensure examination taken by the person under this chapter[;] are posted by the board; or
- (4) The date on which the board revokes the temporary license; [whichever occurs first;] provided that the board may revoke the temporary license at any time for cause.

No person who has failed an examination shall have the benefit of any temporary license."

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

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

(Approved June 8, 1989.)

**ACT 232**

S.B. NO. 964

A Bill for an Act Relating to Dental Hygienists.

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

**SECTION 1.** Section 447-1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person eighteen years of age or over and holding or having a diploma or a proper certificate of graduation from an accredited high school employing at least a four year course of instruction and likewise holding and having

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a diploma or proper certificate of graduation from a dental hygiene school accredited by the American Dental Association (A.D.A.) Commission on Dental Accreditation requiring at least a two year course, recognized by the board of dental examiners, and having been officially certified in the administration of intra-oral infiltration local anesthesia by an accredited dental hygiene school or by a certification program previously approved by the board, upon written application made to and filed with the secretary of the board at least thirty days prior to the date selected by the board for the examination, may be examined by the board for qualification as a dental hygienist.

The application for examination shall be accompanied by the applicant's certificate of graduation[,] from an accredited dental hygiene school together with documentary proof of applicant's certification in the administration of intra-oral infiltration local anesthesia and, at the time of filing the application, the applicant shall pay to the board application and examination fees, which fees, together with all other fees or charges in this chapter, shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and shall be deposited with the director of finance to the credit of the general fund."

SECTION 2. Section 447-3, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Clinical dental hygiene may be practiced by a licensed dental hygienist. The practice of clinical dental hygiene is defined as the removal of hard and soft deposits and stains from the portion of the crown and root surfaces to the depth of the gingival sulcus, polishing natural and restored surfaces of teeth, the application of preventive chemical agents to the coronal surfaces of teeth, which chemical agents have been approved by the board of dental examiners, and the use of mouthwashes as are approved by the board, but shall not include the performing of any repair work or the preparation thereof, or any other operation on the teeth or tissues of the mouth; provided that nothing herein shall prohibit a dental hygienist from using or applying topically any chemical agent which has been approved in writing by the department of health for any of the purposes set forth in part V of chapter 321, and other procedures delegated by the dentist in accordance with the rules of the board of dental examiners.

In addition, a licensed[, certified] dental hygienist may administer intra-oral infiltration local [anesthetics] anesthesia under the direct supervision of a dentist[,]; provided that the board of dental examiners shall establish a certification process not later than June 30, 1986, which shall include the establishment of criteria for a comprehensive course work, the completion of which shall be a prerequisite to a licensed dental hygienist taking a certification examination].

(c) The licensed [certified] dental hygienist may operate in the office of any licensed dentist, or legally incorporated eleemosynary dental dispensary or infirmary, private school, or welfare center, or in any building owned or occupied by the State or any county, but only under the aforesaid employment and under the direct or general supervision of a licensed dentist; provided that in the private practice of dentistry, the hygienist shall be under the direct supervision of a licensed dentist. No dental hygienist may establish or operate any separate care facility which exclusively renders dental hygiene services."

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

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

(Approved June 8, 1989.)

## ACT 233

S.B. NO. 968

A Bill for an Act Relating to Public Assistance.

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

SECTION 1. Section 346-53, Hawaii Revised Statutes, is amended to read as follows:

**"§346-53 Determination of amount of assistance.** (a) The standard of need for families of given sizes shall equal the poverty level established by the federal government, pro-rated over a twelve-month period.

(b) The assistance allowance provided shall be based on a percentage of the standard of need. On July 1, 1988, the assistance allowance shall be set at sixty per cent of the standard of need. Changes in the financial assistance standard of need and the assistance allowance shall become effective on July 1 of each year thereafter, subsequent to any change in the federal poverty level.

(c) The director, pursuant to chapter 91, shall determine the rate of payment for the different levels of domiciliary care provided to recipients eligible either for Federal Supplemental Security Income or public assistance in accordance with state standards or both. The director shall provide for level of care increases effective July 1, 1988, in amounts not less than \$60 for each level of care.

The rate of payment at which level a recipient enters an adult residential care home licensed pursuant to section 321-15.6 shall remain the same for as long as the recipient resides in that adult residential care home. The rate of payment may be raised if the recipient's condition so requires, or by rule of the department in accordance with this subsection; provided that:

- (1) Notwithstanding the rate of payment at the time of entry, the department shall ensure that the recipient shall receive the quality of care consistent with the level of care as determined by the department; and
- (2) If the operator does not provide the quality of care consistent with the needs of the individual as determined by and to the satisfaction of the department, the department may reduce the rate of payment, or adjust the level of care, or remove the recipient to another facility.

The department shall handle abusive practices under this section in accordance with chapter 91.

Nothing in this subsection shall allow the director to remove a recipient from an adult residential care home or other similar institution if the recipient does not desire to be removed and the operator thereof is agreeable to the recipient remaining therein, except where the recipient requires a higher level of care than provided thereby, or where the recipient no longer requires any domiciliary care.

(d) The department shall pay rental and utility (to include gas, electricity, and water only) deposits once only for any person eligible for financial assistance by the department. However, under extraordinary circumstances as determined by the department, an additional rental deposit, utility deposit, or both, may be granted.

(e) Any recipient may petition the department for additional assistance when the recipient's need is due to emergencies caused by seismic wave, tsunami, hurricane, volcanic eruption, typhoon, earthquake, flood, or fire determined by the director to have caused losses as to require and justify additional assistance from the State. In addition any recipient may petition the department for additional assistance for the replacement or repair of household appliances. Such additional assistance shall be paid on an emergency basis, as determined by the department, to meet the cost of replacing or repairing household appliances. If the cost of repairs of household appliances is less than one-half the unit cost of the item, the department shall pay for the cost of repairs. If the cost of repairs of household appliances is

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more than one-half the unit cost of the item, the department shall replace the household appliance; provided that the replacement cost shall not exceed \$350. For the purposes of this subsection "household appliances" means a refrigerator or a range.

The department shall establish an emergency fund, not to exceed one per cent of total financial assistance from state funds required by this chapter in the previous fiscal year. The director shall adopt rules pursuant to chapter 91 for determining in which cases to grant lump sum payments to recipients petitioning for additional assistance.

(f) The department shall include protective child care payment as a special needs item in the financial assistance standard for cases of child neglect or abuse requiring placement of a child in child care. The referral for protective child care payment shall be from the department's child welfare program and the rate of payment shall be set by the department.

[f] (g) The director shall adopt rules pursuant to chapter 91 to implement this section."

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

SECTION 3. This Act shall take effect on July 1, 1989.

(Approved June 8, 1989.)

## **ACT 234**

S.B. NO. 970

A Bill for an Act Relating to General Assistance.

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

SECTION 1. Section 346-71, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department of human services shall administer and provide public assistance to eligible persons who are disabled, or are at least fifty-five years of age, or have dependent children in the home not otherwise provided for under this chapter, and who are unable to provide sufficient support for themselves or those dependent upon them; provided that such persons have first been determined ineligible for a comparable federally funded financial assistance program [and], are bona fide residents of this State[.], and have furnished to the department a social security account number for each member of the assistance unit or verification that an application was made with the Social Security Administration for a social security account number for each member of the assistance unit. In family groups in which there are children, income and resources of both parents, natural or adoptive, shall be considered available for each other and the support of their children. Persons who meet the categorical criteria for eligibility, but fail to satisfy income and resource criteria adopted by the department for eligibility under the comparable federally funded financial assistance program shall not be eligible for general assistance. The failure of any adult member of the assistance unit to comply with the requirements or conditions of general assistance shall exclude the entire assistance unit from receiving financial assistance. However, when the adult member is disqualified for not meeting the work requirement, the assistance unit shall not be disqualified if the assistance unit was formed after the failure to meet the work requirement occurred. "Assistance unit" as the term is used herein means persons

whose needs, income, and assets are considered in the financial assistance payment and their dependents.

For purposes of determining whether persons seeking assistance are bona fide residents of this State, the department of human services shall consider, but is not limited to considering, the following factors: enrollment and receipt of welfare benefits from another jurisdiction; physical presence in the State; maintenance of a place of residence in the State; the availability of furnishings and household and personal effects sufficient to lead a reasonable person to conclude that the place of residence is more than a public accommodation; qualification as to residence for purposes of voting in the State; change in vehicle operation license; vehicle registration; enrollment of children in local schools; bank accounts in this State or any other jurisdiction."

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

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

(Approved June 8, 1989.)

## ACT 235

S.B. NO. 1224

A Bill for an Act Relating to Securities.

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

SECTION 1. Section 485-2, Hawaii Revised Statutes, is amended to read as follows:

**"§485-2 Commissioner of securities.** The administration of this chapter shall be vested in the commissioner of securities. The director of commerce and consumer affairs shall, with the approval of the governor, appoint the commissioner of securities who shall not be subject to chapters 76 and 77. The securities commissioner shall hold the commissioner's office at the pleasure of the director of commerce and consumer affairs and shall be responsible for the performance of the duties imposed under this chapter.

The commissioner of securities may adopt, amend, and repeal, pursuant to chapter 91, such rules as may be necessary to carry out the purposes of this chapter."

SECTION 2. New statutory material is underscored.

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

(Approved June 8, 1989.)

## ACT 236

S.B. NO. 1229

A Bill for an Act Relating to Motor Vehicle Repairs.

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

SECTION 1. Section 437B-11, Hawaii Revised Statutes, is amended to read as follows:

**"§437B-11 Prohibited practices.** The following acts or omissions related to the repair of motor vehicles shall be grounds for invoking the enforcement procedures of section 437B-12:

- (1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading;
- (2) Causing or allowing a customer to sign any work order which does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair;
- (3) Failing or refusing to give to a customer a copy of any document requiring the customer's signature, as soon as the customer signs such document;
- (4) Any other conduct which constitutes fraud;
- (5) Conduct constituting gross negligence;
- (6) Failure to comply with this chapter or [regulations] rules adopted pursuant to it;
- (7) Any wilful departure from or disregard of accepted practices or workmanship;
- (8) Making false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle;
- (9) Having repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair dealer, mechanic, or apprentice demonstrates that the customer could not reasonably have been notified;
- (10) Conducting the business of motor vehicle repair in a place other than stated on the registration except that mobile repair facilities may be permitted if the registration so indicates;
- (11) Rebuilding or restoring of rebuilt vehicles as defined in section 286-2 in such a manner that it does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year[.];
- (12) Subcontracting, recommending, or referring motor vehicle repair work to, or in any way assisting, a motor vehicle repair dealer or mechanic whose registration or certification is not in full compliance with this chapter; and
- (13) Failure to directly supervise a motor vehicle mechanic apprentice/trainee or motor vehicle mechanic helper."

**SECTION 2.** The motor vehicle industry repair board shall undertake a study to determine viable alternatives, including proposed legislation, to best protect the consumer against problems caused by delays in the completion of motor vehicle repairs, without creating undue hardship in the motor vehicle repair industry. In its study, the board shall specifically consider the concepts proposed in Section 1 of S.B. No. 1229, S.D. 1, introduced during the Regular Session of 1989, entitled, "A Bill for an Act Relating to Motor Vehicle Repairs". The board shall submit a report of its findings and recommendations to the Legislature no later than twenty days prior to the convening of the Regular Session of 1990.

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

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

(Approved June 8, 1989.)

## ACT 237

S.B. NO. 1241

A Bill for an Act Relating to General Excise Tax Exemptions for Housing.

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

SECTION 1. Section 201E-205, Hawaii Revised Statutes, is amended to read as follows:

**“§201E-205 Exemption from general excise taxes.** (a) [The] In accordance with section 237-29, the corporation may approve and certify for exemption from general excise taxes any qualified person or firm involved with a newly constructed, or moderately or substantially rehabilitated project;

- (1) [developed] Developed under this chapter or chapter 356[.];
- (2) Developed under a government assistance program approved by the corporation, including, but not limited to, the Farmers Home Administration 502 program and Federal Housing Administration 235 program; or
- (3) Developed under the sponsorship of a private nonprofit corporation providing home rehabilitation or new homes for qualified families in need of decent, low-cost housing.

(b) All claims for exemption under this section shall be filed with and certified by the corporation and forwarded to the department of taxation. Any claim for exemption which is filed and approved, shall not be considered a subsidy for the purpose of this chapter.

(c) For the purposes of this section, “moderate rehabilitation” means rehabilitation to upgrade a unit to a decent, safe, and sanitary condition, or to repair or replace major building systems or components in danger of failure. “Substantial rehabilitation” means the improvement of a property to a decent, safe, and sanitary condition that requires more than routine or minor repairs or improvements and may include, but is not limited to, the gutting and extensive reconstruction of a unit or cosmetic improvements coupled with the curing of a substantial accumulation of deferred maintenance. Substantial rehabilitation also includes renovation, alteration, or remodeling to convert or adapt structurally sound property to the design and condition required for a specific use (e.g., conversion of a hotel to housing for the elderly).”

SECTION 2. Section 237-29, Hawaii Revised Statutes, is amended to read as follows:

**“§237-29 Exemptions for certified [low and moderate income] or approved housing[.] projects.** (a) All gross income received by any qualified person or firm for the planning, design, financing, construction, sale, or lease in the State of a housing project which has been certified or approved under section 201E-205 shall be exempt from general excise taxes.

(b) All gross income received by a nonprofit or a limited distribution mortgagor for a low and moderate income housing project certified or approved under section 201E-205 shall be exempt from general excise taxes.

(c) The director of taxation and the housing finance and development corporation shall adopt rules pursuant to chapter 91 for the purpose of this section, including any time limitation for such exemptions.”

## **ACT 238**

SECTION 3. The exemptions provided under section 237-29, Hawaii Revised Statutes, shall be applicable to and effective according to its terms to (a) all gross income received by any qualified person or firm for the planning, design, financing, construction, sale, or lease in the State of a housing project which has been certified or approved under Act 15 Session Laws of Hawaii 1988, and (b) all gross income received by a nonprofit or a limited distribution mortgagor for a lower-cost housing project certified or approved under Act 15, Session Laws of Hawaii 1988.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5.<sup>1</sup> This Act shall take effect on July 1, 1989, provided that Section 3 of this Act, upon its approval, shall take effect retroactive to April 20, 1988.

(Approved June 8, 1989.)

### **Note**

1. Section designation renumbered.

## **ACT 238**

S.B. NO. 1294

A Bill for an Act Relating to the Hawaii Visitors Bureau.

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

SECTION 1. The Hawaii Visitors Bureau (HVB) is the principle mechanism for the State's visitor industry development efforts. In addition to state funds, HVB receives gifts and in-kind contributions from the private sector. While the level of government funding for HVB is public knowledge, the level of private sector support is unknown due to the absence of any reporting of the value of the gifts and in-kind contributions received by HVB. The legislature finds that disclosure of the value of gifts and in-kind contributions received by HVB would be in the best interests of public and private sectors alike.

The purpose of this Act is to require HVB to report the value of the gifts and in-kind contributions received by HVB to the department of business and economic development.

SECTION 2. Chapter 203, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§203- Disclosure of gifts and in-kind contributions.** The Hawaii Visitors Bureau shall disclose to the department in a quarterly report the value of all gifts and in-kind contributions received by the Hawaii Visitors Bureau; provided, however, that the Hawaii Visitors Bureau shall not be required to disclose the names of the persons making the gifts and in-kind contributions. The director of business and economic development shall adopt procedures and set parameters to implement the reporting requirements of the Hawaii Visitors Bureau.”

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

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

(Approved June 8, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 239**

S.B. NO. 1376

A Bill for an Act Relating to Mortgages.

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

SECTION 1. Section 403-92.5, Hawaii Revised Statutes, is amended to read as follows:

**"[§403-92.5] Mortgage insurance; [opportunity to accept or decline.] notice of right to cancel.** (a) [A] Any financial institution regulated under this chapter that provides a mortgagor with mortgage life insurance without charge for a period less than the term of the mortgage, which insurance is not a condition of obtaining the mortgage, [without charge and for a period that is equal to or less than the term of the mortgage,] shall send each insured mortgagor[,] written notice advising each such mortgagor of the right to cancel the insurance, of the requirements for effecting such cancellation, and that premiums will be charged for the insurance unless it is cancelled. The notice shall be sent to each insured mortgagor at least [no later than] four weeks prior to the expiration of the period during which the insurance is provided without charge [(the "free-period")], a form with a designated "yes" or "no" space in which the insured mortgagor may indicate a desire to continue or discontinue the mortgage life insurance after the free-period has ended. The form shall clearly indicate the amount of the premium to be charged to continue the mortgage life insurance and shall also provide a space for the mortgagor's signature and the date of signing].

[b) Failure to provide the form as specified under this section shall result in the automatic termination of the mortgage life insurance policy upon the expiration of the free-period, unless the mortgagor indicates otherwise in writing to the financial institution.

(c) (b) For the purposes of this section, "mortgage life insurance" means an insurance plan which will pay off the mortgage balance in the event of the death or, as the case may be, disability of the insured mortgagor."

SECTION 2. Chapter 407, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§407- Mortgage insurance; notice of right to cancel.** (a) Any savings and loan association that provides a mortgagor with mortgage life insurance without charge for a period less than the term of the mortgage, which insurance is not a condition of obtaining the mortgage, shall send each insured mortgagor written notice advising each such mortgagor of the right to cancel the insurance, of the requirements for effecting such cancellation, and that premiums will be charged for the insurance unless it is cancelled. The notice shall be sent to each insured mortgagor at least four weeks prior to the expiration of the period during which the insurance is provided without charge.

(b) For the purposes of this section, "mortgage life insurance" means an insurance plan which will pay off the mortgage balance in the event of the death or, as the case may be, disability of the insured mortgagor."

SECTION 3. Chapter 408, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§408- Mortgage insurance; notice of right to cancel.** (a) Any industrial loan company that provides a mortgagor with mortgage life insurance without charge for a period less than the term of the mortgage, which insurance is not a condition of obtaining the mortgage, shall send each insured mortgagor written notice advising each such mortgagor of the right to cancel the insurance, of the requirements for effecting such cancellation, and that premiums will be charged for the insurance unless it is cancelled. The notice shall be sent to each insured mortgagor at least four weeks prior to the expiration of the period during which the insurance is provided without charge.

(b) For the purposes of this section, “mortgage life insurance” means an insurance plan which will pay off the mortgage balance in the event of the death or, as the case may be, disability of the insured mortgagor.”

SECTION 4. Chapter 410, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§410- Mortgage insurance; notice of right to cancel.** (a) Any credit union that provides a mortgagor with mortgage life insurance without charge for a period less than the term of the mortgage, which insurance is not a condition of obtaining the mortgage, shall send each insured mortgagor written notice advising each such mortgagor of the right to cancel the insurance, of the requirements for effecting such cancellation, and that premiums will be charged for the insurance unless it is cancelled. The notice shall be sent to each insured mortgagor at least four weeks prior to the expiration of the period during which the insurance is provided without charge.

(b) For the purposes of this section, “mortgage life insurance” means an insurance plan which will pay off the mortgage balance in the event of the death or, as the case may be, disability of the insured mortgagor.”

SECTION 5. Chapter 506, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§506- Mortgage insurance; notice of right to cancel.** (a) Any person, on behalf of a casualty insurance company, that provides a mortgagor with mortgage life insurance without charge for a period less than the term of the mortgage, which insurance is not a condition of obtaining the mortgage, shall send each insured mortgagor written notice advising each such mortgagor of the right to cancel the insurance, of the requirements for effecting such cancellation, and that premiums will be charged for the insurance unless it is cancelled. The notice shall be sent to each insured mortgagor at least four weeks prior to the expiration of the period during which the insurance is provided without charge.

(b) For the purposes of this section, “mortgage life insurance” means an insurance plan which will pay off the mortgage balance in the event of the death or, as the case may be, disability of the insured mortgagor.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval; provided that if the period during which the mortgage life insurance is provided without charge, expires less than six weeks after the effective date of this Act, the notice required by this Act need not be sent.

(Approved June 8, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 240**

S.B. NO. 1385

A Bill for an Act Relating to Podiatrists.

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

SECTION 1. Section 463E-1, Hawaii Revised Statutes, is amended to read as follows:

**"[§463E-1] Definitions.** As used in this chapter:

"Board" means board of medical examiners.

"Department" means department of commerce and consumer affairs.

"Foot appliance" means any artificial apparatus used as a replacement for, an addition to, or in the treatment of the human foot whether it is medical, surgical, mechanical, manipulative, or electrical in nature.

"Podiatrist" means a person in the professional practice of [podiatry.] podiatric medicine.

"[Podiatry] Podiatric medicine" means the medical, surgical, mechanical, manipulative, and electrical diagnosis and treatment of the human foot, malleoli, and soft tissues about the ankle, except for ankle fractures, including the nonsurgical treatment of the muscles and tendons of the leg governing the functions of the foot, but does not include any amputation, except for digital amputation, treatment of systemic conditions, or the use of any anesthetic except local anesthetic."

SECTION 2. Section 463E-2, Hawaii Revised Statutes, is amended to read as follows:

**"[§463E-2] License required.** Except as otherwise provided by law, no person shall practice, offer to practice, advertise, or announce oneself, either publicly or privately, as prepared or qualified to practice [podiatry.] podiatric medicine, either gratuitously or for pay, or use any sign or advertisement or otherwise use the [term] title "podiatrist", "D.P.M." or "doctor of podiatric medicine", "foot specialist", or any other term or terms indicating or implying that the person is practicing [podiatry.] podiatric medicine, without having a valid unrevoked license obtained from the board of medical examiners, as prescribed in this chapter."

SECTION 3. Section 463E-3, Hawaii Revised Statutes, is amended to read as follows:

**"§463E-3 Qualification for examination.** No person shall be licensed to practice [podiatry] podiatric medicine unless the applicant has passed the examinations described in section 463E-4 and has been found to be possessed of the necessary qualifications as required by the board.

Before any applicant shall be eligible for the examinations, the applicant shall furnish satisfactory proof to the board that:

- (1) The applicant is a graduate in [podiatry] podiatric medicine of a college approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association and by the board of medical examiners;

## ACT 240

- (2) The applicant has taken and satisfactorily completed in a college, a residence course of professional instruction in [podiatry,] podiatric medicine, which has been approved by the board; and
- (3) The applicant is of demonstrated competence and professional knowledge."

SECTION 4. Section 463E-5, Hawaii Revised Statutes, is amended to read as follows:

**"§463E-5 Fees; expenses.** No applicant shall be examined under this chapter until the applicant has paid to the board of medical examiners application, examination, and license fees. The board may provide separate fees for licensure by endorsement and for limited and temporary licenses. Every person holding a license under this chapter shall reregister with the board biennially in each even-numbered year, not later than January 31, and for registration shall pay a renewal fee. At the time of reregistration, the licensee shall provide written proof of a minimum of forty hours of postgraduate work or continuing education of [podiatry] podiatric medicine taken during the previous biennium. Failure to reregister and present this proof shall constitute a forfeiture of the license, which may be restored only upon written application therefor and payment to the board of a restoration fee. All fees shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 and shall be deposited with the director of finance to the credit of the general fund."

SECTION 5. Section 463E-6, Hawaii Revised Statutes, is amended to read as follows:

**"§463E-6 Revocation, suspension, or denial of license; sanctions.** (a) Any license to practice [podiatry] podiatric medicine may be revoked or suspended by the board of medical examiners at any time in a proceeding before the board, or may be denied, for any one or more of the following acts or conditions on the part of the holder of the license or the applicant therefor:

- (1) Employing what is popularly known as a "capper" or "steerer";
- (2) Obtaining any fee on the assurance that a manifestly incurable disease can be permanently cured;
- (3) Wilfully betraying a professional secret;
- (4) Advertising one's podiatrist business with any untruthful and improbable statement;
- (5) False or fraudulent advertising;
- (6) Procuring a license through fraud, misrepresentation, or deceit, or knowingly permitting an unlicensed person to perform activities requiring a license;
- (7) Violation of section 453-2;
- (8) Professional misconduct or gross negligence or manifest incapacity in the practice of [podiatry,] podiatric medicine;
- (9) Engaging in the practice of [podiatry] podiatric medicine other than as defined in section 463E-1;
- (10) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effect;
- (11) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;

- (12) Incompetence or multiple instances of negligence, including, but not limited to, the consistent use of medical service which is inappropriate or unnecessary;
  - (13) Revocation, suspension, or other disciplinary action by another state or federal agency of a license or practice privilege for reasons as provided in this section;
  - (14) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of a podiatrist, notwithstanding any statutory provision to the contrary;
  - (15) Violation of chapter 329, uniform controlled substance act, or any rule adopted thereunder;
  - (16) Failure to report to the board, in writing, any disciplinary action taken against the licensee in another jurisdiction within thirty days after the disciplinary action becomes final; or
  - (17) Submitting to or filing with the board any notice, statement, or other document required under this chapter, which is false or untrue or contains any material misstatement or omission of fact.
- (b) In addition to or in lieu of revoking or suspending a license to practice [podiatry,] podiatric medicine, the board may impose one or more of the following actions:
- (1) Place the licensee on probation, including such conditions of probation as requiring observation of the licensee by an appropriate group or society of licensed podiatrists;
  - (2) Limit the license by restricting the field of practice in which the licensee may engage;
  - (3) Fine the licensee, including assessment against the licensee of the cost of the disciplinary proceedings. Any fine imposed by the board after a hearing in accordance with chapter 91 shall be no less than \$500 and no more than \$5,000 for each violation, exclusive of the costs of the disciplinary proceedings;
  - (4) Temporarily suspend the license for not more than thirty days without a hearing, when the board finds the practice of the licensee probably constitutes an immediate and grave danger to the public; or
  - (5) Require further education or training or require proof of performance competency.”

SECTION 6. Section 463E-7, Hawaii Revised Statutes is amended to read as follows:

**“§463E-7 Hearing; procedure.** In any proceeding before the board of medical examiners for the revocation or suspension of a license to practice [podiatry] podiatric medicine for any act or condition listed in section 463E-6, the person whose license is sought to be revoked or suspended shall be given notice and opportunity for a hearing in accordance with chapter 91. Any applicant whose application for a license to practice [podiatry] podiatric medicine has been denied shall be given notice and the opportunity for a hearing pursuant to chapter 91.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 8, 1989.)

## ACT 241

### Note

1. So in original.

## ACT 241

S.B. NO. 1426

A Bill for an Act Relating to Telephone Service.

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

SECTION 1. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§269- Aggregators of telephone service requirements.** (a) For the purposes of this section:

“Aggregator” means every person or entity that is not a telecommunications carrier, who, in the ordinary course of its business, makes telephones available and aggregates the calls of the public or transient users of its business, including but not limited to a hotel, motel, hospital, or university, that provides operator-assisted services through access to an operator service provider.

“Operator service” means a service provided by a telecommunications company to assist a customer to complete a telephone call.

(b) The commission, by rule or order, shall adopt and enforce operating requirements for the provision of operator-assisted services by an aggregator. These requirements shall include, but not be limited to, the following:

- (1) Posting and display of information in a prominent and conspicuous fashion on or near the telephone equipment owned or controlled by the aggregator which states the identity of the operator service provider, the operator service provider’s complaint handling procedures, and means by which the customer may access the various operator service providers.
- (2) Identification by name of the operator service provider prior to the call connection and, if not posted pursuant to subsection (b)(1), a disclosure of pertinent rates, terms, conditions, and means of access to various operator service providers and the local exchange carriers; provided that the operator service provider shall disclose this information at any time upon request by the customer.
- (3) Allowing the customer access to any operator service provider operating in the relevant geographic area through the access method chosen by the provider or as deemed appropriate by the commission.
- (4) Other requirements as deemed reasonable by the commission in the areas of public safety, quality of service, unjust or discriminatory pricing, or other matters in the public interest.”

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

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

(Approved June 8, 1989.)

### Note

1. Edited pursuant to HRS §23G-16.5.

**ACT 242**

S.B. NO. 1428

A Bill for an Act Relating to Public Utilities.

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

SECTION 1. Section 269-28, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding the provisions of subsection (a), any public utility violating or neglecting or failing in any particular to conform to or comply with any rule[, regulation,] or order of the commission setting forth safety requirements applicable to the transmission of gas shall be subject to a civil penalty not to exceed \$25,000 for each day that [such] the violation, neglect, or failure continues; provided that the maximum penalty for related violations arising out of the same act, omission, or occurrence shall not exceed [\$200,000.] \$500,000.”

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

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

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

(Approved June 8, 1989.)

**ACT 243**

S.B. NO. 1508

A Bill for an Act Relating to Workers' Compensation Insurance.

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

SECTION 1. Section 386-100, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each workers' compensation insurance policy issued by every insurer shall offer, at the option of the insured employer, a deductible for medical benefits in the amount of \$100, \$150, \$200, \$300, \$400, [or \$500.] \$500, or \$2,500. The insured employer, if choosing to exercise the option, shall choose only one of the amounts as the deductible. The provisions of this subsection shall be fully disclosed to the prospective purchaser in writing.”

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

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

(Approved June 8, 1989.)

## ACT 244

S.B. NO. 1555

A Bill for an Act Relating to Public Officers and Employees.

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

**SECTION 1.** The legislature finds that the increasing mobility of society, changing patterns of socioeconomic needs and values, and the economic realities of life in Hawaii require consideration of innovative approaches to ensure the availability of flexible employment opportunities to meet the varying needs of Hawaii's people. Job-sharing, which would provide half-time positions in place of full-time positions, is an innovation that will increase available employment options so that people may be employed on the basis of their financial or other needs, such as raising a family, without the necessity of being employed on a full-time basis, or perhaps, the necessity of resigning from full-time employment.

The legislature further finds that the success of the pilot projects in the department of education and the libraries, warrants further expansion of the job-sharing concept to other departments. Moreover, implementation of job-sharing may create a more stimulating and healthy environment for employees in their professional capacities, especially for those who are faced with the dilemma of desiring to spend more time with their families without totally leaving the job market. In addition, the implementation of this project for employees would allow them more time to pursue additional training and education, further benefiting the citizens of the State.

The purpose of this Act is to establish a voluntary job-sharing pilot project for all permanent, full-time employees belonging to units 2, 3, 4, 8 and 13 of the executive branch, the judicial branch, the department of education, the University of Hawaii, the legislative reference bureau, the legislative auditor, and the office of the ombudsman; other than persons allowed to job-share under sections 297-12.5 and 312-7, and Act 73, Session Laws of Hawaii 1986.

**SECTION 2. Establishment of a job-sharing pilot project.** There is established a four-year job-sharing pilot project to be conducted by the executive branch, the judicial branch, the department of education, the University of Hawaii, the legislative reference bureau, the legislative auditor, and the office of ombudsman (hereinafter referred to as "participants"), at their option, for the fiscal years 1990-1991 to 1993-1994; provided that none of them shall implement the pilot project without first carefully developing its plans, procedures, and guidelines. Each participant shall initiate the project within one month of establishing the final guidelines or, to the extent practicable, during the fiscal year 1990-1991, to allow sufficient notice for recruitment.

"Job-sharing," for the purpose of this Act, means the voluntary, equal division of one full-time permanent position between two employees, each performing one-half of the work required for the permanent position. The two half-time permanent positions resulting from the division of one full-time position shall constitute two job-sharing positions.

Each participant shall devote not more than one hundred fifty permanent positions to job-sharing, pursuant to this Act. Each work site shall be given the opportunity to participate. The participants shall administer the pilot project established by this Act and, in consultation and agreement with the representatives of the appropriate bargaining units, shall adopt guidelines for implementation of this Act.

**SECTION 3. General requirements.** The following shall constitute general requirements of the pilot project conducted within each participant and shall be followed in the implementation of this Act:

- (1) The directors of each of the participants shall announce the pilot project to all of their full-time, regular employees and shall solicit the voluntary requests of the personnel who may be interested in participating in the job-sharing pilot project.
- (2) Each director, in consultation and agreement with the representatives of the appropriate bargaining units, shall formulate and adopt guidelines for the implementation of this Act.

Employees who respond to the announcement and others who request information shall receive a full written description of the terms of the pilot project when the guidelines are finalized and those desiring to participate may apply to participate in the project. The employees who apply for participation shall obtain the concurrence of their immediate supervisor, other appropriate personnel officers, and the director of each of the participants.

Those who qualify then shall be interviewed by the participant's personnel officer or other appropriate individual. Participation shall be for fiscal years 1990-1991 to 1993-1994, except as provided in paragraph (6). It is recommended that not more than fifty per cent of the eligible personnel at any work site be accepted to participate in the project. It is further recommended that when sufficient eligible applicants are available, not less than twenty-five per cent of the personnel at any work site be accepted to participate in the project.

- (3) Upon the selection of a permanent, full-time employee for job-sharing under this Act, the director of each participant, for the purposes of this Act, shall convert the position of the employee into two job-sharing positions, one of which shall be filled by the employee, and the other which shall be filled by either another permanent employee or a person hired under this Act.
- (4) Persons hired to fill job-sharing positions shall be recruited in accordance with this Act; provided that any person hired for a job-sharing position shall possess the minimum requirements of the full-time position, which was converted to job-sharing positions under this Act.
- (5) "Job-sharing," for the purpose of this Act, is the voluntary sharing of a full-time, permanent employee's position with another employee, with each working one-half of the total number of hours of work required per month, and each receiving one-half of the salary to which each is respectively entitled and at least one-half of each employee benefit afforded to full-time employees.

The full-time, permanent employee shall not lose membership in an employee bargaining unit because of participation in this project, any law to the contrary notwithstanding. Union membership or service fees paid by job-sharers under this Act shall be at a level consistent with normal union membership dues or service fees.

The State's contribution to a job-sharer's prepaid health, prepaid dental, and any group life insurance plans shall be the same as for full-time employees, any other provision of the law to the contrary notwithstanding. Job-sharers shall be covered under chapter 386, Hawaii Revised Statutes, and the applicable provisions of chapter 383, Hawaii Revised Statutes.

## **ACT 245**

Service credit for permanent employees participating in the pilot project under this Act shall be given on the same basis as that for full-time employees.

Nothing in this Act 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 pilot project. No full-time position shall be abolished or reduced to a half-time position as a result of this Act, except for the purpose of job-sharing, and only for the time allowed for the project by this Act. In a reduction-in-force procedure, consideration of a job-sharer's retention points shall be on the same basis as that of a full-time employee. Nothing in this Act shall impair the employment or employment rights or benefits of any employee.

- (6) Participation in the pilot project shall require the commitment on the part of all parties to a contractual agreement; provided that the employee shall be given the option to contract one or more years.
- (7) No job-sharing position created under this Act and committed for a specific 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 any department on the part of any person shall not be converted to full-time status until termination of the contractual agreement and shall be filled immediately through recruitment of another person pursuant to this Act.
- (8) Upon the termination of contractual agreements under this Act, all job-sharing positions shall be reconverted to full-time positions, and the employees who held the full-time positions prior to their participation in the pilot project shall be entitled to resume their positions without loss of any employee rights.

**SECTION 4. Duties.** The office of the legislative auditor shall monitor and evaluate the pilot project, with particular regard to the efficacy of the job-sharing concept, and shall evaluate factors such as turnover rates, absenteeism, productivity, morale, and demographic factors such as ethnicity, sex, and age composition of participants, and other pertinent data. The office of the legislative auditor shall, among other analyses, identify factors that facilitated or made more difficult the implementation of this Act.

The office of the legislative auditor shall submit status reports on its findings to the legislature prior to the convening of the regular sessions of 1991, 1992, and 1993 and shall submit a report to the legislature on its findings and recommendations prior to the convening of the regular session of 1994.

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

(Approved June 8, 1989.)

## **ACT 245**

S.B. NO. 1816

A Bill for an Act Relating to the Medical Claims Conciliation Panel.

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

**SECTION 1.** Section 671-12, Hawaii Revised Statutes, is amended to read as follows:

**"§671-12<sup>1</sup> Review by panel required; notice; presentation of claims.**

Effective July 1, 1976, any person or the person's representative claiming that a medical tort has been committed shall submit the claim to the medical claim conciliation panel before a suit based on the claim may be commenced in any court of this State. Claims shall be submitted to the medical claim conciliation panel [orally or] in writing [on forms provided by the panel]. If the claim is presented orally, the panel shall reduce the claim to writing]. The claimant shall set forth facts upon which the claim is based and shall include the names of all parties against whom the claim is or may be made who are then known to the claimant. Within five business days thereafter the panel shall give notice of the claim, by certified mail, to all health care providers and others who are or may be parties to the claim and shall furnish copies of written claims to such persons. Such notice shall set forth a date, not more than twenty days after mailing the notice, within which any health care provider against whom a claim is made may file a written response to the claim, and a date and time, not less than five days following the last date for filing a response, for a hearing of the panel. Such notice shall describe the nature and purpose of the panel's proceedings and shall designate the place of the meeting. The times originally set forth in the notice may be enlarged by the chairperson, on due notice to all parties, for good cause."

SECTION 2. Section 671-13, Hawaii Revised Statutes, is amended to read as follows:

**"§671-13 Medical claim conciliation panel hearing; fact-finding; evidence; voluntary settlement.** Every claim of a medical tort shall be heard by the medical claim conciliation panel within thirty days after the last date for filing a response. No persons other than the panel, witnesses, and consultants called by the panel, and the persons listed in section 671-14 shall be present except with the permission of the chairperson. The panel may, in its discretion, conduct an inquiry of a party, witness, or consultant without the presence of any or all parties.

The hearing shall be informal. Chapters 91 and 92 shall not apply. The panel may require a stenographic record of all or part of its proceedings for the use of the panel, but such record shall not be made available to the parties. The panel may receive any oral or documentary evidence. Questioning of parties, witnesses, and consultants may be conducted by the panel, and the panel may, in its discretion, permit any party, or any counsel for a party to question other parties, witnesses, or consultants. The panel may designate who, among the parties, shall have the burden of going forward with the evidence with respect to such issues as it may consider, and unless otherwise designated by the panel, when medical and hospital records have been provided the claimant for the claimant's proper review, such burden shall initially rest with the claimant at the commencement of the hearing.

The panel shall have the power to require by subpoena the appearance and testimony of witnesses and the production of documentary evidence. When such subpoena power is utilized, notice shall be given to all parties. The testimony of witnesses may be taken either orally before the panel or by deposition. In cases of refusal to obey a subpoena issued by the panel, the panel may invoke the aid of any circuit court in the State, which may issue an order requiring compliance with the subpoena. Failure to obey such order may be punished by the court as a contempt thereof. Any member of the panel, the director of the department, or any person designated by the director of the department may sign subpoenas. Any member of the panel may administer oaths and affirmations, examine witnesses, and receive evidence. Notwithstanding such powers, the panel shall attempt to secure the voluntary appearance, testimony, and cooperation of parties, witnesses, and consultants without coercion.

## **ACT 246**

At the hearing of the panel and in arriving at its opinion the panel shall consider, but not be limited to, statements or testimony of witnesses, hospital and medical records, nurses' notes, x-rays, and other records kept in the usual course of the practice of the health care provider without the necessity for other identification or authentication, statement of fact, or opinion on a subject contained in a published treatise, periodical, book, or pamphlet, or statements of experts without the necessity of the experts appearing at the hearing. The panel may upon the application of any party or upon its own decision appoint as a consultant, an impartial and qualified physician, surgeon, physician and surgeon, or other professional person or expert to testify before the panel or to conduct any necessary professional or expert examination of the claimant or relevant evidentiary matter and to report to or testify as a witness thereto. Such a consultant shall not be compensated or reimbursed except for travel and living expenses to be paid as provided in section 671-11. [Discovery] Except for the production of hospital and medical records, nurses' notes, x-rays, and other records kept in the usual course of the practice of the health care provider, discovery by the parties shall not be allowed.

During the hearing and at any time prior to the rendition of an advisory decision pursuant to section 671-15, the panel may encourage the parties to settle or otherwise dispose of the case voluntarily."

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

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

(Approved June 8, 1989.)

### **Note**

1. So in original.

## **ACT 246**

S.B. NO. 1819

A Bill for an Act Relating to Hearing Aids.

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

**SECTION 1.** Section 451A-14, Hawaii Revised Statutes, is amended to read as follows:

**"§451A-14 Prohibited acts and practices.** No person shall:

- (1) Sell, barter, offer to sell, barter or transfer or assign a license, certificate of endorsement, or temporary permit;
- (2) Purchase or procure by barter a license, certificate of endorsement, or temporary permit with intent to use it as evidence of qualification to practice the fitting and selling of hearing aids;
- (3) Alter a license, certificate of endorsement, or temporary permit with fraudulent intent;
- (4) Use or attempt to use a license, certificate of endorsement, or temporary permit which is invalid because it was purchased, fraudulently obtained, forged, or materially altered;
- (5) Make a false statement in an application for a license, certificate of endorsement, or temporary permit, or in an application for renewal of a license;

- (6) [Solicit for the sale of hearing aids "house to house" as defined in section 476-1.] Sell hearing aids through "door-to-door sales" as defined in section 481C-1."

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

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

(Approved June 8, 1989.)

**ACT 247**

S.B. NO. 1835

A Bill for an Act Relating to County Administrators.

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

SECTION 1. Section 346-4, Hawaii Revised Statutes, is hereby repealed.

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

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

(Approved June 8, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 248**

S.B. NO. 1872

A Bill for an Act Relating to Escrow Depositories.

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

SECTION 1. Section 449-15, Hawaii Revised Statutes, is amended to read as follows:

**"§449-15 Audited statements.** Each escrow depository shall at its own expense submit to the commissioner within ninety days after the close of its fiscal year a certified audit of its books and records made by an independent certified public accountant. The audit shall include a direct verification of all deposits of money made with or by the escrow depository. Failure to comply with this section shall be grounds for the suspension or revocation of the escrow depository's license [and such failure] in accordance with the provisions of section 449-17. Failure to comply with this section shall authorize the commissioner to order an independent audit at the expense of the escrow depository[.] and shall also authorize the commissioner to impose an administrative fine of \$100 per day for each day that the audit is overdue."

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

## ACT 249

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

(Approved June 8, 1989.)

## ACT 249

S.B. NO. 1891

A Bill for an Act Relating to Public Lands.

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

SECTION 1. Section 171-6, Hawaii Revised Statutes, is amended to read as follows:

**“§171-6 Powers.** Except as otherwise provided by law, the board of land and natural resources shall have the powers and functions granted to the heads of departments and the board of land and natural resources under chapter 26.

In addition to the foregoing, the board may:

- (1) Adopt a seal;
- (2) Administer oaths;
- (3) Prescribe forms of instruments and documents;
- (4) Adopt rules which, upon compliance with chapter 91, shall have the force and effect of law;
- (5) Set, charge, demand, and collect reasonable fees for the preparation of documents to be issued, for the surveying of public lands, and for the issuing of certified copies of its public documents and records, which fees, when collected, shall be deposited into the state general fund, unless otherwise specified in this chapter;
- (6) Establish additional restrictions, requirements, or conditions, not inconsistent with those prescribed in this chapter, relating to the use of particular land being disposed of, the terms of sale, lease, license, or permit, and the qualifications of any person to draw, bid, or negotiate for public land;
- (7) Reduce or waive the lease rental at the beginning of the lease on any lease of public land to be used for any agricultural or pastoral use, or for resort, commercial, industrial, or other business use where the land being leased requires substantial improvements to be placed thereon; provided that such reduction or waiver shall not exceed two years for land to be used for any agricultural or pastoral use; or exceed one year for land to be used for resort, commercial, industrial, or other business use;
- (8) Delegate to the chairman or employees of the department of land and natural resources, subject to the board's control and responsibility, such powers and duties as may be lawful or proper for the performance of the functions vested in the board;
- (9) Utilize arbitration under chapter 658 to settle any controversy arising out of any existing or future lease;
- (10) Set, charge, and collect reasonable fees in an amount sufficient to defray the cost of performing or otherwise providing for the inspection of activities permitted upon the issuance of a land license involving a commercial purpose;
- (11) Appoint masters or hearing officers to conduct public hearings as provided by law and under such conditions as the board by rules shall establish;

- (12) Bring such actions as may be necessary to remove or remedy encroachments upon public lands. Any person causing an encroachment upon public land shall be subject to a fine of not more than \$500 a day for the first offense and shall be liable for administrative costs incurred by the department and for payment of damages. Upon the second offense and thereafter, the violator shall be fined not less than \$500 nor more than \$2,000 per day, shall, if required by the board, restore the land to its original condition if altered and assume the costs thereof, and shall assume such costs as may result from adverse effects from such restoration;
- (13) Set, charge, and collect interest and a service charge on delinquent payments due on leases, sales, or other accounts. The rate of interest shall not exceed one per cent a month[; and the service charge shall not exceed \$50.00 a month for each delinquent payment]; provided that the contract shall state the interest rate and the service charge and be signed by the party to be charged; and
- (14) Set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder. Any person violating any of the provisions of this chapter or any rule adopted thereunder, for which violation a penalty is not otherwise provided, shall be fined not more than \$500 a day and shall be liable for administrative costs incurred by the department and for payment for damages."

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

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

(Approved June 8, 1989.)

## ACT 250

S.B. NO. 1898

A Bill for an Act Relating to Investment.

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

**SECTION 1.** The issue of outside investment is a recurring one in Hawaii, and the United States as a whole. Controversy rises and falls with the value of foreign currency and the availability of excess capital.

Investment by outside sources becomes an issue in a community when it is perceived that negative impacts outweigh the community needs. These negative impacts are almost always expressed in subjective terms such as: loss of local control; a sense of diminishing opportunities; fear that social and economic benefits are occurring at a faster rate to nonresidents than residents; and examples of scarce resources falling into the hands and control of "outsiders".

Such an issue is unlikely to vanish as countries of the world move towards an interdependent global economy and trade barriers become less restrictive, for these policies provide for the freer flow of capital and investment throughout the world.

The free flow of capital can be a productive force in a community; creating jobs, building and improving the physical plant, providing additional revenues to the tax base and thereby contributing to government services and projects. However, the free flow of capital left purely to the response of market forces is also capable of engendering destructive forces. In order for a community to achieve maximum

benefits and minimize negative results, the free flow of capital must be shaped by the explicit economic goals of the community as well as its cultural and social objectives.

A community must also be allowed to shape its own destiny. This is a fundamental right guaranteed in the constitution of the State of Hawaii. As stated in the preamble, "we reserve the right to control our destiny, to nurture the integrity of our people and culture, and to preserve the quality of life that we desire."

As land becomes a more precious commodity, and with the freer flow of capital, the needs and concerns of the community must be taken into account.

The Hawaii State Plan serves as a guide for the future goals of the State. It can provide direction and clarification as to the policies and positions of the State. Furthermore, it serves as a means by which the people of this State are able to express their own destiny.

This Act is intended to make more explicit the State's priorities for investment in Hawaii, irrespective of country or origin. Furthermore, this Act is intended to educate businesses and potential investors on State development objectives and to identify those investments which are encouraged and welcomed by the State.

**SECTION 2.** Section 226-103, Hawaii Revised Statutes, is amended to read as follows:

**"§226-103 Economic priority guidelines.** (a) Priority guidelines to stimulate economic growth and encourage business expansion and development to provide needed jobs for Hawaii's people and achieve a stable and diversified economy:

- (1) Seek a variety of means to increase the availability of investment capital for new and expanding enterprises.
  - (A) Encourage investments which:
    - (i) Reflect long term commitments to the State;
    - (ii) Rely on economic linkages within the local economy;
    - (iii) Diversify the economy;
    - (iv) Reinvest in the local economy;
    - (v) Are sensitive to community needs and priorities; and
    - (vi) Demonstrate a commitment to provide management opportunities to Hawaii residents.
  - (2) Encourage the expansion of technological research to assist industry development and support the development and commercialization of technological advancements.
  - (3) Improve the quality, accessibility, and range of services provided by government to business, including data and reference services and assistance in complying with governmental regulations.
  - (4) Seek to ensure that state business tax and labor laws and administrative policies are equitable, rational, and predictable.
  - (5) Streamline the building and development permit and review process, and eliminate or consolidate other burdensome or duplicative governmental requirements imposed on business, where public health, safety<sup>1</sup> and welfare would not be adversely affected.
  - (6) Encourage the formation of cooperatives and other favorable marketing or distribution arrangements at the regional or local level to assist Hawaii's small-scale producers, manufacturers, and distributors.
  - (7) Continue to seek legislation to protect Hawaii from transportation interruptions between Hawaii and the continental United States.
  - (8) Provide public incentives and encourage private initiative to develop and attract industries which promise long-term growth potentials and which have the following characteristics:

- (A) An industry that can take advantage of Hawaii's unique location and available physical and human resources.
  - (B) A clean industry that would have minimal adverse effects on Hawaii's environment.
  - (C) An industry that is willing to hire and train Hawaii's people to meet the industry's labor needs[.] at all levels of employment.
  - (D) An industry that would provide reasonable income and steady employment.
- (9) Support and encourage, through educational and technical assistance programs and other means, expanded opportunities for employee ownership and participation in Hawaii business.
- (10) Enhance the quality of Hawaii's labor force and develop and maintain career opportunities for Hawaii's people through the following actions:
- (A) Expand vocational training in diversified agriculture, aquaculture, information industry, and other areas where growth is desired and feasible.
  - (B) Encourage more effective career counseling and guidance in high schools and post-secondary institutions to inform students of present and future career opportunities.
  - (C) Allocate educational resources to career areas where high employment is expected and where growth of new industries is desired.
  - (D) Promote career opportunities in all industries for Hawaii's people by encouraging firms doing business in the State to hire residents.
  - (E) Promote greater public and private sector cooperation in determining industrial training needs and in developing relevant curricula and on-the-job training opportunities.
  - (F) Provide retraining programs and other support services to assist entry of displaced workers into alternative employment.
- (b) Priority guidelines to promote the economic health and quality of the visitor industry:
- (1) Promote visitor satisfaction by fostering an environment which enhances the Aloha Spirit and minimizes inconveniences to Hawaii's residents and visitors.
  - (2) Encourage the development and maintenance of well-designed, adequately serviced hotels and resort destination areas which are sensitive to neighboring communities and activities and which provide for adequate shoreline setbacks and beach access.
  - (3) Support appropriate capital improvements to enhance the quality of existing resort destination areas and provide incentives to encourage investment in upgrading, repair, and maintenance of visitor facilities.
  - (4) Encourage visitor industry practices and activities which respect, preserve, and enhance Hawaii's significant natural, scenic, historic, and cultural resources.
  - (5) Develop and maintain career opportunities in the visitor industry for Hawaii's people, with emphasis on managerial positions.
  - (6) Support and coordinate tourism promotion abroad to enhance Hawaii's share of existing and potential visitor markets.
  - (7) Maintain and encourage a more favorable resort investment climate consistent with the objectives of this chapter.
  - (8) Support law enforcement activities that provide a safer environment for both visitors and residents alike.

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- (9) Coordinate visitor industry activities and promotions to business visitors through the state network of advanced data communication techniques.
- (c) Priority guidelines to promote the continued viability of the sugar and pineapple industries:
  - (1) Provide adequate agricultural lands to support the economic viability of the sugar and pineapple industries.
  - (2) Continue efforts to maintain federal support to provide stable sugar prices high enough to allow profitable operations in Hawaii.
  - (3) Support research and development, as appropriate, to improve the quality and production of sugar and pineapple crops.
- (d) Priority guidelines to promote the growth and development of diversified agriculture and aquaculture:
  - (1) Identify, conserve, and protect agricultural [ ] and aquacultural [ ] lands of importance and initiate affirmative and comprehensive programs to promote economically productive agricultural and aquacultural uses of such lands.
  - (2) Assist in providing adequate, reasonably priced water for agricultural activities.
  - (3) Encourage public and private investment to increase water supply and to improve transmission, storage, and irrigation facilities in support of diversified agriculture and aquaculture.
  - (4) Assist in the formation and operation of production and marketing associations and cooperatives to reduce production and marketing costs.
  - (5) Encourage and assist with the development of a waterborne and airborne freight and cargo system capable of meeting the needs of Hawaii's agricultural community.
  - (6) Seek favorable freight rates for Hawaii's agricultural products from interisland and overseas transportation operators.
  - (7) Encourage the development and expansion of agricultural and aquacultural activities which offer long-term economic growth potential and employment opportunities.
  - (8) Continue the development of agricultural parks and other programs to assist small independent farmers in securing agricultural lands and loans.
  - (9) Require agricultural uses in agricultural subdivisions and closely monitor the uses in these subdivisions.
  - (10) Support the continuation of land currently in use for diversified agriculture.
- (e) Priority guidelines for water use and development:
  - (1) Maintain and improve water conservation programs to reduce the overall water consumption rate.
  - (2) Encourage the improvement of irrigation technology and promote the use of nonpotable water for agricultural and landscaping purposes.
  - (3) Increase the support for research and development of economically feasible alternative water sources.
  - (4) Explore alternative funding sources and approaches to support future water development programs and water system improvements.
- (f) Priority guidelines for energy use and development:
  - (1) Encourage the development, demonstration, and commercialization of renewable energy sources.
  - (2) Initiate, maintain, and improve energy conservation programs aimed at reducing energy waste and increasing public awareness of the need to conserve energy.

- (3) Provide incentives to encourage the use of energy conserving technology in residential, industrial, and other buildings.
- (4) Encourage the development and use of energy conserving and cost-efficient transportation systems.
- (g) Priority guidelines to promote the development of the information industry:
  - (1) Establish an information network that will serve as the catalyst for establishing a viable information industry in Hawaii.
  - (2) Encourage the development of services such as financial data processing, a products and services exchange, foreign language translations, telemarketing, teleconferencing, a twenty-four-hour international stock exchange, international banking, and a Pacific Rim management center.
  - (3) Encourage the development of small businesses in the information field such as software development, the development of new information systems and peripherals, data conversion and data entry services, and home or cottage services such as computer programming, secretarial, and accounting services.
  - (4) Encourage the development or expansion of educational and training opportunities for residents in the information and telecommunications fields.
  - (5) Encourage research activities, including legal research in the information and telecommunications fields.
  - (6) Support promotional activities to market Hawaii's information industry services."

SECTION 3. Section 226-106, Hawaii Revised Statutes, is amended to read as follows:

**"§226-106 Affordable housing.** Priority guidelines for the provision of affordable housing:

- (1) Seek to use marginal or nonessential agricultural land and public land to meet housing needs of low- and moderate-income and gap-group households.
- (2) Encourage the use of alternative construction and development methods as a means of reducing production costs.
- (3) Improve information and analysis relative to land availability and suitability for housing.
- (4) Create incentives for development which would increase home ownership and rental opportunities for Hawaii's low- and moderate-income households, gap-group households, and residents with special needs.
- (5) Encourage continued support for government or private housing programs that provide low interest mortgages to Hawaii's people for the purchase of initial owner-occupied housing.
- (6) Encourage public and private sector cooperation in the development of rental housing alternatives.
- (7) Encourage improved coordination between various agencies and levels of government to deal with housing policies and regulations.
- (8) Give higher priority to the provision of quality housing that is affordable for Hawaii's residents and less priority to development of housing intended primarily for individuals outside of Hawaii."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

## **ACT 251**

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

(Approved June 8, 1989.)

### **Note**

1. So in original.

## **ACT 251**

S.B. NO. 1907

A Bill for an Act Relating to the Criminal Injuries Compensation Act.

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

**SECTION 1.** Section 351-70, Hawaii Revised Statutes, is amended to read as follows:

**“§351-70 Annual report.** The criminal injuries compensation commission shall transmit annually to the governor and to the director of [finance,] corrections, at least thirty days prior to the convening of the legislature a report of its activities under this chapter including a brief description of the facts in each case, and the amount, if any, of compensation awarded, and the names of attorneys and health care providers where they are the applicants. The director of [finance] corrections shall, within five days after the opening of the legislative session, transmit the report, together with a tabulation of the total amount of compensation awarded[,] during the prior fiscal year and an estimate of the amount that is reasonably estimated to be required for the next fiscal year, and a legislative bill [appropriating] to appropriate funds [necessary to replenish] for the criminal injuries compensation fund for the [compensation awarded.] next fiscal year. The criminal injuries compensation commission shall provide upon request of the governor, the director of [finance,] corrections, or the legislature, the relevant data, including the names of all applicants for compensation, under this chapter.”

**SECTION 2.** Notwithstanding the provisions set forth in Section 1, the criminal injuries compensation commission shall transmit to the governor and to the director of corrections, at least thirty days prior to the convening of the Regular Session of 1990, Fifteenth Legislature, State of Hawaii, a report of its activities under this chapter for the period from January 1, 1989 to December 31, 1989, including a brief description of the facts in each case, and the amount, if any, of compensation awarded, and the names of attorneys and health care providers where they are the applicants. The director of corrections shall, within five days after the opening of the Regular Session of 1990, Fifteenth Legislature, State of Hawaii, transmit the report, together with the following: (1) a tabulation of the total amount of compensation awarded during the period from January 1, 1989 to December 31, 1989, and the amount that is reasonably estimated to be required (a) for the period from January 1, 1990 to June 30, 1990 and (b) for the next fiscal year starting July 1, 1990 to June 30, 1991, along with (2) a legislative bill to (a) appropriate funds necessary to replenish the criminal injuries compensation fund for the period from January 1, 1989 to December 31, 1989, and to (b) appropriate funds for the criminal injuries compensation fund for the period from January 1, 1990 to June 30, 1990 and for the next fiscal year starting July 1, 1990 to June 30, 1991. The criminal injuries compensation commission shall provide upon request of the governor, the director of corrections, or the legislature, the relevant data, including the names of all applicants for compensation, under this chapter.

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

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

(Approved June 8, 1989.)

## ACT 252

S.B. NO. 1912

A Bill for an Act Relating to Foreign Banks.

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

SECTION 1. Section 405D-39, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) As used in this section:

“Adjusted liabilities” means the liabilities of the bank’s business in this State, excluding:

- (1) Accrued expenses;
- (2) Any liability to an office, whether in or outside of this State, or majority-owned subsidiary of the bank; and
- (3) Such other liabilities as the commissioner may exclude.

“Applicable minimum”, when used with respect to eligible assets deposited or to be deposited with an approved depository by a foreign bank, means the amount as the commissioner by rule may determine as necessary for the maintenance of sound financial condition, for the protection of the interests of creditors of the bank’s business in this State, or for the protection of the public interest.

“Approved depository” means a bank organized under the laws of this State or a national bank headquartered in this State which has been selected by the foreign bank and approved by the commissioner to act as the approved depository of the foreign bank and which has filed with the commissioner an agreement to comply with all applicable provisions of this section and of any rule or order issued under this section.

“Eligible assets” means any of the following:

- (1) Cash;
- [(2)] Any security of the type described in section 403-128;
- (3) (2) Any negotiable certificate of deposit which:
  - (A) Has a maturity of not more than one year;
  - (B) Is payable in the United States; and
  - (C) Is issued by a bank organized under the laws of a state of the United States, by a national bank, or by a branch office of a foreign bank which is located in the United States;
- [(4)] (3) Any commercial paper which is payable in the United States and which is rated P-1 or its equivalent by a nationally recognized rating service; provided that any conflict in rating shall be resolved in favor of the lower rating;
- [(5)] (4) Any banker’s acceptance which is payable in the United States and which is eligible for discount with a Federal Reserve Bank;
- [(6)] (5) Any other asset which the commissioner determines is eligible.

Notwithstanding the foregoing provisions of this [paragraph,] definition, “eligible asset” does not include any instrument the issuer of which is, or is affiliated with, the foreign bank, is domiciled in, or controlled by a bank or other person domiciled in, the same foreign nation as the foreign bank, or is controlled by the foreign nation. For purposes of this paragraph, to be “affiliated” means to control, to be controlled by, or to be under common control with.”

## **ACT 253**

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

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

(Approved June 8, 1989.)

## **ACT 253**

S.B. NO. 1919

A Bill for an Act Relating to Public Lands.

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

SECTION 1. Section 171-35, Hawaii Revised Statutes, is amended to read as follows:

**“§171-35 Lease provisions; generally.** Every lease issued by the board of land and natural resources shall contain:

- (1) The specific use or uses to which the land is to be employed;
- (2) The improvements required; provided that a minimum reasonable time be allowed for the completion of the improvements;
- (3) Restrictions against alienation as set forth in section 171-36;
- (4) The rent, as established by the board or at public auction, which shall be payable not more than one year in advance, in monthly, quarterly, semiannual, or annual payments;
- (5) Where applicable, adequate protection of forests, watershed areas, game management areas, wildlife sanctuaries, and public hunting areas, reservation of rights-of-way and access to other public lands, public hunting areas, game management areas, or public beaches, and prevention of nuisance and waste; and
- (6) Such other terms and conditions as the board deems advisable to more nearly effectuate the purposes of the state constitution and of this chapter.”

SECTION 2. New statutory material is underscored.

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

(Approved June 8, 1989.)

## **ACT 254**

S.B. NO. 1947

A Bill for an Act Relating to Administrative Reviews by State Health Planning and Development Agency.

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

SECTION 1. The purpose of this Act is to amend chapter 323D, Hawaii Revised Statutes, to provide that when the state health planning and development agency conducts administrative reviews pursuant to section 323D-44.5, Hawaii Revised Statutes, there shall be an informational hearing on the certificate of need application to allow for public participation early in the process. This public hearing shall not be deemed to be a contested case or rule-making within the meaning of

chapter 91. Through this procedure, the efficiencies sought to be accomplished by the administrative review process will not be sacrificed significantly, but public participation will be allowed.

SECTION 2. Section 323D-44.5, Hawaii Revised Statutes, is amended to read as follows:

**"[§323D-44.5] Administrative review of certain applications for certificate of need.** The state agency shall adopt rules in conformity with chapter 91 providing for administrative review and decision on certain applications for certificate of need without referring the applications to the subarea council, review panel, or statewide council[.] for recommendation as provided under section 323D-45. Each application reviewed under this section shall be subject to a public information meeting before the state agency makes its decision, which public information meeting may be at a meeting of the subarea council, review panel, or statewide council. Applications subject to administrative review and decision under this section shall include, but are not limited to, applications which are:

- (1) Inconsistent with or contrary to the state health services and facilities plan under section 323D-15;
- (2) Determined not to have a significant impact on the health care system; or
- (3) Involve capital or annual operating expenses below a significant level."

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

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

(Approved June 8, 1989.)

## ACT 255

S.B. NO. 1983

A Bill for an Act Relating to Roadwork.

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

SECTION 1. **Findings.** The Legislature finds that Interstate H-1 is the most heavily used traffic corridor in the State and any construction, repairs or maintenance performed during daylight hours quickly result in traffic tieups. The Off-Hour Road Work Task Force has concluded that off-hour road work is a viable means by which to alleviate traffic congestion for commuters due to the fewer number of motorists travelling along the Interstate H-1 during these hours. Furthermore, road work during off-hours has the potential of accelerating the completion dates of construction projects due to the longer hours during which off-hour road work can be undertaken. The Task Force has secured agreement to implement its recommendations; however, to date, there has been no concerted effort to implement off-hour road work on a large scale. The purpose of this Act is to initiate a one year demonstration project with off-hour road work on the most congested portion of Interstate H-1.

SECTION 2. There shall be no construction, repairs, or maintenance on the travelling lanes of the Interstate H-1 between the Kapiolani and Kahauiki interchanges between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday until June 30, 1990, provided that construction, repairs and maintenance shall be

## **ACT 256**

allowed during such hours and on such days if the director of transportation finds that an emergency condition exists, or that the nature of the work is such that if undertaken at night would jeopardize the health and safety of the public, or that the nature of the work is such that it cannot be done safely and efficiently at night.

**SECTION 3.** The director of transportation shall submit a report of his findings and recommendations to the legislature twenty days prior to the convening of the regular session of 1991, with an analysis of the impact of this Act and recommendations for further action.

**SECTION 4.** This Act shall take effect on July 1, 1989.

(Approved June 8, 1989.)

## **ACT 256**

S.B. NO. 1977

A Bill for an Act Relating to the Civil Service Exemption of the Student Member on the Board of Education.

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

**SECTION 1.** Section 76-16, Hawaii Revised Statutes, is amended to read as follows:

**“§76-16 Civil service and exemptions.** The civil service to which this part applies comprises all positions in the State now existing or hereafter established and embraces all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of personnel services has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
- (3) Positions of a temporary nature needed in the public interest where the need for the position does not exceed one year, but before any person may be employed to render the temporary service, the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, jury commissioners, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;

- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, and one law clerk for each judge of the circuit court and the administrative judge of the district court of the first circuit (provided that the law clerk for a judge of the circuit court shall be employed in lieu of and shall have the powers and duties of a court officer and bailiff under section 606-14); sheriff, first deputy sheriff, and second deputy sheriff; and one private secretary for each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
- (11) Teachers, principals, vice-principals, district superintendents, chief deputy superintendents, other certificated personnel, and not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work in the department of education, and members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
- (12) Employees engaged in special, research, or demonstration projects approved by the governor;
- (13) Positions filled by inmates, kokus, patients of state institutions, persons with severe physical or mental handicaps participating on the work experience training programs, and students and positions filled through federally funded programs which provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;
- (14) A custodian or guide at Iolani Palace, Royal Mausoleum, and Hulihee Palace;
- (15) Positions filled by persons employed on a fee, contract, or piecework basis who lawfully may perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
- (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of the State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; one additional deputy to administer all hospitals within the jurisdiction of the department of health; one additional deputy in the department of health to administer all environmental health programs within the jurisdiction of the department; one additional deputy in the department

of human services either in charge of welfare or other functions within the department as may be assigned by the director of human services; one additional deputy in the department of health in charge of administration or other functions within the department as may be assigned by the director of health with the approval of the governor; one additional deputy in the department of business and economic development to perform the duties assigned by the director of business and economic development and approved by the governor; one additional deputy in the department of budget and finance to perform the duties assigned by the director of finance and approved by the governor; one additional deputy within the department of land and natural resources to perform the duties to be assigned by the chairperson of the board of land and natural resources; and an administrative assistant to the superintendent of education;

- (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
- (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
- (19) Household employees at the official residence of the president of the University of Hawaii;
- (20) Employees in the department of education engaged in the supervision of students during lunch periods and in the cleaning of classrooms after school hours on a less than half-time basis;
- (21) Employees hired under the tenant hire program of the Hawaii housing authority; provided that no more than twenty-six per cent of the authority's work force in any housing project maintained or operated by the authority shall be hired under the tenant hire program;
- (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii which require hiring of nutrition program assistants who live in the areas they serve; [and]
- (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions[.]; and
- (24) One public high school student to be selected by the Hawaii state student council as a non-voting member on the board of education as authorized by the State Constitution.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

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

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

(Approved June 8, 1989.)

**ACT 257**

H.B. NO. 15

A Bill for an Act Relating to Computers.

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

**SECTION 1.** The legislature finds that a "software industry" would be beneficial for the State of Hawaii. A software industry would help to diversify the economy, create higher paying jobs, and position Hawaii as a high technology leader in the Pacific. Software development is considered a "clean" industry, and therefore, would not have the negative spin-off effects associated with other economic development initiatives. Although there is strong consensus on the idea of developing a software industry, there is no strategic plan to nurture its development.

The purpose of this Act is to encourage the development of a software industry directed at the market for customized applications development in the United States and elsewhere.

**SECTION 2.** The high technology development corporation, working in consultation with the department of budget and finance, shall establish a plan for the development of a software industry in Hawaii. The plan shall consider state laws and policies pertaining to contracts for computer software.

The corporation may conduct workshops for local software companies to review the plan draft and discuss relevant development activities, such as export markets and offshore programming and data entry services.

The corporation shall submit its findings, recommendations, and plan to the legislature at least twenty days prior to the convening of the 1990 regular session.

**SECTION 3.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceed by \$50,000, or 0.0021 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act are necessary to serve the public interest; to meet the need provided for by this Act, and to encourage the development of a software industry which is directed at the market for customized applications development in the United States and elsewhere.

**SECTION 4.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000, or so much thereof as may be necessary for fiscal year 1989-1990, to carry out the purposes of this Act. The sums appropriated shall be expended by the department of business and economic development for the purposes of this Act.

**SECTION 5.** This Act shall take effect on July 1, 1989.

(Approved June 8, 1989.)

**ACT 258**

H.B. NO. 54

A Bill for an Act Relating to Public Health.

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

**SECTION 1.** The legislature finds that protection of the public health from unsanitary and infectious wastes is a primary responsibility of state and county

## **ACT 259**

governments. In recent years, the common practices associated with the handling and disposal of solid wastes in landfills and the handling, treatment, and disposal of infectious wastes have been increasingly inadequate. The generation of these wastes appears to be growing at a rate faster than society's ability to deal with the problem. Of special concern is protection of the groundwater from pollution associated with landfills and the prevention of incidental exposure of the public to infectious wastes at a time when hepatitis B and AIDS are major concerns for health officials and the public.

The legislature finds that two important strategies to alleviate the problems associated with these wastes are the promotion of special sorting and handling of certain wastes that can be recycled and the development of new regulations relating to infectious wastes.

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

**“§321- Infectious wastes; management and disposal.** The department of health shall adopt rules pursuant to chapter 91 for the management and disposal of infectious wastes generated by hospitals, clinics, other health care facilities, doctors' offices, dentists' offices, research laboratories, veterinary clinics, and other generators of infectious wastes. The rules shall include a definition of infectious wastes that clearly and objectively defines infectious wastes and specifies acceptable containers and other factors related to the identification, segregation, containment, and transportation of infectious wastes. Effective July 1, 1991 all generators of infectious wastes shall show proof that infectious wastes are being managed and disposed of according to departmental rules upon request of the department.”

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

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

(Approved June 8, 1989.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 259**

H.B. NO. 80

A Bill for an Act Making an Appropriation for Visitor Industry Educational and Training Programs.

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

**SECTION 1.** The legislature finds that the visitor industry has been and will continue to be a mainstay of Hawaii's economy. Over the years, the visitor industry has generated thousands of jobs in the hotel, food and beverage, retail, entertainment, and transportation industries in Hawaii, and the number of jobs in these industries due to the visitor industry is expected to increase dramatically over the next twenty years. As the visitor industry continues to expand, many new jobs will be created on all islands. However, due to the small labor markets and the lack of training in the principles and practices of the tourism industry, the work forces on the neighbor islands will not be prepared to provide the high-quality services for which our State's visitor industry is renowned. Recognizing the problem, the 1988 legislature appropriated \$156,000 to the department of labor and industrial relations

to enable the state tourism training council to provide tourism educational and training services. These services are being delivered to the neighbor islands through the University of Hawaii's school of travel industry management, the University of Hawaii community colleges, and the University of Hawaii at Hilo-Hawaii community college.

The legislature further finds that there is a continued need to expand educational and training programs to support the visitor industry. The purpose of this Act is to appropriate funds to continue the expansion of visitor industry training and educational programs in growing resort areas on all islands. These training and educational programs may include programs and courses currently offered by the University of Hawaii's school of travel industry management and the community colleges.

**SECTION 2.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$250,000, or 0.0011 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

**SECTION 3.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$87,500, or so much thereof as may be necessary for fiscal year 1989-1990, and \$87,500, or so much thereof as may be necessary for fiscal year 1990-1991, to continue the development and expansion of management and professional level programs on the neighbor islands through the University of Hawaii's school of travel industry management.

**SECTION 4.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$87,500, or so much thereof as may be necessary for fiscal year 1989-90, and \$87,500, or so much thereof as may be necessary for fiscal year 1990-1991, to continue the expansion of visitor industry education and training programs on the neighbor islands by the University of Hawaii community colleges.

**SECTION 5.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$75,000, or so much thereof as may be necessary for fiscal year 1989-1990, and \$75,000, or so much thereof as may be necessary for fiscal year 1990-1991, to expand visitor industry education and training programs on Oahu through the University of Hawaii community colleges.

**SECTION 6.** The sums appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

**SECTION 7.** The department of budget and finance shall conduct an evaluation and assessment of the visitor industry education and training program conducted by the tourism training council, department of labor and industrial relations, which shall include but not be limited to the organization, management, administration, and operation of the existing program and the possibility of transferring the program to the University of Hawaii. The department of budget and finance shall submit a report on its findings and recommendations to the legislature at least twenty days prior to the ending of the 1990 regular session of the legislature.

**SECTION 8.** This Act shall take effect on July 1, 1989.

(Approved June 8, 1989.)

## ACT 260

### ACT 260

H.B. NO. 122

A Bill for an Act Relating to Ridesharing.

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

SECTION 1. Section 279G-2, Hawaii Revised Statutes, is amended to read as follows:

**“[§279G-2[]] Liability [of employer.] for promoters of ridesharing arrangements.** (a) For purposes of this section the term “entity” refers to the State, the counties, schools, community organizations, private non-profit organizations, rideshare coordinators, and employers who encourage participation in ridesharing arrangements.

(b) An [employer] entity shall not be liable for injuries to passengers and other persons because the [employer] entity provides information, incentives, or otherwise encourages the public, students, or employees to participate in ridesharing arrangements[,]; provided that this section shall not apply if the motor vehicle used in the ridesharing arrangement is owned, leased, or contracted for by the [employer.] entity.”

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

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

(Approved June 8, 1989.)

### ACT 261

H.B. NO. 225

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

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

SECTION 1. Section 11-204, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) All payments made by a person [or] whose contributions or expenditure activity is financed, maintained, or controlled by any corporation, labor organization, association, political party, or any other person or committee, including any parent, subsidiary, branch, division, department, or local unit of the corporation, labor organization, association, political party, or any other person, or by any group [such] those persons shall be considered to be made by a single person.”

SECTION 2. Section 27C-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [The Hawaii Revised Statutes is amended to provide for the establishment of] There is established a centralized state information service in the office of the governor, consisting of a central office at the capital and satellite offices located in each county.”

SECTION 3. Section 46-15.5, Hawaii Revised Statutes, is amended to read as follows:

**["[§46-15.5]] Cooperation by state departments.** All state departments, including the departments of [social] human services [and housing] and health, shall cooperate with the counties with respect to administrative inspections conducted under section 46-15.4, by providing information:

- (1) Regarding probable violations of the conditions of a license under section 445-95;
- (2) Regarding the probable operation of a lodging or tenement house, group home, group residence, group living arrangement, hotel, boarding-house, or restaurant; or
- (3) That may be used to satisfy the probable cause requirement of section 46-15.4."

SECTION 4. Section 103-7, Hawaii Revised Statutes, is amended to read as follows:

**"§103-7 Capital improvements; authorizations for; emergency repairs or reconstruction, exception.** All capital improvement projects requiring the use of general funds, special funds, general obligation bonds, and revenue bonds of the State, except projects covered by chapter [41] 41D shall require authorization by the legislature and the governor."

SECTION 5. Section 103-22, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In all cases of expenditures of public money that is more than \$4,000 but less than \$8,000, a call for informal bids shall be published at least once in a newspaper of general circulation printed and published within the State; provided that:

- (1) In the case of public works or repairs and maintenance of buildings, roads, and other site improvements where the expenditure is more than \$4,000 but less than \$15,000, a call for informal bids shall be published at least once in a newspaper of general circulation printed and published within the State; and
- (2) In the case of the repair of publicly owned or leased heavy equipment, automotive equipment, and sewage treatment plants where the expenditure is more than \$4,000 but less than \$10,000, the expenditure may be made without public advertisement for sealed tenders or a call for [informal] bids."

SECTION 6. Section 134-8, Hawaii Revised Statutes, is amended to read as follows:

**"§134-8 Ownership, etc., of machine guns, automatic rifles, silencers, etc., prohibited; penalty.** (a) The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of any of the following is prohibited: machine guns; submachine guns; automatic rifles; rifles with barrel lengths less than sixteen inches; shotguns with barrel lengths less than eighteen inches; cannon; mufflers, silencers, or devices for deadening or muffling the sound of discharged firearms; hand grenades, dynamite, blasting caps, bombs, or bombshell, or other explosives; or any type of ammunition or any projectile component thereof coated with teflon or any other similar coating [or] designed primarily to enhance its capability to penetrate

## ACT 261

metal or pierce protective armor; and any type of ammunition or any projectile component thereof designed or intended to explode or segment upon impact with its target.

(b) Any person violating this section shall be guilty of a class C felony and shall be imprisoned for a term of five years without probation."

SECTION 7. Section 134-32, Hawaii Revised Statutes, is amended to read as follows:

**"§134-32 License to sell and manufacture firearms; conditions.** Every license issued pursuant to this part shall be issued and shall be regarded as having been accepted by the licensee subject to the following conditions:

- (1) That the licensee [shall] at all times shall comply with all provisions of law relative to the sale of firearms.
- (2) That the license [may] during any time of national emergency or crisis, as defined in section 134-34, may be canceled or suspended.
- (3) That all firearms in the possession and control of any licensee [may] at any time of national emergency or crisis, as defined in section 134-34, may be seized and held in possession or purchased by or on the order of the governor until such time as the national emergency or crisis has passed, or until such time as the licensee and the government of the United States or the government of the State may agree upon some other disposition of the same.
- (4) That all firearms in the possession and control of the licensee or registered pursuant to section [134-3(e)] 134-3(c) by the licensee shall be subject to physical inspection by the chief of police of each county during normal business hours at the licensee's place of business."

SECTION 8. Section 155-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Interest charged on the private lender's share of the loan shall not be more than the sum of two per cent above the lowest rate of interest charged by all banks, either commercial banks within the meaning of section [403-3,] 403-2, or national banks excepted under section 403-10, doing business in the State of Hawaii, on unsecured short term loans made to borrowers who have the highest credit rating with [such] those banks."

SECTION 9. Section 199-7, Hawaii Revised Statutes, is amended to read as follows:

**"§199-7 Seizure and forfeiture of certain property.** Any equipment, article, instrument, aircraft, vehicle, or vessel, used or possessed in violation of title 12 and rules adopted thereunder, is declared to be a public nuisance and subject to seizure by any enforcement officer of the department of land and natural resources or by any police officer; and upon conviction of the person having possession or control of [such] that equipment, article, instrument, aircraft, vehicle, or vessel, for a violation of any provision of the laws or rules, the equipment, article, instrument, aircraft, vehicle, or vessel, may be declared by the court to be forfeited to the State in accordance with the procedure set forth in [section 701-119.] chapter 712A. Any equipment, article, instrument, aircraft, vehicle, or vessel so forfeited shall be turned over to the department of land and natural resources and destroyed, if illegal, or may be kept and retained and utilized by the department of land and natural resources or any other state agency, or if not needed or required by the

department or other state agency, shall be sold at public auction in the judicial circuit in which it was seized, the auction to be held once annually at a place and time to be designated by the department and notice thereof to be published in a newspaper of general circulation within the judicial circuit at least once before the auction, the first publication to be not less than twenty days prior to the auction. The auction shall be conducted by a person other than an employee of the department but designated by the department.

The department of land and natural resources shall compile a list of all equipment, articles, instruments, aircraft, vehicles, or vessels forfeited as provided in this section and shall publish the list in its annual report."

SECTION 10. Section 205-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any department or agency of the State, any department or agency of the county in which the land is situated, or any person with a property interest in the land sought to be reclassified, may petition the land use commission for a change in the boundary of a district. This section [is applicable] applies to all petitions for changes in district boundaries of lands within conservation districts and all petitions for changes in district boundaries involving lands greater than fifteen acres in the agricultural, rural, and urban districts, except as provided in section [359G-4.1.] 201E-210. The land use commission shall adopt rules pursuant to chapter 91 to implement section [359G-4.1.] 201E-210."

SECTION 11. Section 219-8, Hawaii Revised Statutes, is amended to read as follows:

**"§219-8 Participation in loans by the department.**

- (1) The department of agriculture may provide funds for a share, not to exceed ninety per cent, of the principal amount of a loan made to a qualified aquaculturalist by a private lender who is unable otherwise to lend the applicant sufficient funds at reasonable rates where the qualified farmer is unable to obtain sufficient funds for the same purpose from the Farmers Home Administration.
- (2) Participation loans under this section shall be limited by the provisions of section 219-6 and the department of agriculture's share shall not exceed the maximum amounts specified therefor.
- (3) Interest charged on the private lender's share of the loan shall not be more than the sum of two per cent above the lowest rate of interest charged by all banks, either commercial banks within the meaning of section [403-3,] 403-2, or national banks excepted under section 403-10, doing business in the State, on secured short term loans made to borrowers who have the highest credit rating with [such] those banks.
- (4) The private lender's share of the loan may be insured by the department up to ninety per cent of the principal balance of the loan, under [the provisions of] section 219-7.
- (5) When a participation loan has been approved by the department, its share shall be paid to the participating private lender for disbursement to the borrower. The private lender shall collect all payments from the borrower and otherwise service the loan.
- (6) Out of interest collected, the private lender may be paid a service fee to be determined by the department which fee shall not exceed one per cent of the unpaid principal balance of the loan, provided that this fee shall not be added to any amount which the borrower is obligated to pay.

- (7) The participating private lender may take over a larger percentage or the full principal balance of the loan at any time that it has determined, to the satisfaction of the department, that the borrower is able to pay any increased interest charges resulting.
- (8) Security for participation loans shall be limited by [the provisions of] section 219-5(6). All collateral documents shall be held by the private lender. Division of interest in collateral received shall be in proportion to participation by the department and the private lender.”

SECTION 12. Section 222-2, Hawaii Revised Statutes, is amended to read as follows:

**“§222-2 Duties of the center.** The center shall:

- (1) Serve as a research arm of [the commission on the year 2000,] the advisory commission on employment and human resources, and such other public agencies as may properly require its services and assistance in locating research experts for particular studies and in working out the dimensions and contractual arrangements for such studies, the costs and final decisions of which shall be the responsibility of the requesting agencies[.];
- (2) Encourage and promote invention and experimentation in futures study, planning, and design[.];
- (3) Maintain an inventory of studies, research, and other information, including groups or persons concerned with futures study, planning, and design applicable to the State[.]; and
- (4) Engage in the development and acquisition of models, techniques, and other tools, and capability for the effective monitoring, measuring, and forecasting of crucial aspects of Hawaii's socio-economic environmental system over the immediate, intermediate, and long range future, including the design of systems to assist and stabilize the State's construction industry.”

SECTION 13. Section 329C-3, Hawaii Revised Statutes, is amended to read as follows:

**“[§329C-3] Forfeiture.** All imitation controlled substances are subject to forfeiture according to the procedures set forth in [section 701-119.] chapter 712A.”

SECTION 14. Section 359-141, Hawaii Revised Statutes, is amended to read as follows:

**“§359-141 State sales housing.** Notwithstanding sections 359-8, 359-9, 359-39, 359-66, or any other law to the contrary, but subject to any resolution of issuance under part IV [of this chapter], the authority may permit any member of a tenant family of a housing project administered under this chapter, or chapter 356, or any individual meeting the income standards under section 221(d)(3) of the National Housing Act to enter into a contract, including but not limited to contracts entered under and conforming to part V [of this chapter or under chapter 361, the community home mortgage program, (either individually or as a member of a group)], for the acquisition of a dwelling unit and lot or the acquisition of a dwelling unit and the lease of its lot, the lease to conform to chapter 171 with the exception that the lease shall not require bid, auction, or negotiation, in any project under chapters 356 and 359 which is suitable for sale and for occupancy by such purchaser or a member or members of the purchaser's family, upon the following terms:

- (1) The purchaser shall pay at least (A) a pro rata share cost of any services furnished the purchaser by the authority, including but not limited to, administration, maintenance, repairs, utilities, insurance, provision of reserves, and other expenses, (B) taxes on the purchaser's dwelling unit, and (C) monthly payments of interest and principal sufficient to amortize a sales price, equal to the greater of the unamortized debt or the appraised value (at the time such purchase contract is entered into) of the dwelling unit, in not more than forty years; provided that the authority [may], under terms and conditions to be prescribed by it, may permit a purchaser to apply toward the purchase price of [such] the unit amounts provided for under part V;
- (2) [Except in the case of financing under the community home mortgage program the] The interest rate shall be fixed at not less than the average interest cost of loans outstanding on the project, except that in the case of a project on which bonds are not outstanding the interest rate shall be fixed at not less than the going rate applicable to [such] that project;
- (3) The principal payments shall be not less than one-half of one per cent a year of the sales price during the first five years after purchase, one per cent a year during the next five years, one and one-half per cent a year during the third five years, and thereafter not less than the principal payments resulting from a level debt service of interest and principal over the balance of the payment period; and
- (4) If at any time (A) a purchaser fails to carry out the purchaser's contract with the authority and if no member of the purchaser's family who resides in the dwelling assumes such contract, or (B) the purchaser or a member of the purchaser's family who assumes the contract does not reside in the dwelling, the authority shall have an option to acquire the purchaser's interest under the contract upon payment to the purchaser or the purchaser's estate of an amount equal to the purchaser's aggregate principal payments plus the value to the authority of any improvements made by the purchaser, less an amount equal to two and one-half per cent of the sales price."

SECTION 15. Section 403-74, Hawaii Revised Statutes, is amended to read as follows:

**"§403-74 Deposit in approved bank of funds.** No bank mentioned or defined in [sections] section 403-2 [to 403-5] shall deposit any of its funds with another bank, except in a federal reserve bank, unless the other bank has been designated a depository for the bank's funds by a vote of a majority of the directors of the depositing bank, in which case the bank shall not deposit therewith funds in an amount in excess of twenty-five per cent of its paid-up and unimpaired capital and surplus or allocated aggregate paid-up capital and surplus; provided that if the receiving bank, so designated, has been approved by the commissioner as a reserve bank for the purpose of receiving the depositing bank's reserve funds the depositing bank may deposit with the receiving bank funds in an amount equal to but not to exceed three hundred per cent of its paid-up and unimpaired capital and surplus or allocated aggregate paid-up capital and surplus; provided further that the aggregate of all deposits in banks not chartered under the laws of the United States, or any state or territory in the United States, shall at no time exceed twenty-five per cent of the aggregate paid-up and unimpaired capital and surplus or allocated aggregate paid-up capital and surplus. The commissioner may waive the foregoing restrictions to such an extent as the commissioner may consider advisable upon an affirmative showing having been made to the commissioner that the interest of all concerned will be better served by the waiver."

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SECTION 16. Section 514A-70, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-70 Warranty against structural and appliance defects; notice of expiration required.** The developer of a [horizontal] condominium property regime subject to this chapter shall give notice by certified mail at the appropriate time to all members of the association of apartment owners and all members of the board of directors that the normal one-year warranty period will expire in ninety days. The notice shall set forth specific methods which apartment owners may pursue in seeking remedies for defects, if any, prior to expiration.”

SECTION 17. Section 514C-1, Hawaii Revised Statutes, is amended by amending the definition of “condominium project” to read as follows:

““Condominium project” means a real estate condominium project; a plan or project whereby a condominium of two or more units located within the [horizontal] condominium property regime have been sold or leased or are offered or proposed to be offered for sale or lease.”

SECTION 18. Section 571-51.5, Hawaii Revised Statutes, is amended to read as follows:

**“[§571-51.5] Modification of support and visitation decrees.** (a) The special court trustee may assist any parent, guardian, or custodian materially affected by a court order or decree with the modification of any provision of the order or decree pertaining to support payments or with the enforcement of visitation rights; provided the special court trustee may assist in modifying support payments only upon finding, after investigation, reasonable cause to believe that the relative financial condition between the obligor and the person who receives the child support payments has substantially changed. For purposes of this section, such a substantial change has occurred if:

- (1) The obligor has involuntarily suffered a material reduction in financial resources; or
- (2) The person who receives child support payments has enjoyed a material increase in financial resources.

(b) The special court trustee may conduct an investigation for the purposes of subsection (a) where a person notifies the special court trustee that the relative financial condition between the obligor and the person who receives the child support payments has substantially changed.

(c) The special court trustee may utilize the services of public or private social agencies in conducting investigations under this section and in making the written findings to the court. Such written findings shall be received in evidence under the same conditions as would those of the special court trustee.

(d) The special court trustee shall submit findings and recommendations pertaining to the modification of support payments or enforcement of visitation rights in writing to the court after investigation under subsection (b). The special court trustee shall provide copies of the findings and recommendations to all persons materially affected by the proposed modification or enforcement. Any person materially affected by the proposed modification or enforcement who opposes the findings and recommendations shall file a written objection with the court or the clerk of the court no later than fifteen days after receipt of the findings and recommendations.

(e) When warranted, the court shall hold a hearing on the recommendations of the special court trustee no later than thirty days after the expiration of the fifteen day period under subsection (d).

(f) Whenever the court, in accordance with this section, approves in full or in part the recommendations of the special court trustee, the court, within a period of not more than ten days after the hearing, shall modify the decree or order to reflect the approved recommendations.

(g) Court costs, service fees, and the expenses of any investigation conducted by the special court trustee, in the discretion of the court, may be assessed wholly or partially against any parent, guardian, or custodian.

[h] (h) For purposes of this section, support includes those amounts included as support under section 571-52.1.

[i] (h) Nothing in this section shall be construed to the effect that child support and visitation compliance be conditioned upon each other. Each shall be treated as an independent right of the child as well as of a parent."

SECTION 19. Section 708-8200, Hawaii Revised Statutes, is amended to read as follows:

**"§708-8200 Cable television service fraud in the first degree.** (1) A person commits cable television service fraud in the first degree if the person knowingly:

- (a) Distributes written instructions or plans to make or assemble a cable television service device and knows that the written plans or instructions are intended to be used to make or assemble a device to obtain cable television service without payment of applicable charges; or
- (b) Distributes a cable television service device and knows that the device is intended to be used to obtain cable television service without payment of applicable charges.

(2) Cable television service fraud in the first degree is a class C felony."

SECTION 20. Section 708-8204, Hawaii Revised Statutes, is amended to read as follows:

**"[§708-8204] Forfeiture of telecommunication service device and cable television service device.** Any telecommunication service device, cable television service device, or instructions or plans therefor, possessed or used in violation of [section] sections' 708-8200 to 708-8203 may be ordered forfeited to the State for destruction or other disposition, subject to the requirements of [section 701-119.] chapter 712A."

SECTION 21. Section 710-1001, Hawaii Revised Statutes, is amended to read as follows:

**"§710-1001 Forfeiture of property used as benefit or pecuniary benefit in the commission of an offense defined in this chapter.** Any property offered, conferred, agreed to be conferred, or accepted as a benefit, pecuniary benefit, or compensation in the commission of an offense defined in this chapter is forfeited, subject to the requirements of [section 701-119,] chapter 712A, to the State."

SECTION 22. Section 712-1230, Hawaii Revised Statutes, is amended to read as follows:

**"§712-1230 Forfeiture of property used in illegal gambling.** Any gambling device, paraphernalia used on fighting animals, or birds, implements, furniture, personal property, vehicles, vessels, aircraft, or gambling record possessed or used in violation of a section in this part, or any money or personal property used as a bet or stake in gambling activity in violation of a section in this part,

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may be ordered forfeited to the State, subject to the requirements of [section 701-119,] chapter 712A, where the evidence satisfies the court by its preponderance that the owner allowed the illegal use of [his] the owner's property."

SECTION 23. Section 804-4, Hawaii Revised Statutes, is amended to read as follows:

**“§804-4 When a matter of right.** If the charge is for an offense for which bail is allowable under section 804-3, the defendant may be admitted to bail before conviction as a matter of right. The right to bail shall continue after conviction of a misdemeanor<sup>1</sup> or violation, and release on bail may continue, in the discretion of the court after conviction of a felony until the final determination of any motion for a new trial, appeal, habeas corpus, or other proceedings which are made, taken, issued, or allowed for the purpose of securing a review of the rulings, verdict, judgment, sentence, or other proceedings of any court or jury in or by which the defendant has been arraigned, tried, convicted, or sentenced; except that no bail shall be allowed [after conviction and prior to sentencing in cases where bail was not available] after conviction and prior to sentencing in cases where bail was not available under section 804-3, or where bail was denied or revoked before conviction; and provided further that no bail shall be allowed pending appeal of a felony conviction where a sentence of imprisonment has been imposed. The court shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the court finds:

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

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

SECTION 24. Act 209, Session Laws of Hawaii 1987, is amended by amending Section 3 to read as follows:

“SECTION 3. This Act shall take effect upon its approval [and shall be repealed on December 31, 1989.]; provided that section 11-72 is reenacted in the form in which it read on June 11, 1987.”

SECTION 25. If any other Act enacted by the legislature during the Regular Session of 1989 amends Section 3 of Act 209, Session Laws of Hawaii 1987, that Act shall prevail over Section 24 of this Act.

SECTION 26. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 27. This Act shall take effect upon its approval.

(Approved June 8, 1989.)

**Note**

1. So in original.

**ACT 262**

H.B. NO. 557

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. Section 806-73, Hawaii Revised Statutes, is amended to read as follows:

**"§806-73 Duties and powers of probation officers; adult probation records.** A probation officer shall investigate any case referred to the probation officer for investigation by the court in which the probation officer is serving and report thereon to the court. The probation officer shall instruct each defendant placed on probation under the probation officer's supervision regarding the terms and conditions of the defendant's probation. The probation officer shall keep informed concerning the conduct and condition of the defendant and shall report thereon to the court and shall use all suitable methods to aid the defendant and to bring about improvement in the defendant's conduct and condition. The probation officer shall keep such records and perform such other duties as the court may direct.

All records of the [State of Hawaii] Hawaii state adult probation divisions are confidential and are not public records, including but not limited to, all records made by any adult probation officer in the course of performing official duties; provided that such records, or the content of such records, shall be divulged only as follows:

- (1) A copy of any adult probation division case record or of a portion of it, or the case record itself, [shall] may upon request be provided only to an adult probation officer of [the] a [State of Hawaii] Hawaii state adult probation division [which originated the record]; provided that a written summary of the record may be provided upon request [to an adult probation officer of another State of Hawaii adult probation division or to an adult probation officer of a probation department of another state which is providing supervision of a probationer convicted and sentenced by the courts of Hawaii.] to any state or federal criminal justice agency which is providing supervision of a defendant or offender convicted and sentenced by the courts of Hawaii, or which is responsible for the preparation of a report for a court.
- (2) The contents of any adult probation division case record relevant for the purpose of serving a summons or bench warrant in a civil or criminal proceeding or in a deportation proceeding, including, but not limited to, contents indicating the whereabouts or residence of a defendant or offender, may be released only to a state or federal law enforcement agency.
- [2] (3) A copy of a presentence report or investigative report shall be provided only to the persons or entities named in section 706-604; to the Hawaii paroling authority; to any psychiatrist, psychologist, or other mental health practitioner who is treating the defendant pursuant to a court order for mental health care; to the intake service centers; in accordance with applicable law[,] to persons or entities doing research; to any Hawaii state adult probation officer or to an adult probation officer of another state [providing supervision of an offender in

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Hawaii; or to any adult probation officer providing supervision of an offender in another state if the offender was convicted and sentenced in the courts of Hawaii.] who is engaged in the supervision of a defendant or offender convicted and sentenced in the courts of Hawaii, or which is engaged in the preparation of a report for a court regarding a defendant or offender convicted and sentenced in the courts of Hawaii. [Any persons or entities not entitled pursuant to this section or pursuant to section 706-604 to receive a copy of a presentence report are not entitled to receive a summary of a report and are not entitled to view a report.]

Every probation officer shall, within the scope of the probation officer's duties, have the powers of a police officer."

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

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

(Approved June 8, 1989.)

## ACT 263

H.B. NO. 658

A Bill for an Act Relating to Weapons.

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

SECTION 1. The purpose of this Act is to define "automatic firearm" and to prohibit the manufacture thereof by means of converting any other firearm.

SECTION 2. Section 134-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Automatic firearm" means any firearm that shoots, is designed to shoot, or can be readily restored to shoot automatically more than one shot, without manual reloading, by a single function of the trigger."

SECTION 3. Section 134-1, Hawaii Revised Statutes, is amended by amending the definition of "firearm" to read as follows:

"Firearm" means any weapon, for which the operating force is an explosive, including[,] but not limited to[,] pistols, revolvers, rifles, shotguns, [machine guns,] automatic [rifles,] firearms, noxious gas projectors, mortars, bombs, and cannon[, and submachine guns]."

SECTION 4. Section 134-8, Hawaii Revised Statutes, is amended to read as follows:

"§134-8 Ownership, etc., of [machine guns,] automatic [rifles,] firearms, silencers, etc., prohibited; penalty. (a) The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of any of the following is prohibited: [machine guns; submachine guns,] automatic [rifles,] firearms; rifles with barrel lengths less than sixteen inches; shotguns with barrel lengths less than eighteen inches; cannon; mufflers, silencers, or devices for deadening or muffling the sound of discharged firearms; hand grenades, dynamite, blasting caps, bombs, or bombshells, or other explosives; or any type of ammunition or any projectile component

thereof coated with teflon or any other similar coating or designed primarily to enhance its capability to penetrate metal or pierce protective armor; and any type of ammunition or any projectile component thereof designed or intended to explode or segment upon impact with its target.

(b) Any person who installs, removes, or alters a firearm part with the intent to convert the firearm to an automatic firearm shall be deemed to have manufactured an automatic firearm in violation of this section.

[(b)] (c) Any person violating this section shall be guilty of a class C felony and shall be imprisoned for a term of five years without probation."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 8, 1989.)

**ACT 264**

H.B. NO. 741

A Bill for an Act Relating to the Determination of Residency for Tuition Purposes.

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

SECTION 1. Section 304-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The board shall adopt the necessary rules defining residence for tuition purposes herein; provided that the basic rule shall be that a student shall qualify for the resident tuition fee only if the following criteria are met:

- (1) The adult student, or in the case of a minor student, the student's parents or guardians, has been a bona fide resident of this State for at least twelve consecutive months next preceding the student's first day of officially scheduled instruction for any semester or term in which the student is enrolling at the particular college or campus; and
- (2) The adult or minor student has not been claimed as a dependent for tax purposes for at least twelve months next preceding the student's first day of officially scheduled instruction for any semester or term in which the student is enrolling at the particular college or campus by the student's parents or guardians who are nonresidents of the State[.]; provided that this provision shall not apply in cases where the parent claiming the student as a dependent is entitled to do so under a child support order or agreement issued or entered into in conjunction with a divorce proceeding or legal separation agreement, and the other parent and the student meet the criteria set forth in paragraph (1)."

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

SECTION 3. This Act shall take effect upon its approval; provided that if approved after May 22, 1989 this Act shall apply retroactively to May 22, 1989.

(Approved June 8, 1989.)

**ACT 265**

H.B. NO. 886

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

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

**SECTION 1.** The purpose of this Act is to mandate the appointment of an additional member of the Hawaiian homes commission from the county of Hawaii. More than one-third of Hawaiian home lands is situated on the county of Hawaii. Since there is significantly more Hawaiian home lands on the county of Hawaii than on any other county, the legislature finds it would be more equitable and in the public interest to have at least two members who are residents of the county of Hawaii on the commission, of which one member shall be a resident of east Hawaii and the other member shall be a resident of west Hawaii.

**SECTION 2.** Section 202, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (a) to read as follows:

“(a) There shall be a department of Hawaiian home lands which shall be headed by an executive board to be known as the Hawaiian homes commission. The members of the commission shall be nominated and appointed in accordance with section 26-34, Hawaii Revised Statutes. The commission shall be composed of [eight] nine members, as follows: three shall be residents of the city and county of Honolulu; [one] two shall be [a resident] residents of the county of Hawaii[;]  
one of whom shall be a resident of east Hawaii and the other a resident of west Hawaii; two shall be residents of the county of Maui one of whom shall be a resident from the island of Molokai; one shall be a resident of the county of Kauai; and the [eighth] ninth member shall be the chairman of the Hawaiian Homes Commission. All members shall have been residents of the State at least three years prior to their appointment and at least four of the members shall be descendants of not less than one-fourth part of the blood of the races inhabiting the Hawaiian islands previous to 1778. The members of the commission shall serve without pay, but shall receive actual expenses incurred by them in the discharge of their duties as such members. The governor shall appoint the chairman of the commission from among the members thereof.

The commission may delegate to the chairman such duties, powers, and authority or so much thereof, as may be lawful or proper for the performance of the functions vested in the commission. The chairman of the commission shall serve in a full-time capacity. He shall, in such capacity, perform such duties, and exercise such powers and authority, or so much thereof, as may be delegated to him by the commission as herein provided above.”

**SECTION 3.** Section 26-17, Hawaii Revised Statutes, is amended to read as follows:

“The<sup>1</sup> department of Hawaiian home lands shall be headed by an executive board to be known as the Hawaiian homes commission.

The commission shall be composed of [eight] nine members. The appointment, tenure, and removal of the members and the filling of vacancies on the commission shall be in accordance with section 26-34 and section 202(a) of the Hawaiian Homes Commission Act of 1920, as amended. The governor shall appoint the chairman of the commission from among the members thereof.

The commission may delegate to the chairman such duties, powers, and authority, or so much thereof as may be lawful or proper, for the performance of the functions vested in the commission.

The chairman of the board shall serve in a full time capacity and shall perform such duties, and exercise such powers and authority, or so much thereof as may be delegated to the chairman by the board.

The department shall administer the Hawaiian Homes Commission Act of 1920 as set forth in the Constitution of the State and by law.

The functions and authority heretofore exercised by the Hawaiian homes commission as heretofore constituted are transferred to the department of Hawaiian home lands established by this chapter."

**SECTION 4.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 5.** The provisions of the amendments made by this Act to the Hawaiian Homes Commission Act, 1920, as amended, are declared to be severable, and if any section, sentence, clause, or phrase, or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect, then that portion only shall take effect upon the granting of consent by the United States and effectiveness of the remainder of these amendments or the application thereof shall not be affected.

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

(Approved June 8, 1989.)

**Note**

1. So in original.

**ACT 266**

H.B. NO. 941

A Bill for an Act Relating to Industrial Loan Companies.

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

**SECTION 1.** The purpose of this Act is to allow industrial loan companies to utilize and reserve the name "financial services loan companies". This change in designation is not intended to change the identity nor the rights, powers, and duties this industry may presently have, hold, or enjoy in any manner, but instead is submitted to accommodate the industry's changing nomenclature and delete the use of an outdated term. For all intent and purposes, financial services loan companies are industrial loan companies.

**SECTION 2.** Chapter 408, Hawaii Revised Statutes, is amended to read as follows:

**"[INDUSTRIAL] FINANCIAL SERVICES LOAN COMPANIES**

**§408-1 Application of chapter.** This chapter may be cited as the [Industrial] Financial Services Loan Companies Act and shall be applicable to every person who engages in or attempts to engage in the business of an industrial loan company[.] or financial services loan company.

**§408-2 Definitions.** As used in this chapter and unless<sup>1</sup> different meaning appears from the context:

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“Affiliate” means any corporation, partnership, venture, business trust, association, or any other similar organization:

- (1) Of which the industrial loan company<sup>1</sup> or the financial services loan company, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty per cent of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions; or
- (2) Of which control is held, directly or indirectly, through stock ownership or in any other manner, by shareholders of the industrial loan company or the financial services loan company who own or control either a majority of the shares of such company or more than fifty per cent of the number of shares voted for the election of directors of such company at the preceding election, or by the trustees for the benefit of the shareholders of any such company; or
- (3) Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of the industrial loan company[.] or the financial services loan company; or
- (4) Which owns or controls, directly or indirectly, either a majority of the shares of capital stock of the industrial loan company or the financial services loan company or more than fifty per cent of the number of shares voted for the election of directors of such company at the preceding election, or controls in any manner the election of a majority of the directors of such company, or for the benefit of whose shareholders all or substantially all the capital stock of such company is held by trustees.

“Billing cycle” means the time interval between periodic billing dates.

“Commissioner” means the commissioner of financial institutions of the State.

“Company” means any person to which this chapter or any portion of this chapter is applicable. The term “company” includes any foreign corporation doing business in the State.

“Consumer loan” means a loan made to a natural person primarily for a personal, family, or household purpose:

- (1) In which the principal amount does not exceed \$25,000 or in which there is an express written commitment to extend credit in a principal amount not exceeding \$25,000; or
- (2) Such loan is secured by real property, or by personal property used or expected to be used as the borrower’s principal dwelling.

“Contract” means credit agreements, loan agreements, promissory notes, and other documents constituting the contract for credit.

“Engage in the business of an industrial loan company” or “engage in the business of a financial services loan company”, or “carry on the business of an industrial loan company” or “carry on the business of a financial services loan company”, or “the industrial loan business” or “the financial services loan business”, or any other term of similar import, means the loaning of money and charging, contracting for, or receiving interest, fees, compensation, or charges of whatever nature or kind for the use of money where the interest charged, contracted for, or received is in excess of the interest permitted by law other than this chapter; provided that direct financing to customers by mercantile firms or by persons engaged in the mercantile business shall not be deemed engaging in business as an industrial loan company[.] or a financial services loan company.

**"Industrial loan company"** or **"financial services loan company"** means any person who engages in the industrial loan business or the financial services loan business as defined in this chapter; provided that this definition shall not be construed to include banks, trust companies, savings and loan associations, credit unions, mortgage companies, pawnbrokers, or licensees under chapter 409. As used in this chapter the term "savings and loan association" includes "building and loan association". A financial services loan company is an industrial loan company as the term was used in this chapter before the effective date of this Act.

"Interest" includes interest, discount, points, loan fees, and loan origination charges, if charged, contracted for, or received for the use of money, but excludes other charges, including the charges permitted by section 408-15(e) and (j).

"Licensee" means any company holding a license issued pursuant to this chapter.

"Open-end loan" means a loan made by a licensee under this chapter pursuant to an agreement between the licensee and the borrower whereby:

- (1) The licensee may permit the borrower to obtain advances of money from the licensee from time to time or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;
- (2) The amount of each advance and allowable interest and other charges are debited to the borrower's open-end loan account and payments and other credits are credited to the same account;
- (3) Interest and other charges are computed on the unpaid principal balance or balances of the open-end loan account from time to time; and
- (4) The amount of credit extended to the borrower (up to any limit set by the licensee) is generally made available to the extent any outstanding balance is repaid.

"Person" means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or governmental unit.

"Primary obligor" means a person legally bound to comply with a demand for the satisfaction of any security. This definition includes the maker or endorser of a note, the corporate issuer of stock, and issuer of any security or of any other evidence of indebtedness.

"Principal" or "principal amount" means the face loan amount of the note or other form of contract.

"Section 408-3 loan" means a loan for which the interest is computed in a manner permitted by section 408-3.

"Truth in Lending Act" means the federal Truth in Lending Act (15 U.S.C. 1601, et seq.), Regulation Z, of the Board of Governors of the Federal Reserve System, and the Official Staff Commentary to Regulation Z prepared by the staff of the Federal Reserve Board, and amendments of the Act, Regulation Z, and such Commentary.

**§408-2.1 Exclusiveness of name.** (a) No person, firm, company, association, fiduciary, partnership, or corporation, either domestic or foreign, unless lawfully licensed and authorized to do business in this State under this chapter and actually engaged in carrying on an industrial loan business or a financial services loan company business shall transact any business under any name or title which contains the words "industrial loan" or words of similar import,<sup>1</sup> or "financial services loan"; or use any name or sign or circulate or use any letterhead, billhead, circular, or paper whatever, or advertise or represent in any manner which indicates or reasonably implies that the business is the character or kind of business carried on or transacted by an industrial loan company or financial services loan company under this chapter. The commissioner may examine the accounts, books, and records

of any person, company, association, fiduciary, partnership, or corporation to ascertain whether this section has been or is being violated.

(b) Any person violating this section shall forfeit to the State \$100 a day for every day or part thereof during which the violation continues. Upon action brought by the commissioner or any industrial loan company[,] or any financial services loan company, the court may issue an injunction restraining any person, firm, company, association, fiduciary, partnership, or corporation or agent from further violating this section or from further acting in any way or manner as to imply or lead the public to believe that its business is of an industrial loan or financial services loan character.

(c) This section shall not apply to any person, firm, company, association, fiduciary, partnership, or corporation registered to do business in the State under the name, or title, or descriptive term which contains the words "industrial loan" on or before June 12, 1982[.], or "financial services loan" on or before the effective date of this Act. Any form or type of advertisement used by such person, firm, company, association, fiduciary, partnership, or corporation shall contain a statement in the same size print as its name, or title, or descriptive term that the company is not an industrial loan company or a financial services loan company under this chapter.

(d) This section shall not apply to the use of an academic degree or a professional designation given by an accredited institution of higher education to an individual upon completion of the requirements for such degree or designation."

SECTION 3. Sections 11-199, 38-1, 207-11, 235-9, 237-23, 241-1, 241-1.5, 241-3, 328K-2, 407-92.5, 408-4, 408-5, 408-6, 408-7, 408-8, 408-10, 408-11, 408-12, 408-13, 408-14, 408-14.1, 408-14.5, 408-14.6, 408-14.7, 408-16, 408-21, 408-21.5, 408-22, 408-25, 408-26, 408-28, 408-30, 408-31, 408-32, 410-12, 411-2, 411-7, 443B-1, 446-4, 454-2, 454D-2, 476-9, 476-28, 477E-2, 478-5, 485-4, and 568:6-101,<sup>1</sup> Hawaii Revised Statutes, are amended by substituting the word "financial services loan", "Financial Services Loan", or "a financial services loan", for "industrial loan", "Industrial Loan", and "an industrial loan" wherever those terms appear, as the context requires.

SECTION 4. Sections 401-3, 401-5, 401-6, 401-7, 401-11, 401-14, 402-1, and 409-2, Hawaii Revised Statutes, are amended by substituting the words "financial services loan company" or "financial services loan companies", for "industrial loan and investment company" and "industrial loan and investment companies" wherever those terms appear, as the context requires.

SECTION 5. Section 490:9-203, Hawaii Revised Statutes, is amended by amending subsection (4) as follows:

"(4) A transaction, although subject to this article, is also subject to chapter 408 ([industrial] financial services loan companies act), chapter 409 (small loan act), and chapter 476 (credit sales act), and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein."

SECTION 6. This Act is intended for the purpose of changing nomenclature only and does not affect any use or meaning of the words "industrial loan company" or words of similar import in any law, rule, or document prior to the effective date of this Act. Furthermore, this Act does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 1989.

(Approved June 8, 1989.)

**Note**

1. So in original.

**ACT 267**

H.B. NO. 1198

A Bill for an Act Relating to Control or Eradication Programs.

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

SECTION 1. Chapter 141, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§141- Control or eradication programs.** (a) The department of agriculture shall develop and implement a detailed control or eradication program for any pest designated in section 141-3, using the best available technology in a manner consistent with state and federal law.

(b) For any pest designated by emergency rule as provided in section 141-3, the department shall implement an emergency program using the best available technology in a manner consistent with state and federal law.

**§141- Entry of private property to control or eradicate any pests.** (a) The department of agriculture shall give at least five days notice to the landowner and the occupier of any private property of its intention to enter the property for the control or eradication of a pest. Written notice sent to the landowner's last known address by registered mail, postage prepaid, return receipt requested, shall be deemed sufficient notice. The notice shall set forth all pertinent information on the pest control program and the procedures and methods to be used for control or eradication.

(b) After notice as required by subsection (a), any member of the department or any agent authorized by the department may enter at reasonable times any private property other than dwelling places to maintain a pest control or eradication program, being liable only for acts beyond the scope of their authority or acts due to negligence. If the entry is refused, the department may bring an action in the appropriate district court to enjoin the landowner from refusing entry and to enforce compliance with this chapter. Upon proper showing, the court shall grant a restraining order or other appropriate relief.”

SECTION 2. Section 141-3, Hawaii Revised Statutes, is amended to read as follows:

**“§141-3 [Eradicate pests, etc.] Designation of pests; control or eradication of pests; emergency power.** (a) The department of agriculture shall establish by rule, the criteria and procedures for the designation of pests for control or eradication.

(b) The department of agriculture shall, so far as reasonably practicable, assist, free of cost to individuals, in the control or eradication of insects, [blights, scales, and] mites, diseases, noxious weeds, or other pests injurious to vegetation

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of value; and in the investigation, suppression, and eradication of contagious, infectious, and communicable diseases among domestic animals; and shall in like manner distribute to points where needed, beneficial insects, [growths,] or pathogens and other antidotes for the [eradication] control of insects, [blights, scales,] mites and diseases or other pests injurious to vegetation of value, and for the control or eradication of vegetation of a noxious character.

(c) Notwithstanding subsection (a), if the department finds the incipient infestation of a pest which is injurious or deleterious or which is likely to become injurious or deleterious to the agricultural, horticultural, aquacultural, or livestock industries of the State without immediate action, it may proceed without prior notice or upon a minimum of forty-eight hours notice and hearing to adopt an emergency rule for the eradication of the pest to be effective for a period of not longer than one hundred eighty days without renewal."

SECTION 3. Section 152-7, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

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

(Approved June 8, 1989.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 268

H.B. NO. 1534

A Bill for an Act Relating to Contractors License Board.

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

SECTION 1. Section 444-4, Hawaii Revised Statutes, is amended to read as follows:

**"§444-4 Powers and duties of board.** In addition to any other duties and powers granted by this chapter the contractors license board shall:

- (1) Grant licenses, including conditional licenses, to contractors pursuant to this chapter[;] and rules;
- (2) Make, amend, or repeal such rules as it may deem proper fully to effectuate this chapter and carry out the purpose thereof which purpose is the protection of the general public. All such rules shall be approved by the governor and the director of commerce and consumer affairs, and when adopted pursuant to chapter 91, shall have the force and effect of law. The rules may forbid acts or practices deemed by the board to be detrimental to the accomplishment of the purpose of this chapter. The rules may require contractors to make reports to the board containing such items of information as will better enable the board to enforce this chapter and rules, or as will better enable the board from time to time to amend the rules more fully to effectuate the purposes of this chapter. The rules may require contractors to furnish reports to owners containing such matters of information as the board deems necessary to promote the purpose of this chapter. The enumeration of specific matters which may properly be made the subject of

- rules shall not be construed to limit the board's general power to make all rules necessary fully to effectuate the purpose of this chapter;
- (3) Enforce this chapter and rules adopted pursuant thereto;
  - (4) Suspend or revoke any license for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant any license for any cause which would be ground for revocation or suspension of a license;
  - (5) Publish and distribute pamphlets and circulars containing such information as it deems proper to further the accomplishment of the purpose of this chapter; and
  - (6) Contract for professional testing services to prepare, administer, and grade such examinations and tests for applicants as may be required for the purposes of this chapter. The board shall determine the scope and length of such examinations and tests, whether they shall be oral, written, or both, and the score that shall be deemed a passing score."

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

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

(Approved June 8, 1989.)

**ACT 269**

H.B. NO. 1637

A Bill for an Act Relating to Interest and Usury.

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

SECTION 1. Section 478-1, Hawaii Revised Statutes, is amended by amending the definitions of "consumer credit" and "home business loan" to read:

" "Consumer credit" means credit extended to a natural person primarily for a personal, family, or household purpose:

- (1) In which the principal amount does not exceed [\$100,000] \$250,000 or in which there is an express written commitment to extend credit in a principal amount not exceeding [\$100,000;] \$250,000; or
- (2) Such credit is secured by real property or by personal property used or expected to be used as the borrower's principal dwelling.

"Home business loan" means a credit transaction [(a)] (1) in which the principal amount does not exceed [\$100,000] \$250,000 or in which there is an express written commitment to extend credit in a principal amount not exceeding [\$100,000,] \$250,000; [(b)] (2) which is not a consumer credit transaction[,]; and [(c)] (3) which is secured by a mortgage of the principal dwelling of any natural person who is a mortgagor named in the mortgage given as security in connection with the credit transaction."

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

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

(Approved June 8, 1989.)

ACT 270

H.B. NO. 1680

A Bill for an Act Relating to Uniform Durable Power of Attorney Act.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER  
UNIFORM DURABLE POWER OF ATTORNEY ACT**

**§ -1 Definition.** A durable power of attorney is a power of attorney by which a principal designates another as the principal's attorney in fact in writing and the writing contains the words "This power of attorney shall not be affected by the disability of the principal," "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity.

**§ -2 Durable power of attorney not affected by disability.** All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were competent and not disabled.

**§ -3 Relation of attorney-in-fact to court-appointed[A fiduciary].<sup>1</sup>** (a) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a guardian of the property, or other fiduciary charged with the management of all of the principal's property or all of the principal's property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the power to revoke or amend the power of attorney that the principal would have had if the principal were not disabled or incapacitated.

(b) A principal may nominate, by a durable power of attorney, the guardian of the principal's property, or guardian of the principal's person for consideration by the court if protective proceedings for the principal's person or property are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

**§ -4 Power of attorney not revoked until notice.** (a) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

(b) The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

**§- 5 Proof of continuance of durable and other powers.** As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in

fact under a power of attorney, durable or otherwise, stating that the attorney in fact did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

**§ -6 Uniformity of application and construction.** This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

**§ -7 Short title.** This Act may be cited as the Uniform Durable Power of Attorney Act."

SECTION 2. Sections 560:5-501 and 560:5-502, Hawaii Revised Statutes, are repealed.

SECTION 3. If any provision of this Act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. Statutory material to be repealed is bracketed.<sup>2</sup>

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

(Approved June 8, 1989.)

#### Notes

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

## ACT 271

H.B. NO. 1717

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. Chapter 608, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§608- Judiciary salary commission.** There shall be a judicial salary commission to review and recommend salaries of justices and judges of all state courts and appointed judiciary administrative officers. The commission shall be composed of five members, two to be appointed by the governor, one by the president of the senate, one by the speaker of the house, and one by the chief justice. Members shall be appointed for terms of four years each. Members shall not receive compensation for their services, but shall be reimbursed for traveling and other expenses incidental to the performance of commission duties. For administrative purposes only, the commission shall be attached to the judicial council.

By October 15 of each year preceding a fiscal biennium, the commission shall submit its recommendations in a report to the legislature, with copies to be

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submitted to the governor and chief justice. At the next regular legislative session, the amounts recommended by the commission shall be submitted by the chief justice as part of the judiciary's proposed budget pursuant to the budgetary procedures specified in chapter 37 and section 601-2(c). Salary amounts in the budget as enacted shall take precedence over any inconsistent statutes."

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

SECTION 3. This act shall take effect upon approval. The initial members of the commission shall be appointed no later than July 1, 1990.

(Approved June 8, 1989.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 272

H.B. NO. 1747

A Bill for an Act Relating to Risk Retention Groups.

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

SECTION 1. Chapter 431K, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§431K- Financial responsibility.** Whenever pursuant to the laws of this State or any county of this State a demonstration of financial responsibility is required as a condition for obtaining a license or permit to undertake specified activities, if any such requirement may not be satisfied by obtaining insurance from an insurance company not authorized in this State, then such requirement may not be satisfied by purchasing insurance from a risk retention group not chartered in this State."

SECTION 2. Section 431K-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

**"Financially impaired"** means that a risk retention group:

- (1) Has admitted assets that are less than the sum of its aggregate liabilities and the amount of surplus to policyholders required to be maintained by a risk retention group chartered in this State and authorized to do the same kind or kinds of insurance; or
- (2) Has admitted assets that are less than the sum of its aggregate liabilities and outstanding capital stock; or
- (3) Is insolvent.

**"Insolvent"** means that a risk retention group has admitted assets that are less than the aggregate amount of its liabilities."

SECTION 3. Section 431K-1, Hawaii Revised Statutes, is amended by amending the definition of "plan of operation" or "feasibility study" to read:

**"Plan of operation"** or **"feasibility study"** means an analysis which presents the expected activities and results of a risk retention group including, not less than the following:

- (1) The coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;
- (2) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;
- (3) Pro forma financial statements and projections;
- (4) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premiums or participation levels required to commence operations and to prevent a hazardous financial condition;
- (5) Identification of management, underwriting procedures, managerial oversight methods, investment policies; [and]
- (6)<sup>1</sup> Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each state; and
- [6] (7) Other matters as may be prescribed by the commissioner for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered."

SECTION 4. Section 431K-3, Hawaii Revised Statutes, is amended to read as follows:

**"[§431K-3] Risk retention groups not chartered in this State.** Risk retention groups chartered in states other than this State and seeking to do business as a risk retention group in this State shall observe and abide by the laws of this State as follows:

- (1) Before offering insurance in this State, a risk retention group shall submit to the commissioner:
  - (A) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering, its principal place of business, and such other information, including information on its membership, as the commissioner of this State may require to verify that the risk retention group is qualified as a risk retention group;
  - (B) A copy of its plan of operations or a feasibility study and revisions of this plan or study submitted to its state of domicile; provided that the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance which was:
    - (i) Defined in the Product Liability Risk Retention Act of 1981, 15 United States Code 3901 et seq., before October 27, 1986; and
    - (ii) Offered before that date by any risk retention group which had been chartered and operating for not less than three years before that date; and
  - (C) A statement of registration which designates the commissioner as its agent for the purpose of receiving service of legal documents or process[.];
- (2) Any risk retention group doing business in this State shall submit to the commissioner:
  - (A) A copy of the group's financial statement submitted to the insurance commissioner of its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves

- made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners;
- (B) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination in its state of domicile;
  - (C) Upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and
  - (D) Information as may be required to verify its continuing qualification as a risk retention group;
- (3) Taxation of risk retention groups shall be as follows:
    - (A) All premiums paid for coverages within this State to risk retention groups shall be subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment as that applicable to foreign admitted insurers;
    - (B) To the extent agents or brokers are utilized, the agents or brokers shall report and pay the taxes for the premiums for risks which the agents or brokers have placed with or on behalf of a risk retention group not chartered in this State; or
    - (C) To the extent agents or brokers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the State; provided that each risk retention group shall report all premiums paid to it for risks insured within the State;
  - (4) Any risk retention group shall comply with [section 431-641 to 431-648] chapter 431, article 13 regarding deceptive, false, or fraudulent acts or practices, and unfair claims settlement practices; provided that if the commissioner seeks an injunction regarding such conduct, the injunction shall be obtained from a court of competent jurisdiction;
  - (5) Any risk retention group shall submit to an examination by the commissioner to determine its financial condition if the commissioner of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within sixty days after a request by the commissioner of this State. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioner's Examiner Handbook[.];
  - (6) [Any policy issued by a risk retention group shall contain in ten point type on the front page and the declaration page, the following notice:] The following notice shall be printed in ten point type on the front page of every application for insurance from a risk retention group, and on the front page and the declaration page of every policy issued by a risk retention group:

### **NOTICE**

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and rules of your state. State insurance insolvency guaranty funds are not available for your risk retention group;

- (7) The following acts by a risk retention group are prohibited:
  - (A) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; and

- (B) The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired;
- (8) No risk retention group shall be allowed to do business in this State if an insurance company is directly or indirectly a member or owner of [this] the risk retention group, other than in the case of a risk retention group all of whose members are insurance companies;
- (9) No risk retention group may offer insurance policy coverage prohibited by chapter 431 or declared unlawful by the highest court of this State; and
- (10) A risk retention group not chartered in this State and doing business in this State shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by any state insurance commissioner if there has been a finding of financial impairment after an examination under paragraph (5)."

SECTION 5. Section 431K-4, Hawaii Revised Statutes, is amended to read as follows:

**"[[]\$431K-4[]] Compulsory associations.** (a) No risk retention group shall be permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this State, nor shall any risk retention group or its insureds receive any benefit from any such fund for claims arising out of the operations of such risk retention group.

(b) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this State or a risk retention group, no such risks wherever resident or located shall be covered by any insurance insolvency guaranty fund or similar mechanism in this State.

(c) When a purchasing group obtains insurance covering its members' risks from an insurer authorized in Hawaii, claims shall be covered by the property and liability insurance guaranty association, subject to the provisions of chapter 431, article 16.

[(b)] (d) A risk retention group shall participate in this State's joint underwriting associations and mandatory liability pools as provided by any law of this State."

SECTION 6. Section 431K-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A purchasing group which intends to do business in this State shall furnish notice to the commissioner which shall include the following:

- (1) Identification of the state in which the group is domiciled;
- (2) Specification of the lines and classifications of liability insurance which the purchasing group intends to purchase;
- (3) Identification of the insurance company or risk retention group from which the group intends to purchase its insurance and the domicile of such company[;] or risk retention group;
- (4) Identification of the principal place of business of the group; [and]
- (5) Provision of other information as may be required by the commissioner to verify that the purchasing group qualifies as such under section 431K-1[.]; and
- (6) The method by which, and the person or persons through whom, insurance will be offered to its members whose risks are resident or located in this State."

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SECTION 7. Section 431K-8, Hawaii Revised Statutes, is amended to read as follows:

**"[§431K-8] Restrictions on insurance purchased by purchasing groups.**

(a) A purchasing group located in this State may not purchase insurance from a risk retention group that is not chartered in [a state] this State or from an insurer not [admitted in the state in which the purchasing group is located,] authorized in this State, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws [and regulations of that state.] set forth in chapter 431, article 8.

(b) The terms of any liability insurance policy obtained by a purchasing group shall not provide nor be construed to provide insurance coverage prohibited by chapter 431 or declared unlawful by the highest court of this State.

(c) A purchasing group which obtains liability insurance from an insurer not authorized in this State or a risk retention group shall inform each of the members of the group which have a risk resident or located in this State that the risk retention group or insurer may not be subject to any insurance laws of this State.

(d) No purchasing group may purchase insurance providing for a deductible or self-insured retention unless the deductible or self-insured retention shall be the sole responsibility of each individual member of the purchasing group."

SECTION 8. Section 431K-11, Hawaii Revised Statutes, is amended to read as follows:

**"[§431K-11] Duty of agents or brokers to obtain license[,] and to keep records.** (a) Any person acting[,] or offering to act[,] as an agent or broker for a risk retention group or purchasing group[,] which solicits members, sells insurance coverage, purchases coverage for its members located within the State, or otherwise does business in this State, before commencing any such activity[,] shall obtain a license from the commissioner.

(b) Whenever a licensed insurance agent or surplus lines broker places business pursuant to subsection (a), the agent or broker shall keep a complete and separate record of each policy procured from a risk retention group and for a purchasing group. The record shall be open to examination by the commissioner. For each policy and each kind of insurance provided in the policy, the record shall include the following:

- (1) The limit of liability and peril insured;
- (2) A brief description of the property insured and its location;
- (3) The effective date of the contract and its terms;
- (4) The time period covered by the contract;
- (5) The gross premium charged;
- (6) Any return premiums paid;
- (7) The name and address of the risk retention group which issued the policy;
- (8) The name and address of the insured; and
- (9) Any additional information required by the commissioner."

SECTION 9. Section 431K-5, Hawaii Revised Statutes, is repealed.

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

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

(Approved June 8, 1989.)

**Notes**

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

**ACT 273**

H.B. NO. 1824

A Bill for an Act Relating to Compensation for Criminal Injuries.

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

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$504,686.68, or so much thereof as may be necessary for fiscal year 1989-1990, for the purpose of compensating certain persons or their providers of services, pursuant to chapter 351, Hawaii Revised Statutes.

SECTION 2. The sum appropriated in section 1 of this Act shall be deposited in the criminal injuries compensation fund to be used for payments as authorized by the criminal injuries compensation commission.

SECTION 3. In accordance with Section 9 Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$504,686.68 or 0.022 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by the Act.

SECTION 4. This Act shall take effect on July 1, 1989.

(Approved June 8, 1989.)

**ACT 274**

H.B. NO. 1860

A Bill for an Act Relating to the High Technology Development Corporation.

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

SECTION 1. Chapter 206M, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§206M- High technology special fund.** There is established in the state treasury a fund to be known as the high technology special fund, into which shall be deposited all moneys and fees from tenants or other users of the development corporation’s industrial parks, projects, other leased facilities, and other services and publications. All moneys in the fund are hereby appropriated for the purposes of and shall be expended by the development corporation for the operation, maintenance, and management of its industrial parks, projects, facilities, services, and publications.

**§206M- Meetings of the board.** (a) The meetings of the board shall be open to the public as provided in section 92-3, except that when it is necessary for the board to receive information that is proprietary to a particular enterprise that seeks entry into or use of one of its facilities or the disclosure of which might be

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harmful to the business interests of the enterprise, the board may enter into an executive meeting that is closed to the public.

(b) The board shall be subject to the procedural requirements of section 92-4, and this authorization shall be an addition to the exceptions listed in section 92-5, to enable the development corporation to respect the proprietary requirements of enterprises with which it has business dealings.”

SECTION 2. Section 206M-2, Hawaii Revised Statutes, is amended to read as follows:

**“[§206M-2] High technology development corporation; established.**

(a) There is established the high technology development corporation, which shall be a public body corporate and politic and an instrumentality and agency of the State. The development corporation shall be placed within the department of business and economic development for administrative purposes, pursuant to section 26-35.

(b) The governing body of the development corporation shall consist of a board of directors having nine voting members. Seven of the members shall be appointed by the governor for staggered terms pursuant to section 26-34. Six of the appointed members shall be from the general public and selected on the basis of their knowledge, interest, and proven expertise in, but not limited to, one or more of the following fields: finance, commerce and trade, corporate management, marketing, economics, engineering, and telecommunications, and other high technology fields; provided that no public member of the board shall be an officer or employee of the State or its political subdivisions. The other appointed member shall be selected from the faculty of the college of engineering of the University of Hawaii. All appointed members of the board shall continue in office until their respective successors have been appointed. The director of business and economic development and the director of finance, or their designated representatives, shall serve as ex-officio voting members of the board. The director of business and economic development shall serve as the chairperson until such time as a chairperson is elected by the board from the membership. The board shall elect such other officers as it deems necessary.

(c) The members of the board appointed under subsection (b) shall serve without compensation, but may be reimbursed for expenses, including travel expenses, incurred in the performance of their duties.

(d) The board shall appoint a chief executive officer, who shall serve at the pleasure of the board and shall be exempt from chapters 76 and 77. The board shall set the salary and duties of the executive officer.

(e) The board shall appoint a management advisory committee for each industrial park and project governed by the board. Each committee shall have five members, who shall serve without compensation but may be reimbursed for expenses incurred in the performance of their duties. The members shall be drawn from fields of activity related to each project or park.”

SECTION 3. Section 206M-3, Hawaii Revised Statutes, is amended to read as follows:

**“[§206M-3] Powers, generally.** [(a)] The development corporation shall have all the powers necessary to carry out its purposes, including the following powers:

- (1) To sue and be sued;

- (2) To have a seal and alter the same at its pleasure;
- (3) To make and execute, enter into, amend, supplement, and carry out contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter including, subject to approval of the governor, a project agreement with a qualified person, and any other agreement whereby the obligations of a qualified person under a project agreement shall be unconditionally guaranteed or insured by, or the performance thereof assigned to, or guaranteed or insured by, a person or persons other than the qualified person; and to grant options or renew any project agreement entered into by it in connection with any project or industrial park, on terms and conditions as it deems advisable;
- (4) To make and alter bylaws for its organization and internal management;
- (5) To adopt rules under chapter 91 necessary to effectuate this chapter in connection with industrial parks, projects, and the operations, properties, and facilities of the development corporation;
- (6) Through its chief executive officer, to appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76 and 77;
- (7) To prepare or cause to be prepared development plans for industrial parks;
- (8) To acquire, own, lease, hold, clear, improve, and rehabilitate real, personal, or mixed property and to assign, exchange, transfer, convey, lease, sublease, or encumber any project including by way of easements;
- (9) To construct, reconstruct, rehabilitate, improve, alter, or repair, or provide for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project and to designate a qualified person as its agent for such purpose, and to own, hold, assign, transfer, convey, exchange, lease, sublease, or encumber any project;
- (10) To arrange or initiate appropriate action for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, easements, or other places, the furnishing of improvements, the acquisition of property or property rights, or the furnishing of property or services in connection with an industrial park;
- (11) To prepare or cause to be prepared plans, specifications, designs, and estimates of cost for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project or industrial park, and from time to time to modify such plans, specifications, designs, or estimates;
- (12) To engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;
- (13) To procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;
- (14) To accept and expend gifts or grants in any form from any public agency or from any other source;
- (15) To issue bonds pursuant to this chapter in such principal amounts as may be authorized from time to time by law to finance the cost of a project or an industrial park as authorized by law and to provide for the security thereof as permitted by this chapter;
- (16) To lend or otherwise apply the proceeds of the bonds issued for a project or an industrial park either directly or through a trustee or a qualified person for use and application in the acquisition, construction,

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- installation, or modification of a project or industrial park, or agree with the qualified person whereby any of these activities shall be undertaken or supervised by that qualified person or by a person designated by the qualified person;
- (17) With or without terminating a project agreement, to exercise any and all rights provided by law for entry and re-entry upon or to take possession of a project at any time or from time to time upon breach or default by a qualified person under a project agreement, including any action at law or in equity for the purpose of effecting its rights of entry or re-entry or obtaining possession of the project or for the payments of rentals, user taxes, or charges, or any other sum due and payable by the qualified person to the development corporation pursuant to the project agreement;
- (18) To enter into arrangements with qualified county development entities whereby the board would provide financial support to qualified projects proposed; and
- (19) To do all things necessary or proper to carry out the purposes of this chapter.”

**SECTION 4.** Section 206M-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The development corporation shall not be subject to any requirement of law for competitive bidding for project agreements, construction contracts, lease and sublease agreements, or other contracts unless a project agreement with respect to a project or industrial park otherwise shall require.”

**SECTION 5.** During the period July 1, 1989, to June 30, 1990, the high technology development corporation may permit projects related to film production activities to be conducted at its industrial parks.

**SECTION 6.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

**SECTION 7.** This Act shall take effect upon its approval.

(Approved June 8, 1989.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 275**

H.B. NO. 1872

A Bill for an Act Relating to Energy Performance Contracting.

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

**SECTION 1.** Section 36-41, Hawaii Revised Statutes, is amended to read as follows:

“[[§36-41[] Third-party financing] **Energy performance contracting for public facilities.** (a) Any agency may enter into [any third-party financing arrangement] a multi-year energy performance contract for the purpose of undertaking or implementing energy conservation[, cogeneration,] or [alternative] alternate energy

measures in [public facilities. These innovative financing arrangements with third parties] a facility or facilities. An energy performance contract may include, but shall not be limited to, options such as leasing, joint ventures, shared-savings plans, or energy service contracts, or any combination thereof; provided that in due course [a state] the agency [shall] may receive title to the energy system being financed. [The department of accounting and general services shall review and approve third-party financing arrangements for state facilities.] Except as otherwise provided by law, the agency that is responsible for a particular facility shall review and approve energy performance contract arrangements for the facility.

(b) Notwithstanding any law to the contrary relating to the award of public contracts, any agency desiring to enter into an energy performance contract shall do so in accordance with the following provisions:

- (1) The agency shall issue a public request for proposals, advertised in the same manner as provided in chapter 103, concerning the provision of energy efficiency services or the design, installation, operation, and maintenance of energy equipment or both. The request for proposals shall contain terms and conditions relating to submission of proposals, evaluation and selection of proposals, financial terms, legal responsibilities, and other matters as may be required by law and as the agency determines appropriate;
- (2) Upon receiving responses to the request for proposals, the agency may select the most qualified proposal or proposals on the basis of the experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the agency, and other factors determined by the agency to be relevant and appropriate;
- (3) The agency thereafter may negotiate and enter into an energy performance contract with the person or company whose proposal is selected as the most qualified based on the criteria established by the agency;
- (4) The term of any energy performance contract entered into pursuant to this section shall not exceed ten years;
- (5) Any contract entered into shall contain the following annual allocation dependency clause:

"The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the applicable funding authority. If that authority fails to appropriate sufficient funds to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which allocations were made"; and

- (6) Any energy performance contract may provide that the agency ultimately shall receive title to the energy system being financed under the contract.

(c) Any agency may enter into an energy performance contract pursuant to this section for a period not to exceed ten years.

[b)] (d) For purposes of this section:

[ "Energy service contract" means the investor undertakes to engineer, install, operate, and maintain improvements to the customer's facilities to supply all or a specified portion of the customer's energy requirements at a fixed aggregate or unit price set below the corresponding costs in the absence of improvements.]

"Agency" means any executive department, independent commission, board, bureau, office, or other establishment of the State or any county government, the judiciary, the University of Hawaii, or any quasi-public institution that is supported in whole or in part by state or county funds.

"Energy performance contract" means an agreement for the provision of energy services and equipment, including but not limited to building energy con-

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servation enhancing retrofits and alternate energy technologies, in which a private sector person or company agrees to finance, design, construct, install, maintain, operate, or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a facility in exchange for a portion of the energy cost savings, lease payments, or specified revenues, and the level of payments is made contingent upon the measured energy cost savings or energy production.

“Facility” means a building or buildings or similar structure owned or leased by, or otherwise under the jurisdiction of, the agency.

“Shared-savings plan” means an agreement under which the [investor] private sector person or company undertakes to [engineer,] design, install, operate, and maintain improvements to the [customer’s] agency’s facility or facilities and the [customer] agency agrees to pay a contractually specified amount of measured energy cost savings.

[“Third-party financing arrangement” means any arrangement in which a private sector investor finances, designs, constructs, owns, and operates an energy-conserving or energy-producing system in a public facility.]”

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

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

(Approved June 8, 1989.)

## ACT 276

H.B. NO. 1894

A Bill for an Act Relating to the Insurance Code.

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

SECTION 1. Act 97, Session Laws of Hawaii 1987, section 3, is amended to read as follows:

“SECTION 3. This Act shall take effect upon its approval[.], and the substantive provisions of this Act shall amend any conflicting provisions of H.B. No. 410, H.D.1, S.D.1, C.D.1, only if H.B. No. 410, H.D.1, S.D.1, C.D.1<sup>1</sup> is passed by the legislature during the Regular Session of 1987, whether before or after the effective date of this Act.”

SECTION 2. Act 250, Session Laws of Hawaii 1987, section 3, is amended to read as follows:

“SECTION 3. This Act shall take effect upon its approval[.], and the substantive provisions of this Act shall amend the provisions of H.B. No. 410, H.D.1, S.D.1, C.D.1, only if H.B. No. 410, H.D.1, S.D.1, C.D.1<sup>1</sup> is passed by the legislature during the Regular Session of 1987, whether before or after the effective date of this Act.”

SECTION 3. Act 253, Session Laws of Hawaii 1987, section 6, is amended to read as follows:

“SECTION 6. This Act shall take effect upon its approval[.], and the substantive provisions of this Act shall amend the provisions of H.B. No. 410, H.D.1,

S.D.1, C.D.1, only if H.B. No. 410, H.D.1, S.D.1, C.D.1<sup>1</sup> is passed by the legislature during the Regular Session of 1987, whether before or after the effective date of this Act; and further provided that the requirements of this Act shall be applicable to policies and certificates delivered or issued for delivery on or after the first day of January immediately following the adoption of rules by the insurance commissioner to implement this Act.”

SECTION 4. Act 332, Session Laws of Hawaii 1987, section 4, is amended to read as follows:

“SECTION 4. This Act shall take effect upon its approval[.], and the substantive provisions of this Act shall amend the provisions of H.B. No. 410, H.D.1, S.D.1, C.D.1, only if H.B. No. 410, H.D.1, S.D.1, C.D.1 is passed by the legislature during the Regular Session of 1987, whether before or after the effective date of this Act.”

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

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

(Approved June 8, 1989.)

**Note**

1. Act 347, Session Laws of Hawaii 1987.

**ACT 277**

S.B. NO. 833

A Bill for an Act Relating to the Hawaii Workers' Compensation State Fund.

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

SECTION 1. Chapter 386A, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“HAWAII [WORKERS’ COMPENSATION STATE FUND]  
STATE COMPENSATION MUTUAL INSURANCE FUND”**

SECTION 2. Section 386A-1, Hawaii Revised Statutes, is amended by amending the definition of “fund” to read as follows:

“ “Fund” means the Hawaii [workers’ compensation state fund.] state compensation mutual insurance fund.”

SECTION 3. Section 386A-2, Hawaii Revised Statutes, is amended to read as follows:

“[[§386A-2]] Fund’s establishment. (a) There is established a workers’ compensation state insurance fund to be known as the “Hawaii [workers’ compensation state fund.”] state compensation mutual insurance fund”.

(b) The fund shall not be an agency of the State. The fund shall be a nonprofit organization independent mutual insurance corporation under the control of a board of directors and placed within the department of budget and finance for admin-

istrative purposes, except as otherwise provided herein]. The fund shall pay taxes and license fees like other insurance carriers.

(c) The fund's assets shall consist of [legislative appropriations and all of the fund's] real and personal property[.] and shall include all premiums and other money paid to the fund, and all property and other income acquired, earned, or otherwise gained by the use of premiums and other money paid to the fund, by deposits, investments, exchanges, and other transactions. The fund's assets shall be the sole property of the fund and shall be used exclusively by the fund for the operation and obligations of the fund.

(d) Except for a state loan at its inception, the fund shall be self-supporting. The fund shall repay the State for the loan with interest within ten years.

[e] (e) The department of budget and finance shall have custody of the fund's assets as determined by the board.

(f) (e) The fund's principal office shall be in Honolulu, Hawaii. The board may establish branch offices in other locations."

SECTION 4. Section 386A-3, Hawaii Revised Statutes, is amended to read as follows:

**"[§386A-3[]] Fund's purpose.** The fund's purpose is to sell workers' compensation insurance at the lowest actuarially responsible price as determined by the fund's board. The fund shall commence operation [on June 12, 1985,] upon appointment and qualification of the initial five members of the fund's board, but the workers' compensation insurance sold initially by the fund shall provide insurance coverage for work injuries occurring from [July 1, 1986,] a date to be established by the board and not more than one year from the date of the appointment and qualification.

The fund may serve as a model for the workers' compensation insurance industry to determine minimum insurance premium rates. It shall be competitive with other private workers' compensation insurance carriers."

SECTION 5. Section 386A-4, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) The board shall be composed of five directors, [who shall be appointed by the governor, upon the Hawaii workers' compensation state fund becoming operational as provided in section 386A-12.

(b) A director's] whose term of office shall be five years, and each director shall hold office until the appointment and qualification of the director's successor.

(b) The terms of the first five directors, who shall be appointed by [July 1, 1986,] the governor, upon the fund becoming operational as provided in section 386A-12, shall expire as follows:

- (1) One for one year;
- (2) One for two years;
- (3) One for three years;
- (4) One for four years; and
- (5) One for five years.

Thereafter, each director shall be appointed for a term of five years.

Upon the payment in full of the loan from the State and all interest thereon, the unexpired terms of the appointed directors shall expire, and the fund's policyholders shall be entitled to elect all of the directors. Any other law to the contrary notwithstanding, the selection and composition of the board of directors as provided in this section shall be deemed adequate to qualify the fund as a mutual insurer under chapter 431.

(c) A vacancy on the board shall be filled by appointment of the governor[.] in the case of vacancies in positions formerly occupied by the governor's appointee, or by election by the fund's policyholders in the case of positions formerly occupied by a director elected by the fund's policyholders. The person appointed to fill a vacancy shall serve for the remainder of the term of the person's predecessor."

SECTION 6. Section 386A-4, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

- "(g) The board shall discharge its duties:
- (1) In accordance with the fund's purpose;
- (2) With the care, skill, prudence, and diligence under the circumstances that a prudent director, acting in a like capacity and familiar with such matters would use in conducting a similar enterprise and purpose;
- (3) By diversifying the fund's investments to minimize the risk of losses, unless it is prudent not to do so;
- (4) In accordance with governing legal documents;
- (5) By having an annual audit of the fund by [a] an independent certified public accountant and by making copies of such audit available to the governor and the state legislature;
- (6) By securing fidelity bonds for the directors and in its discretion for other agents dealing with the fund's assets at the fund's expense;
- (7) By purchasing liability insurance for errors and omissions for the board, each director, and any other fiduciary employed or contracted by the fund to cover liability or losses caused by the act or omission of a fiduciary;
- (8) By maintaining proper books of accounts and records of the fund's administration;
- (9) By carrying out the reporting and disclosure requirements required by law; and
- (10) By determining an actuarially responsible schedule of premium rates with consideration of the fund's investment income or refunds, or both, to policyholders."

SECTION 7. Section 386A-12, Hawaii Revised Statutes, is amended to read as follows:

**"[§386A-12][ ] State fund operational.** The Hawaii [workers' compensation] state compensation mutual insurance fund shall become operational upon funding by special appropriation by the legislature.

SECTION 8. Chapter 386A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§386A- Insurance code applicable.** The Hawaii state compensation mutual insurance fund shall be subject to the provisions of chapter 431 to the same extent and degree as any domestic provider of workers' compensation insurance within the State. Any statutory provisions which conflict with the provisions of this chapter, as amended, shall be resolved in terms of the language of this chapter."

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

## **ACT 278**

SECTION 10. This Act shall take effect upon its approval.

(Approved June 9, 1989.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 278**

S.B. NO. 1465

A Bill for an Act Relating to Housing.

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

SECTION 1. Section 201E-224, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If dwelling units developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial construction defect, the corporation shall have the right, but not the obligation, to file or cause to be filed a legal action on behalf of or by, the owner or lessee of the dwelling unit for the recovery of damages or for injunctive relief against the developer, co-developer, general contractor, and their subcontractors, consultants, and other parties notwithstanding any provisions to the contrary in chapter 657. Additionally, notwithstanding any provision of rule 23 of the Hawaii rules of civil procedure, the corporation may file or cause to be filed a legal action brought under this subsection as a class action on behalf of or by at least two owners or lessees of dwelling units which have similar substantial construction defects.”

SECTION 2. New statutory material is underscored.

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

(Approved June 9, 1989.)

## **ACT 279**

S.B. NO. 1966

A Bill for an Act Relating to Educational Officers Classification/Compensation Appeals Board.

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

SECTION 1. Section 297-31.3, Hawaii Revised Statutes, is amended to read as follows:

**“§297-31.3 Classification/compensation appeals board; adjustments to classification/compensation plan.** (a) There shall be established a classification/compensation appeals board within the department of education for administrative purposes. The board shall be composed of three members with one member appointed by the board of education and one member appointed by the exclusive bargaining unit representing educational officers, and [these two appointed members shall appoint a third member who shall serve as chairperson;] the third member shall be appointed by the governor and shall serve as chairperson; provided that no member shall be an employee of the department of education or member of the board of education or an employee of the organization representing educational officers. The board shall sit as an appellate body on matters of classification/

compensation. All decisions of the 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 of education, 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 of education 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 December 7, 1988, and by the first Wednesday of December on subsequent even-numbered years. Following the final pricing adjustment to the classification/compensation plan, the superintendent of education shall submit to the state 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 of education. 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 board. The cost thereof shall be met by state legislative appropriations for the appeals board."

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

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

(Approved June 9, 1989.)

ACT 280

H.B. NO. 241

A Bill for an Act Relating to Arbitration.

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

SECTION 1. The Legislature has found that in cases involving medical torts the court annexed arbitration process has added a third step to the resolution process. In medical tort cases the parties first must go through the medical claim conciliation panel and then submit to arbitration and finally take their case to court. By going through three stages the expense of resolving the disputes has mounted, and the cases are delayed. The purpose of this bill is to permit parties to a medical tort suit which would probably require mandatory arbitration to elect to bypass the arbitration program after submitting the claim to the medical claim conciliation panel.

SECTION 2. Chapter 671, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§671- Arbitration; subsequent litigation.** Any person or the person’s representative claiming that a medical tort has been committed or any health care provider against whom a claim has been made may elect to bypass the court annexed arbitration program under section 601-20 after the claim has been submitted to the medical claim conciliation panel and the panel has rendered a decision or has not reached a decision within the tolling period of the statute of limitations under section 671-18.”

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

SECTION 4. This Act shall take effect on July 1, 1990.

(Approved June 9, 1989.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 281

H.B. NO. 1445

A Bill for an Act Relating to Environmental Protection.

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

SECTION 1. Chapter 342, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . LEAD ACID BATTERY RECYCLING**

**§342- Lead acid batteries; land disposal prohibited.** (a) No person may place a used lead acid battery in mixed municipal solid waste, discard, or otherwise dispose of a lead acid battery except by delivery to an automotive battery retailer or wholesaler, to an authorized collection or recycling facility, or to a secondary lead smelter permitted by the United States Environmental Protection Agency.

(b) No automotive battery retailer shall dispose of a used lead acid battery except by delivery to the agent of a battery wholesaler, to a battery manufacturer for delivery to a secondary lead smelter permitted by the United States Environ-

mental Protection Agency, or to an authorized collection or recycling facility, or to a secondary lead smelter permitted by the United States Environmental Protection Agency.

(c) Each battery improperly disposed of shall constitute a separate violation.

(d) For each violation of this section a violator shall be subject to the penalty provided under subsection (e) of section 342-11.

**§342- Lead acid batteries, collection for recycling.** A person selling lead acid batteries at retail or offering lead acid batteries for retail sale in the State shall:

- (1) Accept, at the point of transfer, in a quantity at least equal to the number of new batteries purchased, used lead acid batteries from customers, if offered by customers; and
- (2) Post written notice which must be at least five inches by seven inches in size and must contain the universal recycling symbol and the following language:
  - (i) "It is illegal to discard a motor vehicle battery or other lead acid battery";
  - (ii) "Recycle your used batteries"; and
  - (iii) "State law requires us to accept used motor vehicle batteries or other lead acid batteries for recycling, in exchange for new batteries purchased".

**§342- Inspection of automotive battery retailers.** The department of health shall produce, print, and distribute the notices required by section 342- to all places where lead acid batteries are offered for sale at retail. In performing its duties under this section the department may inspect any place, building, or premise governed by section 342-. Authorized employees of the agency may issue warnings and citations to persons who fail to comply with the requirement of those sections. Failure to post the required notice following warning shall subject the establishment to a fine of \$2,000 per day.

**§342- Lead acid battery wholesalers.** Any person selling new lead acid batteries at wholesale shall accept, at the point of transfer, in a quantity at least equal to the number of new batteries purchased, used lead acid batteries from customers, if offered by customers. A person accepting batteries in transfer from an automotive battery retailer shall be allowed a period not to exceed ninety days to remove batteries from the retail point of collection.

**§342- Enforcement.** The department of health shall enforce this part."

SECTION 2. Section 342-11, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Any person who wilfully or negligently violates part VII or part of this chapter or any rule adopted by the department pursuant to part VII or part shall be punished by a fine of not more than \$5,000 for each violation or imprisonment for not more than one year, or both. If the conviction is for a violation committed after a first conviction, the violator shall be subject to a fine of not more than \$10,000 for each violation, or by imprisonment for not more than two years, or both."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions

## **ACT 282**

or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**SECTION 4.** New statutory material is underscored.

**SECTION 5.** This Act shall take effect on January 1, 1990.

(Approved June 9, 1989.)

## **ACT 282**

H.B. NO. 1611

A Bill for an Act Amending Act 142, Session Laws of Hawaii 1988.

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

**SECTION 1.** Act 142, Session Laws of Hawaii 1988, is amended by amending sections 2 and 3 to read as follows:

"**SECTION 2.** The department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$30,000,000 in one or more series for the purpose of assisting Energy Conversion Devices, Inc., a Michigan corporation, or its subsidiaries, [or] and Chronar Corporation, or its subsidiaries, [or] and a partnership in which either Energy Conversion Devices, Inc., or Chronar Corporation is a general partner, in the generation of new capital for the manufacture of amorphous silicon alloy photovoltaics products or devices in Hawaii. The legislature finds and determines that the activities and facilities of Energy Conversion Devices, Inc., or its subsidiaries, and of Chronar Corporation, or its subsidiaries, constitute a project as defined in part III, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a manufacturing enterprise.

**SECTION 3.** The department of business and economic development, with assistance from the Hawaii Natural Energy Institute, shall perform a technical and economic analysis of both Energy Conversion Devices, Inc., and Chronar Corporation and recommend one or both of them to the department of budget and finance to be assisted by the issuance of special purpose revenue bonds under this Act."

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

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

(Approved June 9, 1989.)

## **ACT 283**

H.B. NO. 1905

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

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

**SECTION 1.** The legislature finds and determines:

- (1) The Hawaiian Homes Commission Act, 1920, as amended, places all Hawaiian home lands (as defined in the Act) under the control of the department of Hawaiian home lands to be used and disposed of in accordance with the provisions of the Act;
- (2) The Hawaiian Homes Commission Act, 1920, as amended, authorizes the department, among other things, to lease to native Hawaiians the right to the use and occupancy of a tract or tracts of Hawaiian home lands (as defined in the Act) for the purposes provided therein, including for use as a residence lot, and to enter into and carry out contracts to develop available lands (as defined in the Act) for homestead, commercial, and multipurpose projects;
- (3) The Hawaiian Homes Commission Act does not provide a sufficient grant of power for the department to undertake and finance development; and
- (4) It is necessary and desirable for the department to be authorized to undertake and finance development and available lands for residential use and homestead, commercial, and multipurpose projects.

SECTION 2. The Hawaiian Homes Commission Act, 1920, as amended, is amended by adding two new sections to be appropriately numbered and to read as follows:

**“§ - Additional powers.** In addition and supplemental to the powers granted to the department by law, and notwithstanding any law to the contrary, the department may:

- (1) With the approval of the governor, undertake and carry out the development of any Hawaiian home lands available for lease under and pursuant to section 207 of this Act by assembling these lands in residential developments and providing for the construction, reconstruction, improvement, alteration, or repair of public facilities therein, including, without limitation, streets, storm drainage systems, pedestrian ways, water facilities and systems, sidewalks, street lighting, sanitary sewerage facilities and systems, utility and service corridors, and utility lines, where applicable, sufficient to adequately service developable improvements therein, sites for schools, parks, off-street parking facilities, and other community facilities;
- (2) With the approval of the governor, undertake and carry out the development of available lands for homestead, commercial, and multipurpose projects as provided in section 220.5 of this Act, as a developer under this section or in association with a developer agreement entered into pursuant to this section by providing for the construction, reconstruction, improvement, alteration, or repair of public facilities for development, including, without limitation, streets, storm drainage systems, pedestrian ways, water facilities and systems, sidewalks, street lighting, sanitary sewerage facilities and systems, utility and service corridors, and utility lines, where applicable, sufficient to adequately service developable improvements therein, sites for schools, parks, off-street parking facilities, and other community facilities;
- (3) With the approval of the governor, designate by resolution of the commission all or any portion of a development or multiple developments undertaken pursuant to this section an “undertaking” under part III of chapter 39, Hawaii Revised Statutes; and

## **ACT 284**

- (4) Exercise the powers granted under section 39-53, Hawaii Revised Statutes, including the power to issue revenue bonds from time to time as authorized by the legislature.

All provisions of part III of chapter 39, Hawaii Revised Statutes, shall apply to the department and all revenue bonds issued by the department shall be issued pursuant to the provisions of that part, except these revenue bonds shall be issued in the name of the department, and not in the name of the State.

As applied to the department, the term "undertaking" as used in part III of chapter 39 shall include a residential development or a development of homestead, commercial, or multipurpose projects under this Act. The term "revenue" as used in part III of chapter 39, shall include all or any portion of the rentals derived from the leasing of Hawaiian home lands or available lands, whether or not the property is a part of the development being financed.

**§ - Establishment of special fund.** A separate special fund of the department shall be established for each undertaking or part thereof financed from the proceeds of revenue bonds equally secured. Each fund shall be designated "department of Hawaiian home lands revenue bond special fund" and bear any additional designation the department deems appropriate to properly identify the fund. Any law to the contrary notwithstanding, including any provision of this Act, from and after the issuance of revenue bonds under and pursuant to the provisions of this Act and part III of chapter 39, Hawaii Revised Statutes, to finance an undertaking, all rentals, income, receipts, and other revenues derived by the department from the particular undertaking for which financing is undertaken shall be paid into the special fund established pursuant to this Act and applied in the manner and for the purposes set forth in part III of chapter 39, Hawaii Revised Statutes, and the proceedings authorizing the issuance of revenue bonds."

**SECTION 3.** The provisions of the amendments made by this Act to the Hawaiian Homes Commission Act, 1920, as amended, are declared to be severable and if any section, clause, or phrase, or the application thereof to any person or circumstances is held to be invalid or ineffective because there is a requirement of having the consent of the United States to take effect, then that portion only shall take effect upon the granting of consent by the United States and effectiveness of the remainder of these amendments or the application thereof shall not be affected.

**SECTION 4.** New statutory material is underscored.<sup>1</sup>

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

(Approved June 9, 1989.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 284**

S.B. NO. 636

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

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

## PART I

SECTION 1. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$593,111 or 0.025 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

## PART II

SECTION 2. There are hereby appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the 1989-1991 and 1991-1993 fiscal bienniums all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 4:

<u>FUND</u>	<u>FY 1989-90</u>	<u>FY 1990-91</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
General	\$462,007	\$759,179	\$544,230 <sup>10</sup>	\$389,431 <sup>10</sup>
Special	\$ 64,148	\$101,077	\$70,005 <sup>10</sup>	\$ 61,228 <sup>10</sup>
Federal	\$ 26,537	\$ 40,263	\$27,582 <sup>10</sup>	\$ 24,478 <sup>10</sup>
Other	\$ 6,542	\$ 11,472	\$ 9,137 <sup>10</sup>	\$ 7,711 <sup>10</sup>

SECTION 3. Funds appropriated or authorized by this Part shall be allotted by the director of finance in the respective fiscal years for the purposes of this Part, subject to the ratification of the collective bargaining agreement for unit 4 by its members.

## PART III

SECTION 4. There are hereby appropriated or authorized from the sources of funding indicated below to Administrative Director Services (JUD 201) the following sums, or so much thereof as may be necessary, to fund for the 1989-1991 and 1991-1993 fiscal bienniums all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 4:

<u>FUND</u>	<u>FY 1989-90</u>	<u>FY 1990-91</u>	<u>FY 1991-92</u>	<u>FY 1992-93</u>
General	\$131,104	\$209,405	\$146,802	\$133,936
Special	\$ 6,275	\$ 10,296	\$ 5,864	\$ 5,872

SECTION 5. Funds appropriated or authorized by this Part shall be allotted by the chief justice in the respective fiscal years for the purposes of this Part, subject to the ratification of the collective bargaining agreement for unit 4 by its members.

## PART IV

SECTION 6. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds, shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 7. Funds appropriated or authorized by this Act which are not expended or encumbered by June 30, 1990, June 30, 1991, June 30, 1992, and June 30, 1993, of the respective fiscal years shall lapse as of those dates.

## ACT 285

SECTION 8. This Act shall take effect on July 1, 1989.

(Approved June 13, 1989.)

### Note

1. Item vetoed and initialed "JW".

## ACT 285

S.B. NO. 370

A Bill for an Act Relating to Condominium Management Recovery and Education Funds.

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

SECTION 1. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### "PART . CONDOMINIUM MANAGEMENT EDUCATION FUND

**§514A- Condominium management education fund.** (a) The real estate commission shall establish a condominium management education fund that the commission may use for educational purposes. Educational purposes shall include financing or promoting:

- (1) Education and research in the field of condominium management, condominium registration, and real estate for the benefit of the public and those required to be registered under this chapter;
  - (2) The improvement and more efficient administration of condominium associations; and
  - (3) Expedited and inexpensive procedures for resolving condominium association disputes.
- (b) The commission may use any and all moneys in the condominium management education fund for purposes consistent with subsection (a).

**§514A- Payments to the fund.** (a) Each association of apartment owners with six or more apartments shall pay to the department of commerce and consumer affairs a fee of \$2 for each apartment for calendar year 1990. Thereafter, the annual fee shall be as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(b) The department of commerce and consumer affairs shall allocate the fees collected to the condominium management education fund established pursuant to section 514A-

(c) Payments of any fees required under this section shall be due on or before January 1 of each year. If an association of apartment owners fails to pay a required fee by March 1 of each year, the association shall be assessed a penalty of ten per cent of the amount due and the association shall not have standing to bring any action to collect or to foreclose any lien for common expenses or other assessments in any court of this State until the amount due, including any penalty, is paid. Failure of an association of apartment owners to pay a fee required under this section shall not impair the validity of any claim of the association for common expenses or other assessments, or prevent the association from defending any action in any court of this State.

**§514A- Management of funds.** (a) The sums received by the commission for deposit in the condominium management education fund shall be held by the commission in trust for carrying out the purpose of the fund.

(b) The commission and the director of commerce and consumer affairs may use moneys in the condominium management education fund to employ necessary personnel not subject to chapters 76 and 77 for additional staff support, to provide office space, and to purchase equipment, furniture, and supplies required by the commission to carry out its responsibilities under this part.

(c) The moneys in the condominium management education fund may be invested and reinvested together with the real estate education fund established under section 467-19 in the same manner as are the funds of the employees' retirement system of the State. The interest from these investments shall be deposited to the credit of the condominium management education fund.

**§514A- False statement.** It shall be unlawful for any association of apartment owners, its officers, its board of directors, or its agents to file with the commission any notice, statement, or other document required under this chapter that is false or untrue or contains any material misstatement of fact. Any violation of this section shall constitute a misdemeanor."

SECTION 2. Section 514A-40, Hawaii Revised Statutes, is amended to read as follows:

**"§514A-40 Issuance of final reports.** (a) No final public report shall be issued prior to completion of construction of the project, unless there is filed with the real estate commission:

- (1) A verified statement showing all costs involved in completing the project, including land payments or lease payments, real property taxes, construction costs, architect, engineering, and attorneys' fees, financing costs, provisions for contingency, etc., which must be paid on or before the completion of construction of the building;
- (2) A verified estimate of the time of completion of construction of the total project;
- (3) Satisfactory evidence of sufficient funds to cover the total project cost from purchasers' funds, equity funds, interim or permanent loan commitments, or other sources;
- (4) A copy of the executed construction contract;
- (5) Satisfactory evidence of a performance bond of not less than one hundred per cent of the cost of construction;
- (6) If purchasers' funds are to be used for construction, an executed copy of the escrow agreement for the trust fund required under section 514A-67 for financing construction, which [shall] expressly shall provide for:
  - (A) No disbursements by the escrow agent for payment of construction costs, unless bills are submitted with the request for [such] disbursements [which] that have been approved or certified for payment by the mortgagee or a financially disinterested person; and
  - (B) No disbursements from the balance of the trust fund after payment of construction costs pursuant to the preceding paragraph until the escrow agent receives satisfactory evidence that all mechanics' and materialmen's liens have been cleared, unless sufficient funds are set aside for any bona fide dispute;
- (7) A parking plan to include designated residence parking stalls and guest parking, if any, exclusive of assignment to individual apartments, if parking stalls are to be considered limited common elements.

(b) No final public report shall be issued for a project [which] that includes one or more existing structures being converted to condominium status unless there is filed with the real estate commission all items required under subsection (a) and:

- (1) A verified statement signed by an appropriate county official that the project is in compliance with all ordinances, codes, rules, regulations, and other requirements in force at the time of its construction;
- (2) A verified statement signed by an appropriate county official of whether any variance has been granted from any ordinance, code, rule, regulation, or any other requirement in force at the time of its construction or from any current ordinance, code, rule, regulation, or other requirement;
- (3) A statement by the declarant, based upon a report prepared by an independent registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;
- (4) A statement by the declarant of the expected useful life of each item reported on in paragraph (3) or a statement that no representations are made in that regard;
- (5) A list of any outstanding notices of uncured violations of building code or other [municipal] county regulations, together with the cost of curing these violations; and
- (6) A statement whether the project is on a lot[,] or has structures[,] or uses [which] that do not conform to present zoning requirements;

provided that paragraphs (3), (4), and (5) apply only to apartments that may be occupied for residential use[,] and [only to apartments that] have been in existence for five years.

(c) No final public report or supplementary public report, which supersedes a final public report shall be issued for a project until the developer has paid into the condominium management education fund a nonrefundable fee of \$5 for each apartment in the project. Fees required by this subsection shall be subject to adjustment as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. Payments required under this subsection shall be due after the effective date of this Act."

SECTION 3. Section 514A-47, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-47 Cease and desist orders.** In addition to its authority under section 514A-48, whenever the [real estate] commission has reason to believe that any person is violating or has violated sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62 to 514A-65, 514A-68, 514A-69, 514A-84, [and] 514A-85, 514A-95, and 514A- or the rules of the commission adopted pursuant thereto, it shall issue and serve upon [such] the person a complaint stating its charges in that respect, containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of the complaint. The person so complained of has the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring the person to cease and desist from the violation of the law charged in the complaint. If upon the hearing the commission is of the opinion that this chapter has been or is being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on the person an order requiring the person to cease and desist from [such] the violations. The person complained of [may], within thirty days after service upon the person of the report or order, may obtain a review thereof in the appropriate circuit court.”

SECTION 4. Section 514A-48, Hawaii Revised Statutes, is amended to read as follows:

**"§514A-48 Power to enjoin.** Whenever the [real estate] commission believes from satisfactory evidence that any person has violated any of sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85, [and] 514A-95, and 514A- or the rules of the commission adopted pursuant thereto, it may conduct an investigation on the matter[,] and bring an action in the name of the people of the State in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof."

SECTION 5. Section 514A-49, Hawaii Revised Statutes, is amended to read as follows:

**"§514A-49 Penalties.** (a) Any person who, in any respect, violates or fails to comply with any of the provisions set forth in [sections] section 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85, 514A-95, [or] 514A-102 to 514A-106, or 514A- is guilty of a misdemeanor and shall be punished by a fine not exceeding \$2,000 or by imprisonment for a term not exceeding one year, or both. Any person [or] who in any other respect violates or fails, omits, or neglects to obey, observe, or comply with any rule, order, decision, demand, or requirement of the [real estate] commission under [sections] section 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85, 514A-95, [or] 514A-102 to 514A-106, or 514A- [is guilty of a misdemeanor, and] shall be punished by a fine not exceeding [\$1,000] \$2,000. [or by imprisonment for a term not exceeding one year, or both.]

(b) Any person who violates any provision of this chapter or the rules of the [real estate] commission adopted pursuant thereto also shall [also] be subject to a civil penalty not exceeding \$2,500[,] for any violation. Each violation shall constitute a separate offense and the collection of the fine shall be by suit brought by the attorney general on behalf of the [real estate] commission."

SECTION 6. The real estate commission shall adopt rules pursuant to chapter 91 to effectuate fully the purpose of this Act.

SECTION 7. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 13, 1989.)

**ACT 286**

S.B. NO. 527

A Bill for an Act Relating to Education.

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

**SECTION 1.** The legislature finds that our educational system could not function smoothly without a pool of qualified substitute teachers who are willing and able to fill in with little or no advance notice for regular teachers who are absent due to health problems or compelling family or personal situations. The legislature finds also that capable (hourly paid) part-time temporary teachers (PTTs) are needed to staff various on-going supplementary instructional programs in the department of education. Despite their essential role, however, substitute teachers were not granted salary increases, as were regular teachers, as a result of the 1987 collective bargaining negotiations. Similarly, part-time temporary teachers, whose pay rates are indexed to the substitute teacher pay rates by regulation, were not granted pay increases comparable to regular teachers. The legislature further finds that even though substitute teachers and PTTs are not represented at the collective bargaining table, they have historically and traditionally (and properly) been included in the scope of those negotiations, resulting in periodic equitable pay increases. Since this was not the case in 1987, it is appropriate for the legislature to provide statutorily that substitute teachers benefit from collective bargaining as do regular teachers employed by the department of education.

The purposes of this Act are to provide that the pay rates for substitute teachers and PTTs, whose pay rates are indexed to substitute teacher pay rates, be compatible with that of regular entry level class I, class II, and class III teachers, as calculated on a per diem and per hour basis, and to make an appropriation to fund appropriate pay rate adjustments for affected employees.

**SECTION 2.** Section 297-33, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(i) Effective September 1, [1975.] 1989, per diem rates for substitute teachers shall be based on the annual salary rate established for appropriate salary range and step on the most current teachers' salary schedule as follows:

Class I Substitute Teacher . . . . Salary Range [1, Step 1]  
for Class I Teacher,  
Entry Step

Class II Substitute Teacher . . . . Salary Range [3, Step 1]  
for Class II Teacher,  
Entry Step

Class III Substitute Teacher . . . . Salary Range [5, Step 1]  
for Class III Teacher,  
Entry Step

Per diem rates shall be derived from annual rates in accordance with the following formula:

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

Substitute teachers shall be classified as follows:

- (1) A Class I substitute teacher is a substitute teacher who holds a certificate issued by the department and who does not qualify as a Class II or Class III substitute teacher, as described below.
- (2) A Class II substitute teacher is a substitute teacher who holds a certificate issued by the department based on a baccalaureate degree and other requirements as may be established by the department.

- (3) A Class III substitute teacher is a substitute teacher who holds a certificate issued by the department based on five acceptable years of college education and other requirements as may be established by the department."

**SECTION 3.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$3,317,825, or 0.14 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided by this Act.

**SECTION 4.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,317,825, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$3,317,825, or so much thereof as may be necessary for fiscal year 1990-1991, to provide appropriate pay adjustments for eligible substitute teachers and part-time temporary teachers. The sums appropriated shall be expended by the department of education.

**SECTION 5.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 6.** This Act shall take effect upon its approval; provided that section 4 shall take effect on July 1, 1989.

(Approved June 13, 1989.)

## ACT 287

S.B. NO. 544

A Bill for an Act Relating to the Highway Special Fund.

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

**SECTION 1.** Section 36-31, Hawaii Revised Statutes, is amended to read as follows:

**"§36-31 Transfers from special funds, limited or suspended, when. (a)**  
If any transfer contemplated by sections 36-27, 36-29, and 36-30 might, if effected, result in loss to the State or to any special fund affected, of any federal funds, or would be in violation of the Constitution or any law of the United States, the governor shall issue an executive order setting forth the facts and suspending the application of sections 36-27, 36-29, and 36-30 to the special fund affected in whole or in part, or limiting the transfer, as shall be necessary to avoid the loss of federal funds or to avoid the unconstitutionality or violation. The transfer shall not be made except to the extent, if at all, which will not result in the loss of federal funds or violation.

**(b) If any transfer contemplated by section 36-28 might, if effected, cause an expenditure out of the state highway fund in excess of moneys available in such fund, result in loss to the State or to the state highway fund of any federal funds, or would be in violation of the Constitution or any law of the United States, the governor shall issue an executive order setting forth the facts and suspending the application of section 36-28 to the state highway fund in whole or in part, or limiting the transfer, as shall be necessary to avoid the expenditure of moneys in excess of**

## **ACT 288**

moneys available in the state highway fund, the loss of federal funds or to avoid the unconstitutionality or violation. The transfer shall not be made except to the extent, if at all, which will not result in the loss of federal funds or violation."

**SECTION 2.** New statutory material is underscored.

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

(Approved June 13, 1989.)

## **ACT 288**

S.B. NO. 556

A Bill for an Act Relating to Partnerships.

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

**SECTION 1.** The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### **“CHAPTER UNIFORM LIMITED PARTNERSHIP ACT”**

#### **ARTICLE 1 GENERAL PROVISIONS**

**§ -101 Definitions.** As used in this chapter, unless the context otherwise requires:

“Certificate of limited partnership” means the certificate referred to in section -201, and the certificate as amended or restated.

“Contribution” means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in the capacity as a partner.

“Director” means the director of commerce and consumer affairs.

“Event of withdrawal of a general partner” means an event that causes a person to cease to be a general partner as provided in section -402.

“Foreign limited partnership” means a partnership formed under laws other than the laws of this State and having as partners one or more general partners and one or more limited partners.

“General partner” means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

“Limited partner” means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

“Limited partnership” and “domestic limited partnership” mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners.

“Partner” means a limited or general partner.

“Partnership agreement” means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

“Partnership interest” means a partner’s share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

“Person” means a natural person, partnership, limited partnership (domestic or foreign), business trust, trust, estate, association, or corporation, or any other legal or commercial entity.

"State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, or any foreign state or country.

**§ -102 Name.** (a) The name of each limited partnership as set forth in its certificate of limited partnership:

- (1) May not contain the name of a limited partner unless:
    - (A) It is also the name of a general partner or the corporate name of a corporate general partner, or
    - (B) The business of the limited partnership had been carried on under that name before the admission of that limited partner;
  - (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation or partnership existing under the laws of this State, any foreign corporation or partnership authorized to transact business in this State, any trade name, trademark or service mark previously registered in this State, or a name the exclusive right to which is, at the time, reserved, or the name of a partnership which has in effect a registration of its partnership name as provided in this chapter, except that this provision shall not apply if the applicant filed with the director either of the following:
    - (A) The written consent of the other partnership or holder of a reserved or registered name to use the same or substantially identical name, and one or more words may be added to make the name distinguishable from the other name, or
    - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State.
- (b) The director may make, amend, and repeal such rules as may be necessary to carry out the purpose of this section.

**§ -103 Reservation of name.** (a) The exclusive right to the use of a name may be reserved by:

- (1) Any person intending to organize a limited partnership under this chapter and to adopt that name;
- (2) Any domestic limited partnership or any foreign limited partnership registered in this State which, in either case, intends to adopt that name;
- (3) Any foreign limited partnership intending to register in this State and adopt that name; and
- (4) Any person intending to organize a foreign limited partnership and intending to have it registered in this State and to adopt that name.

(b) The reservation shall be made by delivering to the director an application, executed by the applicant, to reserve a specified partnership name. If the director finds that the name is available for use by a domestic or foreign limited partnership, the director shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days.

(c) The right to the exclusive use of a reserved name may be transferred to any other person by delivering to the director a notice of the transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

**§ -104 Specified office.** Each limited partnership shall continuously maintain in this State an office, which may but need not be a place of its business in this State, at which shall be kept the records required by section -105.

**§ -105 Records to be kept.** (a) Each limited partnership shall keep at the office referred to in section -104 the following:

- (1) A current list of the full name and last known address of each partner separately identifying the general partners in alphabetical order and the limited partners in alphabetical order;
- (2) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any power of attorney pursuant to which any certificate has been executed;
- (3) Copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years;
- (4) Copies of any then effective written partnership agreement and of any financial statements of the limited partnership for the three most recent years; and
- (5) Unless contained in a written partnership agreement, a writing setting out:
  - (A) The amount of cash, and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;
  - (B) The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;
  - (C) Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution; and
  - (D) Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

(b) Records kept under this section are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

**§ -106 Nature of business.** A limited partnership may carry on any business that a partnership without limited partners may carry on.

**§ -107 Business transactions of partner with partnership.** Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

## ARTICLE 2 FORMATION: CERTIFICATE OF LIMITED PARTNERSHIP

**§ -201 Certificate of limited partnership.** (a) In order to form a limited partnership, a certificate of limited partnership must be executed and delivered to the office of the director for filing. The certificate shall set forth:

- (1) The name of the limited partnership;
- (2) The address of the principal office;
- (3) The name and the residence address of each general partner;
- (4) The name and address of each limited partner;
- (5) The latest date upon which the limited partnership is to dissolve; and
- (6) Any other matter the general partners determine to include therein.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the director or at any later time, not more than thirty days after being filed, specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

**§ -202 Amendment to certificate.** (a) A certificate of limited partnership is amended by delivering a certificate of amendment thereto to the office of the director for filing. The certificate shall set forth:

- (1) The name of the limited partnership;
- (2) The date of filing the certificate; and
- (3) The amendment to the certificate.

(b) Within thirty days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be delivered to the director for filing:

- (1) The admission of a new general partner;
- (2) The withdrawal of a general partner; or
- (3) The continuation of the business under section -801 after an event of withdrawal of a general partner.

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(e) No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (b) of this section, if the amendment is filed within the thirty-day period specified in subsection (b).

(f) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment. The restated certificate shall set forth all of the operative provisions of the certificate as theretofore amended.

**§ -203 Cancellation of certificate.** (a) A certificate of limited partnership shall be canceled upon the dissolution and the commencement of winding up of the partnership or when there are no limited partners. A certificate of cancellation shall be delivered to the director for filing and set forth:

- (1) The name of the limited partnership;
- (2) The date of filing of its certificate of limited partnership;
- (3) The reason for filing the certificate of cancellation;
- (4) The effective date, which shall be a date and time certain, of cancellation, if it is not to be effective upon the filing of the certificate; and
- (5) Any other information the general partners filing the certificate determine.

(b) If a partnership has terminated by the expiration of its term of existence, the partners, may, at any time within two years of such termination, by taking action consistent with the partnership agreement and by amending the partnership's certificate of limited partnership, extend the term of partnership. Such extension shall be effective from the original filing of the certificate unless otherwise stated in the amended certificate.

**§ -203.5 Annual statement.** Every limited partnership shall file an annual statement on or before March 31 of each year as of December 31 of the preceding year containing the following information:

- (1) The name of the limited partnership;
- (2) The name and residence address of each general partner;
- (3) The name and address of each limited partner;
- (4) The nature of the limited partnership business;

- (5) The location of the principal place of business of the limited partnership in this State; and
- (6) The fact the none of the partners is either a minor or an incompetent person.

Each annual statement shall be certified as correct by any general partner.

**§ -203.6. Cancellation of registration.** (a) If any limited partnership neglects for a period of two years to file any annual statement as required by this chapter, the director may cancel the certificate of such limited partnership. The cancellation of such certificate shall not relieve the general partners of liability for the penalties for the failure to file any statement or certificate required by this chapter.

(b) Within ninety days after the involuntary cancellation of a limited partnership under this section, the limited partnership may be reinstated by the director upon written application executed by any general partner of the limited partnership setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary cancellation, and the filing of all reports due and unfiled. Within the ninety-day period, should the name of the limited partnership, or a name substantially identical thereto be registered or reserved by another corporation or partnership, or should such name or a name substantially identical thereto be registered as a trade name, trademark or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily cancelled limited partnership pursuant to the amendment provisions of this chapter.

**§ -204 Execution of certificates.** (a) Each certificate required by this chapter to be filed in the office of the director shall be executed in the following manner:

- (1) An original certificate of limited partnership must be signed by all general partners;
- (2) A certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner; and
- (3) A certificate of cancellation must be signed by all general partners.
- (4) Any other certificate or document must be signed by all general partners.

(b) Any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.

(c) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

**§ -205 Execution by judicial act.** If a person required by section -204 to execute any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the circuit court of the circuit in which the principal place of business of the limited partnership is situated to direct the execution of the certificate. If the court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the director to record an appropriate certificate, and shall also cause to be filed in the office of the director a certified copy of its order setting forth the certificate.

**§ -206 Filing in office of the director.** (a) A certified and executed certificate of limited partnership, any certificate of amendment or cancellation, or

of any judicial decree of amendment or cancellation, an application for registration as a foreign limited partnership, or any certificate relating thereto, shall be delivered to the director for filing. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing. Unless the director finds that any certificate does not conform to law, upon receipt of all filing fees required by law, the director shall:

- (1) Stamp the word "Filed" and the date of delivery thereof; and
- (2) File the document in the director's office.

(b) Upon the filing of a certificate of amendment or judicial decree of amendment in the office of the director, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation or a judicial decree thereof, the certificate of limited partnership is canceled.

**§ -206.5 Filing requirements; filing duty of the director.** (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies from these requirements, to be entitled to filing by the director.

(b) The document must contain the information required by this chapter. It may contain other information as well.

(c) If the director has prescribed a mandatory form for the document, the document must be in or on the prescribed form.

(d) The director's duty to file documents under this chapter is ministerial. The filing or refusal to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or part;
- (2) Relate to the correctness or incorrectness of information contained in the document; or
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**§ -206.6 Correcting a filed document.** (a) A domestic or foreign partnership may correct a document filed by the director if the document:

- (1) Contains an incorrect statement; or
- (2) Was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected:

- (1) By preparing a certificate of correction that:
  - (A) Describes the document including its file date or attaches a copy of it to the certificate;
  - (B) Specifies the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
  - (C) Corrects the incorrect statement or defective execution; and
- (2) By delivering the certificate to the director for filing.

(c) A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, a certificate of correction is effective when filed.

**§ -207 Liability for false statement in certificate.** If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

- (1) Any person who executes the certificate, or causes another to execute it on that person's behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

- (2) Any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under section -205.

**§ -208 Notice.** The fact that a certificate of limited partnership is on file in the office of the director is notice that the partnership is a limited partnership and that the persons designated therein as general partners are general partners, but it is not notice of any other fact.

**§ -209 Delivery of certificates to limited partners.** Upon filing, the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.

### **ARTICLE 3 LIMITED PARTNERS**

**§ -301 Admission of limited partners.** (a) A person becomes a limited partner:

- (1) At the time the limited partnership is formed; or
  - (2) The date stated in the records of the limited partnership as the date that person becomes a limited partner.
- (b) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:
- (1) In the case of a person acquiring a partnership interest directly from the limited partnership, upon the compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and
  - (2) In the case of an assignee of a partnership interest of a partner who has the power, as provided in section -704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

**§ -302 Voting.** Subject to section -303, the partnership agreement may grant to all or a specified group of the limited partners the right to vote upon any matter on a per capita or other basis.

**§ -303 Liability to third parties.** (a) Except as provided in subsection (d), a limited partner is not liable for the obligations of a limited partnership unless the limited partner is also a general partner or, in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner participates in the control of the business. However, if the limited partner participates in the control of the business, the limited partner is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:

- (1) Being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation;

- (2) Consulting with and advising a general partner with respect to the business of the limited partnership;
- (3) Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;
- (4) Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;
- (5) Requesting or attending a meeting of partners;
- (6) Proposing, approving, or disapproving by voting or otherwise, one or more of the following matters:
  - (A) The dissolution and winding up of the limited partnership;
  - (B) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;
  - (C) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;
  - (D) A change in the nature of the business;
  - (E) The admission or removal of a general partner;
  - (F) The admission or removal of a limited partner;
  - (G) A transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;
  - (H) An amendment to the partnership agreement or certificate of limited partnership; or
  - (I) Matters related to the business of the limited partnership not otherwise enumerated in this subsection, which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;
- (7) Winding up the limited partnership pursuant to section -803; or
- (8) Exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection.

(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other power by a limited partner constitutes participation by the limited partner in the business of the limited partnership.

(d) A limited partner who knowingly permits the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by section -102, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

**§ -304 Person erroneously believing to be limited partner.** (a) Except as provided in subsection (b), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any right of a limited partner, if, on ascertaining the mistake, the person:

- (1) Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or
- (2) Withdraws from future equity participation in the enterprise by executing and filing with the director a certificate declaring withdrawal under this section.

(b) A person who makes a contribution of the kind described in subsection (a) is liable as a general partner to any third party who transacts business with the enterprise:

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- (1) Before the person withdraws and an appropriate certificate is filed to show withdrawal; or
- (2) Before an appropriate certificate is filed to show that the limited partner is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

§ **-305 Information.** Each limited partner has the right to:

- (1) Inspect and copy any of the partnership records required to be maintained by section -105; and
- (2) Obtain from the general partners from time to time upon reasonable demand:
  - (A) True and full information regarding the state of the business and financial condition of the limited partnership;
  - (B) Promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year; and
  - (C) Other information regarding the affairs of the limited partnership as is just and reasonable.

## ARTICLE 4 GENERAL PARTNERS

§ **-401 Admission of additional general partners.** After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional partners, with the written consent of all partners.

§ **-402 Events of withdrawal.** Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

- (1) The general partner withdraws from the limited partnership as provided in section -602;
- (2) The general partner ceases to be a member of the limited partnership as provided in section -702;
- (3) The general partner is removed as a general partner in accordance with the partnership agreement;
- (4) Unless otherwise provided in writing in the partnership agreement, the general partner:
  - (A) Makes an assignment for the benefit of creditors;
  - (B) Files a voluntary petition in bankruptcy;
  - (C) Is adjudicated bankrupt or insolvent;
  - (D) Files a petition or answer seeking for that general partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law or rule;
  - (E) Files an answer or pleading admitting or failing to contest the material allegations of a petition filed against that general partner in any proceeding of this nature; or
  - (F) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of that general partner's properties;

- (5) Unless otherwise provided in writing in the partnership agreement, one hundred twenty days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law or rule, the proceeding has not been dismissed, or if within ninety days after the appointment without that general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of that general partner's properties, the appointment is not vacated or stayed or within ninety days after the expiration of any such stay, the appointment is not vacated;
- (6) In the case of a general partner who is a natural person:
  - (A) That general partner's death; or
  - (B) The entry of an order by a court of competent jurisdiction adjudicating the general partner incompetent to manage that general partner's person or estate;
- (7) In the case of a general partner who is acting as general partner by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;
- (8) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;
- (9) In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or
- (10) In the case of an estate, the distribution by the legal representative of the estate of the estate's entire interest in the limited partnership.

**§ -403 General powers and liabilities.** (a) Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(b) Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

**§ -404 Contributions by general partner.** A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of that person's participation in the partnership as a limited partner.

**§ -405 Voting.** The partnership agreement may grant to all or certain identified general partners the right to vote on a per capita or any other basis, separately or with all or any class of the limited partners, on any matter.

## ARTICLE 5 FINANCE

**§ -501 Form of contribution.** The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

**§ -502 Liability for contribution.** (a) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

(b) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if the partner is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the value as stated in the partnership records required to be kept pursuant to section -105, of the stated contribution which has not been made.

(c) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or otherwise acts in reliance on that obligation after the partner signs a writing which reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

**§ -503 Sharing of profits and losses.** The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the partnership records required to be kept pursuant to section -105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

**§ -504 Sharing of distributions.** Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value, as stated in the partnership records required to be kept pursuant to section -105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

## ARTICLE 6 DISTRIBUTIONS AND WITHDRAWAL

**§ -601 Interim distributions.** Except as provided in this chapter, a partner is entitled to receive distributions from a limited partnership before that partner's withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the time or upon the happening of the events specified in the partnership agreement.

**§ -602 Withdrawal of general partner.** A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership

may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to the withdrawing general partner.

**§ -603 Withdrawal of limited partner.** A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement. If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at each general partner's address on the books of the limited partnership at its office in this State.

**§ -604 Distribution upon withdrawal.** Except as provided in this chapter, upon withdrawal any withdrawing partner is entitled to receive any distribution to which the withdrawing partner is entitled under the partnership agreement and, if not otherwise provided in the agreement, the withdrawing partner is entitled to receive, within a reasonable time after withdrawal, the fair value of that withdrawing partner's interest in the limited partnership as of the date of withdrawal based upon that withdrawing partner's right to share in distributions from the limited partnership.

**§ -605 Distribution in kind.** Except as provided in writing in the partnership agreement, a partner, regardless of the nature of that partner's contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to that partner exceeds a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the limited partnership.

**§ -606 Right to distribution.** At the time a partner becomes entitled to receive a distribution, the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

**§ -607 Limitations on distribution.** A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

**§ -608 Liability upon return of contribution.** (a) If a partner has received the return of any part of that partner's contribution without violation of the partnership agreement or this chapter, the partner is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(b) If a partner has received the return of any part of that partner's contribution in violation of the partnership agreement or this chapter, the partner is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

(c) A partner receives a return of that partner's contribution to the extent that a distribution to that partner reduces that partner's share of the fair value of the net assets of the limited partnership below the value, as set forth in the partnership

records required to be kept pursuant to section -105, of that partner's contribution which has not been distributed to that partner.

## ARTICLE 7 ASSIGNMENT OF PARTNERSHIP INTERESTS

**§ -701 Nature of partnership interest.** A partnership interest is personal property.

**§ -702 Assignment of partnership interest.** Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any right of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all that partner's partnership interest.

**§ -703 Rights of creditor.** On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption law applicable to that partner's partnership interest.

**§ -704 Right of assignee to become limited partner.** (a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

- (1) The assignor gives the assignee that right in accordance with authority described in the partnership agreement; or
- (2) All other partners consent.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner also is liable for the obligations of that assignee's assignor to make and return contributions as provided in this chapter. However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from that assignor's liability to the limited partnership under sections -207 and -502.

**§ -705 Power of estate of deceased or incompetent partner.** If a partner who is an individual dies or a court of competent jurisdiction adjudges that partner to be incompetent to manage that partner's person or property, the partner's legal representative may exercise all the partner's rights for the purpose of settling that partner's estate or administering that partner's property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

## ARTICLE 8 DISSOLUTION

**§ -801 Nonjudicial dissolution.** A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

- (1) At the time specified in the certificate of limited partnership;
- (2) Upon the happening of events specified in writing in the partnership agreement;
- (3) Written consent of all partners;
- (4) An event of withdrawal of a general partner unless at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal, if, within ninety days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or
- (5) Entry of a decree of judicial dissolution under section -802.

**§ -802 Judicial dissolution.** On application by or for a partner, the circuit court of the circuit in which the principal place of business of the limited partnership is located may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

**§ -803 Winding up.** Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs; but the circuit court of the circuit in which the principal place of business of the limited partnership is located may wind up the limited partnership's affairs upon application of any partner or any partner's legal representative or assignee.

**§ -804 Distribution of assets.** Upon the winding up of a limited partnership, the assets shall be distributed as follows:

- (1) To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under section -601 or -604;
- (2) Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under section -601 or -604; and
- (3) Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions.

## ARTICLE 9 FOREIGN LIMITED PARTNERSHIPS

**§ -901 Law governing.** Subject to the Constitution of this State:

- (1) The laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners; and
- (2) A foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State.

**§ -902 Registration.** Before transacting business in this State, a foreign limited partnership shall register with the director. In order to register, a foreign

limited partnership shall submit to the director an application for registration as a foreign limited partnership, certified and signed by a general partner and setting forth:

- (1) The name of the foreign limited partnership;
- (2) The state and date of its formation;
- (3) The name and address of any qualified agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this State or a domestic corporation;
- (4) A statement that the director is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under paragraph (3) or, if appointed, the agent's authority has been revoked, or if the agent cannot be found or served with the exercise of reasonable diligence;
- (5) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;
- (6) The name and residence address of each general partner; and
- (7) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with a written commitment on the part of the foreign limited partnership that it will keep those records until the registration of the foreign limited partnership in this State is cancelled or withdrawn.

**§ -903 Issuance of registration.** (a) If the director finds that an application for registration conforms to law and all requisite fees have been paid, the director shall issue a certificate of registration to transact business in this State.

(b) The certificate of registration shall be returned to the person who filed the application or that person's representative.

**§ -904 Name.** (a) No registration for a foreign limited partnership shall be accepted by the director if the name of such foreign limited partnership:

- (1) Is the same as, or substantially identical to, the name of any corporation or partnership, whether general or limited, domestic or foreign, previously authorized or registered to do business under the laws of the State, or with any trade name, service mark, or trademark previously registered under the laws of the State, or a name the exclusive right to which is, at the time, reserved, except that this provision shall not apply if the foreign limited partnership applying for registration files with the director any one of the following:
    - (A) The written consent of the holder of the registered or reserved name to use the same or substantially identical name and one or more words are added to make the name distinguishable from the other name; or
    - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign limited partnership to the use of the name in this State; and
  - (2) Is not transliterated into letters of the English alphabet, if the name is not in English.
- (b) If a foreign limited partnership is unable to change its name to a name which is available to it under the laws of this State, it may deliver to the director a copy of a certificate of registration of trade name for the foreign limited partnership's file and thereafter become registered to transact business in the State under that name.

**§ -905 Changes and amendments.** If any statement in the application for registration of a foreign limited partnership was false when made or any arrangement or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the director a certificate, certified and signed by a general partner, correcting such statement.

**§ -906 Cancellation of registration.** (a) A foreign limited partnership registered to transact business in this State may withdraw from the State upon procuring from the director a certificate of withdrawal. In order to procure a certificate of withdrawal, the foreign limited partnership shall deliver to the director an application for withdrawal, certified and signed by a general partner, which shall set forth:

- (1) The name of the foreign limited partnership and the state or country under the laws of which it is formed;
- (2) That the foreign limited partnership is not transacting business in this State;
- (3) That the foreign limited partnership surrenders its authority to transact business in this State;
- (4) That the foreign limited partnership revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the partnership was authorized to transact business in this State may thereafter be made on the partnership by service thereof on the director;
- (5) The name and residence address of each general partner;
- (6) The dates that notice of the foreign limited partnership's intent to withdraw from the State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State. The foreign limited partnership, with the approval of the director, may omit the publication of the notice if the partnership has insufficient assets to pay for the publication;
- (7) That all taxes, debts, obligations, and liabilities of the foreign limited partnership in the State have been paid and discharged or that adequate provision has been made therefore;
- (8) A mailing address to which the director may mail a copy of any process against the foreign limited partnership that may be served on the director; and
- (9) Such additional information as may be necessary or appropriate in order to enable the director to determine and assess any unpaid fees payable by the foreign limited partnership.

(b) After the filing of the application of withdrawal, the director shall issue a certificate of withdrawal which shall be effective as of the date of the filing of the application of withdrawal, and the authority of the foreign limited partnership to transact business in this State shall cease.

(c) A cancellation does not terminate the authority of the director to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transactions of business in this State.

**§ -906.5 Annual statement.** Every foreign limited partnership registered in this State shall file an annual statement on or before March 31 of each year as of December 31 of the preceding year containing the following information:

- (1) The name of the limited partnership;
- (2) The name and residence address of each general partner;
- (3) The name and address of each limited partner;
- (4) The nature of the limited partnership business;
- (5) The name of the jurisdiction where the limited partnership was formed and the location of the principal place of business of the partnership; and
- (6) The fact that none of the partners is either a minor or incompetent.

Each annual statement shall be certified as correct by any general partner.

**§ -906.6 Cancellation of registration.** If any foreign limited partnership neglects for a period of two years to file any annual statement as required by this chapter, the director may cancel the registration of such limited partnership. The cancellation of such registration shall not relieve the general partners of liability for the penalties for the failure to file any statement or certificate required by this chapter.

**§ -907 Transaction of business without registration.** (a) A foreign limited partnership transacting business in this State may not maintain any action, suit, or proceeding in any court of this State until it has registered in this State.

(b) The failure of a foreign limited partnership to register in this State does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this State.

(c) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this State without registration.

(d) A foreign limited partnership, by transacting business in this State without registration, appoints the director as its agent for service of process with respect to causes of action arising out of the transaction of business in this State.

**§ -908 Action by director.** The director may bring an action to restrain a foreign limited partnership from transacting business in this State in violation of this chapter.

## ARTICLE 10 DERIVATIVE ACTIONS

**§ -1001 Right of action.** A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

**§ -1002 Proper plaintiff.** In a derivative action, the plaintiff must be a partner at the time of bringing the action and:

- (1) Must have been a partner at the time of the transaction of which the plaintiff complains; or
- (2) The plaintiff's status as a partner must have devolved upon the plaintiff by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

**§ -1003 Pleading.** In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

**§ -1004 Expenses.** If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited partnership the remainder of those proceeds received by the plaintiff.

## ARTICLE 11 MISCELLANEOUS

### § -1101 [Reserved]

**§ -1102 Short title.** This chapter may be cited as the Uniform Limited Partnership Act (1985) (Modified).

**§ -1103 Severability.** If any provision of this chapter or the application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

**§ -1104** This Act shall take effect on January 1, 1990; provided that:

- (1) Sections -501, -502 and -608 apply only to contributions and distributions made after the effective date of this Act;
- (2) Section -704 applies only to assignments made after the effective date of this Act; and
- (3) Unless otherwise agreed by the partners, the applicable provisions of existing law governing allocation of profits and losses rather than the provisions of section -503, distributions to a withdrawing partner rather than the provisions of section -604, and distributions of assets upon the winding up of a limited partnership rather than the provisions of section -804 govern limited partnerships formed before the effective date of this Act.

**§ -1105 Savings clause.** The repeal of any statutory provisions by this Act does not impair or otherwise affect the organization or the continued existence of a limited partnership existing at the effective date of this Act, nor does the repeal of any existing statutory provisions by this Act impair any contract or affect any right accrued before the effective date of this Act.

**§ -1106 Rules for cases not provided for in this part.** In any case not provided for in this chapter the provisions of the Uniform Partnership Act govern.

**§ -1107 Fees for filing documents and issuing certificates.** The following fees shall be paid to the director upon the filing of limited partnership documents:

- (1) Certificate of limited partnership, \$25;
- (2) Any certificate of amendment, restatement, or correction, \$10;
- (3) Certificate of cancellation, \$10;
- (4) Annual statement for domestic or foreign limited partnership, \$3;
- (5) Any other certificate or document of domestic or foreign limited partnership, \$10;
- (6) Application for registration as a foreign limited partnership, \$50;
- (7) Any certificate of amendment or agent change for foreign limited partnership, \$10;

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- (8) Certificate of cancellation of registration of foreign limited partnership, \$10;
- (9) Reservation of name, \$10;
- (10) Transfer of reservation of name, \$10;
- (11) Good standing certificate, \$15;
- (12) Special handling fee for review of any limited partnership document, \$40;
- (13) Special handling fee for certificates issued by the director, \$10 per certificate; and
- (14) Special handling fee for certification of documents, \$1 per page.

All special handling fees shall be credited to the special fund authorized by section 415-128.

**§ -1108 Personal liability and penalty.** (a) Every general partner who neglects or fails to comply with any provision of this chapter shall be liable severally and individually for all debts and liabilities of the limited partnership, and may be severally sued therefore, without the necessity of joining the other members in any action and shall also severally forfeit to the State \$25 for each and every month while the default shall continue, to be recovered by action brought in the name of the State by the director of commerce and consumer affairs; provided that as to the forfeiture penalty, the director may, for good cause shown, reduce or waive the same.

(b) Any person who signs or certifies as correct any statement or certificate filed pursuant to this chapter, knowing the same to be false in any material particular, shall be guilty of a class C felony.

(c) Any person who negligently but without intent to defraud signs or certifies as correct any statement or certificate filed pursuant to this chapter, which statement or certificate is false in any material particular, shall be punished by a fine not exceeding \$500."

SECTION 2. Section 425-8, Hawaii Revised Statutes, is amended to read as follows:

**"§425-8 Reservation of partnership name.** The exclusive right to the use of a partnership name may be reserved by any person intending to organize a domestic partnership, by any domestic partnership intending to change its name, by any foreign partnership intending to do or carry on any business in the State or to take, hold, sell, demise, or convey real estate or other property therein, by any foreign partnership authorized to do or carry on any business in the State or to take, hold, sell, demise, or convey real estate or other property therein and intending to change its name, or by any person intending to organize a foreign partnership and intending to have the partnership to do or carry on any business in the State or to take, hold, sell, demise, or convey real estate or other property therein. Reservations shall be made by filing with the director of commerce and consumer affairs an application in such form as the director may prescribe to reserve a specified partnership name, and payment to the director of a fee equivalent to that paid by a corporation for the same service. If the director finds that the name is available for partnership use, the director shall reserve the name for the exclusive use of the applicant for a period of [sixty] one hundred twenty days. The right to the exclusive use of a specified partnership name so reserved may be transferred to any other person or partnership by filing in the office of the director a notice of a transfer executed by the applicant for whom the name is reserved specifying the name and address of the transferee."

SECTION 3. Parts II and III of chapter 425, Hawaii Revised Statutes, are repealed.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect on January 1, 1990.

(Approved June 13, 1989.)

**ACT 289**

S.B. NO. 740

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. Section 804-51, Hawaii Revised Statutes, is amended to read as follows:

**“§804-51 Procedure.** Whenever the court, in any criminal cause, forfeits any bond or recognizance given in a criminal cause, the court shall immediately enter up judgment in favor of the State and against the principal or principals and surety or sureties on the bond, jointly and severally, for the full amount of the penalty thereof, and shall cause execution to issue thereon immediately after the expiration of [ten] thirty days from the date [of the entry of the judgment,] that notice is given via certified mail, return receipt requested, to the surety or sureties on the bond, of the entry of the judgment in favor of the State, unless before the expiration of [ten] thirty days from [the entry of the judgment] the date that notice is given to the surety or sureties on the bond of the entry of the judgment in favor of the State, a motion or application of the principal or principals, surety or sureties, or any of them, showing good cause why execution should not issue upon the judgment, is filed with the court. If the motion or application, after a hearing held thereon, is sustained, the court shall vacate the judgment of forfeiture and, if the principal surrenders or is surrendered pursuant to section 804-14 or section 804-41, return the bond or recognizance to the principal or surety, whoever shall have given it, less the amount of any cost, as established at the hearing, incurred by the State as a result of the nonappearance of the principal or other event on the basis of which the court forfeited the bond or recognizance. If the motion or application, after a hearing held thereon, is overruled, execution shall forthwith issue and shall not be stayed unless the order overruling the motion or application is appealed from as in the case of a final judgment.

This section shall be considered to be set forth in full in words and figures in, and to form a part of, and to be included in, each and every bond or recognizance given in a criminal cause, whether actually set forth in the bond or recognizance, or not.”

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

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

(Approved June 13, 1989.)

## ACT 290

## ACT 290

S.B. NO. 750

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

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

SECTION 1. Section 10-9, Hawaii Revised Statutes, is amended to read as follows:

**“§10-9 Compensation; expenses.”<sup>1</sup>** Members of the board shall be allowed:

- (1) Compensation at the rate of [\$50] \$100 a day for each day’s actual attendance at meeting;
- (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 such board meetings or official business shall require a member to leave the island upon which the member resides.”

SECTION 2. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$13,950, or 0.00059 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 3. There are appropriated or authorized from the sources of funding indicated below the following sums, or so much thereof as may be necessary, for the purposes of this Act:

	<u>FY 1989-1990</u>	<u>FY 1990-1991</u>
General Funds	\$13,950	\$13,950
Special Funds	<u>\$13,950</u>	<u>\$13,950</u>
Total	\$27,900	\$27,900

The sums appropriated shall be expended by the office of Hawaiian affairs.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 1989.

(Approved June 13, 1989.)

### Note

1. So in original.

## ACT 291

S.B. NO. 757

A Bill for an Act Relating to Statute of Limitations for the State Ethics Commission.

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

SECTION 1. Section 84-19, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The State by the attorney general may recover any fee, compensation, gift, or profit received by any person as a result of a violation of the code of ethics by a legislator or employee or former legislator or employee. Action to recover under this subsection shall be brought within [two years] one year of a determination of such violation.”

SECTION 2. Section 84-31, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) The ethics commission shall have the following powers and duties:
- (1) It shall prescribe forms for the disclosures required by Article XIV of the Hawaii Constitution and section 84-17 and the statements and reports required by sections 97-2 and 97-3 and shall establish orderly procedures for implementing the requirements of those provisions.
  - (2) It shall render advisory opinions upon the request of any legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the code of ethics. It shall also render advisory opinions to persons subject to chapter 97. If no advisory opinion is rendered within thirty days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the code of ethics. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment, or person subject to chapter 97 who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by such persons in the request for an advisory opinion.
  - (3) It shall initiate, receive, and consider charges concerning alleged violation of this chapter, initiate or make investigation, and hold hearings.
  - (4) It may subpoena witnesses, administer oaths, and take testimony relating to matters before the commission and require the production for examination of any books or papers relative to any matter under investigation or in question before the commission. Before the commission shall exercise any of the powers authorized herein with respect to any investigation or hearings it shall by formal resolution, supported by a vote of three or more members of the commission, define the nature and scope of its inquiry.
  - (5) It may, from time to time make, amend, and repeal such rules [and regulations], not inconsistent with this chapter as in the judgment of the commission seem appropriate for the carrying out of this chapter and for the efficient administration thereof, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission. The rules [and regulations], when adopted as provided in chapter 91, shall have the force and effect of law.
  - (6) It shall have jurisdiction for purposes of investigation and taking appropriate action on alleged violations of this chapter in all proceedings commenced within [one year after termination of state employment by a legislator or employee.] three years of an alleged violation of this

## ACT 292

chapter by a legislator or employee or former legislator or employee.  
A proceeding shall be deemed commenced by the filing of a charge  
with the commission or by the signing of a charge by three or more  
members of the commission. Nothing herein shall bar proceedings  
against a person who by fraud or other device, prevents discovery of  
a violation of this chapter. [A proceeding shall be deemed commenced  
by the signing of a charge by three or more members of the com-  
mission.]

- (7) It shall distribute its publications without cost to the public and shall initiate and maintain programs with the purpose of educating the citizenry and all legislators, delegates to the constitutional convention, and employees on matters of ethics in government employment.
- (8) It shall administer any code of ethics adopted by a state constitutional convention, subject to the procedural requirements of this part and any rules adopted thereunder.
- (9) It shall perform the duties and fulfill the functions assigned to it by chapter 97, relating to registration of lobbyists."

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

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

(Approved June 13, 1989.)

## ACT 292

S.B. NO. 1005

A Bill for an Act Relating to Motor and Other Vehicles.

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

SECTION 1. Section 286-50, Hawaii Revised Statutes, is amended to read as follows:

**"§286-50 Registration of vehicle located outside State; correction of errors; fee for correcting errors.** (a) The director of finance of a county shall not accept an application for registration of any vehicle under this part unless the vehicle at the time of application is to be operated on the public highways of that county as required under section 286-41 or, if the vehicle is not within the State, the vehicle is currently registered in the State in the name of a bona fide resident of the State. However, the director of finance shall accept and grant an application and issue number plates for a new unlicensed vehicle which is not within the State when the application is accompanied by a written certificate signed by the seller, who shall be a person licensed to sell new motor vehicles under chapter 437, giving the name and local address of the seller and the purchaser and a description of the vehicle, including a statement of a<sup>1</sup> weight thereof, and, when the [serial or engine and factory] vehicle identification numbers of such new vehicle are not available, a statement of such fact, and also by a written certificate of the purchaser giving the purchaser's name, the purchaser's local address and permanent residence, and the name of the seller, a full description of the vehicle, and a statement that the use tax payable thereon has been paid or that the same will be paid within sixty days of the arrival of the vehicle in the State. One copy of the application when granted shall be furnished by the director of finance to the director of taxation. In a case where the [serial or engine and factory] vehicle identification numbers of the new

vehicle are not available at the time of the application, the dealer shall certify to the [serial or engine and factory] vehicle identification numbers thereof upon receipt of the numbers from the factory or manufacturer, which certificate the director of finance shall enter in the director of finance's registration records. Within sixty days after arrival in the State of any such vehicle, unless the same has been shown in the application or subsequent certification, the dealer shall furnish to the director of finance a certificate of the dealer, identifying the vehicle by the [serial or engine and factory] vehicle identification numbers or other description, and evidence of arrival in the State of any such vehicle, which information the director of finance shall enter in the director of finance's registration records.

If the [serial or engine and factory] vehicle identification numbers of the vehicle, as given in the dealer's certificate of the [serial or engine and factory] vehicle identification numbers, subsequently prove to be erroneous on account of error in the information received by the dealer from the factory or manufacturer, or for any other reason, the dealer shall notify the director of finance of the error by a written certificate of the dealer stating the reasons for the nature of the error and the correction which should be made in the registration records; and upon receipt of the dealer's certificate by the director of finance, the registration records shall be corrected accordingly. A fee of [\$1] \$3 shall be paid by the dealer and collected by the director of finance for each instance of correction of the registration records.

(b) Notwithstanding the first paragraph of subsection (a), the director of finance shall accept and grant an application, and issue number plates, when the vehicle, although not within the State, is to be registered in the name of [a United States Senator from the State, a United States Representative from the State, or members of their congressional staffs who are] bona fide residents of the State, and the application is accompanied by:

- (1) A written certificate setting forth the name, local address<sup>1</sup> of the applicant; the name and business address of the seller; a full description of the vehicle, including a manufacturer's statement of the weight thereof, and the [serial or engine and factory] vehicle identification numbers[;] verified by a law enforcement agency; and such other information as may be required by the director of finance;
- (2) A copy of the bill of sale and such other documents as may be required by the director of finance, to establish legal ownership; and
- (3) A written statement signed by the applicant stating that the use tax payable thereon will be paid within sixty days of the arrival of the vehicle in the State.

The applicant shall be responsible for supplying to the director of finance all information relative to the correct [serial or engine and factory] vehicle identification numbers, and the payment of correction fees, in the same manner and to the same extent as is required hereinabove of a dealer. One copy of the application, when granted, shall be furnished by the director of finance to the state director of taxation.

No tax or other fees required by law in connection with the registration of a vehicle not within the State at the time of application shall be refundable."

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

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

(Approved June 13, 1989.)

## ACT 293

### Note

1. So in original.

## ACT 293

S.B. NO. 1197

A Bill for an Act Relating to Anabolic Steroids.

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

SECTION 1. Section 329-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Anabolic steroid” includes the following enumerated compounds:

- (1) Methandrostenolone;
- (2) Stanozolol;
- (3) Ethylestrenol;
- (4) Nandrolone phenpropionate;
- (5) Nandrolone decanoate;
- (6) Testosterone propionate;
- (7) Chorionic gonadotropin.”

SECTION 2. Chapter 329, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§329- Anabolic steroids; penalties.** (a) Except as authorized by law, or upon the prescription issued for a legitimate medical purpose by a practitioner acting in the usual course of his professional practice, it is unlawful for any person to knowingly:

- (1) Possess an anabolic steroid;
- (2) Possess any anabolical<sup>1</sup> steroid with intent to distribute;
- (3) Distribute any anabolic steroid; or
- (4) Manufacture, compound, convert, produce, derive, process, or prepare, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, any anabolic steroid.

For the purpose of this section, “distribute” means to sell, transfer, prescribe, administer, give, or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same.

(b) Any person who violates subsections (a)(2), (3) or (4) of this section is guilty of a class C felony.

(c) Any person who violates subsection (a)(1) of this section is guilty of a misdemeanor.

(d) This section shall not apply to anabolic steroids that are expressly intended for administration through implants to cattle or other non-human species, and that are approved by the United States Food and Drug Administration for such use.”

SECTION 3. This Act does not apply to acts which occurred prior to its effective date.

SECTION 4. New statutory material is underscored.<sup>2</sup>

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

(Approved June 13, 1989.)

## Notes

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

## ACT 294

S.B. NO. 1360

A Bill for an Act Relating to Housing.

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

SECTION 1. Section 201E-62, Hawaii Revised Statutes, is amended to read as follows:

**“§201E-62 Rules; eligible borrower.** (a) The corporation shall establish the qualifications of the eligible borrower, and may consider, but not be limited to the following:

- (1) The proportion of income spent for shelter;
- (2) Size of the family;
- (3) Cost and condition of housing available to the total housing market; and
- (4) Ability of the person to compete successfully in the normal housing market and to pay the amounts on which private enterprise is providing loans for safe, decent, and sanitary housing in the State.

(b) The [adjusted household] family income of an eligible borrower shall not exceed the income requirements of section 143 (f) of the Internal Revenue Code of 1986, as amended. [amount established by the corporation pursuant to this section. For an eligible borrower with a family of four persons, the amount shall be equal to one hundred seventy-two and one-half per cent of the median annual income for households of four persons in the State as published by the United States Department of Health and Human Services in November 1980; provided that the amount may be increased by four per cent for each one-half per cent that the annual interest rate on the eligible loan exceeds ten per cent. For an eligible borrower with a family of other than four persons, the amount computed above for a family of four persons shall be adjusted in accordance with rules adopted by the corporation. As used in this subsection, “adjusted household income” means the total income, before taxes and personal deductions, received by all members of the eligible borrower’s household, including, but not limited to, wages, social security payments, retirement benefits, unemployment benefits, welfare benefits, interest and dividend payments, and such other income as provided by rules adopted by the corporation under chapter 91, but not including business deductions and income received by dependent members of an eligible borrower’s household.]

(c) [The assets of an eligible borrower shall not exceed an annual amount equal to the adjusted household income for an eligible borrower as set forth in subsection (b). As used in this section, assets include, but are not limited to, all cash, securities, and real and personal property, less any outstanding liabilities secured by such assets and less twenty-five per cent of a downpayment required for the purchase of property financed by an eligible loan. For purposes of this section, the value of a vacant lot owned by an eligible borrower shall not be included as an asset when a dwelling unit is or shall be constructed on the property and financed by an eligible loan.

(d)] For the purpose of determining the qualification of an eligible borrower for an eligible improvement loan:

- (1) The housing unit for which the eligible improvement loan is to be made and the property on which the housing unit is situated shall not be included in the calculation of the eligible borrower's assets; and
- (2) The mortgage secured by the housing unit and property shall not be included in the calculation of the eligible borrower's liabilities.
- (e)] (d) For the purpose of determining the qualification of an eligible borrower for an eligible loan for a targeted area residence:
  - (1) The housing unit being replaced and the property on which the housing unit is situated shall not be included in the calculation of the eligible borrower's assets; and
  - (2) The mortgage secured by the housing unit and the property shall not be included in the calculation of the eligible borrower's liabilities."

SECTION 2. Section 201E-221, Hawaii Revised Statutes, is amended to read as follows:

**"§201E-221 Dwelling units; restrictions on transfer, waiver or restrictions.** (a) Except for dwelling units which are financed under a federally subsidized mortgage program, the following restrictions shall apply to the transfer of dwelling units purchased from the corporation, whether on fee simple or leasehold property:

- (1) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the dwelling unit and the property or the lease, the corporation shall have the first option to purchase the unit and property or lease at a price which shall not exceed the sum of:
  - (A) The original cost to the purchaser;
  - (B) The cost of any improvements added by the purchaser; and
  - (C) Simple interest on the purchaser's equity in the property at the rate of seven per cent a year.

The corporation may purchase the unit either outright, free and clear of all liens and encumbrances, or by transfer subject to an existing mortgage.

If by outright purchase, the corporation shall insure that all existing mortgages, liens, and encumbrances are satisfactorily paid by the purchaser.

In any purchase by transfer subject to an existing mortgage, the corporation shall agree to assume and to pay the balance on any first mortgage created for the purpose of enabling the purchaser to obtain funds for the purchase of the unit and any other mortgages which were created with the approval and consent of the corporation. In such cases, the amount to be paid to the purchaser by the corporation shall be the difference between the above-mentioned price and the principal balance of all mortgages outstanding and assumed at the time of transfer of title to the corporation.

- (2) After the end of the tenth year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the unit and sell or assign the property to any person free from any price restrictions; provided that the purchaser shall be required to pay to the corporation the sum of:
  - (A) The balance of any mortgage note, agreement of sale, or other amount owing to the corporation;
  - (B) Any subsidy made by the corporation in the acquisition, development, construction, and sale of the unit, and any other amount expended by the corporation not counted as cost under section

201E-220 but charged to the dwelling unit by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs; and

(C) Interest on the subsidy and any other amount expended at the rate of seven per cent a year computed as to the subsidy, from the date of purchase, or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that the computed interest shall not extend beyond thirty years from the date of purchase, or execution of agreement of sale, of the unit; and provided that if any proposed sale or transfer will not generate an amount sufficient to pay the corporation the sum as computed under this paragraph, the corporation shall have the first option to purchase the dwelling unit at a price which shall not exceed the sum as computed under paragraph (1).

(3) Notwithstanding any provision above to the contrary, pursuant to rules adopted by the corporation, the subsidy described in subsection (a)(2)(B) and any interest accrued pursuant to subsection (a)(2)(C) may be paid at any time.

(b) The restrictions prescribed in subsection (a) may be waived if:

- (1) The purchaser wishes to transfer title to the dwelling unit and the property or lease by devise or through the laws of descent to a family member who would otherwise qualify under rules established by the corporation; or
- (2) The corporation determines, in accordance with adopted rules, that the sale or transfer of a dwelling unit would be at a price and upon terms that preserves the intent of this section without the necessity of the State to repurchase the unit.

(c) The restrictions prescribed in subsection (a) shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder or other party becomes the owner of the dwelling unit and the land or leasehold interest pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering a dwelling unit and land or leasehold interest encumbered by the first option to purchase in favor of the corporation, prior to commencing mortgage foreclosure proceedings, shall notify the corporation of (1) any default of the mortgagor under the mortgage within ninety days after the occurrence of the default, and (2) any intention of the mortgagee to foreclose the mortgage under chapter 667. The corporation shall be a party to any foreclosure action, and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount which shall not exceed the sum of amounts determined pursuant to subsection (a)(1)(B) and (C) and the purchaser's equity in the property.

(d) The provisions of this section shall be incorporated in any deed, lease, mortgage, agreement of sale, or any other instrument of conveyance issued by the corporation. In any sale by the corporation of a dwelling unit for which a subsidy was made by the corporation, the amount of the subsidy described in subsection (a)(2)(B), a description of the cost items which constitute the subsidy, and the conditions of the subsidy shall be clearly stated at the beginning of the contract document issued by the corporation.”

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

## ACT 295

SECTION 4. This Act shall take effect upon its approval; provided that Section 2 shall take effect retroactive to June 19, 1970, the date of approval of Act 105, Session Laws of Hawaii 1970, and shall apply to all purchasers of dwelling units sold pursuant to Act 105, Session Laws of Hawaii, 1970, as amended.

(Approved June 13, 1989.)

### Note

1. So in original.

## ACT 295

S.B. NO. 1433

A Bill for an Act Relating to the Hearing Impaired.

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

SECTION 1. Findings and purpose. The legislature finds that existing law concerning the establishment of a relay service for the deaf and hearing-impaired may be too restrictive and will prevent the public utilities commission from investigating alternative and experienced providers of such services.

The purpose of this Act is to ensure that alternative and experienced providers are considered when providing a cost-effective relay system which allows deaf and hearing-impaired people to fully utilize telephone service.

SECTION 2. Section 269-16.6, Hawaii Revised Statutes, is amended to read as follows:

**“[I]§269-16.6[] Relay services for the deaf and hearing-impaired.** (a) The public utilities commission shall implement a program to achieve relay services for the deaf and hearing-impaired not later than July 1, 1989.

(b) “Relay services for the deaf and hearing-impaired” means a twenty-four-hour operator-assisted telephone relay service staffed by persons who are able to receive and transmit phone calls between deaf and hearing-impaired and hearing persons using a telecommunication device for the deaf in conjunction with a telephone.

(c) The commission shall investigate the availability of experienced providers of quality relay services for the deaf and hearing-impaired. Contracts for the provision of these relay services to be rendered on or after July 1, 1992, shall be awarded by the commission to the provider or providers which the commission determines to be best qualified to provide these services. In reviewing the qualifications of the provider or providers, the commission shall consider the factors of cost, quality of services, and experience, and such other factors as the commission deems appropriate.

(d) If the commission determines that the relay service can be provided in a cost-effective manner by a service provider, the commission may require every telephone public utility to contract with that provider for the provision of the relay service under the terms established by the commission.

(e) Notwithstanding subsections (c) and (d), relay services for the period beginning July 1, 1989, and ending June 30, 1992, shall be provided by every telephone public utility providing local service; provided that the commission and the provider or providers can agree on the terms and conditions for the provision of those relay services.

[c)] (f) The commission shall require every telephone public utility providing local telephone service to file a schedule of rates and charges and every

provider of relay service to maintain a separate accounting for the costs of providing for relay services for the deaf and hearing-impaired.

[(d)] (g) Nothing in this section shall preclude the commission from changing any rate established pursuant to [subsection (a)] this section either specifically or pursuant to any general restructuring of all telephone rates, charges, and classifications."

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

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

(Approved June 13, 1989.)

## ACT 296

S.B. NO. 1851

A Bill for an Act Relating to Driver Licensing.

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

SECTION 1. Section 286-106, Hawaii Revised Statutes, is amended to read as follows:

**"§286-106 Expiration of licenses.** Every driver's license issued under this part, whether an original issuance or a renewal, shall expire on the [fourth] first birthday of the licensee [following] occurring not less than four years after the date of the issuance of the license, unless sooner revoked or suspended; provided that the license shall expire on the [second] first birthday of the licensee [following] occurring not less than two years after the date of the issuance of the license if at that time the licensee:

- (1) Is sixty-five years of age or older;
- (2) Has been convicted of violations of the traffic laws of the State and of county traffic ordinances in the previous two years which, under the provisions of section 286-128, total nine points;
- (3) Is twenty-four years of age or younger; or
- (4) Exhibits a physical condition or conditions which the examiner of drivers reasonably believes has impaired the driver's ability to drive, unless the licensee:
  - (A) Obtains a certificate from a licensed physician that the licensee's physical condition or conditions do not impair the licensee's ability to drive; or
  - (B) Is able to correct the physical impairment, or by using a vehicle adapted to overcome the physical impairment is to the satisfaction of the examiner of drivers able to drive safely."

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

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

(Approved June 13, 1989.)

## ACT 297

S.B. NO. 1874

A Bill for an Act Relating to Condominium Management.

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

SECTION 1. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be designated and to read as follows:

**"§514A-95.1 Association of apartment owners registration; fidelity bond."**

(a) Each condominium project having six or more apartment units shall:

- (1) Secure annually through its association of apartment owners a fidelity bond in an amount equal to \$500 multiplied by the number of units in the project, to cover all officers, directors, employees, and managing agents of the association who handle the association's funds; provided that the amount of bond required by this subsection shall not be less than \$20,000 nor greater than \$100,000. The bond shall protect the association against fraudulent or dishonest acts by persons, including any managing agent registered with the commission, handling the association's funds. An association shall recover from the bond required by this section by order of the circuit or district court of the county where the violation occurred if the terms of the bond require a court order. An association which is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission. The commission shall adopt rules establishing the conditions and terms for which it may grant an exemption or bond alternative;
  - (2) Register annually through its association with the commission starting on January 1, 1990. Any condominium project coming into existence after January 1, 1990, shall register through its association within thirty days of the association's first meeting. The information required to be submitted upon registration shall include but not be limited to proof of fidelity bond coverage, names and positions of those persons who handle the association's funds, the name of the association's managing agent, if any, the postal address of the condominium, and the name, business address, and phone number of a designated contact person for the association;
  - (3) Pay an initial registration fee of \$25 for the first year from the effective date of this section and subsequently an annual reregistration fee as prescribed by rules adopted by the director of commerce and consumer affairs;
  - (4) Pay any registration fee on or before January 1 of each year. If an association fails to pay the registration fee by March 1 of each year, the association shall also pay, in addition to the registration fee, a penalty equal to the amount of the registration fee.
- (b) The commission may reject or terminate any registration submitted by an association which fails to comply with this section. Any association which fails to register as required by this section or whose registration is rejected or terminated shall not have standing to maintain any action or proceeding in the courts of this State until it registers. The failure of an association to register, or rejection or termination of its registration, shall not impair the validity of any contract or act of the association nor prevent the association from defending any action or proceeding in any court in this State."

SECTION 2. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be designated and to read as follows:

**"§514A-97 Association of apartment owners funds; handling and disbursement.** (a) The funds in the general operating account of the association of apartment owners shall not be commingled with funds of other activities such as lease rent collections and rental operations, nor shall a managing agent commingle any association funds with the managing agent's own funds.

(b) For purposes of subsection (a), lease rent collections and rental operations shall not include the rental or leasing of common elements that is conducted on behalf of the association or the collection of ground lease rents from individual apartment owners of a project and the payment of such ground lease rents to the ground lessor; provided that:

- (1) The collection is allowed by the provisions of the declaration, bylaws, master deed, master lease, or individual apartment leases of the project;
- (2) If a management contract exists, it requires the managing agent to collect ground lease rents from the individual apartment owners and pay the ground lease rents to the ground lessor;
- (3) The system of lease rent collection is approved by a majority vote of all apartment owners at a meeting of the association; and
- (4) No managing agent or association shall pay ground lease rent to the ground lessor in excess of actual ground lease rent collected from individual apartment owners.

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

- (1) Deposited in a financial institution located in the State whose deposits are insured by an agency of the United States government;
- (2) Held by a corporation authorized to do business under chapter 406; or
- (3) Invested in the obligations of the United States government.

Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association's board of directors. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the association's board of directors. The commission may draft rules governing the handling and disbursement of condominium association funds.

(d) A managing agent or board of directors shall not transfer association funds by telephone between accounts, including but not limited to the general operating account and reserve fund account.

(e) A managing agent shall keep and disburse funds collected on behalf of the condominium owners in strict compliance with any agreement made with the condominium owners, chapter 467, the rules of the commission, and all other applicable laws.

(f) Any person who embezzles or knowingly misapplies association funds received by a managing agent or association of apartment owners shall be guilty of a class C felony."

SECTION 3. Chapter 514A, Hawaii Revised Statutes, is amended by adding two new sections to be designated and to read as follows:

**"§514A-98 False statement.** It shall be unlawful for any association of apartment owners, its officers, its board of directors, or its agents to file with the commission any notice, statement, or other document required under this chapter which is false or untrue or contains any material misstatement of fact. Any such false filing shall constitute a misdemeanor.

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**§514A-99 Rules.** The commission shall adopt, amend, or repeal such rules as it may deem proper to fully effectuate this chapter."

SECTION 4. Section 514A-46, Hawaii Revised Statutes, is amended to read as follows:

**"§514A-46 Investigatory powers.** If the [real estate] commission has reason to believe that a developer, an association of apartment owners, or a managing agent is violating any provision set forth in sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85, [and] 514A-95, 514A-95.1, 514A-97, or 514A-98, or the rules of the commission adopted pursuant thereto, the commission may investigate the developer's project, the association of apartment owners, or the managing agent and examine the books, accounts, records, and files of the association, the managing agent, or those used in the project of the developer. For the purposes of examination, the developer shall keep and maintain records of all sales transactions and of the funds received by the developer pursuant thereto, and to make such records accessible to the commission upon reasonable notice and demand."

SECTION 5. Section 514A-47, Hawaii Revised Statutes, is amended to read as follows:

**"§514A-47 Cease and desist orders.** In addition to its authority under section 514A-48, whenever the [real estate] commission has reason to believe that any person is violating or has violated sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62 to 514A-65, 514A-68, 514A-69, 514A-84, [and] 514A-85, 514A-95, 514A-95.1, 514A-97, or 514A-98, or the rules of the commission adopted pursuant thereto, it shall issue and serve upon such person a complaint stating its charges in that respect[,] containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of the complaint. The person so complained of has the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring the person to cease and desist from the violation of the law charged in the complaint. If upon the hearing the commission is of the opinion that this chapter has been or is being violated, it shall make a report in writing[,] in which it shall state its findings as to the facts[,] and shall issue and cause to be served on the person an order requiring the person to cease and desist from [such] the violations. The person complained of may, within thirty days after service upon the person of the report or order, obtain a review thereof in the appropriate circuit court."

SECTION 6. Section 514A-48, Hawaii Revised Statutes, is amended to read as follows:

**"§514A-48 Power to enjoin.** Whenever the [real estate] commission believes from satisfactory evidence that any person has violated any of sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85, [and] 514A-95, 514A-95.1, 514A-97, or 514A-98, or the rules of the commission adopted pursuant thereto, it may conduct an investigation on the matter[,] and bring an action in the name of the people of the State in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof."

SECTION 7. Section 514A-49, Hawaii Revised Statutes, is amended to read as follow:

**"§514A-49 Penalties.** (a) Any person who[,] in any respect[,] violates or fails to comply with any of the provisions set forth in sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85, 514A-95, [or] 514A-95.1, 514A-97, 514A-102 to 514A-106, or 514A-98, or who in any other respect violates or fails, omits, or neglects to obey, observe, or comply with any rule, order, decision, demand, or requirement of the [real estate] commission under sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62, 514A-63, 514A-65, 514A-68, 514A-69, 514A-84, 514A-85, 514A-95, [or] 514A-95.1, 514A-97, 514A-102 to 514A-106, or 514A-98 is guilty of a misdemeanor[,] and shall be punished by a fine not exceeding [\$1,000] \$2,000 or by imprisonment for a term not exceeding one year, or both.

(b) Any person who violates any provision of this chapter or the rules of the [real estate] commission adopted pursuant thereto shall also be subject to a civil penalty not exceeding \$2,500[,] for any violation. Each violation shall constitute a separate offense and the collection of the fine shall be by suit brought by the attorney general on behalf of the [real estate] commission."

SECTION 8. Section 514A-84, Hawaii Revised Statutes, is amended to read as follows:

**"§514A-84 Management contracts; developer.** [(a)] If the developer or any affiliate of the developer acts as the first managing agent for the association of apartment owners following its organization, the contract shall not have a term exceeding one year and shall contain a provision that the contract may be terminated by either party thereto on not more than sixty days' written notice. The identity of the managing agent as the developer or [its] the developer's affiliate shall be disclosed to the association [of apartment owners] no later than the first meeting of the association. An affiliate of, or person affiliated with, a developer is a person that directly or indirectly controls, is controlled by, or is under common control with, the developer.

[(b)] A managing agent employed or retained by one or more condominium projects shall provide evidence of a fidelity bond in an amount equal to \$500 multiplied by the aggregate number of units covered by all of the agent's condominium management contracts; provided that the minimum amount of bond required by this subsection shall not be less than \$20,000 nor greater than \$100,000.

(c) If a project chooses not to have a managing agent, a fidelity bond in an amount equal to \$500 multiplied by the number of units in the project shall be secured for all persons handling the project's funds; provided that the minimum amount of bond required by this subsection shall not be less than \$20,000 nor greater than \$100,000. The association of apartment owners, upon the real estate commission's request, shall provide evidence of the bond to the commission. The bond shall protect the association of apartment owners against fraudulent or dishonest acts by persons handling the condominium project's funds.

(d) The funds in the general operating account of the condominium association shall not be commingled with funds of other activities such as lease rent collection and rental operations, nor shall the managing agent commingle any association funds with its own funds. For purposes of this subsection, lease rent collections and rental operations shall not include either the rental or leasing of common elements that is conducted on behalf of the board of directors of the association of apartment owners; or the collection of ground lease rents from in-

dividual apartment owners of a project and the payment of such ground lease rents to the ground lessor; provided that the collection is allowed by the provisions of the declaration, bylaws, master deed, master lease, or individual apartment leases of the project; that the management contract requires the managing agent to collect ground lease rents from the individual apartment owners and pay the ground lease rents to the ground lessor; and that the system of lease rent collection is approved by a majority vote of all apartment owners at a meeting of the association of apartment owners; provided further that the managing agent shall not pay ground lease rent to the ground lessor in excess of actual ground lease rent collected from individual apartment owners.

(e) A managing agent employed or retained by one or more condominium projects may dispose of the records of any condominium project which are more than five years old without liability if the managing agent first provides the board of directors of the condominium project affected with written notice of the managing agent's intent to dispose of the records if not retrieved by the board of directors within sixty days, which notice shall include an itemized list of the records which the managing agent intends to dispose of.]"

SECTION 9. Section 514A-85, Hawaii Revised Statutes, is amended to read as follows:

**"§514A-85 [Books of receipts and expenditures; unpaid assessments; availability for examination.] Records; examination; disposal.** (a) The [manager] managing agent or board of directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. The [manager] managing agent or board of directors shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses.

(b) All records and the vouchers authorizing the payments[,] and statements shall be kept and maintained at the address of the project, or elsewhere within the State as determined by the board of directors, and shall be available for examination by the apartment owners at convenient hours of week days. [The manager or board of directors shall not transfer by telephone association funds between accounts, including, but not limited to, the general operating account and reserve fund account.]

(c) A managing agent employed or retained by one or more condominium associations may dispose of the records of any condominium association which are more than five years old without liability if the managing agent first provides the board of directors of the condominium association affected with written notice of the managing agent's intent to dispose of the records if not retrieved by the board of directors within sixty days, which notice shall include an itemized list of the records which the managing agent intends to dispose of.

(d) No person shall knowingly make any false certificate, entry, or memorandum upon any of the books or records of any managing agent or association. No person shall knowingly alter, destroy, mutilate, or conceal any books or records of a managing agent or association."

SECTION 10. Section 514A-95, Hawaii Revised Statutes, is amended to read as follows:

**"§514A-95 Managing agents.** (a) Every managing agent shall [be licensed as a real estate broker in compliance with chapter 467 and the rules of the real estate commission or a corporation authorized to do business under chapter 406

and shall register with the real estate commission. The information required to be submitted shall include, but not be limited to, the name, business address, and phone number of the managing agent. The managing agent shall also show proof of bonding obtained pursuant to section 514A-84. Any person aggrieved by an act, representation, transaction, or conduct of a managing agent upon the grounds of fraud, misrepresentation, or deceit shall recover by order of the circuit court or district court of the county where the violation occurred first from the bond required by section 514A-84, and if the managing agent is a licensed real estate broker, secondly from the real estate recovery fund established under section 467-16.]:

- (1) Be licensed as a real estate broker in compliance with chapter 467 and the rules of the commission or be a corporation authorized to do business under chapter 406;
- (2) Register annually with the commission. The information required to be submitted upon registration shall include but not be limited to proof of fidelity bond coverage, name, business address, and phone number;
- (3) Provide evidence annually and at time of initial registration of a fidelity bond in an amount equal to \$500 multiplied by the aggregate number of units covered by all of the managing agent's contracts; provided that the amount of the bond shall not be less than \$20,000 nor greater than \$100,000. The bond shall protect the association of apartment owners against fraudulent or dishonest acts by persons handling the association's funds. Any association aggrieved by the actions of a managing agent on the grounds of fraud, misrepresentation, or deceit shall recover by order of the circuit or district court of the county where the violation occurred from the bond required by this section, and if the managing agent is a licensed real estate broker, secondly from the real estate recovery fund established under section 467-16. A managing agent who is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission. The commission shall adopt rules establishing the conditions and terms by which it may grant an exemption or bond alternative; and
- (4) Pay an initial registration fee of \$25 for the first year and subsequently pay an annual reregistration fee as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. A compliance resolution fee shall also be paid pursuant to section 26-9(n) and the rules adopted pursuant thereto.

(b) The [real estate] commission may reject any registration without hearing if bonding for which proof is shown fails to meet the statutory requirements.

(c) All managing agents doing business in this State on July 1, 1984, shall register with the real estate commission before January 1, 1985. Any person who becomes a managing agent after July 1, 1984, shall register with the commission by January 1, 1985, or not later than one week after becoming a managing agent, whichever is later. Every managing agent shall pay an initial registration fee as provided in the rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. Reregistration shall be on a biennial basis. Registration fees shall be placed in the special fund established under section 26-9(n) for compliance resolution.

(d) All funds collected by any managing agent from any condominium project shall be deposited in a financial institution located in the State whose deposits are insured by an agency of the United States government. Records of the deposits shall be disclosed to the real estate commission upon request.

(e) A managing agent employed or retained by one or more condominium projects may dispose of the records of any condominium project which are more than five years old without liability if the managing agent first provides the board

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of directors of the condominium project affected with written notice of the managing agent's intent to dispose of the records if not retrieved by the board of directors within sixty days, which notice shall include an itemized list of the records which the managing agent intends to dispose of.

(f) No person shall knowingly make any false certificate, entry, or memorandum upon any of the books, or records of any managing agent. No person shall knowingly alter, destroy, mutilate, or conceal any books or records of a managing agent.

(g) No managing agent may do business in this State unless the managing agent has a designated agent in the State authorized to act on its behalf, and all records of its managed projects shall be maintained and filed in the State.

(h)] (c) Every managing agent shall be considered a fiduciary with respect to any property managed by that managing agent. [The managing agent shall keep and disburse funds collected on behalf of the condominium owners in strict compliance with any agreement made with the condominium owners, and in compliance with all applicable laws.

(i) Any person who embezzles or knowingly misapplies client funds received by a managing agent shall be guilty of a class C felony.]"

**SECTION 11.** This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

**SECTION 12.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

**SECTION 13.** This Act shall take effect upon its approval.

(Approved June 13, 1989.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 298

S.B. NO. 1859

A Bill for an Act Relating to the Public Employees Health Fund.

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

**SECTION 1.** Section 87-1, Hawaii Revised Statutes, is amended by amending the definition of "employee" to read:

"(5) "Employee" means an employee or officer of the state or county government[,] or the legislature,

(A) Including:

[i] A regularly employed member of the faculty of the University of Hawaii, including a research worker, an extension agent, or a person engaged in instructional or administrative work of the university;

[ii] A regularly employed administrative officer, principal, vice-principal, teacher, special teacher, cafeteria manager, or cafeteria worker of the public schools;

- (iii) An apprentice or on-the-job trainee whether or not supported by any federal grant;
  - (iv)] (i) An elective officer [including a member of the legislature during the member's term of office,] or a person who has served as a member of the legislature for at least a total of ten years;
  - [(v)] A probationary employee;
  - (vi)] (ii) A per diem employee;
  - [(vii)] (iii) An officer or employee under an authorized leave of absence;
  - [(viii)] (iv) An employee of the Hawaii national guard although paid from federal funds;
  - [(ix)] (v) A retired member of the employees retirement system, the county pension system, or the police, firefighters, or bandsmen pension system of the State or county;
  - [(x)] (vi) A salaried and full-time member of a board [or], commission, or agency appointed by the governor[; and] of the State or the mayor of a county; and
  - [(xi)] An employee of the legislature who is employed for at least three months and whose employment is at least a one half full-time equivalent position.]
  - (vii) A person employed by contract for a period not exceeding one year, where the director of either personnel services or civil service has certified that the service is essential or needed in the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures.
- (B) But excluding:
- (i) A designated beneficiary or<sup>1</sup> a retired member of the employees retirement system, the county pension system, or the police, firefighters, or bandsmen pension system of the State or county;
  - (ii) [A] Except as allowed under (5)(A)(vii) above, a person employed temporarily on a fee or contract basis; and
  - (iii) A person employed for [less] fewer than three months and whose employment is less than one-half of a full-time equivalent position[; and]
  - (iv) A nonsalaried and nonfull-time member of a board, commission, or agency appointed by the governor of the State or the mayor of a county].”

SECTION 2. Section 87-3, Hawaii Revised Statutes, is amended to read as follows:

**“§87-3 Purpose of the fund.** The fund shall be used for the purpose of providing employee-beneficiaries and dependent-beneficiaries with a health benefits plan, provided that the fund may be used for other expenses necessary to effectuate the purpose and provided further that any rate credit or reimbursement from any carrier or any earning or interest derived therefrom shall be used in addition to such purposes to:

- (1) [finance] Finance state and county contributions for the dental benefits plan for children under the age of nineteen, as described in section 87-4; and

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- (2) [finance] Finance the employee's portion of the monthly contribution of a health benefits plan for a retired employee, as described in section [87-1(5)(A)(ix),] 87-1(5)(A)(v), or upon the retired employee's death, the retired employee's beneficiary as described in section 87-1(6).

To the extent that contributions are provided for group life insurance benefits in section 87-4, the fund shall also be used for the purpose of providing group life insurance benefits to employees."

SECTION 3. Section 87-4.5, Hawaii Revised Statutes, is amended to read as follows:

**"§87-4.5 State and county contributions to fund; employees with [less] fewer than ten years of service.** (a) This section shall apply to state and county contributions to the fund for employees specified in section [87-1(5)(A)(ix)] 87-1(5)(A)(v) who retire after June 30, 1984, with [less] fewer than ten years of credited service, excluding sick leave.

(b) The State through the department of budget and finance and the several counties through their respective departments of finance shall pay to the fund a monthly contribution of [\$25.96] \$35.52 for the period July 1, [1987,] 1989, to June 30, [1988,] 1990, and [\$28.56] \$39.06 for the period July 1, [1988,] 1990, to June 30, [1989,] 1991, for each of their respective employee-beneficiaries and [\$79.84] \$109.30 for the period July 1, [1987,] 1989, to June 30, [1988,] 1990, and [\$87.82] \$120.22 for the period July 1, [1988,] 1990, to June 30, [1989,] 1991, for each respective employee-beneficiary with a dependent-beneficiary enrolled under this section. These contributions shall be used for the payment of costs of a health benefits plan; provided that the monthly contribution shall not exceed the actual cost of a health benefits plan. If both husband and wife are employee-beneficiaries, the total contribution by the State or the appropriate county shall not exceed the monthly contribution of a family plan for both of them.

(c) The State through the department of budget and finance and the several counties through their respective departments of finance shall pay to the fund a monthly contribution of [\$5.96] \$6.24 for the period July 1, [1987,] 1989, to June 30, [1988,] 1990, and [\$6.24] \$6.88 for the period July 1, [1988,] 1990, to June 30, [1989,] 1991, for each child who has not attained the age of nineteen of all employee-beneficiaries who are enrolled for dental benefits under this section. The contributions shall be used for the payment of costs of dental benefits of a health benefits plan. Notwithstanding any provisions to the contrary, no part of the fund shall be used to finance the contributions except a rate credit or reimbursement or earnings or interest therefrom received by the fund or general revenues appropriated for that purpose.

(d) The State through the department of budget and finance and the several counties through their respective departments of finance shall pay to the fund a monthly contribution of \$2.25 for each of their respective employees to be used towards the payment of group life insurance benefits for each employee enrolled under this section.

(e) The State through the department of budget and finance and the several counties through their respective departments of finance shall advance the amount of their respective employee-beneficiaries' contributions to the fund on or before the first day of each month.

(f) Contributions made by the State or the several counties shall not be considered as wages or salary of an employee-beneficiary, and no employee-beneficiary shall have any vested right in or be entitled to receive any part of any contribution made to the fund."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 13, 1989.)

**Note**

1. So in original.

**ACT 299**

S.B. NO. 2038

A Bill for an Act Relating to Bonding of Motor Vehicle Industry Licensees.

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

SECTION 1. Section 437-21, Hawaii Revised Statutes, is repealed.

SECTION 2. Section 437-21.1, Hawaii Revised Statutes, is amended to read as follows:

**“\$437-21.1 [Bonds: manufacturer, factory branch, factory representative,<sup>1</sup> distributor branch, distributor representative, auction, auctioneer.] Bonds of auctions.**

[(a) Auction.] The bond of an auction shall be in the same amount and under the same terms and conditions as required for a new motor vehicle dealer under section 437-17.

[(b) Auctioneer. The bond of an auctioneer shall be in the same amount and under the same terms and conditions as required for a salesman under section 437-21, regardless of whether the auctioneer is employed by more than one auction.

(c) Manufacturer, factory branch, factory representative, distributor, distributor branch, distributor representative. Each manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative engaged in the business of manufacturing, distributing, or selling new motor vehicles in this State shall furnish and maintain a surety bond in the penal sum of \$100,000 guaranteeing compliance by the principal with this chapter and the rules and regulations enacted thereunder and protecting the treasurer, the dealers, and the general public from any loss or damage resulting from the violation of any provision of this chapter or any rule or regulation enacted thereunder; provided that a factory branch, factory representative, distributor, distributor branch, or distributor representative need not furnish separate bonds if the manufacturer or distributor it represents has filed the bond required hereunder and the factory branch, factory representative, distributor, distributor branch, or distributor representative is named as a principal therein; and provided further that for a factory branch, factory representative, distributor, distributor branch, or distributor representative licensed under this chapter with respect to the business of dealing only with motorcycles and motor scooters and which is not named as a principal by the manufacturer or distributor it represents, the bond shall be only in the amount of \$10,000.

Suit on bonds shall be allowed under the<sup>1</sup> terms and conditions provided for a dealer's bond in section 437-17(d). Nothing contained in this section shall prohibit or prevent an independent action against the license<sup>1</sup> in violation of<sup>1</sup> aforesaid and any other person from being joined or consolidated with an action on the bond and the recovery of a larger amount than the amount of the bond.]”

SECTION 3. Section 437-27.5, Hawaii Revised Statutes, is amended to read as follows:

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**[§437-27.5]** Requirements to maintain license. A new motor vehicle dealer, used motor vehicle dealer, motorcycle or motor scooter dealer, broker, [salesperson,] and auction[, auctioneer, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative] shall have and maintain in full force and effect a bond as required under sections 437-17, 437-18, [437-21,] and 437-21.1. Failure, refusal, or neglect to maintain in full force and effect a bond shall cause the automatic suspension of the license effective as of the date of expiration or cancellation of the bond. The license shall not be reinstated until a bond as required under actions<sup>1</sup> 437-17, 437-18, [437-21,] or 437-21.1 is received by the board.

Failure to effect a reinstatement of a suspended license within sixty days of the suspension shall cause the license and all fees to be forfeited.

A licensee may, within fifteen calendar days after receipt of notification of the license forfeiture, request an administrative hearing pursuant to chapter 91 to review the forfeiture."

SECTION 4. Act 233, 1988 Session Laws, is amended by amending Section 5 to read as follows:

"SECTION 5. This Act shall take effect upon its approval; provided that the new bonding requirements provided in Section 1 shall be repealed on July 1, [1989] 1990 and section 437-17(a) shall be reenacted in the form in which it read immediately prior to the approval of this Act."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

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

(Approved June 13, 1989.)

### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

## ACT 300

H.B. NO. 231

A Bill for an Act Relating to Tort Reform.

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

SECTION 1. **Findings and purpose.** The legislature found in 1986 that the crisis in liability insurance required tort reform as a solution to ever-increasing liability insurance rates and in some cases, unavailability of insurance. In response to this crisis, the legislature passed Act 2 of the 1986 Special Session, which provided for among other things, rate reduction relief, rebate or credit for excessive rates, prohibited cancellation of policies, and amended several parts of the Hawaii Revised Statutes to provide for periodic payment of damages, limit the statute of limitations for suits by minors, limit noneconomic damages and damages for pain and suffering, abolish liability for negligent infliction of serious emotional distress arising solely out of damage to property, and provide for court-annexed arbitration.

The legislature further finds that the automatic repeal of parts of Act 2 on October 1, 1989 will eliminate much of the progress made to date. The innovations provided by that Act should be allowed to continue for two more years to permit a longer review period during which to evaluate these reforms.

SECTION 2. Section 31 of Act 2, First Special Session Laws of Hawaii 1986, is amended to read as follows:

“SECTION 31. This Act shall take effect upon its approval, and Sections 2 to 7, Section 17, and Section 20 shall be repealed on October 1, [1989] 1991.”

SECTION 3. SECTION 386-8.5, Hawaii Revised Statutes, is amended to read as follows:

**“[[§386-8.5[]]] [Immunity from] Limits of third party liability.** (a) Section 386-8 and any other law to the contrary notwithstanding, when a work injury for which compensation is payable under this chapter has been sustained, the discussion or furnishing of, or failure to discuss or furnish, or failure to enforce any safety or health provision to protect employees against work injuries, in any collective bargaining agreement or in negotiations thereon, shall not subject a labor organization representing the injured employee to any civil liability for the injury.

As used in this section, the terms:

- (1) “Labor organization” means any organization which exists and is constituted for the purposes,<sup>1</sup> in whole or in part, of collective bargaining or dealing with employers,<sup>1</sup> concerning grievances, terms, or conditions of employment, or of other mutual aid or protection and includes both private industry and public employment labor organizations.
- (2) “Safety or health provisions” includes, but is not limited to, safety or health inspections and advisory services.

**(b) No construction design professional who is retained to perform professional services on a construction project or any employee of a construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project shall be liable for any injury on the construction project resulting from the employer's failure to comply with safety standards on the construction project for which compensation is recoverable under this chapter unless the responsibility for the compliance of safety practices is specifically assumed by contract or by other conduct of the construction design professional or any employee of the construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project. The limitation of liability provided by this subsection to any construction design professional shall not apply to the negligent preparation of designs plans or specifications.”**

SECTION 4. Section 386-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“ “Construction design professional” means any person who is a professional engineer, architect, or land surveyor who is registered under chapter 464 to practice that profession in the State.”

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

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

(Approved June 13, 1989.)

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### Note

1. So in original.

## ACT 301

H.B. NO. 435

A Bill for an Act Relating to Motor Vehicles.

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

SECTION 1. Section 291C-131, Hawaii Revised Statutes, is amended to read as follows:

**“§291C-131 Spilling loads on highways; penalties.** (a) No vehicle shall be moved on any highway, unless the vehicle is so constructed, covered, or loaded as to prevent any of its load other than clear water or feathers from live birds from dropping, sifting, leaking, blowing, spilling, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a highway in cleaning or maintaining the highway.

(b) No vehicle shall be driven or moved on any highway when any load thereon is not entirely within the body of the vehicle; provided that this prohibition shall not apply if the load is securely fastened by means of clamps, ropes, straps, cargo nets, or other suitable mechanical device to prevent such load from dropping onto the highway or from shifting in any manner and, further, no vehicle shall be operated on any highway with any load thereon projecting beyond the extreme width of the vehicle.

(c) Vehicles carrying agricultural produce from fields during harvesting shall be exempt from the requirements of this section but the owner of the vehicle must provide for the reasonable removal of all such produce spilled or dropped on the highway.

(d) No vehicle shall be driven or moved on any highway with any load if the load is not entirely covered by a cargo net, tarpaulin, canopy, or other material designed to cover the load to prevent the load from escaping from the vehicle, where the load consists partially or entirely of loose paper, loose rubbish, plastics, [and] empty cartons[.], dirt, sand, or gravel.

(e) Vehicles transporting a granular load consisting of dirt, sand, or gravel on any highway shall not be required to cover their granular load if the granular load does not extend, at its peak, above any point on a horizontal plane equal in height to the top of the side, front, or rear part of the cargo container area that is the least in height.

(f) No vehicle shall be driven or moved on any highway with a load consisting of rocks, stones, or boulders if the load, at its peak, extends above any point on a horizontal plane equal in height to the top of the side, front, or rear part of the cargo container area that is the least in height.

[(e)] (g) Violations of this section shall subject the owner or driver of the vehicle, or both, to the following penalties without possibility of probation or suspension of sentence except paragraph (1)(A):

(1) For a first violation, by:

- (A) Suspension of the vehicle registration or suspension of the license of the driver, or both, for five working days;
- (B) A fine of not less than \$100 and not more than \$500.

- (2) For a second violation involving a vehicle previously cited under this section, within one year:
  - (A) Suspension of the vehicle registration or suspension of the license of the driver, or both, for not less than five working days but not more than ten working days; and
  - (B) A fine of not less than \$250 and not more than \$500.
- (3) For a third or subsequent violation involving a vehicle previously cited under this section within one year:
  - (A) Suspension of the vehicle registration or suspension of the license of the driver, or both, for a period of thirty calendar days; and
  - (B) A fine of not less than \$500 and not more than \$1,000.

In imposing a fine under this subsection, the court, in its discretion, may apportion payment of the fine between the driver of the vehicle and the owner of the vehicle according to the court's determination of the degree of fault for the violation.

For the purposes of this subsection, a truck-trailer combination and tractor-semitrailer combination, as they are defined in section 286-2, shall be considered as one vehicle."

**SECTION 2.** This Act shall not apply to acts which occurred before its effective date.

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

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

(Approved June 13, 1989.)

## ACT 302

H.B. NO. 583

A Bill for an Act Relating to Medical Peer Review.

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

**SECTION 1.** Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§663- Payment of reasonable attorney's fees and costs in defense of suit.** In any case brought by one health care professional against another for defamation, damage to reputation, or any other loss resulting from information provided by the second health care professional in any situation relating to a medical peer review proceeding, including the providing of information that may lead to the initiation of such a proceeding, if the second health care professional substantially prevails in the action, and if the action brought by the first health care professional was frivolous, unreasonable, without foundation, or in bad faith, then the court, at the conclusion of the action, shall award to the second health care professional the cost of defending against the action, including a reasonable attorney's fee."

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

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

(Approved June 13, 1989.)

## ACT 303

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 303

H.B. NO. 646

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

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

**SECTION 1. Purpose.** The purpose of this Act is to appropriate funds for the biennial budget of the Office of Hawaiian Affairs.

**SECTION 2.** In accordance with Article VII, Section 9, of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-90 to be exceeded by \$2,066,742, or 0.088 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

**SECTION 3. Definitions.** Unless otherwise clear from the context, as used in this Act:

(a) "Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the Office of Hawaiian Affairs (OHA) followed by a designated number for the program.

(b) "Means of Financing," or "MOF," means the source from which funds are appropriated, or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. Such letter symbols, where used, shall have the following meanings:

- A general funds
- B special funds
- N other federal funds

(c) "Position ceiling" means the maximum number of permanent positions authorized for a particular program during a specified period or periods, as noted by an asterisk.

**SECTION 4. Appropriations.** The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized, as the case may be, from the sources of funding specified to the Office of Hawaiian Affairs for the fiscal biennium beginning July 1, 1989, and ending June 30, 1991. The total general fund expenditures and the number of permanent positions established in each fiscal year of the biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided elsewhere in this Act.

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
<b>Office of Hawaiian Affairs</b>							
1.	OHA100 - Policy and Administration			2.50 *		2.50 *	
	OPERATING		OHA	468,330 A		224,482 A	
				2.50 *		2.50 *	
			OHA	309,809 B		224,481 B	
2.	OHA101 - Administrative Services			3.50 *		3.50 *	
	OPERATING		OHA	305,913 A		227,592 A	
				3.50 *		3.50 *	
			OHA	305,912 B		227,592 B	
3.	OHA102 - Public Information			2.00 *		2.00 *	
	OPERATING		OHA	150,558 A		152,584 A	
				2.00 *		2.00 *	
			OHA	150,557 B		152,584 B	
4.	OHA103 - Human Resources			1.50 *		1.50 *	
	OPERATING		OHA	151,086 A		100,745 A	
				1.50 *		1.50 *	
			OHA	151,086 B		100,744 B	
5.	OHA104 - Planning and Research			3.00 *		3.00 *	
	OPERATING		OHA	149,813 A		156,300 A	
				3.00 *		3.00 *	
			OHA	149,813 B		156,299 B	
6.	OHA105 - Culture			2.00 *		2.00 *	
	OPERATING		OHA	62,591 A		70,606 A	
				2.00 *		2.00 *	
			OHA	62,591 B		70,606 B	
7.	OHA106 - Government and Community Affairs			5.50 *		5.50 *	
	OPERATING		OHA	144,087 A		148,748 A	
				5.50 *		5.50 *	
			OHA	144,087 B		148,748 B	
8.	OHA107 - Land and Natural Resources			1.50 *		1.50 *	
	OPERATING		OHA	309,024 A		319,485 A	
				1.50 *		1.50 *	
			OHA	309,023 B		319,484 B	
9.	OHA108 - Economic Development			1.50 *		1.50 *	
	OPERATING		OHA	172,801 A		180,020 A	
				1.50 *		1.50 *	
			OHA	172,800 B		180,020 B	
				4.00 *		4.00 *	
			OHA	957,000 N		957,000 N	
10.	OHA109 - Education			1.50 *		1.50 *	
	OPERATING		OHA	152,539 A		157,818 A	
				1.50 *		1.50 *	
			OHA	152,539 B		157,818 B	

## **ACT 303**

**SECTION 5.** Provided that the general fund appropriations in Section 3 of this Act shall be expended by the Office of Hawaiian Affairs.

**SECTION 6.** Provided that whenever the need arises, the chairperson of the trustees for the Office of Hawaiian Affairs is authorized to transfer sufficient funds and positions between programs for research and development and operating purposes; provided that a report of all such transfers shall be made to the legislature not less than twenty days prior to the convening of the 1990 and 1991 legislative session.

**SECTION 7.** Provided that the Office of Hawaiian Affairs and the State of Hawaii shall share equally in the costs of wages and fringe benefits paid for employees of the Office of Hawaiian Affairs. Fringe benefits shall be defined as benefits received by public employees, including hospital, medical, and dental care under the public employees health fund, temporary disability insurance, unemployment insurance, life and long term disability insurance, workers compensation, social security, and retirement benefits.

**SECTION 8.** Provided that of the funds appropriated for office of the administrator (OHA 100), the sum of \$10,000 in fiscal year 1989-90 and \$10,000 in fiscal year 1990-91 shall be used as a protocol fund.

**SECTION 9.** Provided that of the funds appropriated for policy and administration (OHA 100), the sum of \$50,000 in general funds and \$50,000 in special funds for fiscal year 1989-90 shall be expended to establish a Governor's task force for the development of a master plan to coordinate the provision of services by public and private entities to native Hawaiians and Hawaiian populations for the purpose of efficiently budgeting funds for this purpose.

**SECTION 10.** Provided that of the funds appropriated for policy and administration (OHA 100), the sum of \$158,520 in general funds for fiscal year 1989-90 shall be expended to address the question of blood quantum for Hawaiians, through the use of media coverage, informational campaign, and meetings in the communities and similar types of actions as determined to be appropriate by OHA; provided further that the results of the single definition ballot shall be transmitted to legislature not less than twenty days prior to the convening of the 1990 regular session for action regarding possible constitutional amendments.

**SECTION 11.** Provided that to ensure the proper expenditure of funds a financial and management audit shall be conducted on the Office of Hawaiian Affairs by the Legislative Auditor; provided further that the audit shall include an evaluation of all existing programs and contain recommendations on measures of effectiveness and reporting format for each program area; provided further that the Legislative Auditor submit a report of finding and recommendations to the legislature not less than twenty days prior to the 1990 regular session.

**SECTION 12.** Provided that of the funds appropriated for human resources (OHA 103), the sum of \$75,000 in general funds and \$75,000 in special funds for fiscal year 1989-90 and \$28,000 in general funds and \$28,000 in special funds for fiscal year 1990-91 shall be expended for the creation of an organization to be known as "Papa Ola Lokahi" to develop a Native Hawaiian (no blood quantum) comprehensive health care master plan for the purpose of efficiently appropriating funds for comprehensive health care.

SECTION 13. Provided that of the funds appropriated for planning and research (OHA 104), the sum of \$40,000 in general funds and \$40,000 in special funds for fiscal year 1989-90 and \$42,080 in general funds and \$42,080 in special funds for fiscal year 1990-91 shall be used for the purpose of matching funds for federal grants; provided further that the funds not expended for the above purpose shall revert back to the general fund or the special fund as the case may be.

SECTION 14. Provided that of the funds appropriated for land and natural resources (OHA 107), the sum of \$25,000 in general funds and \$25,000 in special funds for fiscal year 1989-90 and \$25,000 in general funds and \$25,000 in special funds for fiscal year 1990-91 shall be expended to establish a historic preservation task force to recommend and assist in the development of legislation to address known weaknesses in federal and state laws and county ordinances regarding the inadequacy of historic preservation legal protection; provided further that the Office of Hawaiian Affairs shall consult with the Hawaii historic places review board on the development of this project.

SECTION 15. This Act shall take effect on July 1, 1989.

(Approved June 13, 1989.)

## ACT 304

H.B. NO. 662

A Bill for an Act Relating to Family Law.

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

SECTION 1. Chapter 576D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§576D- Liens.** (a) Whenever any obligor through judicial or administrative process has been ordered to pay an allowance for the support, maintenance, or education of a child, or for the support and maintenance of a spouse or former spouse in conjunction with child support, and the obligor becomes delinquent in those payments in an amount equal to or greater than the sum of payments which would become due over a three-month period, the obligor’s real and personal property shall be subject to lien and foreclosure, distress, seizure and sale, or order to withhold and deliver, which shall be executed in accordance with applicable state law.

(b) Whenever the dependents of the obligor receive public assistance money, the child support enforcement agency or its designated counsel may establish the public assistance debt through an appropriate judicial or administrative proceeding. Upon the establishment of the public assistance debt, it shall be subject to collection action, and the real and personal property of the obligor shall be subject to lien and foreclosure, distress, seizure and sale, or order to withhold and deliver, which shall be executed in accordance with applicable state law.

(c) The lien shall be recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court. The lien shall become effective immediately upon its recordation and shall attach to all interests in real property then owned or subsequently acquired by the obligor including any interests not recorded with the bureau of conveyances or filed in the land court.

(d) No fee shall be charged the child support enforcement agency or its designated counsel for recording or filing of the liens provided for in this section or for the recording or filing of any releases requested in conjunction with the liens.

## ACT 305

(e) Any lien provided for by this section shall take priority over any lien subsequently acquired or recorded except tax liens.

(f) The lien shall be enforceable by the child support enforcement agency or its designated counsel or by the obligee by suit in the appropriate court or shall be enforceable as a claim against the estate of the obligor.

(g) The child support enforcement agency, its designated counsel or the obligee, where appropriate, shall issue certificates of release upon satisfaction of the lien. Certificates of release of any real property shall be recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court. Recordation of the certificate of release shall be the responsibility of the obligor."

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

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

(Approved June 13, 1989.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 305

H.B. NO. 1378

A Bill for an Act Relating to the Public Employees Health Fund.

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

SECTION 1. Section 87-23, Hawaii Revised Statutes, is amended to read as follows:

**"§87-23 Determination of [group life insurance plan] benefits[.] under the group life benefit program or group life insurance program.** Pursuant to section 87-4, the board of trustees shall provide [group life insurance plan] benefits under a group life benefit program or group life insurance program to employees in the following manner:

- (1) For those employees who are not participating in a group life benefit program or group life insurance program of an employee organization (hereafter "nonparticipating employees"), the board shall determine a group life insurance benefit plan and eligibility requirements for such benefits based upon the amount to be contributed per employee under section 87-4(c). Any rate credit or reimbursement from any carrier of any earnings or interest derived from the group life insurance plan of nonparticipating employees shall be used to improve the group life insurance benefits of nonparticipating employees.
- (2) For those employees who participate in a group life benefit program or group life insurance program of an employee organization, the board shall pay a monthly contribution for each employee, in the amount determined under section 87-4(c), or the actual monthly cost of the coverage, whichever is less, towards the purchase of [group life insurance] benefits under the group life benefit program or group life insurance program of an employee organization.
- (3) Paragraphs (1) and (2) notwithstanding, an employee who is participating in a group life benefit program or group life insurance program of an employee organization may continue such plan and pay all of the premiums required while enrolled under paragraph (1); provided

that no employee shall have more than one contribution from the board per month.”

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

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

(Approved June 13, 1989.)

## ACT 306

H.B. NO. 1535

A Bill for an Act Relating to Contractors.

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

SECTION 1. Section 444-25.5, Hawaii Revised Statutes, is amended to read as follows:

**“§444-25.5 Disclosure.** Any licensed contractor entering into a contract involving home improvements shall upon or before signing the contract, but before the application for a building permit:

- (1) Explain verbally in detail to the owner all lien rights of all parties performing under the contract including the homeowner, the contractor, any subcontractor or any materialman supplying commodities or labor on the project.
- (2) Explain verbally in detail the owner’s option to demand bonding on the project, how such a bond would protect the owner and the approximate expense of such a bond.
- (3) Secure signatures of the owner on a separate form, the language of which shall be approved by the contractors license board, which shall be printed in at least 12 point type and in the same language in which the contract was negotiated and which shall contain the provisions set out in paragraphs (1) and (2)[.], provided that at the contractor’s option, a separate form need not be used, so long as the disclosures required by this section are in the first page of the contractor’s written contract and printed in at least 14 point type.
- (4) Violation of this section shall be deemed an unfair or deceptive practice and shall be subject to the provisions of chapter 480, as well as the provisions of this chapter.
- (5) The contractors license board is authorized and directed to develop the disclosure [form] language pursuant to this section.”

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

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

(Approved June 13, 1989.)

**ACT 307**

H.B. NO. 1575

A Bill for an Act Relating to Income Tax Credits for Energy Conservation.

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

**SECTION 1.** The Hawaii state plan calls for our economy to make every practical effort to reduce our dependence on imported oil. Solar water heaters and heat pumps have played a major role in this energy conservation effort. The economic viability of solar water heaters and heat pumps are dependent on the price of oil and also on the availability of tax credits. Since 1985, when the federal tax credits expired, solar water heater installations on Oahu dropped from 3,084 in 1985 to only 38 in 1988.

In 1985, oil was \$30 per barrel, as compared to about \$20 in 1988, and about \$16.50 per barrel in January of 1989. As a result, heat pump installations dropped from almost 3,000 residential and 118 commercial units in 1985, to only 1,500 residential and 63 commercial units in 1988 (a large proportion of the 1,500 residential heat pumps installed in 1988 were installed in military housing).

Accordingly, the legislature finds that the current low price of imported oil has adversely affected the competitive viability of solar water heaters, heat pumps, and other conservation and alternate energy conversion devices and that additional incentives in the form of higher state tax credits are needed to ensure that progress will continue toward the State's goal of reducing its dependence on imported oil.

**SECTION 2.** Section 235-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each individual and corporate resident taxpayer who files an individual or corporate net income tax return for a taxable year, may claim a tax credit under this section against the Hawaii state individual or corporate net income tax. The tax credit may be claimed for any solar or wind energy device, heat pump, or ice storage system in an amount not to exceed ten per cent of the total cost of the device, heat pump, or ice storage system; provided that the tax credit shall apply only to the actual cost of the solar or wind energy device, the heat pump, or ice storage system, their accessories, and installation and shall not include the cost of consumer incentive premiums unrelated to the operation of the solar or wind energy device, the heat pump, or ice storage system offered with the sale of the solar or wind energy device, the heat pump, or ice storage system. The credit shall be claimed against net income tax liability for the year in which the solar or wind energy device, the heat pump, or ice storage system was purchased and placed in use; provided:

- (1) The tax credit shall be applicable only with respect to solar devices, which are erected and placed in service after December 31, 1974, but before December 31, 1992;
- (2) In the case of wind energy devices and heat pumps, the tax credit shall be applicable only with respect to wind energy devices and heat pumps which are installed and placed in service after December 31, 1980, but before December 31, 1992; and
- (3) In the case of ice storage systems, the tax credit shall be applicable only with respect to ice storage systems which are installed and placed in service after December 31, 1985, but before December 31, 1992.

Tax credits which exceed the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. If federal energy tax credits are not extended beyond December 31, 1985, are not retroactively extended or reenacted, or federal energy tax credits the same as or

less in amount than the credits in effect during the 1985 taxable year are not enacted during the taxable year 1986, then the state tax credit shall be increased to [fifteen] twenty per cent of the total cost after December 31, [1985,] 1989, to December 31, 1992."

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

SECTION 3. This Act, upon its approval, shall apply to taxable years after December 31, 1989.

(Approved June 13, 1989.)

## ACT 308

H.B. NO. 1695

A Bill for an Act Relating to Child Support.

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

SECTION 1. Section 576-37.5, Hawaii Revised Statutes, is amended to read as follows:

**"§576-37.5<sup>1</sup> Interstate request for income withholding.** (a) Upon receipt by the agency, as defined in [section 576D-1,] chapter 576E, of a request from another state for enforcement of a support order by income withholding, which request is accompanied by a certified copy of the support order, the agency may enter an income withholding order as authorized in section 576E-16 [or forward the request and support order to the court for filing].

[(b) If the request is forwarded to the court, the certified copy of the support order shall be filed with the court. The support order so filed has the same effect and shall be enforced in the same manner as a support order rendered by a court of this state or by the agency. The agency shall notify the obligor that unless the obligor contests it, an order for income withholding pursuant to the procedures in section 571-52.3, shall automatically issue thirty days after the mailing of the notice. An obligor may contest the issuance of an income withholding order under this section by filing with the agency a statement of objections within twenty days from the date of receipt of the notice of the pending order for income withholding. If no such statement of objections is received, the court shall issue an income withholding order upon the expiration of the thirty day period. If a statement of objections is made within this time, the agency shall notify the court to set the matter for a hearing. At the hearing, the court shall determine whether an income withholding order shall issue and the amount thereof. The only basis for contesting a withholding under this section is a mistake of fact, which, for purposes of this section, means an error in the amount of current or overdue support or in the identity of the alleged absent parent.]

(b) Enforcement of the support order may also include child support arrearages and reimbursement of Aid to Families with Dependent Children moneys, where such order provides a monthly payment plan for these established debts."

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

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

(Approved June 13, 1989.)

## ACT 309

### Note

1. So in original.

## ACT 309

H.B. NO. 1842

A Bill for an Act Relating to State Special Funds.

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

**SECTION 1.** The purpose of this Act is to provide executive departments with increased flexibility in the disposition of moneys in special funds which are determined to be in excess of requirements for any ensuing twelve-month period in such funds, in order to more effectively utilize the financial resources of the State so long as such disposition will not jeopardize federal grant agreements.

The Legislature hereby finds and determines that certain special funds under the control of the department of transportation have experienced unprecedented growth in recent years while other special funds under the control of the department of transportation are operating on a marginal basis; that such circumstances result in an inefficient allocation of the State's financial resources; that it is necessary and desirable to provide a mechanism to permit the transfer of excess moneys from special funds under the control of the department of transportation to other special funds under the control of the department of transportation or to the general fund of the State to finance the important public purposes for which such funds have been established; that it is reasonable to maximize the use of existing financial resources of the State rather than to increase taxes or fees to finance the important public purposes for which the special funds under the control of the department of transportation and the State general fund have been established; and that the enactment of this Act is in the public interest.

**SECTION 2.** Section 37-53, Hawaii Revised Statutes, is amended to read as follows:

**“§37-53 Transfer of special funds [to general revenues].** At any time during [the] a fiscal [period,] year, notwithstanding any other [provisions of] law to the contrary, [departments] any department may, with the approval of the governor or the director of finance if so delegated by the governor, transfer from the special funds relating to such department to the general revenues of the State all or any portion of [monies] moneys<sup>1</sup> determined to be in excess of fiscal [period] year requirements for [the] such special [funds.] funds, except for special funds under the control of the department of transportation relating to highways, airports, transportation use, and harbors activities. At any time the department of transportation, with the approval of the governor or the director of finance if so delegated by the governor, may transfer from any of the special funds under the control of the department of transportation to the general revenues of the State or to any special fund under the control of the department of transportation all or any portion of moneys determined to be in excess of requirements for the ensuing twelve months, provided no such transfer shall be made which would cause a violation of federal law or federal grant agreements.”

**SECTION 3.** The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## “CHAPTER TRANSPORTATION USE SPECIAL FUND”

**§ -1 Transportation use special fund; established.** There is created in the treasury of the State the transportation use special fund into which shall be deposited that portion of the moneys received by the department of transportation paid under contract entered into as authorized by section 261-7 on account of the display, sale and delivery of in-bond merchandise displayed or sold at locations in the State other than on airport properties as permitted under federal law without causing a violation of federal grant agreements, or as shall be mutually agreed upon by the State and any appropriate agency of the federal government, and as may be provided by rules promulgated pursuant to chapter 91; provided that no moneys so deposited may be appropriated, applied or expended from the transportation use special fund prior to July 1, 1990; except that such funds shall continue to be available and be used for purposes provided under section 261-5. The director of transportation shall administer the fund.

**§ -2 Disposition of the transportation use special fund.** For so long as airport revenue bonds issued before the effective date of this Act are outstanding, the director of transportation shall transfer to the airport revenue fund created by section 248-8 from moneys on deposit in the transportation use special fund, as permitted by and in accordance with section 37-53, an amount which, together with moneys on deposit in the airport revenue fund, will cause the aggregate amount of moneys on deposit in the airport revenue fund to be at least one hundred fifty per cent of the requirements of such fund for the ensuing twelve months. At any time after complying with the provisions of the preceding sentence, the director of transportation may transfer all or any portion of the balance of the moneys on deposit in the transportation use special fund to the general fund of the State or to any special fund under the control of the department of transportation as permitted by and in accordance with section 37-53.

**§ -3 Exempted from reimbursement for departmental administrative expenses.** The transportation use special fund is exempted from section 36-30.

**§ -4 Report to the legislature.** The director of transportation shall submit a report to the legislature, not later than thirty days after the end of each fiscal year with respect to the transportation use special fund. The report shall include, but not be limited to, the following:

- (1) The amount of moneys received and deposited in the transportation use special fund and the amount of moneys transferred from the transportation use special fund to any other special fund of the department of transportation for the fiscal year just ended;
- (2) The amount of moneys expected to be received by the department of transportation, pursuant to section -1, for the transportation use special fund and to be transferred to any other special fund of the department of transportation for the current fiscal year; and
- (3) Any interest accrued or expense deducted from the moneys in the transportation use special fund, with an explanation for each.”

SECTION 4. Section 36-30, Hawaii Revised Statutes, is amended to read as follows:

**“§36-30 Special fund reimbursements for departmental administrative expenses.** Each special fund, except the transportation use special fund established

by section -1; the special summer school fund under section 298-3.5; the school cafeteria special funds of the community colleges, the department of education, and the university laboratory school; and the special funds of the student housing, summer session, division of continuing education and community service, campus center, and bookstores of the University of Hawaii, 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. Administrative expenses shall include, but shall not be limited to, salaries, maintenance of buildings and grounds, utilities, and general office expenses. The pro rata share of each special fund shall be that proportion of the administrative expenses of the department, including those paid from all special funds administered by the department, which the expenditures of the special fund bear to the total expenditures of the department; provided that in determining the amount to be charged to each special fund for its pro rata share, credit shall be given for any administrative expenses paid from the special fund concerned and such other adjustments shall be made as may be necessary to achieve an equitable apportionment. The director of finance may determine the amount to be charged to each special fund and may cause the amounts to be transferred to the general funds as reimbursements."

SECTION 5. Section 248-9, Hawaii Revised Statutes, is amended to read as follows:

**"§248-9 State highway fund.** Moneys in the state highway fund may be expended for the following purposes:

- (1) To pay the costs of [repairs and maintenance] operation, maintenance, and repair of the state highway system, [which includes] including without limitation, the cost of equipment and general administrative overhead[.];
- (2) To pay the costs of acquisition (including real property and interests therein), planning, designing, construction and reconstruction of the state highway system, and bikeways, [which include] including, without limitation, the cost of equipment and general administrative overhead[.]; and
- (3) To reimburse the general fund for interest on and principal of general obligation bonds issued to finance highway projects where such bonds are designated to be reimbursable out of the [special] state highway fund.

At any time the director of transportation may transfer from the state highway fund all or any portion of available moneys determined by the director of transportation to be in excess of one hundred fifty per cent of the requirements for the ensuing twelve months for the state highway fund as permitted by and in accordance with section 37-53. For purposes of such determination, the director of transportation shall take into consideration the amount of federal funds and bond funds on deposit in, and budgeted to be expended from, the state highway fund during such period, amounts on deposit in the state highway fund which are encumbered or otherwise obligated, budgeted amounts payable from the state highway fund during such period, and revenues anticipated to be received by and expenditures to be made from the state highway fund during such period based on existing agreements and other information for the ensuing twelve months, and such other factors as the director of transportation shall deem appropriate."

SECTION 6. Section 261-5, Hawaii Revised Statutes, is amended to read as follows:

**"§261-5 Disposition of airport revenue fund.** (a) Except for that portion of the payments received by the department under a contract entered into as au-

thorized by section 261-7 and deposited in the transportation use special fund pursuant to section -1. [All] all<sup>1</sup> moneys received by the department [of transportation] from rents, fees and other charges collected pursuant to this chapter, as well as all aviation fuel taxes paid pursuant to section 243-4(a)(2), shall be paid into the airport revenue fund created by section 248-8.

All [such] moneys paid into the airport revenue fund shall be appropriated, applied or expended by the department [for the statewide system of airports, including the construction of airports and air navigation facilities approved by the legislature, including acquisition of real property and interests therein; and for operation and maintenance of airports and air navigation facilities; and for the payment of indebtedness heretofore or hereafter incurred by the department, or its predecessor, the Hawaii aeronautics commission, for any of the purposes of this chapter.] for any purpose within the jurisdiction, powers, duties, and functions of the department related to the statewide system of airports, including, without limitation, the costs of operation, maintenance and repair of the statewide system of airports and reserves therefor, and acquisitions (including real property and interests therein), constructions, additions, expansions, improvements, renewals, replacements, reconstruction, engineering, investigation, and planning for the statewide system of airports, all or any of which in the judgment of the department are necessary to the performance of its duties or functions. The department shall generate sufficient revenues from its airport properties to meet all of the expenditures of the statewide system of airports and to comply with section [39-59;] 39-61;<sup>1</sup> provided that as long as sufficient revenues are generated to meet such expenditures, the director of transportation may, in the director's discretion, grant a rebate of the aviation fuel taxes paid into the airport revenue fund during a fiscal year pursuant to sections 243-4(a)(2) and 248-8 to any person who has paid airport use charges or landing fees during such fiscal year. Such rebate may be granted during the next succeeding fiscal year but shall not exceed one-half cent per gallon per person, and shall be computed on the total number of gallons for which the tax was paid by such person, for such fiscal year.

(b) At any time the director of transportation may transfer from the airport revenue fund all or any portion of the moneys received by the department paid under a contract entered into as authorized by section 261-7 on account of the display, sale and delivery of in-bond merchandise displayed or sold at locations in the State other than on airport properties, as permitted under federal law without causing a violation of federal grant agreements, which the director of transportation shall determine, pursuant to rules promulgated pursuant to chapter 91, to be in excess of one hundred fifty per cent of the requirements of the airport revenue fund for the ensuing twelve months.

[b)] (c) All expenditures by the department shall be on vouchers duly approved by the director of transportation or such other officer as may be designated by the director.

(d) Notwithstanding the provisions contained in contract authorized by section 261-7 in effect on the effective date of this Act, from and after the effective date of this Act to and including June 30, 1990, all payments made under such contract allocable to the display and sale of in-bond merchandise at locations in the State other than on airport properties shall be deposited in the transportation use special fund but shall not be appropriated, applied, or expended prior to July 1, 1990, except that such funds shall continue to be available and be used for purposes provided under section 261-5."

SECTION 7. Section 266-19, Hawaii Revised Statutes, is amended to read as follows:

**"§266-19 [Harbor special fund; harbor reserve fund.] Creation of harbor special fund; disposition of harbor special fund.** (a) There is created in the treasury of the State the harbor special fund [into which funds collected by the department of transportation under]. All moneys received by the department of transportation from the rates and fees pursuant to section 266-17(1) shall be [deposited] paid into the harbor special fund. The harbor special fund and the second separate harbor special fund heretofore created shall be consolidated into the harbor special fund at such time as there are no longer any revenue bonds payable from the second separate harbor special fund. The harbor reserve fund heretofore created is abolished.

[The harbor special fund shall be applied, used, and disposed of as follows, and in the following order of priority:

First, for the payment when due of all bonds and interest thereon, for the payment of which the revenues are or shall have been pledged, charged, or otherwise encumbered, including reserves therefor;

Second, for the expenses of operation and maintenance of the properties designated in section 266-17(1), including reserves therefor and the expenses of the operation of the department in connection with those properties, the general administrative overhead to be prorated between those properties and the properties principally used for recreation or the landing of fish;

Third, for the purposes, within the jurisdiction, powers, duties, and functions of the department, including the creation and maintenance of reserves, as have been covenanted in any resolution or resolutions of the department or certificate or certificates of the head of the department providing for the issuance of revenue bonds or creating other revenue obligations;

Fourth, to reimburse the general fund of the State for all bond requirements for general obligation bonds which are or have been issued for harbor or wharf improvements with respect to properties designated in section 26-17(1),<sup>1</sup> excluding bonds, the proceeds of which were or are to be expended for improvements which are or will be neither revenue producing nor connected in their use directly with revenue producing properties, or to refund any of the bonds, except insofar as the obligation or reimbursement has been or is canceled by the legislature. Unless otherwise provided by the legislature, bond requirements are the interest on term and serial bonds, sinking fund for term bonds, and principal of serial bonds maturing the following year;

Fifth, for any purpose within the jurisdiction, powers, duties, and functions of the department (excluding properties principally used for recreation or the landing of fish, except the properties located at Kewalo Basin, ewa of Ala Moana Park, Honolulu), including acquisitions, constructions, additions, expansions, improvements, renewals, replacements, reconstruction, engineering, investigation, and planning, all or any of which in the judgment of the department are necessary to the performance of its duties or functions. There is created in the treasury of the State a second separate harbor special fund, into which shall be deposited all moneys to be applied to the foregoing purposes of this paragraph. In anticipation of the payments into and accumulations in the second separate special fund, the department may issue revenue bonds or other revenue obligations of the State, in such sums only as may be authorized by specific act or acts of the legislature and repayable solely out of the second separate special fund, to finance in whole or in part the cost of any acquisition, construction, addition, expansion, improvement, renewal, replacement, or reconstruction. If any revenue bonds or other revenue obligations payable from the second separate special fund are issued, then while any such revenue bonds or other revenue obligations are outstanding:

- (1) The amount deposited and to be deposited in the second separate special fund from the moneys in the harbor special fund shall never be less than the amount necessary to pay when due the principal of and interest on the bonds and other obligations, including reserves therefor;
- (2) The department may create any accounts within the second separate special fund as it may deem necessary or desirable; and
- (3) The moneys in the harbor special fund and in the second separate special fund, in lieu of being appropriated, applied, or expended for the purposes and in the order of priority set forth in section 39-60, shall be appropriated, applied, or expended as provided in this section, subject to the modifications hereinafter set forth in this paragraph.

While any revenue bonds of the State payable directly from the harbor special fund are outstanding, the payments into the second separate special fund to provide for the payment of principal of and interest on the revenue bonds or other revenue obligations payable solely out of the second separate special fund, including reserves therefor, shall be made after the application of moneys in the harbor special fund for first, second, and third priority items of this section but prior to the application thereof for the purposes of the remaining paragraphs of this section. After all revenue bonds of the State payable directly from the harbor special fund have been paid or sufficient funds for their payment have been set aside in trust for that purpose, the payments into the second separate special fund to provide for the payment of the principal of and interest on the revenue bonds or other revenue obligations payable solely from the second separate special fund,<sup>1</sup> including reserves therefor, shall be made prior to the use and application of the moneys in the harbor special fund for any other purposes of this section, including without limitation, the second through ninth priority items. Any moneys in the second separate special fund, including reserves therefor, shall be applied to the payment of the costs of acquisitions, constructions, additions, expansions, improvements, renewals, replacements, and reconstructions required by the legislature to be paid from either the harbor special fund or the second separate special fund. All revenue bonds or other revenue obligations for harbor acquisitions, constructions, additions, expansions, improvements, renewals, replacements, or reconstructions authorized by the legislature at the regular session of 1966, or thereafter, to be issued pursuant to part III, chapter 39, may be issued by the department, either payable as to principal and interest directly from the harbor special fund or from the second separate special fund pursuant to this paragraph;

Sixth, to make payments into the general fund as may be required under section 36-29;

Seventh, to make any and all other outlays or expenditures not otherwise restricted in this section;

Eighth, to provide a reserve for betterments to harbor undertakings under the jurisdiction of the department;

Ninth, to provide funds for other special reserve funds and other special funds as are created by law.

Until adequate provision is otherwise made for the purposes of this section, no transfer shall be made of all or any part of the moneys in the harbor special fund or in any other special fund created in this section, to the general funds of the State nor shall the funds be applied for any other purposes.

There is created the harbor reserve fund into which the department may make transfers from the harbor special fund in the amounts and at the times as the department shall determine. The amount of the harbor reserve fund shall not at any time exceed \$750,000. The harbor reserve fund may be expended for any of the purposes of and in the same manner as the harbor special fund and shall be subject to the same limitations as are placed upon the harbor special fund. No amount held

## ACT 309

in or paid from the harbor reserve fund shall be used to reduce the rates assessable or chargeable by the department under section 266-17(1), but in computing its expense under section 266-17(1), the department shall not include any amount for the purpose of increasing or replenishing the reserve fund. The harbor reserve fund shall be maintained at the balances required by the resolutions or certificates providing for the issuance of all bonds payable from the harbor special fund and issued prior to January 1, 1967, or issued thereafter, payable on a parity with bonds issued prior to January 1, 1967, and when permitted by the resolutions or certificates, the moneys in the harbor reserve fund may be applied to the final payment or redemption of those bonds, and the harbor reserve fund shall thereupon be abolished.]

All moneys derived pursuant to this chapter from harbor properties of the statewide system of harbors (excluding properties principally used for recreation or the landing of fish, except properties located at Kewalo Basin, ewa of Ala Moana Park, Honolulu) shall be paid into the harbor special fund and each fiscal year shall be appropriated, applied, or expended by the department of transportation for the statewide system of harbors for any purpose within the jurisdiction, powers, duties, and functions of the department of transportation related to the statewide system of harbors (excluding properties principally used for recreation or the landing of fish, except the properties located at Kewalo Basin, ewa of Ala Moana Park, Honolulu), including, without limitation, the costs of operation, maintenance and repair of the statewide system of harbors and reserves therefor, and acquisitions (including real property and interests therein), constructions, additions, expansions, improvements, renewals, replacements, reconstruction, engineering, investigation, and planning, for the statewide system of harbors, all or any of which in the judgment of the department of transportation are necessary to the performance of its duties or functions.

(b) At any time the director of transportation may transfer from the harbor special fund created by paragraph (a) of this section, all or any portion of available moneys on deposit in the harbor special fund determined by the director of transportation to be in excess of one hundred fifty per cent of the requirements for the ensuing twelve months for the harbor special fund as permitted by and in accordance with section 37-53. For purposes of such determination, the director of transportation shall take into consideration the amount of federal funds and bond funds on deposit in, and budgeted to be expended from, the harbor special fund during such period, amounts on deposit in the harbor special fund which are encumbered or otherwise obligated, budgeted amounts payable from the harbor special fund during such period, and revenues anticipated to be received by and expenditures to be made from the harbor special fund during such period based on existing agreements and other information for the ensuing twelve months, and such other factors as the director of transportation shall deem appropriate.

(c) All expenditures by the department shall be made on vouchers duly approved by the director of transportation or such other officer as may be designated by the director of transportation."

SECTION 8. Nothing contained in this Act shall impair or be deemed to impair the rights and privileges of the holders of indebtedness outstanding as of the effective date of this Act and payable from moneys in the airport revenue fund. If and to the extent the application of monies in the airport revenue fund as heretofore provided by any certificate securing airport revenue bonds is construed to be inconsistent with the provisions of this Act, such moneys shall continue to be applied in accordance with such certificate so long as any airport revenue bonds secured thereby remain outstanding.

SECTION 9. Nothing contained in this Act shall impair or be deemed to impair the rights and privileges of the holders of indebtedness outstanding as of

the effective date of this Act and payable from moneys in the harbor special fund or the second separate harbor special fund. If and to the extent the application of moneys in the harbor special fund or the second separate harbor special fund as heretofore provided by any certificate securing harbor revenue bonds is construed to be inconsistent with the provisions of this Act, such moneys shall continue to be applied in accordance with such certificate so long as any harbor revenue bonds secured thereby remain outstanding.

SECTION 10. The provisions of this Act shall be performed to the extent they are permitted under federal law without causing a violation of federal grant agreements, federal law or regulations. Nothing contained in this Act shall be deemed or construed to obligate the State or the department of transportation, either legally or morally, to extend the term, conditions and provisions of any agreement in effect as of the effective date of this Act beyond the expiration of such agreement by its terms. The provisions of this Act are not severable. If any provision of this Act, or the application thereof to any person or circumstance is held invalid or in conflict with applicable federal law or federal grant agreements, this Act, in its entirety, shall be invalid and Sections 36-30, 37-53, 248-9, 261-5, and 266-19, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the approval of this Act.

SECTION 11. Statutory material to be deleted is bracketed. New statutory material is underscored.

SECTION 12. This Act shall take effect upon approval.

(Approved June 13, 1989.)

**Note**

1. So in original.

**ACT 310**

H.B. NO. 1912

A Bill for an Act Relating to the Libraries of the University of Hawaii.

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

SECTION 1. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§304- Library special fund.** There is established a special fund for the libraries of the University of Hawaii into which shall be deposited all fines, fees, and other revenue derived from the libraries' operations. Moneys deposited in this fund may be expended to replace or repair lost, damaged, stolen, or outdated books, serials, and periodicals, or to support and improve the services provided by the libraries. The amounts allocated to each campus library from the special fund shall be proportionate to the amount of revenues generated by each library.”

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

SECTION 3. This Act shall take effect on July 1, 1989.

(Approved June 13, 1989.)

## ACT 311

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 311

H.B. NO. 1920

A Bill for an Act Relating to Vehicle Weight.

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

SECTION 1. Section 291-35, Hawaii Revised Statutes, is amended to read as follows:

**“§291-35 Gross weight, axle, and wheel loads.** No motor vehicle or other power vehicle or combination of such vehicles equipped wholly with pneumatic tires, which has a total gross weight, including vehicle and load, an axle load, or a wheel load in excess of the limits set forth in this section shall be operated or moved upon any public road, street, or highway within the State; provided that the maximum gross weight, axle loads, and wheel loads allowed under this section shall be inapplicable when its application would adversely affect the receipt of federal funds for highway purposes; and provided further that no vehicle or combination of vehicles shall be operated on or moved over any bridge or other highway structure if the total gross weight, including vehicle and load, exceeds the posted maximum gross load limitation for the bridge or other highway structure.

- (1) The total gross weight, in pounds, imposed on any public road, street, or highway within the State by any group of two or more consecutive axles, on a vehicle or combination of vehicles shall not exceed the following when the distance between the first and last axles of the group under consideration is:
  - (A) Less than forty-two inches, the weight imposed shall not exceed [twenty-four] twenty-two thousand five hundred pounds.
  - (B) At least forty-two inches but less than six feet, the weight imposed shall not exceed thirty-four thousand pounds. This grouping of two consecutive axles shall be known as tandem axle.
- (2) The total gross weight, in pounds, imposed on interstate highways within the State by any group of two or more consecutive axles, on a vehicle or combination of vehicles shall not exceed that resulting from application of the formula:

LN

$$W = 500(N - 1 + 12N + 36)$$

when the distance between the first and last axles of the group under consideration is at least six feet and over and where W = maximum weight in pounds carried on any group of two or more axles computed to the nearest 500 pounds.

L = Distance in feet between the extremes of any group of two or more consecutive axles, to the nearest foot,

N = Number of axles in group under consideration.

Provided that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six feet or more. Provided also that the overall gross weight does not exceed 80,000 pounds.

- (3) The total gross weight, in pounds, imposed on any public road, street, or highway, other than interstate highways, within the State by a vehicle or combination of vehicles shall not exceed that determined by the formula:

$$W = 900(L + 40)$$

when the distance between the first and last axle is at least six feet and over and where W = maximum weight in pounds rounded to the nearest 500 pounds.

L = Distance in feet between first and last axles of the vehicle or combination of vehicles.

Provided that the overall gross weight does not exceed 88,000 pounds.

- (4) No vehicle or combination of vehicles shall be used or operated on any public road, street, or highway within the State (A) with a load upon any single or tandem axle or combination of axles which exceeds the carrying capacity of the axles specified by the manufacturer, or (B) with a total weight in excess of its designed capacity as indicated by its designed gross vehicle weights or gross combination weights.
- (5) The total gross weight imposed upon the public road, street, or highway by any single axle shall not exceed [twenty-four] twenty-two thousand five hundred pounds. For the purpose of this section, axles placed in the same transverse plane which are closer than forty-two inches shall be considered as one axle.
- (6) The total gross weight imposed upon the public road, street, or highway by any one wheel, either single or dual mounting, shall not exceed [twelve] eleven thousand two hundred and fifty pounds.
- (7) The director of transportation, in the case of state highways, or the county engineer, in the case of county roads and streets, may place and maintain signs to limit the gross weight of a vehicle or combination of vehicles traveling over a bridge or other highway structure in the interest of public safety when it is determined through engineering investigation and analysis that the theoretical load carrying capacity of the bridge or structure is less than the maximum gross vehicular weight allowed by this chapter. In determining the weight limits and in posting the weight limit signs, the director or the county engineer need not comply with rulemaking provisions of chapter 91; provided that if any person objects to the weight limits, the person may object to the rule as provided in chapter 91."

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

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

(Approved June 13, 1989.)

## ACT 312

S.B. NO. 148

A Bill for an Act Relating to Nondegradable Solid Waste.

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

**SECTION 1.** The legislature finds that the wide use of nondegradable plastics threatens the environment by causing excessively rapid filling of landfill space or, if incinerated, by the possible introduction of toxic byproducts into the atmosphere.

## ACT 312

On the other hand, degradable products offer a readily available and environmentally sound alternative to nondegradable products currently used. By decaying into their constituent substances, these products are, compared to their nondegradable equivalents, less of a danger to the natural environment, and less of a permanent blight on the environment.

The legislature further finds that the chemical composition and ability of a substance to degrade are meaningful and useful criteria to focus upon when establishing public policy that is intended to improve the management and disposal of solid waste, reduce the cumulative impact of litter, encourage composting and other forms of recycling, minimize the potential for toxic substances to form if solid waste is burned, reduce the volume of ash byproducts that may be created by any burning of waste plastic, and otherwise anticipate environmental problems that may be caused by solid waste disposal programs.

Moreover, many animals and marine life ingest plastics mistakenly as food or become fatally ensnared in plastic items, including plastic connecting rings commonly found on "six packs" of beer or soda.

Nondegradable plastic beverage connecting devices have been banned in at least seventeen states. Legislation has also been introduced in Congress to extend this ban to the national level.

The purpose of this Act is to prohibit nondegradable plastic connecting devices to protect the air, land, waters, and wildlife against environmental contamination and degradation.

SECTION 2. Chapter 339, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### **"PART . NONDEGRADABLE SOLID WASTE**

**§339- Definitions.** As used in this part, unless the context otherwise requires:

"Degradable" means all of the following:

- (1) Capable of achieving degradation by biological processes, photodegradation, chemodegradation, or degradation by other natural degrading processes;
- (2) Degradation at a rate that is equal to, or greater than, the degradation by a process specified in paragraph (1) of other commercially available plastic devices; and
- (3) Degradation which will not produce or result in a residue or byproduct which, during or after such process of degrading, would be a hazardous or extremely hazardous waste as specified in the Resource Conservation and Recovery Act.

"Director" means the director of health or the director's duly appointed agent.

**§339- Prohibited acts.** No person shall sell or offer for sale to any consumer within the State beverage containers, motor oil, or other consumer goods connected to each other with plastic connecting devices that are not degradable.

**§339- Rules.** The director shall establish by rules adopted under chapter 91 the criteria for eliminating the use of nondegradable plastic connecting devices to protect the air, land, and waters of the State against environmental contamination and degradation.

**§339- Penalties.** Any person who knowingly violates this part shall be fined not more than \$500 for each separate offense. Each day of violation shall

constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action."

**SECTION 3.** This Act shall take effect on January 1, 1990.

(Approved June 13, 1989.)

**ACT 313**

S.B. NO. 1128

A Bill for an Act Relating to Ohana Zoning.

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

**SECTION 1.** Section 46-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Each county [shall] may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted[; provided:

- (1) All applicable county requirements, not inconsistent with the intent of this subsection, are met, including building height, setback, maximum lot coverage, parking, and floor area requirements;
- (2) The county determines that public facilities are adequate to service the additional dwelling units permitted by this subsection; and
- (3) Construction of the second dwelling is otherwise in accordance with applicable zoning ordinances and rules, and general plan and development plan policies.

Nothing in this section shall supersede any recorded covenant or deed restriction that prohibits the construction of a second dwelling on a lot.

After receiving notice that a permit has been granted pursuant to this subsection, the applicant, once a week, for two consecutive weeks, shall publish a notice in a newspaper of general circulation in the area stating the applicant's name and address of the property, and notifying the public that the permit has been obtained. No construction shall be initiated until the last of the notices has been published. If the applicant fails to publish the notices, and constructs the unit, and a covenant or deed restriction exists that would have precluded the construction of the second unit, any person or entity who successfully brings an action for violation of the covenant or deed restriction shall be entitled to reasonable attorney's fees and costs.

This subsection shall not apply to lots developed under planned unit development, cluster development, or similar provisions which allow the aggregate number of dwelling units for the development to exceed the density otherwise allowed in the zoning district.

Each county shall establish a review and permit procedure necessary for the purposes of this subsection]."

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

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

(Approved June 13, 1989.)

**ACT 314****ACT 314**

S.B. NO. 1734

A Bill for an Act Relating to Capital Improvement Projects.

*Be It Enacted by the Legislature of the State of Hawaii:***PART I. GENERAL IMPROVEMENTS**

**SECTION 1.** This Act shall be known and may be cited as the General Improvements Act of 1989.

**SECTION 2.** The following sums or so much thereof as shall be sufficient to finance the projects listed in this Act, are appropriated or authorized, as the case may be, for fiscal year 1989-90, to be expended by the department of accounting and general services, unless otherwise specified, out of moneys in the treasury received from general obligation bond funds and general obligation reimbursable bond funds.

**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F

**ECONOMIC DEVELOPMENT****AGR151 - DISTRIBUTION SYSTEMS IMPROVEMENT FOR AGR**

1. HP1003 MOLOKAI COOLING FACILITY, MOLOKAI.

EQUIPMENT FOR THE FORCED AIR COOLING  
FACILITY ON MOLOKAI.

EQUIPMENT			10	
TOTAL FUNDING	AGR		10 C	C

**LNR153 - COMMERCIAL FISHERY AND AQUACULTURE**

2. SP2503 ROUND POND SHRIMP PRODUCTION FACILITY,  
KAUAI.

PLANS, INCLUDING BUT NOT LIMITED TO  
FEASIBILITY STUDIES, FOR THE PROPOSED  
ROUND POND SHRIMP PRODUCTION FACILITY AT  
PORT ALLEN, KAUAI.

PLANS		25		
TOTAL FUNDING	LNR	25 C		C

**EMPLOYMENT****LBR903 - OFFICE OF COMMUNITY SERVICES**

1. HJ0401 DAY CARE AND MULTI-PURPOSE COMMUNITY  
CENTER, PUUEO, HAWAII.

PLANS, DESIGN, CONSTRUCTION, AND  
EQUIPMENT FOR A DAY CARE MULTI-PURPOSE  
COMMUNITY CENTER, INCLUDING ROADWAY  
AND PARKING.

PLANS		24		
DESIGN		24		

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		CONSTRUCTION		1	
		EQUIPMENT		1	
		TOTAL FUNDING	AGS	50 C	C

## TRANSPORTATION FACILITIES

## TRN161 - LIHUE AIRPORT FACILITIES AND SERVICES

1. SP2501 LIHUE AIRPORT CIVIL AIR PATROL HANGARS  
AND FACILITIES, KAUAI.

PLANS AND DESIGN FOR REPLACEMENT OF  
CIVIL AIR PATROL HANGARS AND FACILITIES  
AT LIHUE AIRPORT.

PLANS	40
DESIGN	40
TOTAL FUNDING	80 C

## TRN341 - KAUNAKAKAI HARBOR FACILITIES AND SERVICES

2. SP0507 KAUNAKAKAI HARBOR, MOLOKA'I.

PLANS AND DESIGN FOR THE PREPARATION  
OF DETAILED MASTER PLAN FOR KAUNAKAKAI  
HARBOR, MOLOKA'I.

PLANS	25
DESIGN	50
TOTAL FUNDING	75 C

## TRN501 - OAHU HIGHWAYS AND SERVICES

3. HP1305 AVOCADO STREET/OHAI STREET AND  
KAMEHAMEHA HIGHWAY, OAHU.

DESIGN FOR FLASHING YELLOW LIGHTS OR  
SIGNAL LIGHTS AT THE INTERSECTION.

DESIGN	5
TOTAL FUNDING	5 D

4. HP4515 FARRINGTON HIGHWAY, WAIPAHU, OAHU.

DESIGN AND CONSTRUCTION FOR  
BEAUTIFYING FARRINGTON HIGHWAY WITH  
SHRUBBERY AND TREES FROM WAIPAHU HIGH  
SCHOOL TO KUNIA ROAD.

DESIGN	3
CONSTRUCTION	22
TOTAL FUNDING	25 D

5. J4522K FARRINGTON HIGHWAY, WAIPAHU, OAHU.

CONSTRUCTION OF SIDEWALK ON MAKAI SIDE  
OF FARRINGTON HIGHWAY FROM WAIPAHU HIGH  
SCHOOL TO PAIWA STREET (PROJECT  
PRESENTLY IN DESIGN PHASE. THIS  
ALLOCATION SUPPLEMENTS \$145,000

## ACT 314

### CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
PREVIOUSLY APPROPRIATED FOR THIS PROJECT).					
		CONSTRUCTION		120	
		TOTAL FUNDING	TRN	120 D	D
6. SP2402 FARRINGTON HIGHWAY, OAHU.					
DESIGN, CONSTRUCTION AND EQUIPMENT TO INSTALL 5 EMERGENCY TELEPHONES FROM NANAKULI TO YOKOHAMA BEACH ON FARRINGTON HIGHWAY.					
		DESIGN		5	
		CONSTRUCTION		20	
		EQUIPMENT		5	
		TOTAL FUNDING	TRN	30 D	D
7. J4623T FORT WEAVER ROAD, EWA, OAHU.					
DESIGN AND CONSTRUCTION FOR A BIKE PATH ALONG FORT WEAVER ROAD, OAHU.					
		DESIGN		3	
		CONSTRUCTION		27	
		TOTAL FUNDING	TRN	30 D	D
8. J4623U FORT WEAVER ROAD, EWA, OAHU.					
DESIGN AND CONSTRUCTION FOR EMERGENCY TELEPHONES ALONG FORT WEAVER ROAD, OAHU.					
		DESIGN		6	
		CONSTRUCTION		39	
		TOTAL FUNDING	TRN	45 D	D
9. HP2607 H-1 FREEWAY, NOISE BARRIERS, OAHU.					
PLANS AND DESIGN FOR AN EXPERIMENTAL NOISE BARRIER ALONG H-1 FREEWAY BETWEEN 6TH AVENUE AND 19TH AVENUE, OAHU.					
		PLANS		4	
		DESIGN		38	
		TOTAL FUNDING	TRN	42 D	D
10. J2814O H-1 FREEWAY NOISE BARRIERS, OAHU.					
PLANS, DESIGN, AND CONSTRUCTION FOR AN EXPERIMENTAL NOISE BARRIER ALONG H-1 FREEWAY BETWEEN KEEAUMOKU STREET AND 6TH AVENUE, OAHU.					
		PLANS		40	
		DESIGN		10	
		CONSTRUCTION		200	
		TOTAL FUNDING	TRN	250 D	D
11. HP2901 H-1 FREEWAY NOISE BARRIERS, OAHU.					
PLANS, DESIGN, AND CONSTRUCTION FOR AN EXPERIMENTAL NOISE BARRIER ALONG H-1					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		FREEWAY BETWEEN THE MCCULLY STREET AND KING STREET OFF RAMP.			
		PLANS		20	
		DESIGN		10	
		CONSTRUCTION		70	
		TOTAL FUNDING	TRN	100 D	D
12.	SP0617	INTERSTATE H-2 WIDENING, OAHU.			
		DESIGN FOR THE WIDENING OF H-2			
		FREEWAY BETWEEN MILILANI AND H-1/H-2			
		INTERSECTIONS.			
		DESIGN		122	
		TOTAL FUNDING	TRN	122 D	D
13.	SP1003	INTERSTATE H-3 EMERGENCY TELEPHONES, OAHU.			
		DESIGN, CONSTRUCTION AND EQUIPMENT TO			
		INSTALL 8 EMERGENCY TELEPHONES ON BOTH			
		SIDES OF THE COMPLETED 4 MILES OF H-3			
		FROM KANEOHE MARINE BASE TO KAM HIGHWAY.			
		DESIGN		3	
		CONSTRUCTION		55	
		EQUIPMENT		2	
		TOTAL FUNDING	TRN	60 D	D
14.	HP1803	KALANIANAOLE HIGHWAY ROCK RETAINING WALL, OLOMANA SUBDIVISION, KAILUA, OAHU.			
		CONSTRUCTION FOR THE COMPLETION OF THE			
		ROCK RETAINING WALL, OLOMANA			
		SUBDIVISION, OAHU.			
		CONSTRUCTION		140	
		TOTAL FUNDING	TRN	140 D	D
15.	J4221E	KAMEHAMEHA HIGHWAY, OAHU.			
		CONSTRUCTION FOR THE SYNCHRONIZATION			
		OF TRAFFIC LIGHTS ON KAMEHAMEHA HIGHWAY			
		AT LIPOA STREET AND KANUKU STREET			
		INTERSECTIONS.			
		CONSTRUCTION		200	
		TOTAL FUNDING	TRN	200 D	D
16.	HP1501	KAMEHAMEHA HIGHWAY, KAAAWA, OAHU.			
		PLANS, DESIGN, AND CONSTRUCTION FOR A			
		SIDEWALK IN FRONT OF KAAAWA ELEMENTARY			
		SCHOOL, OAHU.			
		PLANS		5	
		DESIGN		5	
		CONSTRUCTION		40	
		TOTAL FUNDING	TRN	50 D	D
17.	HJ1202	KAMEHAMEHA HIGHWAY STREET LIGHTS, MILILANI, OAHU.			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN AND CONSTRUCTION FOR STREET LIGHTS ON KAMEHAMEHA HIGHWAY BETWEEN MEHEULA PARKWAY AND KUAHILANI AVENUE, MILILANI, OAHU.			
		DESIGN		30	
		CONSTRUCTION		200	
		TOTAL FUNDING	TRN	230 D	D
18.	J1206A	KAMEHAMEHA HIGHWAY STREET LIGHTS, MILILANI, OAHU.			
		DESIGN AND CONSTRUCTION FOR STREET LIGHTS ON KAMEHAMEHA HIGHWAY BETWEEN KUAHELANI AVENUE AND WAIKALANI DRIVE, MILILANI, OAHU.			
		DESIGN		20	
		CONSTRUCTION		140	
		TOTAL FUNDING	TRN	160 D	D
19.	HP1503	LIKELIKE HIGHWAY, IMPROVEMENT OF EMERGENCY PULL OFF AREA, KANEHOE, OAHU.			
		DESIGN AND CONSTRUCTION FOR THE REPAVING AND EXPANDING OF THE EMERGENCY CORRIDOR OF LIKELIKE HIGHWAY PRIOR TO ENTERING THE KANEHOE ENTRANCE OF THE WILSON TUNNEL.			
		DESIGN		5	
		CONSTRUCTION		45	
		TOTAL FUNDING	TRN	50 D	D
20.	SP1801	NIMITZ HIGHWAY IMPROVEMENTS, OAHU.			
		DESIGN AND CONSTRUCTION TO CREATE LEFT TURN LANE AND TO ADD LEFT TURN SIGNAL ON NIMITZ HIGHWAY (DIAMOND HEAD BOUND) AT FIRST INTERSECTION AFTER WAIKAMILO ROAD (MAKAI ENTRANCE TO CANNERY ROW).			
		DESIGN		20	
		CONSTRUCTION		150	
		TOTAL FUNDING	TRN	170 D	D
21.	HP1401	PARK AND RIDE FACILITY, WAIALUA, OAHU.			
		CONSTRUCTION FOR THE PARK AND RIDE FACILITY AT WAIALUA DISTRICT COURT.			
		CONSTRUCTION		25	
		TOTAL FUNDING	TRN	25 D	D
22.	SP2401	TRAFFIC SIGNAL LIGHTS, OAHU.			
		DESIGN, CONSTRUCTION AND EQUIPMENT OF TRAFFIC SIGNAL LIGHTS ON MOHIKI STREET AT FARRINGTON HIGHWAY.			
		DESIGN		10	
		CONSTRUCTION		100	
		EQUIPMENT		15	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	TRN	125 D	D

## TRN511 - HAWAII HIGHWAYS AND SERVICES

23. SP0105 KEAAU-PAHOA ROAD, PUNA, HAWAII.

PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION OF INTERSECTION IMPROVEMENTS, INCLUDING STORAGE, HOLDING AND/OR DECELERATION LANES.

PLANS	1
LAND	1
DESIGN	1
CONSTRUCTION	137
TOTAL FUNDING	140 D

24. SP0104 STREET LIGHTS, HAWAII.

PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR STREET LIGHTS AT VARIOUS INTERSECTIONS IN THE FIRST SENATORIAL DISTRICT, COUNTY OF HAWAII.

PLANS	1
DESIGN	1
CONSTRUCTION	17
EQUIPMENT	1
TOTAL FUNDING	20 D

## TRN531 - MAUI HIGHWAYS AND SERVICES

25. SP0505 BICYCLE PATHS, MAUI.

PLANS, DESIGN AND CONSTRUCTION FOR BICYCLE PATHS ON MAUI.

PLANS	10
DESIGN	15
CONSTRUCTION	75
TOTAL FUNDING	100 D

26. J0704B HANA HIGHWAY STOPLIGHT, PAIA, MAUI.

PLANS, DESIGN, AND CONSTRUCTION FOR A STOPLIGHT AT HANA HIGHWAY AND BALDWIN AVENUE, MAUI.

PLANS	10
DESIGN	20
CONSTRUCTION	240
TOTAL FUNDING	270 D

27. HP1001 HONOAPI'ILANI HIGHWAY EMERGENCY TELEPHONE SERVICES, MAUI.

CONSTRUCTION AND EQUIPMENT FOR VANDAL-PROOF EMERGENCY 911 CELLULAR CALL BOXES AT VARIOUS POINTS ALONG THE PALI SECTION OF HONOAPI'ILANI HIGHWAY INCLUDING ONE AT PALI LOOKOUT.

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		CONSTRUCTION		2	
		EQUIPMENT		8	
		TOTAL FUNDING	TRN	10 D	D

**TRN541 - MOLOKAI HIGHWAYS AND SERVICES**

28. SP0508 HIGHWAY BEAUTIFICATION, MOLOKA'I.

PLANS, DESIGN AND CONSTRUCTION OF  
HIGHWAY BEAUTIFICATION PROJECTS ON  
MOLOKA'I.

PLANS	5	
DESIGN	5	
CONSTRUCTION	25	
TOTAL FUNDING	35 D	D

**HEALTH****HTH231 - KAUAI VETERANS MEMORIAL HOSPITAL**

1. J5125B KAUAI VETERANS MEMORIAL HOSPITAL, KAUAI.

CONSTRUCTION FOR CORRECTION OF  
DEFICIENCIES AND IMPROVEMENTS FOR  
IMPROVED PATIENT SAFETY.

CONSTRUCTION	250	
TOTAL FUNDING	250 C	C

**HTH401 - COMMUNITY BASED SERVICES FOR MH**

2. SP2407 OHANA HALE, OAHU.

CONSTRUCTION AND EQUIPMENT FOR A  
CESSPOOL AND AN EIGHT PASSENGER VAN.

DESIGN	3	
CONSTRUCTION	12	
TOTAL FUNDING	15 C	C

**HTH501 - COMMUNITY BASED SERVICES FOR DD**

3. J5025G HALE HAUOLI, KAUAI.

PLANS AND DESIGN FOR DAY CARE  
FACILITIES FOR THE MENTALLY RETARDED.

PLANS	90	
DESIGN	70	
TOTAL FUNDING	160 C	C

**HTH907 - GENERAL ADMINISTRATION**

4. SP0204 WAIAKEA HEALTH CENTER, HAWAII.

DESIGN AND CONSTRUCTION FOR THE  
RENOVATION AND/OR ADDITION FOR AN  
ENVIRONMENTAL HEALTH FACILITY.

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		5	
		CONSTRUCTION		20	
		TOTAL FUNDING	AGS	25 C	C
<b>SOCIAL SERVICES</b>					
<b>HMS111 - SERVICES TO INDIVIDUALS AND FAMILIES</b>					
1.	HP3210	BOYS AND GIRLS CLUB OF HONOLULU, OAHU.			
		CONSTRUCTION FOR REPAIR OF ROOF. (GRANT-IN-AID)			
		CONSTRUCTION		9	
		TOTAL FUNDING	HMS	9 C	C
<b>HMS220 - RENTAL HOUSING AUGMENTATION AND ASSISTANCE</b>					
2.	HP3409	KALANIHUIA ELDERLY HOUSING PROJECT, OAHU.			
		CONSTRUCTION AND EQUIPMENT FOR THE INSTALLATION OF SECURITY GRILLES.			
		CONSTRUCTION		12	
		EQUIPMENT		10	
		TOTAL FUNDING	HMS	22 C	C
3.	HP3410	KALANIHUIA ELDERLY HOUSING PROJECT, OAHU.			
		PLANS, DESIGN, AND CONSTRUCTION FOR THE EXPANSION OF THE LOBBY.			
		PLANS		10	
		DESIGN		10	
		CONSTRUCTION		19	
		TOTAL FUNDING	HMS	39 C	C
4.	HP3908	KAMEHAMEHA AND KAAHUMANU HOUSING, OAHU.			
		PLANS, DESIGN, AND CONSTRUCTION FOR TRASH ENCLOSURES.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		19	
		TOTAL FUNDING	HMS	21 C	C
5.	HP4902	KILAUEA ELDERLY HOUSING PROJECT, KAUAI.			
		CONSTRUCTION FOR A FENCE.			
		CONSTRUCTION		4	
		TOTAL FUNDING	HMS	4 C	C
6.	SP1805	LANIKILA HOMES OFFICE, HILO, HAWAII.			
		DESIGN AND CONSTRUCTION TO REMOVE HANDICAP ACCESSIBLE BARRIERS AT LANIKILA HOMES OFFICE.			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		2	
		CONSTRUCTION		15	
		TOTAL FUNDING	HMS	17 C	C

7. J4220B PUUWAI MOMI HOUSING, OAHU.

PLANS AND DESIGN FOR EXPANSION OF  
FACILITIES AT PUUWAI MOMI HOUSING, OAHU.

PLANS	35	
DESIGN	35	
TOTAL FUNDING	HMS	70 C

**HMS229 - HOUSING ASSISTANCE ADMINISTRATION**8. HP3602 HAWAII HOUSING AUTHORITY ADMINISTRATIVE  
OFFICE IMPROVEMENTS, OAHU.PLANS, DESIGN, AND CONSTRUCTION FOR  
THE TALLATION OF SPRINKLER SYSTEM AND  
GROUND IMPROVEMENTS AROUND  
ADMINISTRATIVE OFFICES.

PLANS	5	
DESIGN	10	
CONSTRUCTION	35	
TOTAL FUNDING	HMS	50 C

**BED225 - PRIVATE HOUSING DEVELOPMENT AND OWNERSHIP**

9. SP2404 KILAUEA ELDERLY HOUSING PROJECT, KAUAI.

DESIGN AND CONSTRUCTION FOR THE  
PLACEMENT OF FENCE AT KILAUEA ELDERLY  
HOUSING PROJECT.

DESIGN	1	
CONSTRUCTION	3	
TOTAL FUNDING	BED	4 C

10. SP2405 MAILELAND HOMELESS SHELTER, OAHU.

DESIGN, CONSTRUCTION AND EQUIPMENT FOR  
THE RENOVATION OF KITCHEN FACILITIES.  
(GRANT-IN-AID)

DESIGN	10	
CONSTRUCTION	130	
EQUIPMENT	10	
TOTAL FUNDING	BED	150 C

**HHL602 - PLANNG, DEV, MGT & GEN SPPT FOR HAWN HMSTDs**

11. J4924C ANAHOLA HOMESTEAD, KAUAI.

PLANS AND DESIGN FOR A PARK PAVILION.

PLANS	20	
DESIGN	20	
TOTAL FUNDING	HHL	40 C

12. SP0506 HAWAIIAN HOME LANDS WATER DEVELOPMENT,  
MAUI.

## **CAPITAL IMPROVEMENT PROJECTS**

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	AGS	14 C	C
6.	HJ4142	AIEA HIGH, OAHU.			
		DESIGN AND CONSTRUCTION OF RANGEHOOD FOR HOME ECONOMICS ROOM C-2.			
		DESIGN		10	
		CONSTRUCTION		30	
		TOTAL FUNDING	AGS	40	C
7.	HP1907	AIKAHI ELEMENTARY, OAHU.			
		CONSTRUCTION AND EQUIPMENT FOR REPLACEMENT OF WINDOWS WITH LOUVERED WINDOWS AND SCREENS.			
		CONSTRUCTION		10	
		EQUIPMENT		20	
		TOTAL FUNDING	AGS	30	C
8.	HP2203	AINA HAINA ELEMENTARY, OAHU.			
		PLANS, DESIGN CONSTRUCTION, AND EQUIPMENT FOR ENCLOSURES TO CLASSROOM PATIOS.			
		PLANS		7	
		DESIGN		8	
		CONSTRUCTION		19	
		EQUIPMENT		16	
		TOTAL FUNDING	AGS	50	C
9.	HP2304	AINA HAINA ELEMENTARY, OAHU.			
		CONSTRUCTION FOR REPLACEMENT OF CLASSROOM WINDOWS OR OTHER GENERAL IMPROVEMENTS.			
		CONSTRUCTION		50	
		TOTAL FUNDING	AGS	50	C
10.	HJ4004	ALIAMANU ELEMENTARY, OAHU.			
		PLANS, DESIGN, AND CONSTRUCTION FOR CHAINLINK FENCE AT THE BACK CAMPUS AND CONSTRUCTION OF PORTABLE CLASSROOM BUILDINGS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		81	
		EQUIPMENT		11	
		TOTAL FUNDING	AGS	94	C
11.	HP4003	ALIAMANU ELEMENTARY, OAHU.			
		PLANS, DESIGN, AND EQUIPMENT FOR FLOODLIGHTS.			
		PLANS		4	
		DESIGN		4	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		EQUIPMENT TOTAL FUNDING	AGS	32 40 C	C
12.	HP3906	ALIAMANU INTERMEDIATE, OAHU.			
PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INSTALLATION OF INDIVIDUAL VENTILATION SYSTEMS FOR BUILDINGS.					
		PLANS		1	
		DESIGN		2	
		CONSTRUCTION		12	
		EQUIPMENT		25	
		TOTAL FUNDING	AGS	40 C	C
13.	HP251C	ALIIOLANI ELEMENTARY, OAHU.			
PLANS, DESIGN AND CONSTRUCTION FOR A SOLID DIVIDING WALL IN A FORMER 3-ON-2 CLASSROOM.					
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		15	
		TOTAL FUNDING	AGS	17 C	C
14.	SP1201	ALIIOLANI ELEMENTARY, OAHU.			
PLANS, DESIGN AND CONSTRUCTION OF A PERMANENT STAGE.					
		PLANS		2	
		DESIGN		3	
		CONSTRUCTION		195	
		TOTAL FUNDING	AGS	200 C	C
15.	SP1202	ALIIOLANI ELEMENTARY, OAHU.			
DESIGN AND CONSTRUCTION OF A DIVIDER WALL.					
		DESIGN		5	
		CONSTRUCTION		10	
		TOTAL FUNDING	AGS	15 C	C
16.	SP1203	ANUENUE ELEMENTARY, OAHU.			
PLANS, DESIGN AND CONSTRUCTION OF A RETAINING WALL.					
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		98	
		TOTAL FUNDING	AGS	100 C	C
17.	SP1204	ANUENUE ELEMENTARY, OAHU.			
DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF 27 SECURITY SCREENS IN RESOURCE TEACHERS' ROOMS.					
		DESIGN		5	
		CONSTRUCTION		10	

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	AGS	15 C	C
18. SP1205 ANUENUE ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF CONDUIT PIPES FOR TELEPHONE WIRES.					
		DESIGN		2	
		CONSTRUCTION		8	
		TOTAL FUNDING	AGS	10 C	C
19. J45220 AUGUST AHRENS ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION OF 6 FOOT FENCE NEAR PI AND ALONG WAIPAHU STREET.					
		DESIGN		2	
		CONSTRUCTION		24	
		TOTAL FUNDING	AGS	26 C	C
20. J4723X BARBERS POINT ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR RESURFACING ENTRANCE AND CIRCULAR DRIVEWAY FRONTING THE SCHOOL AND THE ADJACENT PARKING LOT.					
		DESIGN		2	
		CONSTRUCTION		26	
		TOTAL FUNDING	AGS	28 C	C
21. HP4602 CAMPBELL HIGH, OAHU.					
CONSTRUCTION FOR IMPROVEMENTS TO THE INDUSTRIAL ARTS BUILDING N.					
		DESIGN		73	
		TOTAL FUNDING	AGS	73 C	C
22. J4623K CAMPBELL HIGH, OAHU.					
DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE BASEBALL FIELD.					
		DESIGN		38	
		CONSTRUCTION		152	
		TOTAL FUNDING	AGS	190 C	C
23. HP1701 CASTLE HIGH, OAHU.					
DESIGN AND CONSTRUCTION OF BUILDING J.					
		PLANS		1	
		DESIGN		9	
		CONSTRUCTION		90	
		TOTAL FUNDING	AGS	100 C	C
24. HP1702 CASTLE HIGH, OAHU.					
PLANS, DESIGN, AND CONSTRUCTION FOR SECURITY FENCE.					

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANS		1	
		DESIGN		4	
		CONSTRUCTION		45	
		TOTAL FUNDING	AGS	50	C
25.	SP0808	CASTLE HIGH, OAHU.			
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF LAUNDRY AREA TO CONVERT TO STORAGE AREA.			
		DESIGN		3	
		CONSTRUCTION		22	
		TOTAL FUNDING	AGS	25	C
26.	HP3506	CENTRAL INTERMEDIATE, OAHU.			
		CONSTRUCTION FOR INSTALLATION OF ACOUSTICAL TILE IN BAND ROOM.			
		CONSTRUCTION		8	
		TOTAL FUNDING	AGS	8	C
27.	HP3504	CENTRAL INTERMEDIATE, OAHU.			
		CONSTRUCTION AND EQUIPMENT FOR CEILING FANS FOR AUDITORIUM.			
		CONSTRUCTION		4	
		EQUIPMENT		3	
		TOTAL FUNDING	AGS	7	C
28.	HP3505	CENTRAL INTERMEDIATE, OAHU.			
		CONSTRUCTION AND EQUIPMENT FOR THE EMERGENCY ALARM SYSTEM FOR BUILDING C.			
		CONSTRUCTION		4	
		EQUIPMENT		1	
		TOTAL FUNDING	AGS	5	C
29.	SP1706	CENTRAL INTERMEDIATE, OAHU.			
		DESIGN AND CONSTRUCTION TO REPAIR/ INSTALL CHAIN LINK FENCE ON VINEYARD, QUEEN, AND KUKUI STREET SIDES OF CAMPUS.			
		DESIGN		4	
		CONSTRUCTION		16	
		TOTAL FUNDING	AGS	20	C
30.	HJ5101	ELEELE SCHOOL, KAUAI.			
		DESIGN AND CONSTRUCTION FOR IMPROVING A PATH FROM HANAPEPE TOWN TO ELEELE SCHOOL.			
		DESIGN		10	
		CONSTRUCTION		133	
		TOTAL FUNDING	AGS	143	C
31.	SP0906	ENCHANTED LAKE ELEMENTARY, OAHU.			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN AND CONSTRUCTION OF THREE WALL PARTITIONS, ONE EACH TO BE LOCATED IN ROOM K-3/K-4 AND IN ROOM A-1/A-2, AND IN ROOM G3.			
		DESIGN		5	
		CONSTRUCTION		30	
		TOTAL FUNDING	AGS	35	C
32.	J4723Y	EWA ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF SECURITY SCREENS FOR 4 CLASSROOMS AND A COMPUTER ROOM.			
		DESIGN		2	
		CONSTRUCTION		52	
		TOTAL FUNDING	AGS	54	C
33.	J4623S	EWA BEACH ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR GATES AT AUTOMOBILE ENTRANCE.			
		DESIGN		2	
		CONSTRUCTION		10	
		TOTAL FUNDING	AGS	12	C
34.	HP3904	FARRINGTON HIGH, OAHU.			
		PLANS, DESIGN, AND CONSTRUCTION FOR INSTALLATION OF SECURITY SCREENS, IMPROVEMENTS TO BATHROOMS, AND CLASSROOM PARTITIONS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		14	
		EQUIPMENT		14	
		TOTAL FUNDING	AGS	30	C
35.	J2111A	HAHAIONE ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR RETAINING WALL BORDERING SCHOOL GROUNDS AND CITY PARK.			
		DESIGN		5	
		CONSTRUCTION		25	
		TOTAL FUNDING	AGS	30	C
36.	HP0603	HAIKU ELEMENTARY, MAUI.			
		DESIGN AND CONSTRUCTION FOR A PORTABLE CLASSROOM.			
		DESIGN		1	
		CONSTRUCTION		73	
		TOTAL FUNDING	AGS	74	C
37.	SP0705	HALE KULA ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION OF DIVIDER WALLS FOR EXISTING CLASSROOMS.			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		3	
		CONSTRUCTION		45	
		TOTAL FUNDING	AGS	48	C
38.	HP1410	HALEIWA ELEMENTARY, OAHU.			
		CONSTRUCTION FOR RESURFACING AND RESTRIPING DETERIORATED PARKING AREA.			
		CONSTRUCTION		20	
		TOTAL FUNDING	AGS	20	C
39.	HP1411	HALEIWA ELEMENTARY, OAHU.			
		CONSTRUCTION FOR SAFETY FENCING ALONG WALKWAY BY PARKING AREA.			
		CONSTRUCTION		6	
		TOTAL FUNDING	AGS	6	C
40.	HP1412	HALEIWA ELEMENTARY, OAHU.			
		PLANS AND DESIGN FOR EXPANSION OF PLAY GROUND ADJACENT TO KAIAKA STATE PARK LAND.			
		PLANS		5	
		DESIGN		5	
		TOTAL FUNDING	AGS	10	C
41.	SP0401	HANA HIGH AND ELEMENTARY, MAUI			
		CONSTRUCTION TO COMPLETE THE GYMNASIUM, GROUND AND SITE IMPROVEMENTS, AND APPURTENANCES.			
		CONSTRUCTION		354	
		TOTAL FUNDING	AGS	354	C
42.	SP0802	HAU'ULA ELEMENTARY, OAHU.			
		PLANS, DESIGN AND CONSTRUCTION FOR CEMENTING AND CREATING A COURTYARD BETWEEN THE OFFICE AND CAFETERIA.			
		PLANS		1	
		DESIGN		10	
		CONSTRUCTION		90	
		TOTAL FUNDING	AGS	101	C
43.	HP0302	HILO HIGH, HAWAII.			
		PLANS AND CONSTRUCTION FOR A COVERED SIDEWALK FROM BUILDING C TO THE BAND ROOM.			
		PLANS		9	
		CONSTRUCTION		81	
		TOTAL FUNDING	AGS	90	C
44.	SP1411	HOKULANI ELEMENTARY, OAHU.			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE INSTALLATION OF FANS IN THE MULTIPURPOSE/LUNCH ROOM.			

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		1	
		CONSTRUCTION		16	
		EQUIPMENT		1	
		TOTAL FUNDING	AGS	18	C
45.	J4506F	HONOWAI ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR BOYS AND GIRLS RESTROOM FACILITIES.			
		DESIGN		8	
		CONSTRUCTION		53	
		TOTAL FUNDING	AGS	61	C
46.	J4506G	HONOWAI ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF LIGHT FIXTURES AT CRITICAL AREAS ON CAMPUS.			
		DESIGN		13	
		CONSTRUCTION		93	
		TOTAL FUNDING	AGS	106	C
47.	HP0503	HOOKENA ELEMENTARY, HAWAII.			
		CONSTRUCTION FOR A FOURTH WALL TO ENCLOSE CLASSROOM TO MEET BUILDING CODE STANDARDS, INCLUDING CONSTRUCTION OF ADDITIONAL WINDOWS.			
		CONSTRUCTION		2	
		TOTAL FUNDING	AGS	2	C
48.	SP0102	HOOKENA ELEMENTARY, HAWAII.			
		PLANS, DESIGN AND CONSTRUCTION OF DRIVEWAY, AND/OR INSTALLATION OF A 12' HIGH FENCE FRONTING THE SCHOOL.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		160	
		TOTAL FUNDING	AGS	162	C
49.	HP0802	IAO INTERMEDIATE, MAUI.			
		CONSTRUCTION FOR PAVED PLAYCOURTS.			
		CONSTRUCTION		75	
		TOTAL FUNDING	AGS	75	C
50.	HP1302	ILIAHI ELEMENTARY, OAHU.			
		PLANS AND CONSTRUCTION FOR CLASSRROOM PARTITIONS.			
		PLANS		10	
		CONSTRUCTION		45	
		TOTAL FUNDING	AGS	55	C
51.	J4623L	ILIMA INTERMEDIATE, OAHU.			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN AND CONSTRUCTION FOR CHAIN LINK FENCE IMPROVEMENTS.			
		DESIGN		4	
		CONSTRUCTION		16	
		TOTAL FUNDING	AGS	20	C
52.	J4623Q	IROQUOIS POINT ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF AN INTERCOMMUNICATIONS SYSTEM.			
		DESIGN		4	
		CONSTRUCTION		31	
		TOTAL FUNDING	AGS	35	C
53.	J4623R	IROQUOIS POINT ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR A WALL IN CLASSROOMS F-1, F-2, F-3, F-4, F-5, AND F-6.			
		DESIGN		4	
		CONSTRUCTION		23	
		TOTAL FUNDING	AGS	27	C
54.	SP1206	JARRETT INTERMEDIATE, OAHU.			
		PLANS, DESIGN AND CONSTRUCTION OF SIDEWALK AND RAMP FOR SEVERELY MULTIPLE- HANDICAPPED.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		23	
		TOTAL FUNDING	AGS	25	C
55.	SP1207	JARRETT INTERMEDIATE, OAHU.			
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF 8 SECURITY SCREENS TO PROTECT COMPUTERS AND OTHER EQUIPMENT.			
		DESIGN		1	
		CONSTRUCTION		4	
		TOTAL FUNDING	AGS	5	C
56.	HP1506	KAAWA ELEMENTARY, OAHU.			
		RIGHT OF WAY LAND ACQUISITION OF EASEMENT FOR STUDENT WALKWAY.			
		LAND		45	
		TOTAL FUNDING	AGS	45	C
57.	HP3208	KAAHUMANU ELEMENTARY, OAHU.			
		CONSTRUCTION FOR IMPROVEMENTS TO PLAYGROUND, SPRINKLER SYSTEM, LANDSCAPING, AND SIDEWALK BETWEEN PORTABLE BUILDING AND BUILDING G.			

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				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		CONSTRUCTION TOTAL FUNDING	AGS	23 23 C	C
58.	HP3207	KAAHUMANU ELEMENTARY, OAHU.			
		CONSTRUCTION FOR WALKWAY FOR BUILDING F.			
		CONSTRUCTION TOTAL FUNDING	AGS	12 12 C	C
59.	HP3503	KAAHUMANU ELEMENTARY, OAHU.			
		CONSTRUCTION FOR PARTITIONING 6 DOUBLE CLASSROOMS INTO 12 UNITS.			
		CONSTRUCTION TOTAL FUNDING	AGS	50 50 C	C
60.	SP1305	KAHALA ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR ROOM DIVIDERS FOR 4 THREE-ON-TWO CLASSROOMS IN BUILDINGS B, C, AND E.			
		DESIGN CONSTRUCTION TOTAL FUNDING	AGS	5 15 20 C	C
61.	SP0803	KAHALUU ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS OF DRIVEWAY.			
		DESIGN CONSTRUCTION TOTAL FUNDING	AGS	10 160 170 C	C
62.	HP1403	KAHUKU ELEMENTARY, OAHU.			
		CONSTRUCTION FOR INSTALLATION OF CAMPUS SECURITY FENCING.			
		CONSTRUCTION TOTAL FUNDING	AGS	20 20 C	C
63.	HP1402	KAHUKU HIGH, OAHU.			
		DESIGN AND CONSTRUCTION FOR METAL RAILINGS OR GATE.			
		DESIGN CONSTRUCTION TOTAL FUNDING	AGS	5 35 40 C	C
64.	HP1904	KAILUA ELEMENTARY, OAHU.			
		PLANS, CONSTRUCTION, AND EQUIPMENT FOR SECURITY SCREENS AND AIR CONDITIONING FOR COMPUTER ROOM.			
		PLANS CONSTRUCTION		5 10	

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		EQUIPMENT TOTAL FUNDING	AGS	60 75 C	C
65. HP1801 KAILUA INTERMEDIATE, OAHU.					
CONSTRUCTION AND EQUIPMENT FOR REPAIRING FRAMEWORK AND REPLACEMENT OF ACOUSTICAL TILE, REPAIR OF PORTABLE AND STRUCTURAL WOODWORK DAMAGE, SECURING LOCKERS AND CABINETS, AND PAINTING INTERIORS FOR BANDROOM RENOVATION.					
		CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS	3 7 10 C	C
66. HP1902 KAILUA INTERMEDIATE, OAHU.					
CONSTRUCTION AND EQUIPMENT FOR SCHOOL NAME AND MESSAGE SIGN AT SCHOOL ENTRANCE.					
		CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS	1 1 2 C	C
67. HP1903 KAILUA INTERMEDIATE, OAHU.					
CONSTRUCTION AND EQUIPMENT FOR STUDENT LOCKERS.					
		CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS	20 20 40 C	C
68. J4623N KAIMILOA ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR LIGHTING IMPROVEMENTS.					
		DESIGN CONSTRUCTION TOTAL FUNDING	AGS	5 35 40 C	C
69. SP2313 KAIMILOA ELEMENTARY, OAHU.					
PLANS, DESIGN AND CONSTRUCTION OF GATES FOR AUTOMOBILE ENTRANCES.					
		PLANS DESIGN CONSTRUCTION TOTAL FUNDING	AGS	1 1 4 6 C	C
70. HP4604 KAIMILOA ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR GATES AT AUTOMOBILE ENTRANCES.					
		DESIGN CONSTRUCTION TOTAL FUNDING	AGS	2 4 6 C	C
71. J2614N KAIMUKI HIGH, OAHU.					

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				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN FOR AN ASPHALT ROAD TO REPLACE EXISTING DIRT ROAD.			
		DESIGN		50	
		TOTAL FUNDING	AGS	50 C	C
72.	SP1502	KAIMUKI HIGH, OAHU.			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENOVATIONS AND IMPROVEMENTS TO CLASSROOMS, GROUNDS, AND METAL AND WOODWORKING SHOPS USED IN THE INSTRUCTIONAL PROGRAMS.			
		DESIGN		5	
		CONSTRUCTION		90	
		EQUIPMENT		5	
		TOTAL FUNDING	AGS	100 C	C
73.	HP1906	KAINALU ELEMENTARY, OAHU.			
		PLANS, DESIGN AND CONSTRUCTION FOR PARKING LOT IMPROVEMENTS.			
		PLANS		2	
		DESIGN		3	
		CONSTRUCTION		90	
		TOTAL FUNDING	AGS	95 C	C
74.	SP1102	KAISER HIGH, OAHU.			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO ADD, IMPROVE AND/OR REPLACE LIGHTING SYSTEMS FOR FOOTBALL AND TRACK FIELD.			
		PLANS		50	
		DESIGN		50	
		CONSTRUCTION		55	
		EQUIPMENT		200	
		TOTAL FUNDING	AGS	355 C	C
75.	SP1103	KAISER HIGH, OAHU.			
		PLANS, DESIGN, AND CONSTRUCTION FOR THE RENOVATIONS OF GYMNASIUM-REPLACEMENT OF RUBBER FLOORING WITH WOOD.			
		PLANS		30	
		DESIGN		50	
		CONSTRUCTION		50	
		TOTAL FUNDING	AGS	130 C	C
76.	HP1901	KALAHEO HIGH, OAHU.			
		CONSTRUCTION AND EQUIPMENT FOR SCHOOL NAME AND MESSAGE SIGN AT SCHOOL ENTRANCE.			
		CONSTRUCTION		1	
		EQUIPMENT		1	
		TOTAL FUNDING	AGS	2 C	C
77.	HP1906	KALAHEO HIGH, OAHU.			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLAN, DESIGN, AND CONSTRUCTION FOR FLUE/VENT SYSTEM FOR KILN CLASSROOM.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		4	
		TOTAL FUNDING	AGS	6 C	C
78.	HP2601	KALANI HIGH, OAHU.			
		PLANS, DESIGN, AND CONSTRUCTION FOR STEPS, WALKWAY AND GATE BETWEEN KALANI IKI STREET AND KALANI HIGH SCHOOL.			
		PLANS		2	
		DESIGN		4	
		CONSTRUCTION		54	
		TOTAL FUNDING	AGS	60 C	C
79.	J2312I	KALANI HIGH, OAHU.			
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE GYM MEZZAINE, SHOWER FACILITIES, AND OTHER IMPROVEMENTS TO THE GYM.			
		PLANS		10	
		DESIGN		25	
		CONSTRUCTION		215	
		TOTAL FUNDING	AGS	250 C	C
80.	HP2202	KALANI HIGH, OAHU.			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FENCING THE FOOTBALL AND TRACK FIELDS, AND OTHER IMPROVEMENTS TO THE FACILITIES AND GROUNDS.			
		PLANS		4	
		DESIGN		5	
		CONSTRUCTION		8	
		EQUIPMENT		8	
		TOTAL FUNDING	AGS	25 C	C
81.	HP3901	KALIHI KAI ELEMENTARY, OAHU.			
		PLANS, DESIGN, AND CONSTRUCTION FOR COVERED WALKWAYS BETWEEN ALL BUILDINGS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		28	
		TOTAL FUNDING	AGS	30 C	C
82.	SP1903	KALIHI-UKA ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR REMOVAL OF PLATE GLASS SHEETS AND REPLACEMENT WITH WOODEN LOUVRES (JALOUSIES) HARDWARE. FIRST FLOOR WINDOWS WILL NEED SECURITY SCREENS ONCE WOODEN LOUVRES ARE IN PLACE.			

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				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		6	
		CONSTRUCTION		52	
		TOTAL FUNDING	AGS	58 C	C
83.	HP2102	KAMILOIKI ELEMENTARY, OAHU.			
		PLANS, DESIGN, AND CONSTRUCTION FOR ADDITIONAL WATER FOUNTAINS AND NECESSARY GROUND IMPROVEMENTS.			
		PLANS		1	
		DESIGN		3	
		CONSTRUCTION		16	
		TOTAL FUNDING	AGS	20 C	C
84.	SP0905	KANEOHE ELEMENTARY, OAHU.			
		PLANS, DESIGN AND CONSTRUCTION OF A CHAINLINK FENCE NEARING MOKULELE DRIVE.			
		PLANS		1	
		DESIGN		4	
		CONSTRUCTION		55	
		TOTAL FUNDING	AGS	60 C	C
85.	SP0907	KANEOHE ELEMENTARY, OAHU.			
		PLANS, DESIGN AND CONSTRUCTION OF A CHAINLINK FENCE FOR THE LOWER PLAYGROUND.			
		PLANS		1	
		DESIGN		2	
		CONSTRUCTION		11	
		TOTAL FUNDING	AGS	14 C	C
86.	HP3604	KAPALAMA ELEMENTARY, OAHU.			
		PLAN, DESIGN, AND CONSTRUCTION FOR METAL GATES AT LANAI CORNERS OF CLASSROOMS IN BUILDING C.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		3	
		TOTAL FUNDING	AGS	5 C	C
87.	HP3606	KAPALAMA ELEMENTARY, OAHU.			
		PLAN, DESIGN, AND CONSTRUCTION AND EQUIPMENT FOR MOVABLE PARTITIONS FOR OPEN CLASSROOMS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		3	
		EQUIPMENT		10	
		TOTAL FUNDING	AGS	15 C	C
88.	HP3607	KAPALAMA ELEMENTARY, OAHU.			
		PLAN, DESIGN, CONSTRUCTION AND EQUIPMENT FOR RENOVATION AND			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		INSTALLATION OF AIR-CONDITIONING IN MULTI-PURPOSE ROOM IN BUILDING A.			
		PLANS		2	
		DESIGN		3	
		CONSTRUCTION		18	
		EQUIPMENT		1	
		TOTAL FUNDING	AGS	24	C
89.	HP3608	KAPALAMA ELEMENTARY, OAHU.			
		PLAN, DESIGN, AND CONSTRUCTION OF COVERED WALKWAY BETWEEN BUILDING C AND SIDEWALK BORDERING PARKING AREA.			
		PLANS		2	
		DESIGN		3	
		CONSTRUCTION		20	
		TOTAL FUNDING	AGS	25	C
90.	HP3609	KAPALAMA ELEMENTARY, OAHU.			
		PLAN, DESIGN, AND CONSTRUCTION FOR COVERED WALKWAY BETWEEN BUILDING D AND ADMINISTRATIVE BUILDING.			
		PLANS		2	
		DESIGN		3	
		CONSTRUCTION		20	
		TOTAL FUNDING	AGS	25	C
91.	HJ5001	KAUAI HIGH, KAUAI.			
		PLANS AND CONSTRUCTION FOR A LIGHTING SYSTEM FOR THE STUDENT PARKING AREA ADJACENT TO THE GYMNASIUM.			
		PLANS		7	
		CONSTRUCTION		63	
		TOTAL FUNDING	AGS	70	C
92.	HP3408	KAULUWELA ELEMENTARY, OAHU.			
		CONSTRUCTION FOR PARKING LOT REPAVEMENT.			
		CONSTRUCTION		15	
		TOTAL FUNDING	AGS	15	C
93.	HP3407	KAULUWELA ELEMENTARY, OAHU.			
		CONSTRUCTION FOR COVERED WALKWAY.			
		CONSTRUCTION		4	
		TOTAL FUNDING	AGS	4	C
94.	SP1709	KAULUWELA ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION TO SOUND PROOF AND AIR CONDITION BUILDING D (12 CLASSROOMS).			
		DESIGN		5	
		CONSTRUCTION		15	

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	AGS	20	C
95.	HP3301	KAWANANAKOA ELEMENTARY, OAHU.  DESIGN AND CONSTRUCTION FOR INSTALLATION OF CAMPUS DRAINAGE SYSTEM. DESIGN CONSTRUCTION TOTAL FUNDING	AGS	10 70 80	C
96.	HP3411	KAWANANAKOA INTERMEDIATE, OAHU.  CONSTRUCTION FOR INSTALLATION OF A PUBLIC ADDRESS SYSTEM. CONSTRUCTION TOTAL FUNDING	AGS	20 20	C
97.	SP1702	KAWANANAKOA INTERMEDIATE, OAHU.  DESIGN AND CONSTRUCTION TO INSTALL OUTDOOR CAMPUS LIGHTING ATTACHED TO BUILDING INCLUDING PARKING LOT AREA. DESIGN CONSTRUCTION TOTAL FUNDING	AGS	8 32 40	C
98.	HP0101	KE'AAU ELEMENTARY, HAWAII.  CONSTRUCTION FOR RECARPETING BUILDING A, ROOMS 3 AND 4. CONSTRUCTION TOTAL FUNDING	AGS	7 7	C
99.	HP0102	KE'AAU ELEMENTARY, HAWAII.  CONSTRUCTION FOR UPGRADING LIGHTS IN GYM. CONSTRUCTION TOTAL FUNDING	AGS	17 17	C
100.	HP0104	KE'AAU ELEMENTARY, HAWAII.  CONSTRUCTION FOR PAINTING FLOOR IN BUILDING G. CONSTRUCTION TOTAL FUNDING	AGS	2 2	C
101.	HP0105	KE'AAU ELEMENTARY, HAWAII.  CONSTRUCTION FOR REPLACEMENT OF BASKETBALL PULLEY IN GYM. CONSTRUCTION TOTAL FUNDING	AGS	3 3	C
102.	HP0106	KE'AAU ELEMENTARY, HAWAII.			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		CONSTRUCTION FOR REPAIR OF PLAYGROUND.			
		CONSTRUCTION		4	
		TOTAL FUNDING	AGS	4 C	C
103.	HP0107	KE'AAU ELEMENTARY, HAWAII.			
		CONSTRUCTION FOR RECARPETING OF			
		KINDERGARTEN BUILDING E.			
		CONSTRUCTION		3	
		TOTAL FUNDING	AGS	3 C	C
104.	HP0108	KE'AAU ELEMENTARY, HAWAII.			
		CONSTRUCTION FOR INSTALLATION OF			
		WOODEN LOUVERS IN BUILDING E.			
		CONSTRUCTION		6	
		TOTAL FUNDING	AGS	6 C	C
105.	HP0109	KE'AAU ELEMENTARY, HAWAII.			
		CONSTRUCTION FOR CHAIN LINK FENCE AT			
		CAMPUS BACK BOUNDARY.			
		CONSTRUCTION		22	
		TOTAL FUNDING	AGS	22 C	C
106.	HP0110	KE'AAU ELEMENTARY, HAWAII.			
		CONSTRUCTION FOR RECARPETING			
		CLASSROOM D-2.			
		CONSTRUCTION		3	
		TOTAL FUNDING	AGS	3 C	C
107.	HP0111	KE'AAU ELEMENTARY, HAWAII.			
		CONSTRUCTION FOR FENCING AT THE			
		ENTRANCE OF SHIPMAN GYM.			
		CONSTRUCTION		5	
		TOTAL FUNDING	AGS	5 C	C
108.	HP0112	KE'AAU ELEMENTARY, HAWAII.			
		CONSTRUCTION FOR REPLACEMENT OF			
		BALLASTS IN VARIOUS BUILDINGS.			
		CONSTRUCTION		4	
		TOTAL FUNDING	AGS	4 C	C
109.	HP0113	KE'AAU ELEMENTARY, HAWAII.			
		CONSTRUCTION FOR REPAIR OF ROOF ON			
		BUILDING A.			
		CONSTRUCTION		4	
		TOTAL FUNDING	AGS	4 C	C
110.	HP0114	KE'AAU ELEMENTARY, HAWAII.			
		CONSTRUCTION FOR RESURFACING RESTROOM			
		FLOOR IN BUILDING A.			

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				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		CONSTRUCTION TOTAL FUNDING	AGS	11 11 C	C
111. HP0116 KE'AAU ELEMENTARY, HAWAII.					
		CONSTRUCTION FOR REPAINTING LINES IN GYM.			
		CONSTRUCTION TOTAL FUNDING	AGS	2 2 C	C
112. SP0108 KE'AAU ELEMENTARY, HAWAII.					
		PLANS, DESIGN AND CONSTRUCTION TO RESURFACE PORTION OF SHIPMAN GYM PARKING LOT.			
		PLANS DESIGN CONSTRUCTION TOTAL FUNDING	AGS	1 1 28 30 C	C
113. HP0117 KE'AAU ELEMENTARY AND INTERMEDIATE, HAWAII.					
		CONSTRUCTION FOR REPAINTING INTERIOR OF FIVE CLASSROOMS AT THE INTERMEDIATE SCHOOL BUILDING.			
		CONSTRUCTION TOTAL FUNDING	AGS	10 10 C	C
114. SP0602 KIPAPA ELEMENTARY, OAHU.					
		DESIGN AND CONSTRUCTION OF SINKS AND RESTROOMS FOR NINE (9) PORTABLE CLASSROOMS.			
		DESIGN CONSTRUCTION TOTAL FUNDING	AGS	5 20 25 C	C
115. HP0602 KOHALA HIGH AND ELEMENTARY, HAWAII.					
		DESIGN AND CONSTRUCTION FOR A PORTABLE CLASSROOM.			
		DESIGN CONSTRUCTION TOTAL FUNDING	AGS	1 73 74 C	C
116. HP0604 KOHALA HIGH AND ELEMENTARY, HAWAII.					
		DESIGN AND CONSTRUCTION FOR COVERED WALKWAYS FROM BUILDING F TO C, AND BUILDING C TO ROAD.			
		DESIGN CONSTRUCTION TOTAL FUNDING	AGS	1 12 13 C	C
117. J0403A KOHALA HIGH AND ELEMENTARY, HAWAII.					

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANS AND DESIGN FOR AN AUTOMOTIVE SHOP.			
		PLANS		10	
		DESIGN		85	
		TOTAL FUNDING	AGS	95 C	C
118.	SP0302	KOHALA HIGH, HAWAII.			
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF THE BANDROOM TO INCLUDE SOUNDPROOFING AND INSTALLATION OF AIR CONDITIONING.			
		DESIGN		7	
		CONSTRUCTION		68	
		TOTAL FUNDING	AGS	75 C	C
119.	HP2101	KOKO HEAD ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR CLASSROOM LIGHTING FOR BUILDING E AND OTHER NECESSARY IMPROVEMENTS.			
		DESIGN		2	
		CONSTRUCTION		61	
		TOTAL FUNDING	AGS	63 C	C
120.	SP0101	KONAWAENA HIGH, OAHU.			
		DESIGN AND CONSTRUCTION FOR INABA BASEBALL FIELD IMPROVEMENTS.			
		DESIGN		3	
		CONSTRUCTION		35	
		TOTAL FUNDING	AGS	38 C	C
121.	SP0501	LAHAINALUNA HIGH, MAUI.			
		PLANS AND DESIGN FOR A SWIMMING POOL.			
		PLANS		32	
		DESIGN		60	
		TOTAL FUNDING	AGS	92 C	C
122.	HP1505	LAIE ELEMENTARY, OAHU.			
		CONSTRUCTION FOR PAVING OF DIRT PARKING LOT.			
		CONSTRUCTION		25	
		TOTAL FUNDING	AGS	25 C	C
123.	SP0504	LANA'I HIGH, LANA'I.			
		PLANS AND DESIGN OF A FOUR-CLASSROOM BUILDING AT LANA'I HIGH SCHOOL.			
		PLANS		13	
		DESIGN		50	
		TOTAL FUNDING	AGS	63 C	C
124.	SP0701	LEILEHUA HIGH, OAHU.			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF THE FOOTBALL FIELD.			
		DESIGN		5	
		CONSTRUCTION		25	
		TOTAL FUNDING	AGS	30 C	C
125.	SP0706	LEILEHUA HIGH, OAHU.			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION OF SCIENCE LABORATORIES.			
		DESIGN		5	
		CONSTRUCTION		90	
		EQUIPMENT		5	
		TOTAL FUNDING	AGS	100 C	C
126.	HP2603	LIHOLIHO ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR RENOVATION OF CLASSROOMS G-5 AND G-8.			
		DESIGN		5	
		CONSTRUCTION		20	
		TOTAL FUNDING	AGS	25 C	C
127.	HP3603	Likelike Elementary, Oahu.			
		PLAN, DESIGN, AND CONSTRUCTION OF ADDITIONAL PARKING AREA.			
		PLANS		5	
		DESIGN		5	
		CONSTRUCTION		75	
		TOTAL FUNDING	AGS	85 C	C
128.	J2613F	Liliuokalani Elementary, Oahu.			
		PLANS, DESIGN, AND CONSTRUCTION FOR PARKING LOT IN THE PLAYGROUND AREA.			
		PLANS		1	
		DESIGN		2	
		CONSTRUCTION		47	
		TOTAL FUNDING	AGS	50 C	C
129.	HP3209	Lunalilo Elementary, Oahu.			
		DESIGN AND CONSTRUCTION FOR RENOVATIONS AND IMPROVEMENTS TO FACILITIES AND GROUNDS.			
		DESIGN		5	
		CONSTRUCTION		20	
		TOTAL FUNDING	AGS	25 C	C
130.	J4723V	Makakilo Elementary, Oahu.			
		DESIGN AND CONSTRUCTION FOR A CHAIN LINK FENCE ABOVE STEEPLY SLOPING LAND BEHIND THE SCHOOL.			
		DESIGN		2	
		CONSTRUCTION		42	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	AGS	44 C	C
131. HP4702 MAKAKILO ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR A MOVEABLE PARTITION WALL IN 4 DOUBLE SIZED CLASSROOMS.					
		DESIGN		3	
		CONSTRUCTION		65	
		TOTAL FUNDING	AGS	68 C	C
132. HP4408 MANANA ELEMENTARY, OAHU.					
CONSTRUCTION FOR FIRE PROTECTION SYSTEMS AND FIRE ALARM SYSTEMS.					
		CONSTRUCTION		23	
		TOTAL FUNDING	AGS	23 C	C
133. J2714D MANOA ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS ADJACENT TO BUILDING I.					
		DESIGN		4	
		CONSTRUCTION		40	
		TOTAL FUNDING	AGS	44 C	C
134. J2714C MANOA ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR PARTITIONING 3 CLASSROOMS PREVIOUSLY USED FOR 3-ON-2 INSTRUCTIONS.					
		DESIGN		2	
		CONSTRUCTION		8	
		TOTAL FUNDING	AGS	10 C	C
135. J4723W MAUKA LANI ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR A MOSS ROCK RETAINING WALL AGAINST SLOPING GROUND FRONTING THE SCHOOL TO MATCH AN ADJACENT EXISTING WALL.					
		DESIGN		2	
		CONSTRUCTION		80	
		TOTAL FUNDING	AGS	82 C	C
136. HP3206 MCKINLEY HIGH, OAHU.					
DESIGN AND CONSTRUCTION FOR ADDITION OF LABORATORY FACILITIES FOR THE SCIENCE CLASSROOM S-9.					
		DESIGN		5	
		CONSTRUCTION		40	
		TOTAL FUNDING	AGS	45 C	C
137. HJ3501 MCKINLEY HIGH, OAHU.					
CONSTRUCTION FOR REFURBISHING THE SCHOOL TRACK AND OTHER IMPROVEMENTS.					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		CONSTRUCTION TOTAL FUNDING	AGS	104 104 C	C
138.	SP1707	MCKINLEY HIGH, OAHU.  DESIGN AND CONSTRUCTION FOR THE RELOCATION OF TRACK FIELD.			
		DESIGN CONSTRUCTION TOTAL FUNDING	AGS	15 120 135 C	C
139.	J4020F	MOANALUA HIGH, OAHU.  PLANS AND DESIGN FOR AN 8 CLASSROOM BUILDING.			
		PLANS DESIGN TOTAL FUNDING	AGS	75 50 125 C	C
140.	HP4005	MOANALUA ELEMENTARY, OAHU.  PLANS, DESIGN, AND CONSTRUCTION FOR A COVERED WALKWAY BETWEEN PORTABLES 6 AND 7.			
		PLANS DESIGN CONSTRUCTION TOTAL FUNDING	AGS	1 1 8 10 C	C
141.	SP2504	MOANALUA ELEMENTARY, OAHU.  PLANS, DESIGN AND CONSTRUCTION OF A SIDEWALK ADJACENT TO THE MOANALUA INTERMEDIATE SCHOOL DRIVEWAY.			
		PLANS DESIGN CONSTRUCTION TOTAL FUNDING	AGS	1 1 19 21 C	C
142.	SP2507	MOANALUA ELEMENTARY, OAHU.  PLANS, DESIGN AND CONSTRUCTION OF A COVERED SHELTER BETWEEN PORTABLES SIX AND SEVEN.			
		PLANS DESIGN CONSTRUCTION TOTAL FUNDING	AGS	1 1 10 12 C	C
143.	SP2508	MOANALUA HIGH, OAHU.  PLANS AND DESIGN FOR THE REMOVAL OF RUBBLE FROM PREVIOUS CONSTRUCTION, LANDSCAPING, SPRINKLING SYSTEM, AND PLUMBING.			
		PLANS DESIGN		3 5	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	AGS	8 C	C
144. SP0904 MOKAPU ELEMENTARY, OAHU.					
PLANS, DESIGN AND CONSTRUCTION OF A PARKING LOT.					
		PLANS		1	
		DESIGN		9	
		CONSTRUCTION		110	
		TOTAL FUNDING	AGS	120 C	C
145. HP3805 MOLOKAI HIGH, MOLOKAI.					
CONSTRUCTION FOR REPAIR OF GYMNASIUM AND REPLACEMENT OF PUBLIC ADDRESS SYSTEM.					
		CONSTRUCTION		10	
		TOTAL FUNDING	AGS	10 C	C
146. SP0107 MOUNTAIN VIEW ELEMENTARY, HAWAII.					
PLANS TO DEVELOP A MASTER PLAN FOR MOUNTAIN VIEW ELEMENTARY SCHOOL.					
		PLANS		10	
		TOTAL FUNDING	AGS	10 C	C
147. HP0122 NAALEHU ELEMENTARY AND INTERMEDIATE, HAWAII.					
CONSTRUCTION FOR PAVING TURN AROUND AREA FOR DROP-OFF AND PICK-UP OF CHILDREN.					
		CONSTRUCTION		50	
		TOTAL FUNDING	AGS	50 C	C
148. HP4801 NANAIKAPONO ELEMENTARY, OAHU.					
PLANS FOR SCHOOL BUILDINGS AND FACILITIES TO DETERMINE SCHOOL NEEDS FOR REPAIRS AND OTHER CAPITAL IMPROVEMENT PROJECTS.					
		PLANS		90	
		TOTAL FUNDING	AGS	90 C	C
149. J2714A NOELANI ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR A NEW OUTDOOR STAGE.					
		DESIGN		1	
		CONSTRUCTION		3	
		TOTAL FUNDING	AGS	4 C	C
150. J2714B NOELANI ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR STORAGE CLOSETS UNDER EXISTING STAIRWELL IN BUILDING A.					

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		1	
		CONSTRUCTION		14	
		TOTAL FUNDING	AGS	15 C	C
151.	HP3303	NUUANU ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR ADDITIONAL PARKING SPACES AND A TURN-AROUND AREA FOR DELIVERY TRUCKS.			
		DESIGN		4	
		CONSTRUCTION		36	
		TOTAL FUNDING	AGS	40 C	C
152.	J0403C	PAAUILO ELEMENTARY AND INTERMEDIATE, HAWAII.			
		DESIGN AND CONSTRUCTION FOR ENCLOSURE OF EXISTING COVERED PLAY COURT.			
		DESIGN		6	
		CONSTRUCTION		54	
		TOTAL FUNDING	AGS	60 C	C
153.	HP0120	PAHOA, HAWAII.			
		CONSTRUCTION FOR RESURFACING OF 4 TENNIS COURTS.			
		CONSTRUCTION		50	
		TOTAL FUNDING	AGS	50 C	C
154.	J4422D	PALISADES ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR SECURITY SCREENS FOR THE LIBRARY AND 4 CLASSROOMS.			
		DESIGN		2	
		CONSTRUCTION		25	
		TOTAL FUNDING	AGS	27 C	C
155.	HP251A	PALOLO ELEMENTARY, OAHU.			
		PLANS, DESIGN AND CONSTRUCTION FOR A NEW 3,500 SQUARE FEET STAFF PARKING AREA.			
		PLANS		2	
		DESIGN		2	
		CONSTRUCTION		90	
		TOTAL FUNDING	AGS	94 C	C
156.	HP251B	PALOLO ELEMENTARY, OAHU.			
		PLANS, DESIGN AND CONSTRUCTION FOR A RETAINING WALL BORDERING 10TH AVENUE.			
		PLANS		2	
		DESIGN		2	
		CONSTRUCTION		60	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	AGS	64 C	C
157. J1608A PARKER ELEMENTARY, OAHU.					
PLANS, DESIGN AND CONSTRUCTION FOR RETAINING WALL.					
		PLANS		2	
		DESIGN		15	
		CONSTRUCTION		133	
		TOTAL FUNDING	AGS	150 C	C
158. HP3304 PAUOA ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR A FENCE ALONG THE CAMPUS BOUNDARIES BEYOND PAUOA STREAM FOR SAFETY AND SECURITY REASONS.					
		DESIGN		3	
		CONSTRUCTION		10	
		TOTAL FUNDING	AGS	13 C	C
159. HP3305 PAUOA ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR CLASSROOM WALLS TO PARTITION 3-ON-2 CLASSROOMS INTO SELF-CONTAINED CLASSROOMS.					
		DESIGN		2	
		CONSTRUCTION		8	
		TOTAL FUNDING	AGS	10 C	C
160. SP1704 PAUOA ELEMENTARY, OAHU.					
PLAYGROUND EQUIPMENT IN THE K AND GRADES 1 AND 2 AREA.					
		EQUIPMENT		22	
		TOTAL FUNDING	AGS	22 C	C
161. SP1705 PAUOA ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION TO INSTALL CLASSROOM WALL BETWEEN ROOMS B1 AND B2.					
		DESIGN		1	
		CONSTRUCTION		4	
		TOTAL FUNDING	AGS	5 C	C
162. J4322B PEARL CITY HIGH, OAHU.					
DESIGN AND CONSTRUCTION FOR A SERVICE ROAD TO PROVIDE EMERGENCY ACCESS TO THE PHYSICAL EDUCATION BUILDING.					
		DESIGN		17	
		CONSTRUCTION		116	
		TOTAL FUNDING	AGS	133 C	C
163. J4322I PEARL CITY HIGHLANDS ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR IRRIGATION SYSTEM INCLUDING CLEARING, STABILIZING,					

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		AND LANDSCAPING HILLSIDE ON MAUKA END OF SCHOOL CAMPUS TO CORRECT HEALTH AND SAFETY CONCERNs.			
		DESIGN		5	
		CONSTRUCTION		40	
		TOTAL FUNDING	AGS	45	C
164.	J4322G	PEARL CITY HIGHLANDS INTERMEDIATE, OAHU.			C
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO CORRECT HEALTH, SAFETY, AND SECURITY CONCERNs, INCLUDING LANDSCAPING, SECURITY SCREENS, AND OTHER PROJECTS.			
		PLANS		10	
		DESIGN		50	
		CONSTRUCTION		100	
		TOTAL FUNDING	AGS	160	C
165.	SP2103	PEARL HARBOR KAI ELEMENTARY, OAHU.			C
		DESIGN AND CONSTRUCTION FOR THE RENOVATIONS TO H-BUILDING.			
		DESIGN		50	
		CONSTRUCTION		250	
		TOTAL FUNDING	AGS	300	C
166.	J4623O	POHAKEA ELEMENTARY, OAHU.			C
		DESIGN AND CONSTRUCTION FOR GATES AT AUTOMOBILE ENTRANCES.			
		DESIGN		1	
		CONSTRUCTION		3	
		TOTAL FUNDING	AGS	4	C
167.	J4623P	POHAKEA ELEMENTARY, OAHU.			C
		DESIGN AND CONSTRUCTION FOR LIGHTING IMPROVEMENTS.			
		DESIGN		5	
		CONSTRUCTION		35	
		TOTAL FUNDING	AGS	40	C
168.	JS0809	PUHALA ELEMENTARY, OAHU.			C
		PLANS, DESIGN AND CONSTRUCTION TO IMPROVE DRAINAGE BETWEEN BUILDINGS A AND B AND BUILDINGS B AND C.			
		PLANS		2	
		DESIGN		18	
		CONSTRUCTION		180	
		TOTAL FUNDING	AGS	200	C
169.	HP3902	PUUHALE ELEMENTARY , OAHU.			C
		PLANS, DESIGN, AND CONSTRUCTION FOR COVERED WALKWAY FROM BUILDING A TO BUILDING B.			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		23	
		TOTAL FUNDING	AGS	25 C	C
170.	HJ4103	RADFORD HIGH, OAHU.			
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO BOYS' AND GIRLS' LOCKER ROOMS.			
		PLANS		1	
		DESIGN		7	
		CONSTRUCTION		53	
		TOTAL FUNDING	AGS	61 C	C
171.	HP3803	RED HILL ELEMENTARY, OAHU.			
		PLANS AND CONSTRUCTION FOR ACCORDIAN ROOM DIVIDERS FOR OPEN CLASSROOM.			
		PLANS		2	
		CONSTRUCTION		18	
		TOTAL FUNDING	AGS	20 C	C
172.	SP1902	RED HILL ELEMENTARY, OAHU.			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR ACCORDIAN TYPE DIVIDERS FOR TYPE 2 AND 4 ROOMS.			
		DESIGN		15	
		CONSTRUCTION		165	
		EQUIPMENT		10	
		TOTAL FUNDING	AGS	190 C	C
173.	HJ3102	ROOSEVELT HIGH, OAHU.			
		DESIGN AND CONSTRUCTION FOR A WALL AROUND THE SWIMMING POOL.			
		DESIGN		2	
		CONSTRUCTION		56	
		EQUIPMENT		2	
		TOTAL FUNDING	AGS	60 C	C
174.	HJ3101	ROOSEVELT HIGH, OAHU.			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR EXPANSION OF EXISTING AUTO SHOP (BUILDING F) AND INSTALLATION OF A PAINT BOOTH.			
		DESIGN		2	
		CONSTRUCTION		146	
		EQUIPMENT		2	
		TOTAL FUNDING	AGS	150 C	C
175.	J2714X	ROOSEVELT HIGH, OAHU.			
		PLANS, DESIGN AND CONSTRUCTION OF NEW MUSIC BUILDING AND/OR RENOVATION AND IMPROVEMENT OF EXISTING MUSIC BUILDING.			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANS		1	
		DESIGN		48	
		CONSTRUCTION		1	
		TOTAL FUNDING	AGS	50 C	C
176.	HP3804	VARIOUS SCHOOLS IN THE 38TH DISTRICT, OAHU.			
		CONSTRUCTION FOR IMPROVEMENTS AND RENOVATIONS OF VARIOUS SCHOOLS.			
		CONSTRUCTION		70	
		TOTAL FUNDING	AGS	70 C	C
177.	HP1404	WAIALUA ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR PARKING LOT LIGHTS.			
		DESIGN		10	
		CONSTRUCTION		40	
		TOTAL FUNDING	AGS	50 C	C
178.	HP1406	WAIALUA ELEMENTARY, OAHU.			
		CONSTRUCTION FOR CARPETING CLASSROOMS A11A AND A11B.			
		CONSTRUCTION		4	
		TOTAL FUNDING	AGS	4 C	C
179.	SP0703	WAIALUA ELEMENTARY, OAHU.			
		DESIGN OF A NEW 8-CLASSROOM BUILDING.			
		DESIGN		113	
		TOTAL FUNDING	AGS	113 C	C
180.	HP1408	WAIALUA INTERMEDIATE AND HIGH, OAHU.			
		PLANS AND DESIGN FOR LOADING AND UNLOADING AREA.			
		PLANS		2	
		DESIGN		4	
		TOTAL FUNDING	AGS	6 C	C
181.	SP0702	WAIALUA INTERMEDIATE AND HIGH, OAHU.			
		CONSTRUCTION TO COMPLETE THE ROOF EXTENSION OF THE AUTOMOTIVE AND WOODS SHOP.			
		CONSTRUCTION		25	
		TOTAL FUNDING	AGS	25 C	C
182.	HP4903	WAIANAE HIGH, OAHU.			
		PLANS AND CONSTRUCTION FOR TWO AQUACULTURE PONDS AND RELATED STRUCTURES FOR THE MARINE SCIENCE LEARNING CENTER.			
		PLANS		5	
		CONSTRUCTION		47	

## CAPITAL IMPROVEMENT PROJECTS

APPROPRIATIONS  
(IN 000'S)

ITEM NO.	CAPITAL PROJECT NO.	CAPITAL PROJECT TITLE	EXPENDING AGENCY	FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	AGS	52 C	C
183. HP4308 WAIAU ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR CATTLE GATES AT SCHOOL ENTRANCES TO CORRECT SAFETY AND SECURITY CONCERNs.					
DESIGN				2	
CONSTRUCTION				6	
TOTAL FUNDING		AGS		8 C	C
184. SP2210 WAIAU ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR A CHAIN LINK FENCE BETWEEN SCHOOL AND PARK PLAYGROUND.					
DESIGN				1	
CONSTRUCTION				8	
TOTAL FUNDING		AGS		9 C	C
185. HP1304 WAHIAWA INTERMEDIATE, OAHU.					
CONSTRUCTION FOR A COVERED PLAYCOURT.					
CONSTRUCTION				100	
TOTAL FUNDING		AGS		100 C	C
186. HP2403 WAIKIKI ELEMENTARY, OAHU					
DESIGN AND CONSTRUCTION FOR RENOVATION OF SLIDING DOORS, ENCLOSURE OF THE LANAI AND OTHER SITE IMPROVEMENTS TO THE PRIMARY BUILDING (BUILDING A).					
DESIGN				7	
CONSTRUCTION				68	
TOTAL FUNDING		AGS		75 C	C
187. J2010B WAIMANALO ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR A COVERED WALKWAY FROM BUILDING U TO THE CAFETERIA.					
DESIGN				20	
CONSTRUCTION				150	
TOTAL FUNDING		AGS		170 C	C
188. HP0601 WAIMEA ELEMENTARY, HAWAII.					
DESIGN AND CONSTRUCTION FOR A PORTABLE CLASSROOM.					
DESIGN				1	
CONSTRUCTION				73	
TOTAL FUNDING		AGS		74 C	C
189. HP4510 WAIPAHU ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR ENLARGEMENT OF 10 WINDOWS IN I-4 AND I-7.					

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		4	
		CONSTRUCTION		17	
		TOTAL FUNDING	AGS	21 C	C
190.	HP4511	WAIPAHU ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OF GLASS JALOUSIES WITH WOODEN JALOUSIES.			
		DESIGN		4	
		CONSTRUCTION		27	
		TOTAL FUNDING	AGS	31 C	C
191.	J4623E	WAIPAHU ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR ADDITIONAL ENTRY DOORS FOR 8 CLASSROOMS (I-1 TO I-8).			
		DESIGN		8	
		CONSTRUCTION		37	
		TOTAL FUNDING	AGS	45 C	C
192.	J4522L	WAIPAHU HIGH, OAHU.			
		DESIGN AND CONSTRUCTION FOR LIGHTS FOR PARKING LOTS AND DRIVEWAYS.			
		DESIGN		13	
		CONSTRUCTION		94	
		TOTAL FUNDING	AGS	107 C	C
193.	J4522M	WAIPAHU HIGH, OAHU.			
		DESIGN AND CONSTRUCTION FOR CURBING ALONG DRIVEWAY.			
		DESIGN		8	
		CONSTRUCTION		55	
		TOTAL FUNDING	AGS	63 C	C
194.	J4523I	WAIPAHU INTERMEDIATE, OAHU.			
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF BOYS' AND GIRLS' PHYSICAL EDUCATION CLASSROOM BUILDING.			
		DESIGN		22	
		CONSTRUCTION		30	
		TOTAL FUNDING	AGS	52 C	C
195.	HP3201	WASHINGTON INTERMEDIATE, OAHU.			
		DESIGN AND CONSTRUCTION FOR CONVERSION OF BATHROOM IN HEALTH ROOM TO AN OFFICE.			
		DESIGN		5	
		CONSTRUCTION		30	
		TOTAL FUNDING	AGS	35 C	C
196.	SP0603	WHEELER INTERMEDIATE, OAHU.			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN AND CONSTRUCTION OF A PORTABLE CLASSROOM.			
		DESIGN		10	
		CONSTRUCTION		80	
		TOTAL FUNDING	AGS	90	C

197. HP2303 WILSON ELEMENTARY, OAHU.

PLANS, DESIGN, AND CONSTRUCTION FOR A  
SIDEWALK AND RAMP FROM THE PARKING LOT  
TO THE OFFICE OR OTHER GENERAL  
IMPROVEMENTS.

PLANS	5	
DESIGN	10	
CONSTRUCTION	35	
TOTAL FUNDING	50	C

## EDN107 - EXCEPTIONAL CHILD PROGRAM

198. HP1409 HALEIWA ELEMENTARY, OAHU.

DESIGN AND CONSTRUCTION FOR COVERED  
WALKWAY FOR SPECIAL EDUCATION AND OTHER  
STUDENTS.

DESIGN	5	
CONSTRUCTION	40	
TOTAL FUNDING	45	C

199. HP2402 JEFFERSON SCHOOL ORTHOPEDIC UNIT, OAHU.

EQUIPMENT FOR INSTALLATION OF  
AIR CONDITIONING UNITS IN THE  
ORTHOPEDIC UNIT CLASSROOMS, BUILDINGS M,  
N, AND O.

EQUIPMENT	24	
TOTAL FUNDING	24	C

200. SP1503 JEFFERSON SCHOOL ORTHOPEDIC UNIT, OAHU.

DESIGN AND CONSTRUCTION OF A PORTABLE  
TOILET BUILDING FOR BOYS AND GIRLS AND  
ONE TOILET FOR TEACHERS FOR BUILDING D.

DESIGN	5	
CONSTRUCTION	45	
TOTAL FUNDING	50	C

201. SP1301 POHUKAINA ELEMENTARY, OAHU.

DESIGN AND CONSTRUCTION FOR KITCHEN  
AND SHOWER FACILITIES FOR THE LEARNING  
DISABLED IN EXISTING BUILDINGS.

DESIGN	9	
CONSTRUCTION	60	
TOTAL FUNDING	69	C

## EDN203 - SCHOOL ADMINISTRATION

**ACT 314****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90	FISCAL M YEAR O 1990-91
202.	SP1710	KAULUWELA ELEMENTARY, OAHU.  DESIGN AND CONSTRUCTION TO SOUNDPROOF AND AIR CONDITION ADMINISTRATIVE OFFICES.	AGS	5 5 10 C	C
203.	HP3502	ROYAL ELEMENTARY, OAHU.  PLANS AND CONSTRUCTION FOR RENOVATION OF SCHOOL OFFICES.	AGS	5 75 80 C	C
204.	HJ2709	STEVENSON INTERMEDIATE, OAHU.  DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REPLACEMENT OF MAIN AND REAR ENTRY DOORS OF THE MAIN OFFICE.	AGS	2 10 1 13 C	C
<b>EDN204 - INSTRUCTIONAL MEDIA</b>					
205.	J4121G	AIEA INTERMEDIATE, OAHU.  DESIGN AND CONSTRUCTION FOR INSTALLATION OF AIR CONDITIONING IN SCHOOL LIBRARY.	AGS	36 130 166 C	C
206.	SP0704	HELEMANO ELEMENTARY, OAHU.  DESIGN FOR THE RENOVATION AND EXPANSION OF EXISTING LIBRARY.	AGS	70 70 C	C
207.	J4221F	HICKAM ELEMENTARY, OAHU.  DESIGN FOR INSTALLATION OF AIR CONDITIONING IN SCHOOL LIBRARY.	AGS	24 24 C	C
208.	SP1410	HOKULANI ELEMENTARY, OAHU.  DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF CARPETING AND AIR CONDITIONING FOR THE LIBRARY.			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		1	
		CONSTRUCTION		20	
		EQUIPMENT		1	
		TOTAL FUNDING	AGS	22 C	C
209.	HP1301	ILIAHI ELEMENTARY, OAHU.			
		PLANS AND CONSTRUCTION FOR THE THE INSTALLATION OF AIR CONDITIONING IN SCHOOL LIBRARY.			
		PLANS		5	
		CONSTRUCTION		15	
		TOTAL FUNDING	AGS	20 C	C
210.	HP1504	KAAWA ELEMENTARY, OAHU.			
		PLANS AND DESIGN FOR THE EXPANSION OF SCHOOL LIBRARY.			
		PLANS		10	
		DESIGN		20	
		TOTAL FUNDING	AGS	30 C	C
211.	SP0808	KAHALUU ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION TO INSTALL SECURITY SCREENS FOR LIBRARY.			
		DESIGN		3	
		CONSTRUCTION		17	
		TOTAL FUNDING	AGS	20 C	C
212.	J1809C	KAILUA HIGH, OAHU.			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR INSTALLATION OF NEW AIR CONDITIONING SYSTEM IN LIBRARY TO REPLACE PRESENT AIR CONDITIONING SYSTEM.			
		DESIGN		35	
		CONSTRUCTION		140	
		EQUIPMENT		100	
		TOTAL FUNDING	AGS	275 C	C
213.	SP1208	KALANI HIGH, OAHU.			
		PLANS, DESIGN, AND CONSTRUCTION OF AIR CONDITIONING FOR THE LIBRARY.			
		PLANS		2	
		DESIGN		3	
		CONSTRUCTION		45	
		TOTAL FUNDING	AGS	50 C	C
214.	HP3701	KALIHI ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF THE EXISTING SCHOOL LIBRARY.			
		DESIGN		20	
		CONSTRUCTION		230	

**ACT 314**

**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	AGS	250 C	C
215. SP1901 KALIHI ELEMENTARY, OAHU.					
PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT TO EXTEND EXISTING LIBRARY.					
		PLANS		10	
		DESIGN		10	
		CONSTRUCTION		250	
		EQUIPMENT		7	
		TOTAL FUNDING	AGS	277 C	C
216. SP0616 KANOELANI ELEMENTARY, OAHU.					
DESIGN OF A LIBRARY AND RESTORATION OF CLASSROOM CURRENTLY SERVING AS THE TEMPORARY LIBRARY.					
		DESIGN		20	
		TOTAL FUNDING	AGS	20 C	C
217. SP1703 KAWANANAKOA INTERMEDIATE, OAHU.					
DESIGN AND CONSTRUCTION TO INSTALL AIR CONDITIONING IN LIBRARY AND SCHOOL OFFICES IN BLDG. A, 1ST AND 2ND FLOORS.					
		DESIGN		5	
		CONSTRUCTION		47	
		TOTAL FUNDING	AGS	52 C	C
218. HP0605 KEALAKEHE ELEMENTARY, HAWAII.					
EQUIPMENT FOR ACQUISITION AND INSTALLATION OF COMPUTER SYSTEM FOR SCHOOL LIBRARY.					
		EQUIPMENT		15	
		TOTAL FUNDING	AGS	15 C	C
219. HP0801 LIHIKAI INTERMEDIATE AND ELEMENTARY, MAUI.					
CONSTRUCTION FOR IMPROVEMENTS TO LIBRARY FACILITIES.					
		CONSTRUCTION		175	
		TOTAL FUNDING	AGS	175 C	C
220. J3317A MAEMAE ELEMENTARY, OAHU.					
DESIGN AND CONSTRUCTION FOR EXPANSION OF THE SCHOOL LIBRARY AND OTHER IMPROVEMENTS.					
		DESIGN		21	
		CONSTRUCTION		200	
		TOTAL FUNDING	AGS	221 C	C
221. HP0121 NAALEHU SCHOOL, HAWAII.					
CONSTRUCTION FOR INSTALLATION OF AIR CONDITIONERS FOR THE SCHOOL LIBRARY.					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		CONSTRUCTION TOTAL FUNDING	AGS	5 5 C	C
222.	J3116A	ROOSEVELT HIGH, OAHU.			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INSTALLATION OF AIR CONDITIONING FOR THE SCHOOL LIBRARY.			
		DESIGN		40	
		CONSTRUCTION		390	
		EQUIPMENT		70	
		TOTAL FUNDING	AGS	500 C	C
223.	HJ3104	STEVENSON INTERMEDIATE, OAHU.			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INSTALLATION OF AIR CONDITIONING FOR THE SCHOOL LIBRARY.			
		DESIGN		2	
		CONSTRUCTION		33	
		EQUIPMENT		1	
		TOTAL FUNDING	AGS	36 C	C
224.	HP1407	WAIALUA ELEMENTARY, OAHU.			
		CONSTRUCTION FOR INSTALLATION FOR CARPETING IN LIBRARY.			
		CONSTRUCTION		5	
		TOTAL FUNDING	AGS	5 C	C
225.	J4824C	WAIANAE ELEMENTARY, OAHU.			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR INSTALLATION OF CENTRAL AIR CONDITIONING FOR THE SCHOOL LIBRARY			
		DESIGN		10	
		CONSTRUCTION		150	
		EQUIPMENT		20	
		TOTAL FUNDING	AGS	180 C	C
226.	SP1304	WAIKIKI ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION TO ENCLOSE AND AIR CONDITION SCHOOL LIBRARY.			
		DESIGN		25	
		CONSTRUCTION		225	
		TOTAL FUNDING	AGS	250 C	C
227.	J4221A	WAIMALU ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR EXPANSION OF SCHOOL LIBRARY.			
		DESIGN		25	
		CONSTRUCTION		140	
		TOTAL FUNDING	AGS	165 C	C

EDN305 - SCHOOL FOOD SERVICES

**ACT 314****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
228.	SP0103	KAHAKAI ELEMENTARY, HAWAII.			
		PLANS, DESIGN AND CONSTRUCTION TO LOWER THE CEILING AND/OR THE CEILING FANS IN THE CAFETERIUM.			
		PLANS		5	
		DESIGN		5	
		CONSTRUCTION		40	
		TOTAL FUNDING	AGS	50	C
229.	HP3605	KAPALAMA ELEMENTARY, OAHU.			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CEILING FANS IN CAFETERIUM.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		3	
		EQUIPMENT		5	
		TOTAL FUNDING	AGS	10	C
230.	HP0103	KE'AAU ELEMENTARY, HAWAII.			
		CONSTRUCTION FOR INSTALLATION OF WINDOWS IN THE CAFETERIA.			
		CONSTRUCTION		3	
		TOTAL FUNDING	AGS	3	C
231.	HP0115	KE'AAU ELEMENTARY, HAWAII.			
		CONSTRUCTION FOR THE INSTALLATION OF ADDITIONAL WINDOWS IN THE FOOD SERVICE MANAGER'S OFFICE.			
		CONSTRUCTION		3	
		TOTAL FUNDING	AGS	3	C
232.	HP4407	MOMILANI ELEMENTARY, OAHU.			
		DESIGN AND CONSTRUCTION FOR FENCING TO ENCLOSE THE OUTER PERIMETER OF THE CAFETERIA.			
		DESIGN		2	
		CONSTRUCTION		10	
		TOTAL FUNDING	AGS	12	C
233.	HP0123	NAALEHU ELEMENTARY AND INTERMEDIATE, HAWAII			
		CONSTRUCTION FOR A COVERED WALKWAY TO THE CAFETERIA.			
		CONSTRUCTION		26	
		TOTAL FUNDING	AGS	26	C
234.	J4823J	NANAKULI HIGH AND INTERMEDIATE, OAHU.			
		PLANS AND DESIGN FOR NANAKULI INTERMEDIATE AND HIGH SCHOOL CAFETERIUM.			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANS		20	
		DESIGN		100	
		TOTAL FUNDING	AGS	120 C	C

235. J4422F PEARL CITY ELEMENTARY, OAHU.

DESIGN AND CONSTRUCTION FOR THE  
REPLACEMENT OF WINDOWS IN CAFETERIA WITH  
WOODEN JALOUSIES AND SECURITY SCREENS.

DESIGN		8	
CONSTRUCTION		60	
TOTAL FUNDING	AGS	68 C	C

236. J4322C PEARL CITY HIGH, OAHU.

DESIGN AND CONSTRUCTION FOR CAFETERIA  
RESTROOMS.

DESIGN		8	
CONSTRUCTION		37	
TOTAL FUNDING	AGS	45 C	C

237. J4422E PEARL CITY ELEMENTARY, OAHU.

DESIGN AND CONSTRUCTION FOR  
INSTALLATION OF BLOWERS AT ENTRY/EXIT OF  
CAFETERIA.

DESIGN		2	
CONSTRUCTION		10	
TOTAL FUNDING	AGS	12 C	C

238. HP1303 WAHIAWA ELEMENTARY, OAHU.

PLANS FOR CAFETERIA EXPANSION.

PLANS		70	
TOTAL FUNDING	AGS	70 C	C

239. HP1405 WAIALUA ELEMENTARY, OAHU.

PLANS AND DESIGN FOR THE EXTENSION OF  
THE SCHOOL CAFETERIA.

PLANS		5	
DESIGN		10	
TOTAL FUNDING	AGS	15 C	C

240. HP2604 WAIKIKI ELEMENTARY, OAHU.

DESIGN AND CONSTRUCTION FOR THE  
INSTALLATION OF CEILING FANS IN THE  
CAFEATORIUM.

DESIGN		3	
CONSTRUCTION		27	
TOTAL FUNDING	AGS	30 C	C

241. J4623F WAIPAHU ELEMENTARY, OAHU.

DESIGN, CONSTRUCTION, AND EQUIPMENT  
FOR INSTALLATION OF SECURITY SCREENS ON  
CAFETERIA WINDOWS.

**ACT 314****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		2	
		CONSTRUCTION		16	
		EQUIPMENT		6	
		TOTAL FUNDING	AGS	24	C

**EDN406 - ADULT EDUCATION**

242. HJ3203 MCKINLEY COMMUNITY SCHOOL FOR ADULTS, OAHU.

DESIGN AND CONSTRUCTION FOR RENOVATIONS AND IMPROVEMENTS TO FACILITIES AND GROUNDS.

DESIGN	5
CONSTRUCTION	10
TOTAL FUNDING	15

C

**EDN407 - PUBLIC LIBRARIES**

243. SP1004 KAILUA PUBLIC LIBRARY, OAHU.

DESIGN AND CONSTRUCTION FOR THE MODIFICATIONS INCLUDING PARKING LOT, ENTRANCE ROAD, BOOKDROP, LANDSCAPING.

DESIGN	45
CONSTRUCTION	220
TOTAL FUNDING	265

C

244. J2613B KAIMUKI REGIONAL LIBRARY, OAHU.

DESIGN AND CONSTRUCTION FOR INSTALLATION OF AIR CONDITIONING FOR THE LIBRARY OR OTHER IMPROVEMENTS.

DESIGN	38
CONSTRUCTION	71
TOTAL FUNDING	109

C

245. SP0809 KANEOHE PUBLIC LIBRARY, OAHU.

DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF LIGHTS ALONG DRIVEWAY.

DESIGN	1
CONSTRUCTION	9
TOTAL FUNDING	10

C

246. HP3412 LILIHA LIBRARY, OAHU.

CONSTRUCTION FOR THE INSTALLATION OF AIR CONDITIONING IN THE AUDITORIUM.

CONSTRUCTION	10
TOTAL FUNDING	10

C

247. HP3204 McCULLY-MOILILI LIBRARY, OAHU.

DESIGN AND CONSTRUCTION FOR RENOVATIONS AND IMPROVEMENTS TO LIBRARY FACILITIES AND GROUNDS.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		3	
		CONSTRUCTION		12	
		TOTAL FUNDING	AGS	15 C	C

## UOH102 - ORGANIZED RESEARCH - UOH, MANOA

248. J2714E LYON ARBORETUM, OAHU.

PLANS, DESIGN AND CONSTRUCTION FOR A GREENHOUSE.

PLANS	10	
DESIGN	10	
CONSTRUCTION	80	
TOTAL FUNDING	100 C	C

## UOH216 - INSTITUTIONAL SUPPORT - UOH, HILO

249. HP0201 UNIVERSITY OF HAWAII AT HILO, HAWAII.

PLANS, DESIGN, AND CONSTRUCTION FOR ROADWAYS, PARKING, AND OTHER INFRASTRUCTURE IMPROVEMENTS AT THE UNIVERSITY OF HAWAII AT HILO.

PLANS	10	
DESIGN	20	
CONSTRUCTION	220	
TOTAL FUNDING	250 C	C

## UOH301 - INSTRUCTION - HONOLULU COMMUNITY COLLEGE

250. SP1806 HONOLULU CC--MARINE EDUCATION AND TRAINING CENTER, OAHU.

PLANS AND DESIGN FOR THE INCREMENTAL CONSTRUCTION OF MARINE EDUCATION AND TRAINING CENTER ON SAND ISLAND.

PLANS	10	
DESIGN	100	
TOTAL FUNDING	110 C	C

## UOH335 - INSTITUTIONAL SUPPORT - WINDWARD CC

251. HJ1703 WINDWARD COMMUNITY COLLEGE, OAHU.

PLANS, DESIGN, AND CONSTRUCTION FOR INSTALLATION OF AIR CONDITIONING FOR HALOA BUILDING.

PLANS	1	
DESIGN	9	
CONSTRUCTION	165	
TOTAL FUNDING	175 C	C

## UOH906 - COMMUNITY COLLEGE SYSTEMWIDE SUPPORT

252. HP3802 EMPLOYMENT TRAINING OFFICE, OAHU.

PLAN AND DESIGN FOR A TECHNICAL TRAINING FACILITY, INCLUDING AUTO

**ACT 314****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		MECHANICS AND AUTO BODY REPAIR TRAINING FOR THE EMPLOYMENT TRAINING OFFICE. UNUSED PLANNING AND DESIGN FUNDS TO BE USED FOR CONSTRUCTION.			
		PLANS		10	
		DESIGN		90	
		TOTAL FUNDING	AGS	100	C

**CULTURE AND RECREATION****AGS881 - PERFORMING & VISUAL ARTS EVENTS**

1. HP2903 MANOA VALLEY THEATER, OAHU.

PLANS, DESIGN, AND CONSTRUCTION FOR EXPANSION OF THE TECHNICAL SHOP AND COSTUME AREA, AND FOR EXTENSION OF THE THEATER ROOF. (GRANT-IN-AID)

PLANS	2
DESIGN	3
CONSTRUCTION	45
TOTAL FUNDING	AGS

50 C

C

2. HJ4513 WAIPAHU CULTURAL GARDEN PARK, OAHU.

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE PARK INCLUDING CONSTRUCTION OF NEW DISPLAYS. (GRANT-IN-AID)

DESIGN	1
CONSTRUCTION	25
EQUIPMENT	7
TOTAL FUNDING	AGS

33 C

C

**LNR806 - HERITAGE & RECREATION PARKS**

3. SP1602 HAWAII NATURE CENTER, OAHU.

PLANS, DESIGN AND CONSTRUCTION OF A BUILDING FOR ADDITIONAL CLASSROOMS AND/OR MEETING ROOMS. (GRANT-IN-AID)

PLANS	8
DESIGN	20
CONSTRUCTION	120
TOTAL FUNDING	LNR

148 C

C

4. SP1413 KANEWAI CULTURAL GARDEN, OAHU.

PLANS, DESIGN AND CONSTRUCTION FOR EROSION CONTROL/DRAINAGE IMPROVEMENTS FOR TARO PATCH/LAND ABUTTING KANEWAI PARK BOUNDARY. (GRANT-IN-AID)

DESIGN	2
CONSTRUCTION	20
EQUIPMENT	2
TOTAL FUNDING	LNR

24 C

C

5. SP1412 KANEWAI CULTURAL GARDEN, OAHU.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN AND CONSTRUCTION FOR THE REMOVAL/CLEARANCE OF BANYAN TREES SURROUNDING AUWAI. (GRANT-IN-AID)			
		DESIGN		5	
		CONSTRUCTION		25	
		TOTAL FUNDING	LNR	30 C	C
6.	HJ5102	WAIMEA PIER, KAUAI.			
		PLANS, DESIGN, AND CONSTRUCTION FOR PIER EXPANSION TO 50 FEET.			
		PLANS		30	
		DESIGN		20	
		CONSTRUCTION		100	
		TOTAL FUNDING	LNR	150 C	C
		<b>TRN801 - OCEAN-BASED RECREATION</b>			
7.	HP2401	ALA WAI BOAT HARBOR, OAHU.			
		EQUIPMENT FOR DEBRIS REMOVAL AND MAINTENANCE OF WATERWAYS (ESPECIALLY THE ALA WAI CANAL AND BOAT HARBOR) AND REGULATORY MARKERS.			
		EQUIPMENT		150	
		TOTAL FUNDING	TRN	150 C	C
8.	HP3001	ALA WAI BOAT HARBOR, OAHU.			
		DESIGN AND CONSTRUCTION FOR COMPLETION OF THE ELECTRICAL SYSTEM FOR NEW MARGINAL WHARF ON INSIDE OF BREAKWATER TO SERVE BERTHS AT ALA WAI BOAT HARBOR, OAHU.			
		DESIGN		20	
		CONSTRUCTION		187	
		TOTAL FUNDING	TRN	207 C	C
9.	HP3002	ALA WAI BOAT HARBOR, OAHU.			
		CONSTRUCTION FOR TOILET AND SHOWER FACILITIES (COMFORT STATION) AT ALA WAI BOAT HARBOR TO SERVE WORK DOCKS F AND G DOCKS AND TRAILER BOAT LAUNCHING AREAS.			
		CONSTRUCTION		40	
		TOTAL FUNDING	TRN	40 C	C
10.	HP3003	ALA WAI BOAT HARBOR, OAHU.			
		EQUIPMENT FOR ELECTRONIC SECURITY KEY FOR EXISTING TOILET AND SHOWER FACILITIES AT ALA WAI BOAT HARBOR, OAHU.			
		EQUIPMENT		3	
		TOTAL FUNDING	TRN	3 C	C
11.	HP1002	LANAI SMALL BOAT HARBOR, LANAI.			

**ACT 314****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANS AND EQUIPMENT FOR AN EMERGENCY 911 COMMUNICATION SYSTEM TO CONNECT THE LANAI SMALL BOAT HARBOR WITH LANAI CITY, LANAI.			
		PLANS		1	
		EQUIPMENT		4	
		TOTAL FUNDING	TRN	5	C

**LNR809 - GENERAL ADMIN FOR CULTURE & RECREATION**

12. SP2408 HAWAII DIVISION HORSESHOE PITCHING  
ASSOCIATION, OAHU.

DESIGN, CONSTRUCTION AND EQUIPMENT FOR  
HORSESHOE PITS FOR A WORLD HORSESHOE  
TOURNAMENT.

DESIGN		1	
CONSTRUCTION		39	
EQUIPMENT		1	
TOTAL FUNDING	LNR	41	C

**PUBLIC SAFETY****LNR810 - PREVENTION OF NATURAL DISASTERS**

1. SP0503 KAINALU STREAM FLOOD CONTROL PILOT  
PROJECT, MOLOKAI.

PLANS, DESIGN AND CONSTRUCTION TO  
PREVENT STREAM FLOODING OF KAINALU  
STREAM ON MOLOKA'I.

PLANS		1	
DESIGN		1	
CONSTRUCTION		8	
TOTAL FUNDING	LNR	10	C

2. J2714H MANOA STREAM, OAHU.

DESIGN AND CONSTRUCTION FOR EROSION  
CONTROL.

DESIGN		2	
CONSTRUCTION		18	
TOTAL FUNDING	LNR	20	C

**GOVERNMENT-WIDE SUPPORT****GOV103 - STATEWIDE PLAN AND COORDINATION**

1. J4920E OCEANARIUM, OAHU.

PLANS AND DESIGN FOR A FEASIBILITY  
STUDY FOR THE DEVELOPMENT OF A WORLD  
CLASS OCEANARIUM FOR EXHIBIT/  
CONSERVATION, EDUCATION AND RESEARCH  
PURPOSES.

PLANS		66	
DESIGN		190	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	GOV	256 C	C

## LNR101 - PUBLIC LANDS MANAGEMENT

2. HP2001 WAIKUPUNAHA STREET, OAHU.

CONSTRUCTION FOR PAVING ROADS OFF WAIKUPUNAHA STREET INCLUDING THE STREET MAUKA OF WAIKUPUNAHA STREET, AND THE STREET PARALLEL TO KAKAINA STREET MAUKA OF WAIKUPUNAHA STREET.

CONSTRUCTION TOTAL FUNDING	LNR	50	50 C	C
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## AGS221 - CONSTRUCTION

3. SP2218 CULTURAL CENTER, PEARL CITY, OAHU.

CONSTRUCTION OF A CULTURAL CENTER TO INCLUDE AN AUDITORIUM TO BE LOCATED IN THE PEARL CITY AREA. (PLANS AND DESIGN PREVIOUSLY FUNDED UNDER SEC 6, PART IV, ACT 216, SESSION LAWS OF HAWAII 1987 AS AMENDED BY SECTION 280, SESSION LAWS OF HAWAII 1988.)

CONSTRUCTION TOTAL FUNDING	AGS	207	207 C	C
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4. HP4105 MAKALAPA COMMUNITY CENTER, OAHU.

DESIGN AND CONSTRUCTION FOR REPAIR AND MAINTENANCE FOR MAKALAPA COMMUNITY CENTER.

DESIGN CONSTRUCTION TOTAL FUNDING	AGS	5 26 31	C	C
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5. HP3601 PUUKAMALII CEMETERY, OAHU.

PLAN, DESIGN, AND COSTRCTION FOR CHAIN-LINK FENCE AROUND CEMETERY.

PLANS DESIGN CONSTRUCTION TOTAL FUNDING	AGS	1 3 7 11	C	C
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6. SJ2425 VETERANS CENTER, KAUAI.

CONSTRUCTION OF A VETERANS CENTER ON KAUAI.

CONSTRUCTION TOTAL FUNDING	AGS	100	100 C	C
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7. SP0707 WAHIAWA CIVIC CENTER, OAHU.

PLANS AND DESIGN FOR THE WAHIAWA CIVIC CENTER.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANS		34	
		DESIGN		80	
		TOTAL FUNDING	AGS	114 C	C

## SUB201 - CITY &amp; COUNTY OF HONOLULU

8. HP2104 AHUKINI STREET/LUNALILO HOME ROAD IMPROVEMENTS, OAHU.

PLANS, DESIGN, AND CONSTRUCTION FOR TRAFFIC SIGNAL LIGHTS AT THE INTERSECTION OF AHUKINI STREET AND LUNALILO HOME ROAD.

PLANS		1	
DESIGN		1	
CONSTRUCTION		150	
TOTAL FUNDING	CCH	152 C	C

9. HP3402 BERETANIA COMMUNITY PARK, OAHU.

EQUIPMENT FOR PLAYGROUND EQUIPMENT FOR PARK.

EQUIPMENT		5	
TOTAL FUNDING	CCH	5 C	C

10. HP4101 HALAWA HEIGHTS ROAD, DRAINAGE IMPROVEMENTS, CAMP SMITH, OAHU.

DESIGN AND CONSTRUCTION FOR DRAINAGE SYSTEM FRONTING LOT TMK 9-9-09:8 ON HALAWA HEIGHTS ROAD, OAHU.

DESIGN		17	
CONSTRUCTION		97	
TOTAL FUNDING	CCH	114 C	C

11. HP4514 HOAEAE PARK, OAHU.

DESIGN AND CONSTRUCTION FOR CHAIN LINK FENCE ALONG GULCH AT HOAEAE PARK, VILLAGE PARK, OAHU.

DESIGN		2	
CONSTRUCTION		22	
TOTAL FUNDING	CCH	24 C	C

12. J4422H HOOKIEKIE STREET REPAVEMENT, PEARL CITY, OAHU.

DESIGN AND CONSTRUCTION FOR REPAVEMENT OF HOOKIEKIE STREET, FRONTING MOMILANI ELEMENTARY SCHOOL, PEARL CITY, OAHU.

DESIGN		8	
CONSTRUCTION		60	
TOTAL FUNDING	CCH	68 C	C

13. SP1501 KALAKAUA AVENUE BRIDGE REPAIRS, OAHU.

DESIGN AND CONSTRUCTION OF SAFETY REPAIRS TO THE KALAKAUA AVENUE BRIDGE OVER THE ALA WAI CANAL.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		50	
		CONSTRUCTION		300	
		TOTAL FUNDING	CCH	350 C	C
14.	J3918B	KAPALAMA CANAL, OAHU.			
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS AND LANDSCAPING TO KAPALAMA CANAL.			
		PLANS		20	
		DESIGN		30	
		CONSTRUCTION		150	
		TOTAL FUNDING	CCH	200 C	C
15.	HP1413	KAUKONAHUA ROAD GUARD RAILING, WAILUA, OAHU.			
		CONSTRUCTION FOR INSTALLATION OF GUARD RAILINGS AT KAUKNNAHUA ROAD AT POAMOHO BRIDGE IN WAIALUA (NEAR HUKILAU LOOP).			
		CONSTRUCTION		4	
		TOTAL FUNDING	CCH	4 C	C
16.	HP2902	KUULEI STREET IMPROVEMENTS, OAHU.			
		PLANS, DESIGN, AND CONSTRUCTION FOR STORM DRAINS TO ALLEVIATE FLOODING. FUNDS TO BE MATCHED BY CITY AND COUNTY OF HONOLULU.			
		PLANS		5	
		DESIGN		10	
		CONSTRUCTION		85	
		TOTAL FUNDING	CCH	100 C	C
17.	HP252A	LA'I ROAD WATER TANK, OAHU.			
		PLANS, DESIGN AND CONSTRUCTION FOR A NEW WATER TANK AND APPURTENANCES FOR PALOLO FARM AREA.			
		PLANS		5	
		DESIGN		10	
		CONSTRUCTION		60	
		TOTAL FUNDING	CCH	75 C	C
18.	HP3404	LANAKILA PLAYGROUND, OAHU.			
		EQUIPMENT FOR INSTALLATION OF CHILDRENS' PLAY EQUIPMENT.			
		EQUIPMENT		15	
		TOTAL FUNDING	CCH	15 C	C
19.	HP3401	LILIHA AND KUAKINI STREETS INTERSECTION IMPROVEMENTS, OAHU.			
		PLANS, DESIGN, AND CONSTRUCTION FOR THE ADDITION OF A LEFT TURN SIGNAL TO THE TRAFFIC LIGHTS.			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F	
		PLANS		5		
		DESIGN		5		
		CONSTRUCTION		40		
		TOTAL FUNDING	CCH	50 C		C
20.	HP3405	LILIUOKALANI GARDENS, OAHU.				
		PLANS AND DESIGN FOR THE GARDENS.				
		PLANS		5		
		DESIGN		5		
		TOTAL FUNDING	CCH	10 C		C
21.	J2714F	MANOA PARK, OAHU.				
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF THE PARK ON LAND ADJACENT TO MANOA PARK.				
		DESIGN		8		
		CONSTRUCTION		72		
		TOTAL FUNDING	CCH	80 C		C
22.	J2714G	MANOA POOL, OAHU.				
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO MANOA POOL.				
		DESIGN		2		
		CONSTRUCTION		38		
		TOTAL FUNDING	CCH	40 C		C
23.	HP3205	MCCULLY RECREATION CENTER, OAHU.				
		PLANS, DESIGN, AND CONSTRUCTION FOR A NEW ROOF. (GRANT-IN-AID)				
		PLANS		5		
		DESIGN		5		
		CONSTRUCTION		40		
		TOTAL FUNDING	CCH	50 C		C
24.	HP3801	MOANALUA VALLEY NEIGHBORHOOD PARK, OAHU.				
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE UPGRADE AND IMPROVEMENT OF THE PARK.				
		PLANS		2		
		DESIGN		2		
		CONSTRUCTION		41		
		EQUIPMENT		5		
		TOTAL FUNDING	CCH	50 C		C
25.	HP3202	MOILIILI COMMUNITY CENTER, OAHU.				
		DESIGN AND CONSTRUCTION FOR RENOVATIONS AND IMPROVEMENTS TO FACILITIES AND GROUNDS. (GRANT-IN-AID)				
		DESIGN		5		
		CONSTRUCTION		15		

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	CCH	20 C	C
26.	HP3403	NA PUEO PARK, OAHU.			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR SITE IMPROVEMENTS AND LANDSCAPING.			
		PLANS		15	
		DESIGN		15	
		CONSTRUCTION		15	
		EQUIPMENT		5	
		TOTAL FUNDING	CCH	50 C	C
27.	HP2204	NIU VALLEY BRIDGE, OAHU.			
		PLANS AND DESIGN FOR THE EXISTING BRIDGE ON HALEMAUMAU PLACE. FUNDS TO BE MATCHED BY THE CITY AND COUNTY OF HONOLULU.			
		PLANS		10	
		DESIGN		15	
		TOTAL FUNDING	CCH	25 C	C
28.	HP3306	PAUOA ROAD PEDESTRIAN SAFETY IMPROVEMENTS, OAHU.			
		DESIGN AND CONSTRUCTION FOR SIDEWALK EXTENSIONS, CROSSWALKS, STOPINES, AND PEDESTRIAN WARNING SIGNS AT INTERSECTION OF PAUOA ROAD AND FUNCHAL STREET, OAHU.			
		DESIGN		2	
		CONSTRUCTION		18	
		TOTAL FUNDING	CCH	20 C	C
29.	J4020A	PULUOA ROAD IMPROVEMENTS, OAHU.			
		DESIGN FOR EXPANSION OF PULUOA ROAD FROM TWO LANES TO FOUR LANES, DRAINAGE SYSTEM, AND STREET LIGHTING.			
		DESIGN		229	
		TOTAL FUNDING	CCH	229 C	C
30.	HJ4512	VILLAGE PARK AND WAIPAHU AREA BUS STOP IMPROVEMENTS, OAHU.			
		DESIGN AND CONSTRUCTION OF CONCRETE SLABS AND BENCHES AT BUS STOPS AT KUPUNA LOOP AND KAHAKEA STREET; PAIWA STREET AND WAIPAHU STREET; AND HIAPAU STREET AND WAIPAHU STREET.			
		DESIGN		3	
		CONSTRUCTION		12	
		TOTAL FUNDING	CCH	15 C	C
31.	HJ2201	WAILUPE VALLEY PARK, OAHU.			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)		
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F	
		PLANS, LAND, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS AND REGRADING OF THE FIELD. FUNDS TO BE MATCHED BY THE CITY AND COUNTY OF HONOLULU.				
		PLANS		30		
		LAND		75		
		DESIGN		30		
		CONSTRUCTION		15		
		TOTAL FUNDING	CCH	150	C	
32.	HJ2205	WAILUPE STREAM, OAHU.				C
		PLANS, DESIGN, AND CONSTRUCTION FOR THE BANK STABILIZATION OF WAILUPE STREAM. FUNDS TO BE MATCHED BY THE CITY AND COUNTY OF HONOLULU.				
		PLANS		16		
		DESIGN		21		
		CONSTRUCTION		13		
		TOTAL FUNDING	CCH	50	C	
33.	HP2003	WAIMANALO RECREATION CENTER SWIMMING POOL, OAHU.				
		PLANS, DESIGN, AND CONSTRUCTION FOR A SWIMMING POOL.				
		PLANS		2		
		DESIGN		2		
		CONSTRUCTION		76		
		TOTAL FUNDING	CCH	80	C	
34.	SP1603	WATERLINES AND FIRE HYDRANTS, OAHU.				
		DESIGN AND CONSTRUCTION OF WATERLINES AND FIRE HYDRANTS TO PROVIDE FIRE PROTECTION FOR LUNALILO ELEMENTARY SCHOOL.				
		DESIGN		20		
		CONSTRUCTION		180		
		TOTAL FUNDING	CCH	200	C	
<b>SUB301 - COUNTY OF HAWAII</b>						
35.	HP0404	CLEM AKINA PARK PAVILION, HAWAII.				
		CONSTRUCTION FOR RAMP WALKWAY WITH PROPER RAILINGS AND RENOVATION OF RESTROOMS TO PROVIDE ELDERLY AND HANDICAPPED ACCESSIBILITY.				
		CONSTRUCTION		35		
		TOTAL FUNDING	COH	35	C	
36.	SP0106	DAY CARE FACILITY, HAWAII.				
		PLANS, DESIGN AND CONSTRUCTION FOR A PRE-SCHOOL AND/OR DAY CARE FACILITY IN THE DISTRICT OF PUNA, COUNTY OF HAWAII.				

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANS		48	
		DESIGN		1	
		CONSTRUCTION		1	
		TOTAL FUNDING	COH	50	C
37.	SP0305	GROUND WATER SOURCES AT NORTH KOHALA, HAWAII.			
		DESIGN AND CONSTRUCTION FOR THE DRILLING OF FIVE WELLS, TWO OF WHICH WILL HELP SUPPLEMENT WATER TO THE MAKAPALA AND HALAULA WATER SYSTEMS. THE UNITED STATES GEOLOGICAL SURVEY (USGS) IS WILLING TO DO THIS PROJECT ON A 50-50 BASIS.			
		DESIGN		25	
		CONSTRUCTION		325	
		TOTAL FUNDING	COH	350	C
38.	HP0506	HALE HALAWAI, HAWAII.			
		DESIGN AND CONSTRUCTION FOR RENOVATIONS AND MODIFICATIONS TO THE HALE HALAWAI.			
		DESIGN		2	
		CONSTRUCTION		11	
		TOTAL FUNDING	COH	13	C
39.	HP0405	HAMAKUA WATER SOURCE DEVELOPMENT, HAWAII.			
		CONSTRUCTION FOR THE DEVELOPMENT OF A DEEP WELL WATER SOURCE AND CONSTRUCTION OF A STORAGE RESERVOIR, HAMAKUA, HAWAII.			
		CONSTRUCTION		85	
		TOTAL FUNDING	COH	85	C
40.	SP0201	HILO MAINSTREET PROJECT, HAWAII.			
		PLANS, DESIGN AND CONSTRUCTION FOR THE RENOVATION AND REPAIR OF THE PALACE THEATER.			
		PLANS		5	
		DESIGN		20	
		CONSTRUCTION		100	
		TOTAL FUNDING	COH	125	C
41.	HP0303	KALAKAUA PARK, HAWAII.			
		PLANS AND CONSTRUCTION FOR KALAKAUA PARK REHABILITATION AND DOWNTOWN PEDESTRIAN IMPROVEMENTS.			
		PLANS		2	
		CONSTRUCTION		63	
		TOTAL FUNDING	COH	65	C
42.	SJ0218	KAPOHO WATER SYSTEM, HAWAII.			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN AND CONSTRUCTION FOR KAPOHO WATER SOURCE DEVELOPMENT.			
		DESIGN		50	
		CONSTRUCTION		300	
		TOTAL FUNDING	COH	350	C
43.	HP0502	KONA SIDEWALK IMPROVEMENTS, HAWAII.			
		CONSTRUCTION FOR THE REMOVAL OF A COBBLESTONE SIDEWALK AND CONSTRUCTION OF A CEMENT SIDEWALK FRONTING THE KONA INN.			
		CONSTRUCTION		40	
		TOTAL FUNDING	COH	40	C
44.	HP0501	KONA TRAM, HAWAII.			
		EQUIPMENT FOR A TRAM VEHICLE FOR KAILUA-KONA, HAWAII.			
		EQUIPMENT		125	
		TOTAL FUNDING	COH	125	C
45.	HP0119	MAILE LOOP ROAD AND HAWAII BELT HIGHWAY IMPROVEMENTS, PAHALA, HAWAII.			
		CONSTRUCTION FOR STREET LIGHTS AT MAILE LOOP ROAD AND THE HAWAII BELT HIGHWAY 11-G (SOUTH ENTRANCE TO PAHALA TOWN).			
		CONSTRUCTION		5	
		TOTAL FUNDING	COH	5	C
46.	HP0118	OHAI STREET IMPROVEMENTS, HAWAII.			
		CONSTRUCTION FOR STREET LIGHTS ON RIGHT CORNER AT CURVE OF OHAI STREET.			
		CONSTRUCTION		5	
		TOTAL FUNDING	COH	5	C
47.	HP0505	OLD KONA AIRPORT PARK, HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION FOR A SKATEBOARD PARK.			
		PLANS		5	
		DESIGN		5	
		CONSTRUCTION		40	
		TOTAL FUNDING	COH	50	C
48.	HP0504	RIFLE RANGE AT PUUANAHULU, HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION FOR A RIFLE RANGE.			
		PLANS		5	
		DESIGN		5	
		CONSTRUCTION		10	
		TOTAL FUNDING	COH	20	C
49.	J0302B	ULULANI STREET IMPROVEMENTS, HAWAII.			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN AND CONSTRUCTION FOR ROAD AND OFF-SITE IMPROVEMENTS FOR A LOW INCOME MULTI-FAMILY HOUSING PROJECT.			
		DESIGN		20	
		CONSTRUCTION		130	
		TOTAL FUNDING	COH	150	C
<b>SUB401 - COUNTY OF MAUI</b>					
50.	HP1005	COMMUNITY SERVICES FACILITY, MOLOKAI.			
		PLANS, DESIGN, AND CONSTRUCTION FOR A NEW BUILDING TO HOUSE MAUI ECONOMIC OPPORTUNITY OFFICES, TRANSPORTATION SERVICES, HEADSTART AND DAY CARE PROGRAMS ON MOLOKAI.			
		PLANS		25	
		DESIGN		25	
		CONSTRUCTION		125	
		TOTAL FUNDING	COM	175	C
51.	SP0304	HANA COMMUNITY CENTER, MAUI.			
		PLANS AND DESIGN FOR A COMMUNITY CENTER IN HANA, MAUI.			
		PLANS		5	
		DESIGN		45	
		TOTAL FUNDING	COM	50	C
52.	SP0502	KIHEI COMMUNITY RECREATIONAL FACILITY AND GYMNASIUM, MAUI.			
		PLANS AND DESIGN OF A COMMUNITY RECREATIONAL FACILITY AND A GYMNASIUM IN KIHEI, MAUI.			
		PLANS		25	
		DESIGN		50	
		TOTAL FUNDING	COM	75	C
53.	HP0901	LOWER MAIN STREET, MAUI.			
		CONSTRUCTION FOR DRAINAGE AND ROAD WIDENING IMPROVEMENTS, LOWER MAIN STREET, MAUI.			
		CONSTRUCTION		250	
		TOTAL FUNDING	COM	250	C
54.	HP1004	NAPILI FIRESTATION, MAUI.			
		PLANS, DESIGN AND CONSTRUCTION FOR A FIRE STATION AND EMERGENCY SERVICES BUILDING IN NAPILI, WEST MAUI. FUNDS TO BE MATCHED BY THE COUNTY OF MAUI.			
		PLANS		5	
		DESIGN		5	
		CONSTRUCTION		40	

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	COM	50 C	C
55. HP0702 UP COUNTRY COMMUNITY CENTER, MAUI.					
CONSTRUCTION FOR UP COUNTRY COMMUNITY CENTER.					
CONSTRUCTION				100	
TOTAL FUNDING				100 C	C
<b>SUB501 - COUNTY OF KAUAI</b>					
56. HJ5104 KEKAHA NEIGHBORHOOD CENTER, KAUAI.					
PLANS FOR NEW ROOF OVER EXISTING CONCRETE SLAB.					
PLANS				20	
TOTAL FUNDING				20 C	C
57. SP2505 POIPU SHOULDER STABILIZATION, KAUAI.					
DESIGN AND CONSTRUCTION FOR THE STABILIZATION OF SHOULDER ALONG EXISTING ROADWAY AT POIPU, KAUAI.					
DESIGN				5	
CONSTRUCTION				45	
TOTAL FUNDING				50 C	C
58. SP2504 WAILUA GOLF COURSE, KAUAI.					
LAND ACQUISITION AND DESIGN FOR THE EXPANSION OF WAILUA GOLF COURSE.					
LAND				25	
DESIGN				50	
TOTAL FUNDING				75 C	C

**SECTION 3.** The appropriations and authorizations in Section 2 of this Act include land acquisition, plans, design, site preparation, improvements to land, construction, equipment, and necessary off-site improvements.

**SECTION 4.** Where an agency is able to secure funds or other property from private organizations or individuals, to be expended or utilized in connection with any program authorized by this Act, the governor, or the agency with the governor's approval, shall have the power to enter into each undertaking.

**SECTION 5.** If the State should assume direct operation of any nongovernmental agency receiving state funds under the provisions of this Act, all such funds shall constitute a credit to the State against the costs of acquiring all or any portion of the property, real, personal, or mixed, or such nongovernmental agency. The credit shall be applicable regardless of when such acquisition takes place.

**SECTION 6.** Any law or any provision of this Act to the contrary notwithstanding, all authorizations for capital improvement projects made for fiscal year

1989-90 which are unencumbered as of June 30, 1992, shall lapse as of that date; provided that the lapsing date shall not apply to projects necessary to qualify for federal aid financing and reimbursement if the legislature redetermines that such projects are essential.

SECTION 7. Act 217, Session Laws of Hawaii 1987, Section 2, as amended by Act 2, Special Session Laws of 1988, Section 8, is amended to read:

- (1) By amending Item HTH 907-6 to read:

"6. SP0204 WAIAKEA HEALTH CENTER, HAWAII

DESIGN AND CONSTRUCTION FOR THE ADDITION,  
RENOVATION[, OF AIRCRAFT NOISE ABATEMENT OF THE  
WAIAKEA HEALTH CENTER.] OF AN ENVIRONMENTAL  
HEALTH FACILITY.

	FY 1987-88	FY 1988-89
DESIGN	40	
CONSTRUCTION	165	
TOTAL FUNDING	205	C

- (2) By amending Item EDN 105-124 to read:

"124. HP3410 MAEMAE ELEMENTARY SCHOOL, OAHU

[INSTALLATION OF SECURITY SCREENS FOR  
WINDOWS, AND METAL BARS AND GATE FOR  
LANAI AREA.] DESIGN AND CONSTRUCTION  
FOR THE RENOVATION AND EXPANSION OF THE  
LIBRARY.

	FY 1987-88	FY 1988-89
DESIGN	2	
CONSTRUCTION	18	
TOTAL FUNDING	20	C

- (3) By amending Item EDN 105-125 to read:

"125. JP1701 MAEMAE SCHOOL, OAHU

[SECURITY SCREENS FOR WINDOWS, AND  
METAL BARS AND GATES FOR BUILDING F.]  
DESIGN AND CONSTRUCTION FOR THE  
RENOVATION AND EXPANSION OF THE LIBRARY.

	FY 1987-88	FY 1988-89
DESIGN	8	
CONSTRUCTION	76	
TOTAL FUNDING	84	C

- (4) By amending Item EDN 204-228 to read:

"228. HP1703 KANEOHE ELEMENTARY SCHOOL, OAHU.

LIBRARY [RENOVATION.] IMPROVEMENTS.

	FY 1987-88	FY 1988-89
PLANS	10	
DESIGN	10	
CONSTRUCTION	20	
TOTAL FUNDING	40	C

- (5) By amending Item SUB 501-45 to read:

"45. JP2416 KAUAI ECONOMIC OPPORTUNITY,  
KAUAI.

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PLANNING, DESIGN AND CONSTRUCTION OF  
OFFICE BUILDING.

	FY 1987-88	FY 1988-89
DESIGN	50	
[CONSTRUCTION]	120	
TOTAL FUNDING	[170] <u>50</u>	C

- (6) By adding a new Item SUB 501-45A to read:

"45A. SP2506 LIHUE SENIOR CENTER COMPLEX,  
KAUAI.

CONSTRUCTION OF A SENIOR CENTER COMPLEX AT  
THE LIHUE NEIGHBORHOOD CENTER, KAUAI.

	FY 1987-88	FY 1988-89
CONSTRUCTION	120	
TOTAL FUNDING	120	C

SECTION 8. Act 2, Session Laws of Hawaii, Special Session 1988, Section 2, is amended to read as follows:

- (1) By amending Item BED 102-1 to read:

"1. SP0202 MAINSTREET HAWAII

[LEASE,] PURCHASE [REPAIR AND  
RENOVATE, REFURBISH] OF PALACE  
THEATRE[, A MAINSTREET PROJECT].  
(GRANT-IN-AID)

	FY 1987-88	FY 1988-89
[PLANS	25]	
LAND	300	
[DESIGN	25]	
[CONSTRUCTION	200]	
[EQUIPMENT	50]	
TOTAL FUNDING	[BED] COH	A 300 A"

- (2) By amending Item TRN 511-25 to read:

"25. [HP0105] MOUNTAIN VIEW SCHOOL ROAD  
IMPROVEMENT SYSTEM, HAWAII

[DESIGN AND CONSTRUCTION OF A VEHICULAR  
EGRESS FROM THE PREMISES OF MOUNTAIN  
VIEW SCHOOL DRIVEWAY TO EKENA STREET,  
MOUNTAIN VIEW, PUNA, HAWAII] DEPARTMENT  
OF EDUCATION MOUNTAIN VIEW PROJECT  
NUMBER 520-007--"DRIVEWAY IMPROVEMENT,  
PROPOSED LOADING/UNLOADING AREA,  
PARKING".

	FY 1987-88	FY 1988-89
DESIGN		1
CONSTRUCTION		18
TOTAL FUNDING	[TRN] EDN	A 21 A"

- (3) By amending Item HTH 907-9 to read:

"9. JS0201 WIAKEA HEALTH CENTER, HAWAII

PLAN, LAND ACQUISITION, DESIGN AND  
CONSTRUCTION OF AN ENVIRONMENTAL HEALTH  
FACILITY [PROGRAM IN THE WIAKEA HEALTH  
CENTER COMPLEX].

	FY 1987-88	FY 1988-89
PLANS		35
LAND		200
DESIGN		[40] 20
CONSTRUCTION		[425] 245
TOTAL FUNDING	AGS	500 A"
	A	

(4) By amending Item EDN 105-20 to read:

"20. JP0917 CASTLE HIGH SCHOOL, OAHU

PLAN, DESIGN AND CONSTRUCTION FOR A  
[NEW CASTLE HIGH SCHOOL GYMNASIUM.]  
PE/ATHLETIC LOCKER FACILITY.

	FY 1987-88	FY 1988-89
PLANS		45
DESIGN		30
CONSTRUCTION		500
TOTAL FUNDING	AGS	575 A"
	A	

(7) By amending item EDN 105-150 to read:

"150. JP2449 BOYS AND GIRLS CLUB OF WAIANAE

[TO MATCH PRIVATE FUNDS (2:1 RATIO)  
FOR] CONSTRUCTION OF THE WAIANAE BOYS  
AND GIRLS CLUB [ON THE GROUNDS OF]  
FACILITY NEXT TO WAIANAE ELEMENTARY  
SCHOOL. (GRANT-IN-AID)

	FY 1987-88	FY 1988-89
CONSTRUCTION		200
TOTAL FUNDING	AGS	200 A"
	A	

(5) By amending Item LNR 806-14 to read:

"14. JP0510 MOLOKAI MUSEUM AND CULTURAL  
CENTER, KALAE, MOLOKAI

DESIGN AND CONSTRUCTION FOR THE MOLOKAI  
MUSEUM AND CULTURAL CENTER (GRANT-IN-AID)

	FY 1987-88	FY 1988-89
DESIGN		2
CONSTRUCTION		75
TOTAL FUNDING	LNR	77 A"
	A	

## PART II. SPECIAL PROVISIONS

**SECTION 9. GOVERNOR'S DISCRETIONARY POWERS.** When it is deemed in the public interest of the State, the governor, in the governor's discretion, is authorized to use general obligation bond funds to finance capital improvement projects authorized for this fiscal biennium in this Act, where the method of financing is designated to be the general fund. Any law or provision to the contrary notwithstanding, the governor may replace general funds appropriated for capital improvement projects with general obligation reimbursable bond funds, when the expenditure of such general obligation reimbursable bond funds is deemed appropriate for the project.

**SECTION 10.** If the amount specified for any capital improvement project is not totally required to complete the work of such project or after it is definitely found by the expending officer that not more than a specified amount will be required to complete such work, such unrequired amount may be expended with the approval

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of the governor for any other capital improvement project authorized by the legislature in the future.

**SECTION 11.** If general obligation bond proceeds have been allocated to an authorization which may be satisfied from general obligation bond proceeds and the amount of such proceeds so allocated is in excess of the amount needed to satisfy such authorization, the amount of such excess proceeds shall be transferred to a separate account and allocated to the satisfaction of other authorizations which may be satisfied from general obligation bond proceeds made in the same or any other act of the legislature; provided that a report of such allocations for the period ending December 31 of each year shall be made to the legislature by February 1 of the following year.

**SECTION 12.** In releasing funds for projects, the governor shall consider legislative intent; the objectives of the user agency and its programs; the scope and level of the user agency's intended services; and the means, efficiency, and economics by which the project will meet the objectives of the user agency and the State. Agencies responsible for construction shall take into consideration the objectives of the user agency and its programs, the scope and level of the user agency's intended service and thereby construct the improvement to meet the objectives of the user agency in the most efficient and economical manner possible.

**SECTION 13.** The designated expending agency for capital improvements authorized in this Act is authorized to delegate to other state or county agencies the acquisition of land, design, and construction of such projects when it is determined by such agency that it is advantageous to do so; provided that a report of all such delegations for the period ending December 31 of each calendar year shall be made to the first regular session of the legislature convened after such delegations have been made.

**SECTION 14.** Any law or any provision to the contrary notwithstanding, the governor may supplement funds for any early-phased cost element (plans or land) for a capital improvement project authorized under this Act by transferring such sums as may be needed from the funds authorized for later-phased cost elements (design and construction) for the same project authorized by the legislature in this Act or in a prior year or which may be authorized by the legislature in the future.

**SECTION 15.** Where it has been determined that changed conditions, such as a reduction in the particular population being served, permit the reduction in the scope of a capital improvement project described in this Act, the governor may authorize such reduction of project scope; provided that the scope of a project shall not be reduced merely because the authorization for a project is insufficient.

**SECTION 16.** The negotiation for the purchase of land by state agencies shall be subject to the approval of the governor. Private lands may be acquired for the purpose of exchange for federal lands when the governor determines that such acquisition and exchange are necessary to the completion of any project authorized in this Act.

**SECTION 17.** Where county capital improvement projects are partially or totally funded by state funds as authorized in this Act or any other act of the legislature, this fact should be appropriately acknowledged during construction and upon completion of these projects.

**SECTION 18.** No authorization in this Act shall be considered to be a mandate under Article VIII, Section 5 of the Hawaii State Constitution, for a political

subdivision to undertake new programs or to increase the level of services under existing programs of that political subdivision. If any authorization in this Act falls within the provision of Article VIII, Section 5 of the Hawaii State Constitution, such authorization shall be void, and in the case of capital improvement authorizations designated to be financed from the general obligation bond fund, the total general obligation bonds authorized under section 2 of this Act shall be correspondingly decreased.

**SECTION 19.** If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, then the legislature hereby declares that the remainder of the Act and each and every other provision thereof shall not be affected thereby. If any portion of a specific authorization is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and such remaining portion shall be expended to fulfill the objective of such authorization to the extent possible. If any portion of a specific lapse is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and such remaining portion shall be lapsed to fulfill the objective of such lapse to the extent possible.

**SECTION 20.** If manifest clerical, typographical, or other mechanical errors are found in this Act, the governor is hereby authorized to correct such errors. All changes made pursuant to this section shall be reported to the legislature at its next session.

**SECTION 21.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 22.** This Act shall take effect upon its approval.

(Approved June 13, 1989.)

## ACT 315

H.B. NO. 189

A Bill for an Act Relating to the Judiciary.

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

### PART I. GENERAL PROVISIONS

**SECTION 1. Short Title.** This Act shall be known as the Judiciary Appropriations Act of 1989.

**SECTION 2.** In accordance with Article VII, Section 9, of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-90 to be exceeded by \$67,810,180, or 2.89 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

**SECTION 3. Definitions.** Unless otherwise clear from the context, as used in this Act:

(a) "Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the judiciary (JUD) followed by a designated number for the program.

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(b) "Means of Financing," or "MOF," means the source from which funds are appropriated or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. Such letter symbols, where used, shall have the following meanings:

- A General fund
- B Special fund
- N Other federal funds
- C General obligation bond fund

(c) "Position ceiling" means the maximum number of permanent positions authorized for a particular program during a specified period or periods, as noted by an asterisk.

## PART II. PROGRAM APPROPRIATIONS

**SECTION 4. Appropriations.** The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized from the sources of funding specified to the judiciary for the fiscal biennium beginning July 1, 1989, and ending June 30, 1991. The total expenditures and the number of permanent established positions in each fiscal year of the fiscal biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided in this Act.

### PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91
<b>The Judicial System</b>						
1.	JUD101	- Courts of Appeal		67.00 *		67.00 *
		OPERATING	JUD	3,546,821 A		3,526,519 A
2.	JUD111	- Circuit Courts		370.00 *		375.00 *
		OPERATING	JUD	16,467,194 A		16,387,621 A
3.	JUD112	- Family Courts		351.50 *		373.50 *
		OPERATING	JUD	18,837,993 A		19,896,673 A
4.	JUD121	- District Courts		638.50 *		641.50 *
		OPERATING	JUD	17,566,524 A		17,677,246 A
				53.00 *		53.00 *
			JUD	1,461,124 B		1,472,096 B
5.	JUD201	- Admin. Director Services		218.00 *		230.00 *
		OPERATING	JUD	11,391,648 A		11,810,033 A
		INVESTMENT CAPITAL	JUD	2,553,000 C		2,837,000 C

**SECTION 5.** Provided that of the general fund appropriation for courts of appeals (JUD 101), the sum of \$87,884 in fiscal year 1989-90 and \$80,388 in fiscal year 1990-91, shall be expended to employ one assistant bar administrator, one document clerk, and two clerk typists.

**SECTION 6.** Provided that of the general fund appropriation for circuit courts (JUD 111), the sum of \$48,796 in fiscal year 1989-90 and \$44,496 in fiscal

year 1990-91 shall be expended to employ one building maintenance worker and one assistant facility manager for the second circuit.

**SECTION 7.** Provided that of the general fund appropriation for circuit courts (JUD 111), the sum of \$335,324 in fiscal year 1989-90 and \$275,324 in fiscal year 1990-91 shall be expended by the first judicial circuit for the assessment and treatment of convicted, adult sex offender felons.

**SECTION 8.** Provided that of the general fund appropriation for the circuit courts (JUD 111), the sum of \$25,000 in fiscal year 1989-90 shall be allocated for the purpose of evaluating the effectiveness of the proposed JAVS automatic court recording system in courtroom proceedings.

**SECTION 9.** Provided that of the general fund appropriation for circuit courts (JUD 111), the sum of \$400,000 in fiscal year 1989-90 and \$400,000 in fiscal year 1990-91 shall be expended to provide judicial services, which the legislature finds to be a public purpose, through purchase of services agreements under chapter 42, Hawaii Revised Statutes.

**SECTION 10.** Provided that in the circuit courts (JUD 111), for the fiscal 1989-91 biennium the employment status of the chief clerk position for the third judicial circuit shall be changed from exempt to permanent civil service SR 30 rating; provided further that the employee whose employment status is changed as a consequence of this section of this Act shall become a permanent civil service SR 30 rating employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided further that the general fund appropriations for this position shall be continued through the 1989-91 biennium.

**SECTION 11.** Provided that of the general fund appropriation for family courts (JUD 112), the sum of \$133,392 in fiscal year 1990-91 shall be expended to employ the following positions in the third circuit: one district/family judge, one bailiff, and two circuit court clerks.

**SECTION 12.** Provided that of the general fund appropriation for family courts (JUD 112), the sum of \$5,427,031 in fiscal year 1989-90 and \$5,896,266 in fiscal year 1990-91 shall be expended to provide judicial services, which the legislature finds to be a public purpose, through purchase of services agreements under chapter 42, Hawaii Revised Statutes.

**SECTION 13.** Provided that of the general fund appropriation for purchase of services for family courts (JUD 112), for the fiscal biennium which are as provided in chapter 42, Hawaii Revised Statutes for a public purpose the following agencies shall be allocated additional or new funding as follows:

Circuit	Program	FY 1989-90	FY 1990-91
First	Child & Family Svc	\$ 60,000	\$ 60,000
First	Waikiki Com Ctr	300,000	300,000
Second	Sal Army-High Control Ctr	350,000	350,000
Second	Women Helping Women	60,000	60,000
Third	Family Crisis Shelter W HI	100,000	100,000
Third	Family Crisis Shelter E HI	82,676	82,676
Third	Hawaiian Wilderness Project	314,478	330,202
Fifth	YWCA-Kauai Alt to Vio- lence	50,000	50,000

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**SECTION 14.** Provided that of the general fund appropriation for district courts (JUD 121), the sum of \$60,204 in fiscal year 1989-90 and \$32,636 in fiscal year 1990-91 shall be expended by the third judicial circuit to establish one account clerk III in Hilo and one clerk typist III in Kona.

**SECTION 15.** Provided that of the general fund appropriation for district courts (JUD 121), the sum of \$83,156 in fiscal year 1989-90 and \$73,956 in fiscal year 1990-91 shall be expended by the first circuit to establish the following four positions: one inventory clerk; one accountant III; one account clerk V; and one account clerk IV.

**SECTION 16.** Provided that of the general fund appropriation for district courts (JUD 121), the sum of \$200,000 in fiscal year 1989-90 and \$200,000 in fiscal year 1990-91 shall be expended for a Magna Scanner Contract.

**SECTION 17.** Provided that of the general fund appropriation for administrative director services (JUD 201), the sum of \$45,336 in fiscal year 1989-90 and \$45,336 in fiscal year 1990-91 shall be used to establish the position of chief information officer; provided further that this position shall be responsible for and have primary authority for all information systems development and administration.

**SECTION 18.** Provided that of the general fund appropriation for administrative director services (JUD 201), the sum of \$125,000 in fiscal year 1989-90 shall be expended for the judiciary's annual financial audit; provided further that the auditor's report shall include, but not be limited to, financial statements, a management letter, and a review of internal controls; provided further that the auditor's report shall be submitted to the legislature twenty days prior to the convening of the 1991 regular session.

**SECTION 19.** Provided that the positions of arbitration director, arbitration assistant director, and administrative assistant in the alternative dispute resolution (ADR) program contained in the general fund appropriation for administrative director services (JUD 201), for the fiscal biennium are to be temporary positions.

**SECTION 20.** Provided that the authorized position count for administrative director services (JUD 201), shall be increased by one to permanently establish a clerk typist III position in the children's advocacy center.

**SECTION 21.** Provided that of the general fund appropriation for administrative director services (JUD 201), the sum of \$376,234 in fiscal year 1989-90 and \$413,619 in fiscal year 1990-91 shall be expended to provide judicial service, which the legislature finds to be a public purpose, through purchase of services agreements under chapter 42, Hawaii Revised Statutes.

**SECTION 22.** Provided that prior to the start of the 1990 legislative session, in order to properly monitor the expenditure of appropriated funds, the judiciary shall provide the legislature with a complete detailed plan as to how the judiciary will monitor all purchase of services providers for fiscal year 1991 and thereafter; provided that this plan shall include a standardized monitoring procedure with standardized criteria for similar programs, so as to evaluate the functions and effectiveness of all programs covered by purchase of services contracts; provided further that failure to provide an effective evaluation plan shall result in the reduction of funds related to purchase of services for fiscal year 1991 and thereafter.

**SECTION 23.** Provided that the position of fiscal officer currently established in the judiciary shall be reviewed for potential reclassification to a higher rating under the civil service classification system.

SECTION 24. Whenever the expending program of the judiciary, to which an appropriation is made, is changed due to legislation enacted during any session of the legislature which affects the appropriations made by this Act, the chief justice shall transfer the necessary funds and positions to the proper expending program; provided further that a report identifying all transfers implemented during the previous fiscal year shall be submitted to the legislature twenty days prior to the convening of each regular session.

SECTION 25. Whenever the need arises, the chief justice, in administering an equitable and expeditious judicial process, is authorized to transfer sufficient funds and positions between programs for research and development and operating purposes; provided that such transfer shall not be made to implement any collective bargaining contracts signed after this legislature adjourns sine die; provided that a report of all such transfers shall be made to the legislature twenty days prior to the convening of each regular session.

SECTION 26. Where the chief justice or any agency or any government unit is able to secure federal funds or other property made available under any act of Congress, or any funds or other property from private organizations or individuals which are to be expended in connection with any program or works authorized by this Act, or otherwise, the chief justice or agency with the chief justice's approval shall have the power to enter into such undertaking with the proper offices or agencies of the federal government or private organizations or individuals. While most federal aid allocations are known and state matching funds are provided in this Act, there may be programs for which federal-state cost sharing is not yet determined. In such instances, the availability of federal funds shall be construed as a proportionate reduction of state costs whenever possible.

SECTION 27. Provided that the judiciary is authorized to transfer savings from its general fund appropriation to the driver education special fund to accommodate any temporary cash flow deficits; provided further that a report of all transfers shall be submitted to the legislature twenty days prior to the convening of each regular session.

SECTION 28. Provided that, in order to ensure the efficient expenditure of funds, the judiciary shall submit a report to the legislature containing a detailed breakdown for each program reflecting funds expended for services on fees, and all service contracts for the prior fiscal year; provided further that the total amount of the contract fees and services on fees reflected in this report shall correspond to the amount of each line item shown on the budget details table; provided further that this report shall be submitted to the legislature twenty days prior to the convening of each regular session.

SECTION 29. Provided that in order to properly expend funds the legislative auditor shall review all actions, including the development of implementation timetables, that the judiciary has taken to implement each recommendation in the legislative auditor's report no. 89-5, Management and Financial Audit of the Judiciary; provided further that the legislative auditor shall have full authority to review with specificity the progress made by the judiciary in implementing the recommendations of the legislative auditor; provided further that the legislative auditor shall have the authority to obtain any material and information from the judiciary necessary to complete its report. The legislative auditor shall submit a report to the legislature twenty days prior to the 1990 regular session on the judiciary's implementation of the recommendations and its development of timetables for implementing each recommendation in the legislative auditor's report no. 89-5.

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SECTION 30. Provided that, in order to properly budget funds for the judiciary's management information system, the judiciary shall create a preliminary action plan to address the recommendations of the legislative auditor's report no. 89-5, Management and Financial Audit of the Judiciary, relating to the management information system; provided further that the legislative auditor shall review the preliminary action plan and other actions taken to implement the recommendations, and that the judiciary shall update the auditor on the actions taken and respond to requests for information; provided further that the legislative auditor shall submit a report of its review to the legislature twenty days prior to the convening of the 1990 regular session.

### PART III. CAPITAL IMPROVEMENT PROJECTS

SECTION 31. Capital Improvement Projects. The sum of \$5,390,000 appropriated or authorized in Part II of this Act for capital investment shall be expended for the projects listed below. Several related or similar projects may be combined into a single project, if such a combination is advantageous or convenient, for land acquisition, design, and construction purposes; provided that the total cost of the projects thus combined shall not exceed the total of the sum specified for the projects separately. The amount after each cost element and the total funding for each project listed in this Part are in thousands of dollars and are to be expended by the judiciary.

#### CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)				
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F			
<b>The Judicial System</b>								
<b>JUD201 - Admin. Director Services</b>								
1.		PLANNING AND LAND ACQUISITION OF A FAMILY COURT CENTER, OAHU.						
		PLANNING AND LAND ACQUISITION OF A FAMILY COURT CENTER.						
		PLANS		300				
		LAND		100				
		TOTAL FUNDING	JUD	400 C	C			
2.		HILO JUDICIARY COMPLEX, HAWAII						
		PLANNING AND DESIGN OF A JUDICIARY COMPLEX IN HILO TO ACCOMMODATE THE CIRCUIT, FAMILY AND DISTRICT COURTS.						
		PLANS		60				
		DESIGN		993				
		TOTAL FUNDING	JUD	1,053 C	537 C			
3.		KOOLAUPOKO DISTRICT COURT, KANEOHE, OAHU						
		PLANNING, LAND ACQUISITION, AND DESIGN FOR KOOLAUPOKO DISTRICT COURT.						
		PLANS		200				
		LAND		1,695				
		DESIGN		105				
		TOTAL FUNDING	JUD	200 C	1,800 C			
4.		KONA JUDICIARY COMPLEX, KONA, HAWAII						

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000'S)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANNING FOR THE KONA JUDICIARY COMPLEX.			
		PLANS		100	
		TOTAL FUNDING	JUD	100 C	C
5.		KAUAI JUDICIARY COMPLEX, KAUAI			
		PLANNING FOR THE KAUAI JUDICIARY COMPLEX.			
		PLANS		100	
		TOTAL FUNDING	JUD	100 C	C
6.		MOLOKAI DISTRICT COURT, MOLOKAI			
		PLANNING FOR THE MOLOKAI DISTRICT COURT.			
		PLANS		100	
		TOTAL FUNDING	JUD	100 C	C
7.		WAHIAWA DISTRICT COURT, OAHU			
		PLANNING FOR THE WAHIAWA DISTRICT COURT.			
		PLANS		100	
		TOTAL FUNDING	JUD	100 C	C
8.		REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE			
		DESIGN, CONSTRUCTION AND FURNISHING OF EQUIPMENT TO REMODEL AND UPGRADE JUDICIARY BUILDINGS, STATEWIDE.			
		DESIGN		75	
		CONSTRUCTION		300	400
		EQUIPMENT		25	25
		TOTAL FUNDING	JUD	400 C	500 C
9.		JUVENILE DETENTION CENTER, OAHU			
		PLANS		100	
		TOTAL FUNDING	JUD	100 C	C

SECTION 32. Provided that of the general obligation bond fund appropriation for the judiciary, the sum of \$1,053,000 in fiscal year 1989-90 and \$537,000 in fiscal year 1990-91 shall be provided for plans and design of a Hilo judiciary complex to be situated on State lands adjacent to the existing Hilo judicial facilities.

SECTION 33. Any law to the contrary notwithstanding, the appropriations under Act 375, Session Laws of Hawaii 1987, section 24, as amended by Act 318, Session Laws of Hawaii 1988, in the amounts indicated are lapsed:

Item No.	Amount(MOF)
JUD 101-1	\$2,000,000 A
JUD 201-3	\$2,000,000 A

**PART IV. ISSUANCE OF BONDS**

**SECTION 34. General Obligation Bonds.** General obligation bonds may be issued, as provided by law, to yield the amount that may be necessary to finance projects authorized in Part II and listed in Part III of this Act, provided that the sum total of the general obligation bonds so issued shall not exceed \$5,390,000.

**PART V. SPECIAL PROVISIONS**

**SECTION 35.** Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital investment projects authorized in Part II and listed in Part III of this Act shall not lapse at the end of the fiscal year for which the appropriation is made; provided that all appropriations made to be expended in fiscal biennium 1989-91 which are unencumbered as of June 30, 1992, shall lapse as of that date.

**SECTION 36.** The judiciary is authorized to delegate to other state or county agencies the acquisition of land, planning, design, and construction of any capital improvement project when it is determined by the judiciary that it is an advantage to do so.

**SECTION 37.** All unrequired balances, after the objectives of appropriations made in Part II for capital investment purposes from the general obligation fund and listed as projects in Part III have been met, shall be transferred to the judiciary project adjustment fund.

**SECTION 38.** In the event that the amount specified for a capital investment project listed in Part III is insufficient and where the source of funding for the project is designated as the general obligation bond fund, the chief justice may make supplemental allotments from the project adjustment fund; provided that such supplemental allotments shall not be used to increase the scope of the project; provided further that a report of such supplemental allotments and transfers for the period ending December 31 of each calendar year shall be made to the legislature by February 1 of the following calendar year.

**SECTION 39.** Where it has been determined that changed conditions, such as reduction in the particular population being served, permit the reduction in the scope of a project listed in Part III, the chief justice may authorize such reduction of project scope; provided that the scope of a project shall not be reduced merely because the appropriation for the project is insufficient.

**SECTION 40.** The chief justice shall determine when and the manner in which the authorized projects shall be initiated. The chief justice shall notify the governor from time to time of the specific amounts required for the projects, and the governor shall provide for such amounts through the issuance of bonds authorized in Part IV.

**SECTION 41.** Any law or any provision to the contrary notwithstanding, the chief justice may supplement funds for any early-phased cost element for a capital improvement project authorized under this Act by transferring such sums as may be needed from the funds appropriated for later-phased cost elements for the same project authorized by the legislature in this Act or in a prior year or which

may be authorized by the legislature in the future, provided that the total expenditure of funds for all cost elements for the project shall not exceed the total appropriations for that project.

## **PART VI. MISCELLANEOUS PROVISIONS AND EFFECTIVE DATE**

**SECTION 42. Severability.** If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, then the legislature hereby declares that the remainder of the Act and each and every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and such remaining portion shall be expended to fulfill the objective and intent of such appropriation to the extent possible.

**SECTION 43. Manifest errors.** In the event manifest clerical, typographical, or other mechanical errors are found in this Act, the chief justice is authorized to correct such errors. All changes made pursuant to this section shall be reported to the legislature at its next session.

**SECTION 44. Effective date.** This Act shall take effect on July 1, 1989.

(Approved June 13, 1989.)

**ACT 316**

H.B. NO. 205

A Bill for an Act Relating to the State Budget.

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

**PART I. GENERAL PROVISIONS**

**SECTION 1. SHORT TITLE.** This Act shall be known and may be cited as the General Appropriations Act of 1989.

**SECTION 2.** In accordance with Article VII, Section 9, of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-90 to be exceeded by \$125,870,011, or 5.37 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

**SECTION 3. DEFINITIONS.** Unless otherwise clear from the context, as used in this Act:

(a) "Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the organization responsible for carrying out the program, followed by the organization number for the program.

(b) "Expending agency" means the executive department, independent commission, bureau, office, board, or other establishment of the state government (other than the legislature, Office of Hawaiian Affairs, and judiciary), the political subdivisions of the State, or any quasi-public institution supported in whole or in part by state funds, which is authorized to expend specified appropriations made by this Act. Abbreviations, where used to denote the expending agency shall mean the following:

AGR	Department of Agriculture
AGS	Department of Accounting and General Services
ATG	Department of the Attorney General
BED	Department of Business and Economic Development
BUF	Department of Budget and Finance
CCA	Department of Commerce and Consumer Affairs
DEF	Department of Defense
DOC	Department of Corrections
EDN	Department of Education
GOV	Office of the Governor
HHL	Department of Hawaiian Home Lands
HMS	Department of Human Services
HTH	Department of Health
LBR	Department of Labor and Industrial Relations
LNR	Department of Land and Natural Resources
LTG	Office of the Lieutenant Governor
PER	Department of Personnel Services
SUB	Subsidies
TAX	Department of Taxation
TRN	Department of Transportation
UOH	University of Hawai'i
CCH	City and County of Honolulu

COH County of Hawaii  
 COK County of Kauai  
 COM County of Maui

(c) "Means of financing," or "MOF," means the source from which funds are appropriated, or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. Such letter symbols, where used, shall have the following meaning:

A	general fund
B	special funds
C	general obligation bond fund
D	general obligation bond fund with debt service cost to be paid from special funds
E	revenue bond funds
J	federal aid interstate funds
K	federal aid primary funds
L	federal aid secondary funds
M	federal aid urban funds
N	other federal funds
R	private contributions
S	county funds
T	trust funds
U	interdepartmental transfers
W	revolving funds
X	other funds

(d) "Position ceiling" means the maximum number of permanent positions that an expending agency is authorized for a particular program during a specified period or periods, as denoted by an asterisk.

(e) "Capital project number" means the official number of the capital project, as assigned by the responsible organization.

## PART II. PROGRAM APPROPRIATION

**SECTION 4. APPROPRIATIONS.** The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are hereby appropriated or authorized, as the case may be, from the sources of funding specified to the expending agencies designated for the fiscal biennium beginning July 1, 1989, and ending June 30, 1991. The total expenditures and the number of positions in each fiscal year of the biennium shall not exceed the sums and the number indicated for each year, except as provided elsewhere in this Act.

### PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS						
				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F			
<b>A. ECONOMIC DEVELOPMENT</b>										
1. BED102 - COMMERCE AND INDUSTRY										
				39.00 *		44.00 *				
	OPERATING		BED	15,414,353 A		14,709,527 A				
	INVESTMENT CAPITAL		BED	3,900,000 W		4,500,000 W				
			BED	3,081,000 A			A			
2. BED113 - STATE TOURISM OFFICE										

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**PROGRAM APPROPRIATIONS**

ITEM NO.	PROG. ID.	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
				5.00 *		5.00 *	
	OPERATING		BED	21,093,510 A		19,997,664 A	
			BED	1,600,000 R		1,700,000 R	
			BED	100,000 X		100,000 X	
3.	BED107 - FOREIGN TRADE			26.00 *		26.00 *	
	OPERATING		BED	1,479,519 B		1,530,252 B	
4.	AGR101 - FINANCIAL ASSISTANCE FOR AGRICULTURE			15.00 *		15.00 *	
	OPERATING		AGR	798,864 B		815,261 B	
			AGR	2,326,000 W		2,326,000 W	
5.	AGR103 - PRICE & PRODUCTION CONTROLS FOR DAIRY PRDTS			6.00 *		6.00 *	
	OPERATING		AGR	324,009 A		320,575 A	
6.	AGR121 - PLANT QUARANTINE			66.38 *		66.38 *	
	OPERATING		AGR	1,975,734 A		1,805,200 A	
	INVESTMENT CAPITAL		AGS	492,000 A		A	
7.	AGR122 - PLANT PEST CONTROL			32.62 *		32.62 *	
	OPERATING		AGR	2,046,779 A		1,573,806 A	
8.	AGR131 - ANIMAL QUARANTINE			43.00 *		43.00 *	
	OPERATING		AGR	1,649,737 A		1,682,962 A	
			AGR	93,925 U		93,925 U	
9.	AGR132 - ANIMAL DISEASE CONTROL			23.50 *		23.50 *	
	OPERATING		AGR	1,134,663 A		1,001,229 A	
			AGR	46,624 T		49,048 T	
10.	LNR172 - FORESTRY - PRODUCTS DEVELOPMENT			24.00 *		24.00 *	
	OPERATING		LNR	814,101 A		825,519 A	
			LNR	98,600 N		106,250 N	
	INVESTMENT CAPITAL		LNR	C		95,000 C	
11.	AGR151 - DISTRIBUTION SYSTEMS IMPROVEMENT FOR AGR			40.00 *		40.00 *	
	OPERATING		AGR	2,516,414 A		2,207,885 A	
			AGR	419,519 B		445,039 B	
			AGR	9,272 N		8,010 N	
	INVESTMENT CAPITAL		AGR	1,008,000 A		A	
12.	AGR189 - DATA COLLECTION FOR AGR			12.00 *		12.00 *	
	OPERATING		AGR	485,486 A		483,654 A	
13.	AGR192 - GENERAL ADMINISTRATION FOR AGR			40.00 *		40.00 *	
	OPERATING		AGR	1,569,141 A		1,518,578 A	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
		INVESTMENT CAPITAL	AGR	7,000,000 A			A
			AGR	250,000 C			C
14.	AGR102 - FINANCIAL ASSISTANCE FOR AQUACULTURE						
	OPERATING		AGR	80,000 W		80,000 W	
15.	LNR153 - COMMERCIAL FISHERY AND AQUACULTURE			21.00 *		21.00 *	
	OPERATING		LNR	2,076,084 A		2,032,506 A	
			LNR	130,104 N		130,500 N	
	INVESTMENT CAPITAL		LNR	500,000 A			A
16.	BED120 - ENERGY DEVELOPMENT AND MANAGEMENT			10.00 *		10.00 *	
	OPERATING		BED	2,411,723 A		2,000,329 A	
			BED	603,621 B		633,917 B	
			BED	165,608 N		174,116 N	
	INVESTMENT CAPITAL		AGS	2,500,000 A			A
			BED	7,951,000 A		250,000 A	
			BED	850,000 C			C
17.	AGR141 - AGRICULTURAL WATER DEV & IRRIG SERVICES			17.00 *		17.00 *	
	OPERATING		AGR	532,256 A		537,840 A	
			AGR	267,609 B		285,146 B	
	INVESTMENT CAPITAL		LNR	4,803,000 A		480,000 A	
			LNR			4,000,000 C	
18.	BED130 - ECON PLANNING & RESEARCH FOR ECON DEVPMT			14.00 *		14.00 *	
	OPERATING		BED	784,718 A		766,287 A	
19.	BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT			34.00 *		37.00 *	
	OPERATING		BED	2,073,884 A		2,115,556 A	

## B. EMPLOYMENT

1.	LBR111 - PLACEMENT SERVICES			3.00 *		3.00 *	
	OPERATING		LBR	294,957 A		259,540 A	
				141.50 *		141.50 *	
			LBR	10,034,548 N		8,846,952 N	
2.	LBR123 - APPRENTICESHIP & OTHER TRAINING PROGRAMS			7.00 *		7.00 *	
	OPERATING		LBR	211,965 A		213,171 A	
3.	LBR131 - EMPLOYMENT AND TRAINING PROGRAMS			4.00 *		4.00 *	
	OPERATING		LBR	915,995 A		374,821 A	
				13.00 *		13.00 *	
			LBR	12,625,424 N		13,190,342 N	
4.	LBR135 - COMMISSION ON EMPLOYMENT & HUMAN RESOURCES			5.00 *		5.00 *	
	OPERATING		LBR	231,096 A		208,941 A	

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				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91
			LBR	146,500	N	141,000 N
5.	LBR136 - TRANSITION CENTER OPERATING		LBR	1,287,189	A	1,427,988 A
			LBR	75,000	N	N
6.	LBR143 - OCCUPATIONAL SAFETY & HEALTH OPERATING		LBR	51.00 *		51.00 *
			LBR	1,592,566	A	1,606,741 A
				29.50 *		29.50 *
			LBR	1,127,471	N	1,127,608 N
7.	LBR152 - WAGE STANDARDS & FAIR EMPLOYMENT PRACTICES OPERATING		LBR	31.00 *		31.00 *
			LBR	1,047,167	A	1,053,112 A
				51,500	N	51,500 N
8.	LBR161 - PUBLIC AND PRIVATE EMPLOYMENT OPERATING		LBR	3.00 *		3.00 *
			LBR	486,465	A	492,108 A
9.	LBR171 - UNEMPLOYMENT COMPENSATION OPERATING		LBR	2,165,964	A	2,166,061 A
			LBR	82,648,182	B	82,653,933 B
				279.85 *		279.85 *
			LBR	8,519,653	N	8,630,073 N
10.	LBR183 - DISABILITY COMPENSATION OPERATING		LBR	133.00 *		133.00 *
			LBR	3,474,812	A	3,469,430 A
			LBR	9,287,500	B	10,037,500 B
11.	HMS802 - VOCATIONAL REHABILITATION OPERATING		HMS	34.90 *		34.90 *
			HMS	3,473,614	A	3,603,827 A
			HMS	665,277	B	699,872 B
				95.10 *		95.10 *
			HMS	4,326,879	N	4,586,073 N
12.	LBR901 - DLIR-DATA GATHERING, RESEARCH AND ANALYSIS OPERATING		LBR	15.10 *		15.10 *
			LBR	1,413,592	A	1,432,659 A
				25.90 *		25.90 *
			LBR	1,428,882	N	1,368,597 N
13.	LBR902 - GENERAL ADMINISTRATION OPERATING		LBR	34.20 *		34.20 *
			LBR	1,186,194	A	1,213,336 A
				34.80 *		34.80 *
			LBR	1,699,119	N	1,676,132 N
14.	LBR903 - OFFICE OF COMMUNITY SERVICES OPERATING		LBR	7.00 *		7.00 *
			LBR	6,138,826	A	6,381,994 A
				3.00 *		3.00 *
			LBR	4,500,725	N	4,430,725 N
15.	LBR812 - LABOR & INDUSTRIAL RELATIONS APPEALS BOARD					

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
		OPERATING	LBL	10.00 *		10.00 *	
				422,693 A		426,346 A	

## C. TRANSPORTATION FACILITIES

1. TRN102 - HIA FACILITIES & SVCS
 

OPERATING	TRN	514.00 *	514.00 *
INVESTMENT CAPITAL	TRN	45,220,705 B	49,288,163 B
	TRN	248,380,000 E	176,250,000 E
	TRN	850,000 N	1,000,000 N
2. TRN104 - GENERAL AVIATION FACILITIES AND SERVICES
 

OPERATING	TRN	2.00 *	2.00 *
		773,076 B	593,669 B
3. TRN111 - GENERAL LYMAN FIELD FACILITIES & SERVICES
 

OPERATING	TRN	74.00 *	74.00 *
INVESTMENT CAPITAL	TRN	4,635,346 B	4,178,638 B
		600,000 E	1,100,000 E
4. TRN114 - KE-AHOLE AIRPORT FACILITIES AND SERVICES
 

OPERATING	TRN	61.00 *	61.00 *
INVESTMENT CAPITAL	TRN	3,805,899 B	3,911,312 B
	TRN	55,400,000 E	42,740,000 E
	TRN	6,000,000 N	15,000,000 N
5. TRN116 - WAIMEA-KOHALA AIRPORT FACILITIES & SERVICES
 

OPERATING	TRN	2.00 *	2.00 *
		228,463 B	132,100 B
6. TRN118 - UPOLU AIRPORT FACILITIES & SERVICES
 

OPERATING	TRN	456,742 B	147,090 B
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7. TRN131 - KAHULUI AIRPORT FACILITIES AND SERVICES
 

OPERATING	TRN	152.00 *	152.00 *
INVESTMENT CAPITAL	TRN	7,043,345 B	7,562,018 B
	TRN	62,510,000 E	26,680,000 E
	TRN	6,100,000 N	5,150,000 N
8. TRN133 - HANA AIRPORT FACILITIES AND SERVICES
 

OPERATING	TRN	1.00 *	1.00 *
		163,277 B	109,331 B
9. TRN141 - MOLOKAI AIRPORT FACILITIES AND SERVICES
 

OPERATING	TRN	9.00 *	11.00 *
INVESTMENT CAPITAL	TRN	819,438 B	659,615 B
		1,200,000 E	800,000 E
10. TRN143 - KALAUPAPA AIRPORT FACILITIES AND SERVICES
 

OPERATING	TRN	1.00 *	1.00 *
INVESTMENT CAPITAL	TRN	139,440 B	181,358 B
		5,750,000 E	E
11. TRN151 - LANAI AIRPORT FACILITIES AND SERVICES
 

OPERATING	TRN	4.00 *	4.00 *
INVESTMENT CAPITAL	TRN	1,833,217 B	257,071 B
		5,200,000 E	9,000,000 E

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				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
			TRN		N		1,000,000 N
12.	TRN161 - LIHUE AIRPORT FACILITIES AND SERVICES			87.00 *		87.00 *	
	OPERATING	TRN		5,178,546 B		5,347,485 B	
	INVESTMENT CAPITAL	TRN		28,570,000 E		16,900,000 E	
		TRN		2,600,000 N		8,000,000 N	
13.	TRN163 - PORT ALLEN AIRPORT FACILITIES AND SERVICES						
	OPERATING	TRN		1,419 B		1,493 B	
14.	TRN195 - AIR TRANSPORTATION FACILITIES & SVCS SUPPORT						
	OPERATING	TRN		190,600 A		190,600 A	
				77.00 *		77.00 *	
	INVESTMENT CAPITAL	TRN		119,515,914 B		151,043,317 B	
		TRN		32,900,000 E		60,400,000 E	
		TRN		350,000 N		450,000 N	
15.	TRN301 - HONOLULU HARBOR FACILITIES AND SERVICES			129.00 *		129.00 *	
	OPERATING	TRN		9,316,246 B		9,614,825 B	
	INVESTMENT CAPITAL	TRN		1,000,000 A		A	
		TRN		390,000 B		440,000 B	
		TRN		9,025,000 E		10,500,000 E	
16.	TRN303 - BARBERS POINT HARBOR FACILITIES AND SERVICES			2.00 *		2.00 *	
	OPERATING	TRN		187,812 B		197,125 B	
	INVESTMENT CAPITAL	TRN		300,000 A		A	
		TRN		300,000 B		B	
		TRN		E		3,000,000 E	
17.	TRN305 - KEWALO BASIN FACILITIES AND SERVICES			3.00 *		3.00 *	
	OPERATING	TRN		458,736 B		478,749 B	
18.	TRN311 - HILO HARBOR FACILITIES AND SERVICES			10.00 *		10.00 *	
	OPERATING	TRN		922,300 B		929,356 B	
19.	TRN313 - KAWAIHAE HARBOR FACILITIES AND SERVICES			6.00 *		6.00 *	
	OPERATING	TRN		371,022 B		387,613 B	
	INVESTMENT CAPITAL	TRN		300,000 B		B	
		TRN		4,700,000 E		E	
20.	TRN331 - KAHULUI HARBOR FACILITIES AND SERVICES			15.00 *		15.00 *	
	OPERATING	TRN		1,128,293 B		1,279,403 B	
	INVESTMENT CAPITAL	TRN		200,000 B		500,000 E	
		TRN		1,000,000 E			
21.	TRN341 - KAUNAKAKAI HARBOR FACILITIES AND SERVICES			1.00 *		1.00 *	
	OPERATING	TRN		142,037 B		151,582 B	
	INVESTMENT CAPITAL	TRN		175,000 B		B	
22.	TRN361 - NAWILIWILI HARBOR FACILITIES AND SERVICES						

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				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91
				14.50 *		14.50 *
		OPERATING INVESTMENT CAPITAL	TRN	819,288 B		779,205 B
			TRN	8,500,000 E		6,000,000 E
23.	TRN363	- PORT ALLEN HARBOR FACILITIES AND SERVICES		1.00 *		1.00 *
		OPERATING	TRN	219,120 B		194,832 B
24.	TRN395	- WATER TRANSPORTATION FAC & SVCS SUPPORT		54.00 *		54.00 *
		OPERATING INVESTMENT CAPITAL	TRN	18,897,588 B		20,078,471 B
			TRN	350,000 B		350,000 B
25.	TRN501	- OAHU HIGHWAYS AND SERVICES		228.00 *		228.00 *
		OPERATING INVESTMENT CAPITAL	TRN	24,361,410 B		25,603,360 B
			TRN	2,689,000 B		50,000 B
			TRN	41,289,000 D		9,770,000 D
			TRN	195,808,000 J		34,435,000 J
			TRN	25,613,000 K		3,929,000 K
			TRN	255,000 N		N
26.	TRN511	- HAWAII HIGHWAYS AND SERVICES		114.00 *		114.00 *
		OPERATING INVESTMENT CAPITAL	TRN	9,301,213 B		10,466,124 B
			TRN	30,000 B		30,000 B
			TRN	2,641,000 D		3,655,000 D
27.	TRN531	- MAUI HIGHWAYS AND SERVICES		57.00 *		57.00 *
		OPERATING INVESTMENT CAPITAL	TRN	7,340,885 B		7,532,865 B
			TRN	951,000 B		66,000 B
			TRN	9,069,000 D		3,155,000 D
			TRN	4,594,000 K		6,765,000 K
28.	TRN541	- MOLOKAI HIGHWAYS AND SERVICES		12.00 *		12.00 *
		OPERATING INVESTMENT CAPITAL	TRN	2,074,118 B		2,065,325 B
			TRN	60,000 B		B
29.	TRN551	- LANAI HIGHWAYS AND SERVICES		3.00 *		3.00 *
		OPERATING	TRN	502,063 B		458,220 B
30.	TRN561	- KAUAI HIGHWAYS AND SERVICES		42.00 *		42.00 *
		OPERATING INVESTMENT CAPITAL	TRN	5,016,910 B		4,573,469 B
			TRN	1,030,000 B		209,000 B
			TRN	2,480,000 D		D
31.	TRN595	- LAND TRANSPORTATION FAC & SVCS SUPPORT		55.00 *		55.00 *
		OPERATING INVESTMENT CAPITAL	TRN	34,652,582 B		33,646,995 B
			TRN	2,123,000 B		1,098,000 B
			TRN	145,000 C		C
			TRN	3,778,000 N		2,153,000 N
32.	TRN597	- SAFETY ADMINISTRATION OF LAND TRANSPORTATION				

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				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91
		OPERATING	TRN	40.00 *		40.00 *
				1,969,147 B		2,081,905 B
				4.00 *		4.00 *
			TRN	325,594 N		336,091 N
33.		TRN995 - OVERALL PROGRAM SUPPORT FOR TRANS FAC & SVCS			92.00 *	92.00 *
		OPERATING	TRN	5,748,652 B		6,067,430 B

### D. ENVIRONMENTAL PROTECTION

1.	HTH840 - SOLIDS, LIQUIDS, GASES, AND NOISE			66.50 *		66.50 *
	OPERATING	HTH		2,404,411 A		2,208,600 A
				25.00 *		25.00 *
		HTH		1,830,066 N		1,859,468 N
2.	AGR846 - PESTICIDES			23.00 *		25.00 *
	OPERATING	AGR		858,375 A		737,348 A
3.	LNR401 - AQUATIC RESOURCES			24.00 *		24.00 *
	OPERATING	LNR		1,113,217 A		1,099,914 A
		LNR		332,732 N		340,642 N
4.	LNR402 - FORESTS AND WILDLIFE RESOURCES			58.00 *		58.00 *
	OPERATING	LNR		2,248,295 A		2,247,414 A
		LNR		443,208 N		465,050 N
	INVESTMENT CAPITAL	LNR		1,702,000 C		986,000 C
		LNR		271,000 N		219,000 N
5.	LNR403 - MINERAL RESOURCES			3.00 *		3.00 *
	OPERATING	LNR		435,217 A		294,095 A
6.	LNR404 - WATER RESOURCES			23.00 *		25.00 *
	OPERATING	LNR		1,896,042 A		1,713,046 A
	INVESTMENT CAPITAL	LNR		4,000,000 A		A
		LNR		9,811,000 C		2,119,000 C
7.	LNR405 - CONSERVATION & RESOURCES ENFORCEMENT			79.00 *		79.00 *
	OPERATING	LNR		3,887,504 A		3,894,931 A
		LNR		190,686 N		215,033 N
		LNR		1.00 *		1.00 *
		LNR		6,279 W		6,279 W
8.	TRN903 - COASTAL AREAS					
	OPERATING	TRN		15,810 A		16,633 A
	INVESTMENT CAPITAL	TRN		30,000 C		250,000 C
9.	HTH850 - POLICY DVLPMNT,COORD & ANLYS FOR NAT P ENVIR			11.00 *		11.00 *
	OPERATING	HTH		491,688 A		388,323 A
10.	LNR906 - LNR-NATURAL PHYSICAL ENVIRONMENT					

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				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
		OPERATING	LNR	38.50 *		38.50 *	
			LNR	3,770,723 A		3,761,424 A	
		INVESTMENT CAPITAL	LNR	64,401 N		63,939 N	
				250,000 C		250,000 C	

## 11. HTH849 - HTH-NATURAL PHYSICAL ENVIRONMENT

OPERATING	HTH	20.50 *	20.50 *
		1,290,323 A	1,363,242 A
		2.50 *	2.50 *
	HTH	563,580 N	583,202 N

## E. HEALTH

## 1. HTH101 - TUBERCULOSIS

OPERATING	HTH	45.00 *	45.00 *
	HTH	1,697,975 A	1,624,902 A
		68,012 N	68,012 N

## 2. HTH111 - HANSEN'S DISEASE

OPERATING	HTH	73.00 *	73.00 *
	HTH	4,734,653 A	4,594,343 A
	HTH	175,710 B	184,848 B
		3.00 *	3.00 *
INVESTMENT CAPITAL	AGS	441,879 N	441,879 N
		302,000 C	3,445,000 C

## 3. HTH121 - SEXUALLY TRANSMITTED DISEASES

OPERATING	HTH	16.00 *	19.00 *
		2,332,431 A	2,691,266 A
		4.00 *	4.00 *
	HTH	1,536,499 N	1,579,401 N

## 4. HTH131 - OTHER COMMUNICABLE DISEASES

OPERATING	HTH	12.00 *	12.00 *
		1,624,973 A	1,653,669 A
		1.00 *	1.00 *
	HTH	167,977 N	174,213 N

## 5. HTH139 - SUPPORTING SERVICES FOR COMMUN DISEASES

OPERATING	HTH	7.00 *	7.00 *
		200,535 A	200,164 A

## 6. HTH141 - DENTAL DISEASES

OPERATING	HTH	43.60 *	43.60 *
	HTH	1,185,895 A	1,164,286 A
		59,046 N	59,046 N

## 7. HTH151 - CHRONIC DISEASES

OPERATING	HTH	6.00 *	6.00 *
		1,308,769 A	1,344,047 A
		252,773 N	252,773 N

## 8. HTH160 - NUTRITION SERVICES

OPERATING	HTH	9.75 *	9.75 *
		397,902 A	300,912 A
		18.00 *	18.00 *
	HTH	9,701,350 N	10,661,469 N

## 9. HTH170 - EMERGENCY MEDICAL SERVICES

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				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
		OPERATING	HTH	10.00 *		10.00 *	
			HTH	20,395,384 A		21,780,614 A	
				210,515 N		210,515 N	
10.	HTH185 - FAMILY PLANNING				5.00 *	5.00 *	
	OPERATING	HTH		1,085,895 A		1,030,040 A	
				5.00 *		5.00 *	
			HTH	769,356 N		798,658 N	
11.	HTH191 - SCHOOL HEALTH SERVICES				377.00 *	378.00 *	
	OPERATING	HTH		6,995,156 A		7,073,875 A	
				2.00 *		2.00 *	
			HTH	69,521 N		69,521 N	
12.	HTH801 - HEALTH CARE SERVICES				44.50 *	46.50 *	
	OPERATING	HTH		8,146,197 A		8,520,194 A	
				44.00 *		44.00 *	
			HTH	2,435,648 N		2,619,312 N	
13.	HTH211 - HILO HOSPITAL				639.20 *	646.20 *	
	OPERATING	HTH		24,494,688 B		25,538,457 B	
	INVESTMENT CAPITAL	AGS		1,195,000 C		C	
14.	HTH212 - HONOKAA HOSPITAL				416,687 A	437,427 A	
	OPERATING	HTH		49.00 *		49.00 *	
			HTH	1,819,087 B		1,804,716 B	
	INVESTMENT CAPITAL	AGS		7,500,000 A		A	
15.	HTH213 - KA'U HOSPITAL				467,251 A	485,497 A	
	OPERATING	HTH		32.00 *		32.00 *	
			HTH	1,114,420 B		963,012 B	
16.	HTH214 - KOHALA HOSPITAL				482,844 A	502,939 A	
	OPERATING	HTH		36.50 *		36.50 *	
			HTH	1,132,577 B		1,099,589 B	
17.	HTH215 - KONA HOSPITAL				1,665,719 A	1,746,475 A	
	OPERATING	HTH		216.00 *		222.00 *	
			HTH	9,831,461 B		9,847,455 B	
	INVESTMENT CAPITAL	AGS		3,000,000 A		A	
18.	HTH221 - MAUI MEMORIAL HOSPITAL				528.00 *	539.00 *	
	OPERATING	HTH		23,054,353 B		23,680,898 B	
19.	HTH222 - HANA MEDICAL CENTER				313,796 A	325,470 A	
	OPERATING	HTH		10.00 *		10.00 *	
			HTH	382,770 B		294,681 B	
20.	HTH223 - KULA HOSPITAL						

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				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
		OPERATING	HTH	756,557 A 173.00 *		793,999 A 173.00 *	
		INVESTMENT CAPITAL	HTH AGS	5,259,291 B 575,000 C		5,248,326 B C	
21.	HTH224 - LANAI HOSPITAL	OPERATING	HTH	42,793 A 23.00 *		44,812 A 23.00 *	
			HTH	1,163,914 B		1,064,378 B	
22.	HTH231 - KAUAI VETERANS MEMORIAL HOSPITAL	OPERATING	HTH	1,152,328 A 125.00 *		1,209,925 A 125.00 *	
			HTH	4,805,094 B		4,736,972 B	
23.	HTH232 - SAMUEL MAHELONA MEMORIAL HOSPITAL	OPERATING	HTH	454,193 A 145.00 *		476,549 A 145.00 *	
		INVESTMENT CAPITAL	HTH AGS	4,577,348 B 298,000 C		4,275,481 B C	
24.	HTH241 - MALUHIA HOSPITAL	OPERATING	HTH	549,823 A 187.00 *		576,683 A 187.00 *	
			HTH	6,122,815 B		5,327,354 B	
25.	HTH242 - LEAHI HOSPITAL	OPERATING	HTH	1,928,830 A 294.00 *		2,027,800 A 294.00 *	
		INVESTMENT CAPITAL	HTH AGS	8,884,556 B 1,113,000 C		8,791,902 B C	
26.	HTH401 - COMMUNITY BASED SERVICES FOR MH	OPERATING	HTH	362.50 * 25,852,946 A 3.00 *		392.50 * 26,367,910 A 3.00 *	
		INVESTMENT CAPITAL	HTH	2,714,628 N 1,500,000 C		2,713,774 N 3,000,000 C	
27.	HTH430 - HAWAII STATE HOSPITAL	OPERATING	HTH	451.00 *		473.00 *	
		INVESTMENT CAPITAL	AGS	13,212,745 A 6,700,000 C		13,044,842 A C	
28.	HTH495 - GENERAL SUPPORT FOR MH	OPERATING	HTH	30.00 * 1,465,257 A 1.00 *		30.00 * 1,505,495 A 1.00 *	
			HTH	542,025 N		542,666 N	
29.	HTH501 - COMMUNITY BASED SERVICES FOR DEV DIS & MEN RET	OPERATING	HTH	146.25 * 12,578,239 A		146.25 * 13,456,935 A	
30.	HTH511 - WAIMANO TRAINING SCHOOL AND HOSPITAL	OPERATING	HTH	451.00 *		451.00 *	
		INVESTMENT CAPITAL	AGS	13,815,464 A 500,000 C		14,037,114 A C	
31.	HTH601 - VECTOR CONTROL						

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91
				87.00 *		87.00 *
		OPERATING	HTH	2,201,932 A		2,171,523 A
				2.00 *		2.00 *
			HTH	46,197 X		49,601 X
32.	HTH611 - SANITATION & SUBSTANCE CONTROL			90.50 *		95.50 *
	OPERATING		HTH	2,912,648 A		2,895,344 A
33.	HTH621 - DRINKING WATER QUALITY			12.00 *		12.00 *
	OPERATING		HTH	877,869 A		786,548 A
				6.00 *		6.00 *
			HTH	316,573 N		316,573 N
34.	HTH701 - MEDICAL FACILITIES-STDS, INSPECTION, LICENSING			14.50 *		14.50 *
	OPERATING		HTH	587,448 A		598,840 A
				10.00 *		10.00 *
			HTH	549,001 N		558,341 N
35.	HTH901 - LABORATORY SERVICES			79.00 *		82.00 *
	OPERATING		HTH	2,793,512 A		2,798,023 A
	INVESTMENT CAPITAL		AGS	440,000 A		35,660,000 A
36.	HTH902 - PUBLIC HEALTH NURSING SERVICES			157.00 *		157.00 *
	OPERATING		HTH	5,444,412 A		5,445,813 A
				4.00 *		4.00 *
			HTH	34,388 B		34,387 B
			HTH	623,522 N		623,522 N
37.	HTH903 - RECORDS, DATA COLLECTION AND RESEARCH			36.00 *		36.00 *
	OPERATING		HTH	2,149,786 A		1,849,899 A
			HTH	92,000 N		92,000 N
38.	HTH908 - HEALTH EDUCATION			30.00 *		30.00 *
	OPERATING		HTH	1,424,726 A		1,500,271 A
			HTH	331,299 N		332,699 N
39.	HTH906 - COMPREHENSIVE HEALTH PLANNING			10.00 *		10.00 *
	OPERATING		HTH	526,856 A		532,518 A
40.	HTH907 - GENERAL ADMINISTRATION			158.50 *		158.50 *
	OPERATING		HTH	8,361,164 A		7,777,530 A
				23.00 *		23.00 *
			HTH	1,073,691 B		1,164,320 B
				9.00 *		9.00 *
			HTH	370,485 N		372,115 N
	INVESTMENT CAPITAL		AGS	824,000 A		A
			AGS	118,000 C		C
41.	SUB601 - PRIVATE HOSPITALS & MEDICAL SERVICES					

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
		OPERATING INVESTMENT CAPITAL	SUB HTH	2,143,643 A 1,712,000 A		1,955,977 A A	

## F. SOCIAL SERVICES

1. HMS111 - SERVICES TO INDIVIDUALS AND FAMILIES
 

OPERATING	HMS	263.50 *	287.50 *
INVESTMENT CAPITAL	AGS	25,507,555 A 200.00 *	26,051,753 A 200.00 *
	HMS	12,707,600 N	13,379,830 N
	AGS	148,886 U	148,886 U
2. DEF112 - SERVICES TO VETERANS
 

OPERATING	DEF	11.00 *	11.00 *
INVESTMENT CAPITAL	AGS	437,430 A 2,600,000 A	445,337 A A
	AGS	2,600,000 N	N
3. HMS201 - PAYMNTS TO ASSIST FAMILIES WITH DEPNDNT CHLD
 

OPERATING	HMS	39,615,388 A	42,733,923 A
	HMS	49,711,872 N	53,902,549 N
4. HMS202 - PAYMNTS TO ASSIST THE AGED, BLIND & DISABLED
 

OPERATING	HMS	8,795,121 A	9,631,076 A
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5. HMS203 - CHILD FOSTER BOARD PAYMENTS
 

OPERATING	HMS	8,266,458 A	9,318,128 A
	HMS	77,436 N	77,436 N
6. HMS204 - OTHER GENERAL ASSISTANCE PAYMENTS
 

OPERATING	HMS	23,842,544 A	26,412,061 A
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7. HMS206 - OTHER FEDERAL ASSISTANCE PAYMENTS
 

OPERATING	HMS	1,491,331 N	1,491,331 N
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8. HMS220 - RENTAL HOUSING AUGMENTATION AND ASSISTANCE
 

OPERATING	HMS	9.00 *	9.00 *
INVESTMENT CAPITAL	HMS	3,954,914 A 26.50 *	3,927,826 A 26.50 *
	HMS	1,505,377 B 222.00 *	1,553,777 B 222.00 *
	HMS	20,416,687 N	21,627,113 N
	HMS	3,498,000 A	A
9. HMS807 - TEACHER HOUSING
 

OPERATING	HMS	.50 *	.50 *
INVESTMENT CAPITAL	HMS	117,586 B 1,256,000 A	122,383 B A
10. HMS229 - HOUSING ASSISTANCE ADMINISTRATION
 

OPERATING	HMS	8.00 *	8.00 *
INVESTMENT CAPITAL	HMS	215,069 B 31.00 *	215,069 B 31.00 *
	HMS	1,679,817 N	1,572,133 N
	HMS	3,812,000 A	8,063,000 A
11. BED225 - PRIVATE HOUSING DEVELOPMENT & OWNERSHIP

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
		OPERATING	BED	1,244,900 A		419,100 A	
				19.00 *		19.00 *	
		INVESTMENT CAPITAL	BED	2,474,883 B		2,518,731 B	
			BED	10,506,000 A		A	
			BED	17,515,000 C		C	
			BED	100,000,000 E		E	
12.	BED223 - BROADENED HOMESITE OWNERSHIP				1.00 *	1.00 *	
	OPERATING		BED	181,837 A		190,238 A	
				2.00 *		2.00 *	
			BED	224,097 B		221,669 B	
13.	BED227 - HOUSING FINANCE PROGRAM				8.00 *	8.00 *	
	OPERATING		BED	841,257 B		870,297 B	
14.	BED229 - HOUSING FINANCE & DEVELOPMENT ADMINISTRATION						
	OPERATING		BED	50,000 A		A	
				21.00 *		21.00 *	
			BED	1,381,216 B		1,454,022 B	
15.	HMS230 - HEALTH CARE PAYMENTS						
	OPERATING		HMS	124,702,116 A		125,593,641 A	
			HMS	90,916,437 N		91,802,396 N	
			HMS	6,961,610 U		6,961,610 U	
16.	HMS236 - ELIGIBILITY DETERMINATION						
	OPERATING		HMS	332.62 *		332.62 *	
				12,054,885 A		11,755,699 A	
			HMS	256.88 *		256.88 *	
				10,663,179 N		11,255,617 N	
17.	HMS238 - DISABILITY DETERMINATION				51.00 *	51.00 *	
	OPERATING		HMS	2,648,638 N		2,817,577 N	
18.	ATG500 - CHILD SUPPORT ENFORCEMENT SERVICES						
	OPERATING		ATG	47.99 *		47.99 *	
				1,497,172 A		1,497,907 A	
			ATG	69.01 *		69.01 *	
				5,001,632 N		5,055,847 N	
19.	HHL602 - PLANNG, DEV, MGT & GEN SPPT FOR HAWN HMSTD\$						
	OPERATING		HHL	98.00 *		98.00 *	
	INVESTMENT CAPITAL		HHL	3,052,436 A		3,281,827 A	
			HHL	6,875,000 A		A	
			HHL	17,268,000 E		26,500,000 E	
20.	GOV861 - PLAN, PRGM DEV & COORD OF SVCS FOR CHD & YTH						
	OPERATING		GOV	11.00 *		11.00 *	
				1,926,687 A		3,377,690 A	
21.	GOV602 - ELDERLY						
	OPERATING		GOV	8.90 *		8.90 *	
				6,042,377 A		5,943,726 A	
			GOV	9.10 *		9.10 *	
				4,922,673 N		4,924,973 N	

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91
		INVESTMENT CAPITAL	AGS	1,850,000	A	A
22.	HTH520 - HANDICPPD			2.00 *		2.00 *
	OPERATING	HTH	HTH	470,639	A	427,251
				63,787	N	63,787
23.	HMS902 - GENERAL SUPPORT FOR HEALTH CARE PAYMENTS			21.39 *		21.39 *
	OPERATING	HMS	HMS	3,351,579	A	3,108,727
				25.61 *		25.61 *
				3,677,928	N	2,936,560
24.	HMS903 - GENERAL SUPPORT FOR PUBLIC WELFARE			46.70 *		46.70 *
	OPERATING	HMS	HMS	8,412,684	A	7,483,436
				49.30 *		49.30 *
				6,164,595	N	6,352,633
25.	HMS904 - GENERAL ADMINISTRATION (DSSH)			161.16 *		161.16 *
	OPERATING	HMS	HMS	6,166,502	A	5,754,889
				21.84 *		21.84 *
				726,446	N	671,508

## G. FORMAL EDUCATION

1.	EDN105 - REGULAR INSTRUCTION PROGRAM			6,811.00 *		6,883.00 *
	OPERATING	EDN	EDN	224,311,259	A	228,384,187
				9,668,494	N	9,672,296
	INVESTMENT CAPITAL	AGS		66,290,000	B	74,859,000
2.	EDN106 - OTHER REGULAR INSTRUCTION			775.50 *		854.50 *
	OPERATING	EDN	EDN	55,577,606	A	60,266,817
				2,441,318	B	2,469,992
				2,998,631	N	2,794,034
3.	EDN107 - SPECIAL EDUCATION			1,320.00 *		1,321.50 *
	OPERATING	EDN	EDN	39,235,917	A	40,397,076
				25,000	B	25,000
				5,001,820	N	5,002,820
	INVESTMENT CAPITAL	AGS		13,206,000	B	2,882,000
4.	EDN108 - COMPENSATORY EDUCATION			182.50 *		182.50 *
	OPERATING	EDN	EDN	8,884,487	A	9,025,031
				12,070,557	N	12,731,555
5.	EDN203 - SCHOOL ADMINISTRATION			868.50 *		872.50 *
	OPERATING	EDN		30,390,102	A	30,701,153
	INVESTMENT CAPITAL	AGS	AGS	B		250,000
				C		400,000
6.	EDN204 - INSTRUCTIONAL MEDIA					

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				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91
				275.50 *		276.50 *
		OPERATING INVESTMENT CAPITAL	EDN AGS	11,045,466 A 7,912,000 B		11,077,494 A 1,367,000 B
7.	EDN205 - INSTRUCTIONAL DEVELOPMENT			120.00 *		120.00 *
		OPERATING	EDN EDN	8,500,062 A 1,068,974 N		8,648,819 A 1,096,305 N
8.	EDN206 - COUNSELING			345.00 *		356.00 *
		OPERATING	EDN	12,880,951 A		13,219,895 A
9.	EDN207 - STUDENT ACTIVITIES			70.00 *		70.00 *
		OPERATING	EDN	5,637,195 A		5,694,238 A
10.	EDN208 - PSYCHOLOGICAL & SCHOOL SOCIAL WORK SERVICES			247.50 *		247.50 *
		OPERATING	EDN	10,725,056 A		10,755,872 A
11.	EDN303 - STATE ADMINISTRATION			259.00 *		259.00 *
		OPERATING	EDN	22,501,279 A		18,739,302 A
			EDN	985,431 N		1,016,626 N
		INVESTMENT CAPITAL	AGS	600,000 B		B
12.	EDN304 - DISTRICT ADMINISTRATION			263.50 *		263.50 *
		OPERATING	EDN	10,695,305 A		10,739,250 A
13.	EDN305 - SCHOOL FOOD SERVICES			189.00 *		189.00 *
		OPERATING	EDN	13,000,506 A		12,811,731 A
			EDN	709.50 *		720.50 *
			EDN	12,066,557 B		10,877,922 B
		INVESTMENT CAPITAL	AGS	18,921,565 N 1,992,000 B		19,856,451 N 10,642,000 B
14.	EDN306 - SAFETY AND SECURITY SERVICES					
		OPERATING	EDN	3,466,625 A		3,500,072 A
15.	EDN307 - PHYSICAL PLANT OPERATIONS & MAINTENANCE			1,050.10 *		1,057.60 *
		OPERATING	EDN	32,622,419 A		33,809,977 A
16.	AGS807 - PHYSICAL PLANT OPERATIONS & MAINTENANCE-AGS			265.00 *		267.00 *
		OPERATING	AGS	40,000,890 A		39,398,895 A
17.	AGS808 - STUDENT TRANSPORTATION			11.00 *		11.00 *
		OPERATING	AGS	22,254,347 A		23,947,192 A
18.	EDN406 - ADULT EDUCATION			35.00 *		35.00 *
		OPERATING	EDN	5,204,505 A		5,622,460 A

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
			EDN	412,518 B		418,610 B	
			EDN	553,739 N		554,232 N	
19.	EDN407 - PUBLIC LIBRARIES						
	OPERATING		EDN	515.55 *		519.55 *	
			EDN	20,911,636 A		19,612,730 A	
				572,082 N		572,082 N	
	INVESTMENT CAPITAL		AGS	10,149,000 A		A	
			AGS	4,180,000 C		820,000 C	
20.	UOH101 - INSTRUCTION - UOH, MANOA						
	OPERATING		UOH	1,633.02 *		1,638.02 *	
				80,018,129 A		80,881,984 A	
				6.00 *		6.00 *	
			UOH	5,076,240 B		5,182,056 B	
			UOH	277,785 N		277,785 N	
	INVESTMENT CAPITAL		AGS	16,833,000 A		11,338,000 A	
			AGS	15,840,000 C		93,000 C	
			AGS	6,293,000 N		N	
21.	UOH102 - ORGANIZED RESEARCH - UOH, MANOA						
	OPERATING		UOH	607.31 *		607.31 *	
				31,096,457 A		31,361,620 A	
				4.00 *		4.00 *	
			UOH	327,026 B		330,378 B	
				34.42 *		34.42 *	
			UOH	1,699,926 N		1,865,029 N	
			UOH	5,833,266 W		6,202,379 W	
	INVESTMENT CAPITAL		AGS	715,000 C		C	
			AGS	1,490,000 R		R	
22.	UOH103 - PUBLIC SERVICE - UOH, MANOA						
	OPERATING		UOH	99.41 *		99.41 *	
				5,119,944 A		5,097,900 A	
				16.00 *		16.00 *	
			UOH	2,932,237 B		3,100,150 B	
				43.64 *		43.64 *	
			UOH	1,827,036 N		2,013,730 N	
			UOH	59,155 W		61,006 W	
23.	UOH104 - ACADEMIC SUPPORT - UOH, MANOA						
	OPERATING		UOH	373.50 *		373.50 *	
				18,502,522 A		19,401,372 A	
				11.50 *		11.50 *	
			UOH	1,361,997 B		1,480,793 B	
				6.00 *		6.00 *	
			UOH	1,712,104 W		1,805,681 W	
	INVESTMENT CAPITAL		AGS	1,003,000 A		A	
24.	UOH105 - STUDENT SERVICES - UOH, MANOA						
	OPERATING		UOH	228.75 *		228.75 *	
				8,929,159 A		8,967,608 A	
				1.25 *		1.25 *	
			UOH	346,562 B		369,866 B	
			UOH	925,760 N		925,760 N	
				174.25 *		174.25 *	
			UOH	37,825,091 W		37,403,091 W	
	INVESTMENT CAPITAL		AGS	15,536,000 C		91,000 C	
25.	UOH106 - INSTITUTIONAL SUPPORT - UOH, MANOA						

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
				382.00 *		382.00 *	
		OPERATING	UOH	34,723,518 A		34,168,166 A	
				14.00 *		14.00 *	
			UOH	2,725,998 B		2,919,999 B	
				11.00 *		11.00 *	
			UOH	3,151,603 W		3,309,482 W	
		INVESTMENT CAPITAL	AGS	5,415,000 C		2,356,000 C	
			AGS	E		1,243,000 E	
			AGS	288,000 R		5,426,000 R	
			UOH	500,000 C		C	
26.	UOH211 - INSTRUCTION - UOH, HILO						
				234.00 *		237.00 *	
		OPERATING	UOH	11,068,932 A		11,289,760 A	
			UOH	489,526 B		494,042 B	
			UOH	95,028 N		95,028 N	
			UOH	269,153 W		283,149 W	
27.	UOH213 - PUBLIC SERVICE - UOH, HILO						
				1.00 *		1.00 *	
		OPERATING	UOH	117,102 A		118,925 A	
			UOH	289,982 B		299,039 B	
28.	UOH214 - ACADEMIC SUPPORT - UOH, HILO						
				50.00 *		50.00 *	
		OPERATING	UOH	2,776,220 A		2,759,360 A	
				5.00 *		5.00 *	
			UOH	263,168 B		267,920 B	
29.	UOH215 - STUDENT SERVICES - UOH, HILO						
				31.00 *		32.00 *	
		OPERATING	UOH	1,428,449 A		1,527,307 A	
			UOH	394,543 N		394,543 N	
				6.00 *		6.00 *	
			UOH	2,235,985 W		2,339,915 W	
		INVESTMENT CAPITAL	AGS	500,000 A		A	
			AGS	C		700,000 C	
30.	UOH216 - INSTITUTIONAL SUPPORT - UOH, HILO						
				54.00 *		54.00 *	
		OPERATING	UOH	4,268,557 A		4,238,061 A	
			UOH	103,813 B		109,100 B	
			UOH	17,654 W		18,572 W	
		INVESTMENT CAPITAL	AGS	2,601,000 A		A	
31.	UOH301 - INSTRUCTION - HONOLULU COMMUNITY COLLEGE						
				142.00 *		143.00 *	
		OPERATING	UOH	6,209,419 A		6,575,874 A	
			UOH	180,828 N		180,828 N	
				2.00 *		2.00 *	
			UOH	364,882 W		380,114 W	
32.	UOH302 - PUBLIC SERVICE- HONOLULU COMMUNITY COLLEGE						
				9.00 *		9.00 *	
		OPERATING	UOH	945,697 A		952,141 A	
				1.00 *		1.00 *	
			UOH	551,217 B		559,251 B	
33.	UOH303 - ACADEMIC SUPPORT- HONOLULU COMMUNITY COLLEGE						

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
		OPERATING	UOH		31.00 *		33.00 *
					1,054,265 A		1,075,687 A
34.	UOH304 - STUDENT SERVICES- HONOLULU COMMUNITY COLLEGE				27.00 *		27.00 *
		OPERATING	UOH		821,725 A		831,130 A
			UOH		111,000 N		111,000 N
			UOH		56,890 W		59,281 W
35.	UOH305 - INSTITUTIONAL SUPPORT - HONOLULU CC				44.00 *		44.00 *
		OPERATING	UOH		1,850,106 A		1,900,041 A
			UOH		56,755 B		59,592 B
			UOH		120,637 W		126,668 W
36.	UOH311 - INSTRUCTION -KAPIOLANI COMMUNITY COLLEGE				155.10 *		166.10 *
		OPERATING	UOH		6,626,368 A		7,070,099 A
			UOH		88,562 N		88,562 N
					6.00 *		6.00 *
		INVESTMENT CAPITAL	AGS		600,000 W		630,000 W
					18,297,000 A		4,073,000 A
37.	UOH312 - PUBLIC SERVICE-KAPIOLANI COMMUNITY COLLEGE				2.00 *		2.00 *
		OPERATING	UOH		204,506 A		206,051 A
					13.00 *		13.00 *
			UOH		1,073,283 B		1,095,783 B
38.	UOH313 - ACADEMIC SUPPORT-KAPIOLANI COMMUNITY COLLEGE				30.50 *		32.50 *
		OPERATING	UOH		1,291,722 A		1,319,522 A
39.	UOH314 - STUDENT SERVICES-KAPIOLANI COMMUNITY COLLEGE				27.00 *		27.00 *
		OPERATING	UOH		853,073 A		847,611 A
			UOH		91,020 N		91,020 N
			UOH		76,897 W		80,743 W
40.	UOH315 - INSTITUTIONAL SUPPORT - KAPIOLANI CC				45.00 *		45.00 *
		OPERATING	UOH		1,831,521 A		1,880,342 A
			UOH		19,216 B		20,177 B
			UOH		106,488 W		111,812 W
41.	UOH321 - INSTRUCTION-LEEWARD COMMUNITY COLLEGE				158.50 *		161.50 *
		OPERATING	UOH		6,467,087 A		6,497,506 A
			UOH		54,561 N		54,561 N
					1.00 *		1.00 *
			UOH		221,025 W		229,477 W
42.	UOH322 - PUBLIC SERVICE-LEEWARD COMMUNITY COLLEGE				6.00 *		6.00 *
		OPERATING	UOH		190,173 A		191,655 A
					1.00 *		1.00 *
			UOH		337,709 B		344,643 B
43.	UOH323 - ACADEMIC SUPPORT-LEEWARD COMMUNITY COLLEGE						

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				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
		OPERATING	UOH	25.00 *		25.00 *	
44.	UOH324 - STUDENT SERVICES-LEEWARD COMMUNITY COLLEGE			972,478 A		984,706 A	
		OPERATING	UOH	35.00 *		35.00 *	
			UOH	1,247,899 A		1,208,357 A	
			UOH	43,670 B		44,720 B	
			UOH	125,000 N		125,000 N	
			UOH	91,829 W		95,230 W	
45.	UOH325 - INSTITUTIONAL SUPPORT - LEEWARD CC			50.00 *		50.00 *	
		OPERATING	UOH	2,290,498 A		2,328,062 A	
46.	UOH331 - INSTRUCTION-WINDWARD COMMUNITY COLLEGE			43.50 *		43.50 *	
		OPERATING	UOH	1,923,813 A		1,804,566 A	
			UOH	15,364 W		16,132 W	
47.	UOH332 - PUBLIC SERVICE-WINDWARD COMMUNITY COLLEGE			3.00 *		3.00 *	
		OPERATING	UOH	119,117 A		120,693 A	
			UOH	1.00 *		1.00 *	
			UOH	155,707 B		158,039 B	
48.	UOH333 - ACADEMIC SUPPORT-WINDWARD COMMUNITY COLLEGE			14.00 *		14.00 *	
		OPERATING	UOH	579,654 A		585,600 A	
49.	UOH334 - STUDENT SERVICES-WINDWARD COMMUNITY COLLEGE			15.00 *		15.00 *	
		OPERATING	UOH	455,457 A		478,783 A	
			UOH	19,907 N		19,907 N	
			UOH	28,382 W		29,801 W	
50.	UOH335 - INSTITUTIONAL SUPPORT - WINDWARD CC			17.00 *		17.00 *	
		OPERATING	UOH	733,660 A		751,147 A	
			UOH	1.00 *		1.00 *	
			UOH	72,550 W		75,548 W	
51.	UOH501 - INSTRUCTION-MAUI COMMUNITY COLLEGE			82.00 *		82.00 *	
		OPERATING	UOH	3,471,991 A		3,541,091 A	
			UOH	26,090 N		26,090 N	
			UOH	2.00 *		2.00 *	
		INVESTMENT CAPITAL	UOH	238,186 W		248,003 W	
			AGS	1,414,000 A		A	
			AGS	935,000 C		C	
52.	UOH502 - PUBLIC SERVICE-MAUI COMMUNITY COLLEGE			3.50 *		3.50 *	
		OPERATING	UOH	202,735 A		205,131 A	
			UOH	3.50 *		3.50 *	
			UOH	554,950 B		561,964 B	
53.	UOH503 - ACADEMIC SUPPORT-MAUI COMMUNITY COLLEGE			17.00 *		17.00 *	
		OPERATING	UOH	703,761 A		713,475 A	
54.	UOH504 - STUDENT SEVICES-MAUI COMMUNITY COLLEGE						

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				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91
				14.50 *		14.50 *
		OPERATING	UOH	525,370 A		526,153 A
				2.00 *		2.00 *
			UOH	198,169 B		205,046 B
			UOH	88,000 N		88,000 N
			UOH	5,797 W		6,087 W
55.	UOH505	- INSTITUTIONAL SUPPORT-MAUI COMMUNITY COLLEGE		27.00 *		27.00 *
		OPERATING	UOH	1,427,100 A		1,422,330 A
56.	UOH601	- INSTRUCTION-KAUAI COMMUNITY COLLEGE		62.00 *		63.00 *
		OPERATING	UOH	2,196,593 A		2,254,149 A
			UOH	1,735 N		1,735 N
				1.00 *		1.00 *
			UOH	117,156 W		122,259 W
57.	UOH602	- PUBLIC SERVICE - KAUAI COMMUNITY COLLEGE		4.00 *		4.00 *
		OPERATING	UOH	116,124 A		116,233 A
			UOH	87,241 B		88,128 B
58.	UOH603	- ACADEMIC SUPPORT-KAUAI COMMUNITY COLLEGE		18.00 *		18.00 *
		OPERATING	UOH	600,245 A		615,166 A
59.	UOH604	- STUDENT SERVICES-KAUAI COMMUNITY COLLEGE		12.00 *		12.00 *
		OPERATING	UOH	379,187 A		384,529 A
			UOH	36,000 N		36,000 N
			UOH	3,864 W		4,057 W
60.	UOH605	- INSTITUTIONAL SUPPORT - KAUAI CC		27.00 *		27.00 *
		OPERATING	UOH	1,576,785 A		1,627,843 A
			UOH	28,024 B		29,425 B
		INVESTMENT CAPITAL	AGS	1,500,000 A		A
61.	UOH701	- INSTRUCTION-WEST OAHU COLLEGE		17.00 *		17.00 *
		OPERATING	UOH	745,601 A		747,299 A
			UOH	51,719 B		51,847 B
62.	UOH703	- PUBLIC SERVICE - WEST OAHU COLLEGE				
		OPERATING				
63.	UOH704	- ACADEMIC SUPPORT-WEST OAHU COLLEGE		4.50 *		4.50 *
		OPERATING	UOH	413,403 A		209,197 A
64.	UOH705	- STUDENT SERVICES-WEST OAHU COLLEGE		5.00 *		5.00 *
		OPERATING	UOH	160,086 A		174,237 A
65.	UOH706	- INSTITUTIONAL SUPPORT-WEST OAHU COLLEGE		4.00 *		4.00 *
		OPERATING	UOH	338,816 A		348,081 A

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				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91
		INVESTMENT CAPITAL	AGS	200,000	A	A
66.	UOH901 - ACADEMIC SUPPORT-UOH, SYSTEM-WIDE SUPPORT OPERATING		UOH	44,50 *		45,50 *
			UOH	5,132,085	A	5,629,696 A
			UOH	622,000	B	622,000 B
67.	UOH902 - STUDENT SERVICES-UOH, SYSTEM-WIDE SUPPORT OPERATING		UOH	578,969	A	607,636 A
68.	UOH903 - INSTITUTIONAL SPPT-UOH, SYSTEM-WIDE SPPT OPERATING		UOH	239,00 *		239,00 *
			UOH	10,604,650	A	10,634,982 A
			UOH	6,00 *		6,00 *
			UOH	338,872	B	349,921 B
69.	UOH904 - VOCATIONAL EDUCATION,STATEWIDE COORDINATION OPERATING		UOH	7,00 *		7,00 *
			UOH	276,929	A	281,058 A
			UOH	4,00 *		4,00 *
			UOH	383,748	N	399,230 N
70.	UOH905 - STATEWIDE PLAN & COORD FOR POST-SECONDARY ED OPERATING		UOH	1,347,102	A	1,414,457 A
71.	UOH906 - COMMUNITY COLLEGE SYSTEMWIDE SUPPORT OPERATING		UOH	65,15 *		65,15 *
			UOH	11,182,324	A	9,834,576 A
			UOH	16,00 *		16,00 *
			UOH	1,111,139	B	1,128,054 B
			UOH	19,60 *		19,60 *
			UOH	1,971,937	N	2,002,034 N
			UOH	3,00 *		3,00 *
			UOH	289,412	W	300,708 W
	INVESTMENT CAPITAL	AGS		1,680,000	C	C

**H. CULTURE AND RECREATION**

1.	UOH881 - AQUARIA OPERATING		UOH	10,00 *		10,00 *
				527,370	A	573,712 A
2.	CCA701 - HAWAII PUBLIC BROADCASTING OPERATING		CCA	46,00 *		46,00 *
				3,729,479	A	4,034,887 A
				1,00 *		1,00 *
			CCA	1,575,696	W	1,575,696 W
	INVESTMENT CAPITAL	AGS		1,400,000	C	C
3.	AGS881 - PERFORMING & VISUAL ARTS EVENTS OPERATING		AGS	16,00 *		16,00 *
			AGS	8,783,141	A	4,909,161 A
			AGS	484,000	N	470,000 N
			AGS	15,000	R	15,000 R
4.	AGS818 - ETHNIC GROUP PRESENTATIONS OPERATING		AGS	1,00 *		1,00 *
				90,036	A	90,364 A

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				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
			AGS		7,369 B		7,369 B
5.	LNR804 - FOREST RECREATION						
	OPERATING		LNR	32.00 *		32.00 *	
			LNR	1,603,727 A		1,185,262 A	
	INVESTMENT CAPITAL		LNR	921,102 N		527,264 N	
				164,000 C		124,000 C	
6.	LNR805 - AQUATIC RECREATION						
	OPERATING		LNR	8.00 *		8.00 *	
			LNR	234,657 A		233,678 A	
				350,758 N		377,742 N	
7.	LNR806 - HERITAGE & RECREATION PARKS						
	OPERATING		LNR	142.00 *		142.00 *	
			LNR	6,411,888 A		5,318,080 A	
	INVESTMENT CAPITAL		LNR	1,510,000 A		560,000 A	
			LNR	1,945,000 C		1,150,000 C	
8.	TRN801 - OCEAN-BASED RECREATION						
	OPERATING		TRN	24.00 *		24.00 *	
			TRN	783,959 A		466,669 A	
				62.00 *		63.00 *	
	INVESTMENT CAPITAL		TRN	6,024,603 B		6,593,295 B	
			LNR	550,000 A		A	
			TRN	2,905,000 A		A	
			TRN	75,000 B		B	
			TRN	3,600,000 C		C	
			TRN	110,000 D		D	
			TRN	5,630,000 N		N	
9.	AGS889 - SPECTATOR EVENTS & SHOWS - ALOHA STADIUM						
	OPERATING		AGS	37.00 *		37.00 *	
			AGS	3,455,255 B		3,343,781 B	
	INVESTMENT CAPITAL		AGS	3,000,000 A		A	
			AGS	3,870,000 C		4,980,000 C	
10.	LNR809 - GENERAL ADMIN FOR CULTURE & RECREATION						
	OPERATING		LNR	22.00 *		22.00 *	
			LNR	837,955 A		646,417 A	
	INVESTMENT CAPITAL		LNR	600,000 N		600,000 N	
			LNR	190,000 A		40,000 A	
			LNR	270,000 C		475,000 C	
			LNR	N		50,000 N	

## I. PUBLIC SAFETY

1.	DOC405 - HAWAII COMMUNITY CORRECTIONAL CENTER						
	OPERATING		DOC	59.50 *		59.50 *	
				2,204,858 A		2,201,998 A	
2.	DOC406 - MAUI COMMUNITY CORRECTIONAL CENTER						
	OPERATING		DOC	55.00 *		55.00 *	
	INVESTMENT CAPITAL		DOC	2,223,589 A		2,213,036 A	
				125,000 A		A	
3.	DOC407 - OAHU COMMUNITY CORRECTIONAL CENTER						
	OPERATING		DOC	552.10 *		552.10 *	
				19,994,355 A		19,406,692 A	

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				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
		INVESTMENT CAPITAL	AGS	43,036,000	A		A
4.	DOC408 - KAUAI COMMUNITY CORRECTIONAL CENTER			44.50 *		44.50 *	
	OPERATING		DOC	1,521,786	A	1,545,696	A
5.	DOC401 - JUVENILE CORRECTIONAL FACILITIES			85.50 *		85.50 *	
	OPERATING		DOC	4,637,216	A	3,628,103	A
6.	DOC402 - HALAWA CORRECTIONAL FACILITY			466.00 *		466.00 *	
	OPERATING		DOC	15,219,327	A	15,531,468	A
7.	DOC403 - KULANI CORRECTIONAL FACILITY			84.83 *		84.83 *	
	OPERATING		DOC	3,542,720	A	3,504,982	A
	INVESTMENT CAPITAL		AGS	978,000	A	1,815,000	A
8.	DOC404 - WAIWA WA CORRECTIONAL FACILTIY			63.00 *		63.00 *	
	OPERATING		DOC	2,630,363	A	2,694,618	A
9.	DOC409 - WOMEN'S COMMUNITY CORRECTIONAL CENTER			87.00 *		87.00 *	
	OPERATING		DOC	3,228,022	A	3,287,699	A
	INVESTMENT CAPITAL		AGS	21,351,000	A		A
10.	DOC410 - INTAKE SERVICE CENTERS			40.00 *		40.00 *	
	OPERATING		DOC	1,446,316	A	1,456,840	A
11.	DOC411 - ADULT PAROLE DETERMINIATIONS			2.00 *		2.00 *	
	OPERATING		DOC	162,048	A	164,945	A
12.	DOC413 - ADULT PAROLE SUPERVISION & COUNSELING			24.00 *		24.00 *	
	OPERATING		DOC	758,028	A	785,330	A
13.	DOC414 - CRIMINAL INJURIES COMPENSATION			3.00 *		3.00 *	
	OPERATING		DOC	188,734	A	189,625	A
14.	DOC903 - GENERAL ADMINISTRATION			101.00 *		101.00 *	
	OPERATING		DOC	6,899,673	A	7,073,727	A
	INVESTMENT CAPITAL		AGS	1,500,000	A		A
15.	ATG231 - STATE CRIMINAL JUSTICE INFO & IDENTIFICATION			35.00 *		37.00 *	
	OPERATING		ATG	1,926,493	A	1,675,876	A
16.	LNR810 - PREVENTION OF NATURAL DISASTERS			6.00 *		6.00 *	
	OPERATING		LNR	290,501	A	294,560	A
	INVESTMENT CAPITAL		LNR	192,000	C	50,000	C
17.	DEF110 - AMELIORATION OF PHYSICAL DISASTERS						

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				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91
				147.80 *		147.80 *
		OPERATING	DEF	6,951,021 A		7,021,095 A
				7.70 *		7.70 *
		INVESTMENT CAPITAL	DEF	1,583,493 N		1,567,105 N
			AGS	323,000 C		677,000 C
			AGS	150,000 N		760,000 N

## J. INDIVIDUAL RIGHTS

1.	AGR810 - TESTING & CERTIFICATION OF CONSUMER GOODS			26.25 *		26.25 *
	OPERATING	AGR		711,962 A		730,337 A
				26.25 *		26.25 *
		AGR		958,693 N		1,028,947 N
2.	CCA102 - CABLE TELEVISION			4.00 *		4.00 *
	OPERATING	CCA		291,542 X		291,542 X
3.	CCA103 - CONSUMER ADVOCATE FOR COMM, UTIL & TRANS SVC			19.00 *		19.00 *
	OPERATING	CCA		1,159,663 A		1,172,863 A
4.	CCA104 - FINANCIAL INSTITUTION SERVICES			27.00 *		27.00 *
	OPERATING	CCA		1,030,039 A		1,026,746 A
5.	CCA105 - PROFESSIONAL, VOCATIONAL & PERSONAL SVCS			47.00 *		47.00 *
	OPERATING	CCA		1,904,219 A		1,896,549 A
6.	BUF901 - TRANSPORTATION, COMMUNICATIONS, & UTILITIES			35.00 *		35.00 *
	OPERATING	BUF		1,659,928 A		1,683,263 A
7.	CCA106 - INSURANCE SERVICES			37.00 *		37.00 *
	OPERATING	CCA		2,056,937 A		1,746,746 A
8.	CCA110 - OFFC OF CONSUMER PROT - ADV & TERMS OF SALE			25.00 *		25.00 *
	OPERATING	CCA		917,230 A		928,604 A
9.	AGR812 - MEASUREMENT STANDARDS			22.00 *		22.00 *
	OPERATING	AGR		741,444 A		942,839 A
	INVESTMENT CAPITAL	AGS		983,000 A		A
10.	CCA111 - BUSINESS REGISTRATION			33.00 *		33.00 *
	OPERATING	CCA		910,616 A		919,854 A
				8.00 *		8.00 *
		CCA		287,712 B		291,025 B
11.	CCA191 - GENERAL SUPPORT-PROTECTION OF THE CONSUMER			59.00 *		59.00 *
	OPERATING	CCA		2,321,534 A		2,349,787 A

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				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91
		CCA		1,423,471 B		1,436,757 B
12.	BUF151 - LEGAL ASSISTANCE IN CRIMINAL ACTIONS			78.00 *		84.00 *
	OPERATING	BUF		5,228,240 A		5,387,024 A
13.	LNR111 - CONVEYANCES AND RECORDINGS			57.00 *		57.00 *
	OPERATING	LNR		1,236,944 A		1,241,132 A
14.	HMS888 - COMMISSION ON THE STATUS OF WOMEN			1.00 *		1.00 *
	OPERATING	HMS		83,108 A		76,061 A

## K. GOVERNMENT-WIDE SUPPORT

1.	GOV100 - OFFICE OF THE GOVERNOR			46.00 *		46.00 *
	OPERATING	GOV		3,733,626 A		3,472,769 A
	INVESTMENT CAPITAL	AGS		1,000,000 A		A
		GOV		3,000,000 A		A
		GOV		3,000,000 C		C
2.	LTG100 - OFFICE OF THE LIEUTENANT GOVERNOR			21.00 *		21.00 *
	OPERATING	LTG		2,672,497 A		4,351,203 A
3.	GOV102 - GOV - OTH POLICY DEVELOPMENT & COORDINATION			11.00 *		11.00 *
	OPERATING	GOV		7,196,758 A		6,718,224 A
4.	GOV103 - STATEWIDE PLAN AND COORDINATION			44.00 *		44.00 *
	OPERATING	GOV		3,656,909 A		3,223,592 A
		GOV		472,710 N		483,469 N
	INVESTMENT CAPITAL	BED		13,808,000 A		A
		GOV		5,485,000 A		A
5.	BED103 - LAND USE AND COASTAL MANAGEMENT			6.00 *		6.00 *
	OPERATING	BED		362,212 A		374,322 A
6.	BED104 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY			5.00 *		5.00 *
	OPERATING	BED		260,627 A		263,717 A
	INVESTMENT CAPITAL	BED		18,731,000 A		18,681,000 A
7.	BUF101 - BUF - PRGM PLANNG, ANALYSIS & BUDGETING			86.00 *		86.00 *
	OPERATING	BUF		64,283,609 A		68,651,450 A
8.	TAX102 - INCOME ASSESSMENT AND AUDIT			123.00 *		123.00 *
	OPERATING	TAX		3,392,078 A		3,347,271 A
9.	TAX103 - TAX COLLECTIONS ENFORCEMENT			97.00 *		97.00 *
	OPERATING	TAX		2,454,821 A		2,460,764 A
10.	TAX105 - TAX SERVICES & PROCESSING					

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				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
		OPERATING	TAX	104.00 *		104.00 *	
				3,981,822 A		3,861,231 A	
11.	TAX107 - SUPPORTING SERVICES - REVENUE COLLECTION			65.00 *		67.00 *	
	OPERATING	TAX		4,934,623 A		3,596,189 A	
12.	AGS101 - ACCT SYSTEM DEVELOPMENT & MAINTENANCE			12.00 *		12.00 *	
	OPERATING	AGS		663,793 A		424,750 A	
13.	AGS102 - EXPENDITURE EXAMINATION			23.00 *		23.00 *	
	OPERATING	AGS		839,279 A		847,885 A	
14.	AGS103 - RECORDING AND REPORTING			15.00 *		15.00 *	
	OPERATING	AGS		567,734 A		577,686 A	
15.	AGS104 - INTERNAL POST AUDIT			19.00 *		19.00 *	
	OPERATING	AGS		1,222,916 A		1,257,965 A	
16.	BUF110 - CASH AND DEBT MANAGEMENT			19.00 *		19.00 *	
	OPERATING	BUF		277,358,722 A		288,478,113 A	
		BUF		12,200 B		11,200 B	
		BUF		5,000 U		5,000 U	
17.	ATG100 - LEGAL SERVICES			198.24 *		198.24 *	
	OPERATING	ATG		17,267,119 A		16,720,099 A	
		ATG		14.44 *		14.44 *	
		ATG		1,891,725 N		1,901,369 N	
		ATG		34.32 *		34.32 *	
		ATG		2,742,484 U		2,701,423 U	
18.	BUF131 - ELECTRONIC DATA PROCESSING SERVICES			244.00 *		244.00 *	
	OPERATING	BUF		23,975,930 A		23,842,463 A	
		BUF		36.00 *		36.00 *	
		BUF		1,900,000 U		1,982,217 U	
19.	BUF161 - COMMUNICATION			15.00 *		15.00 *	
	OPERATING	BUF		3,827,083 A		4,134,241 A	
		BUF		2,566,321 U		2,889,282 U	
	INVESTMENT CAPITAL	AGS		520,000 C		80,000 C	
20.	PER102 - WORK FORCE ATTR, SELECT, CLASS, & EFFECT			130.00 *		130.00 *	
	OPERATING	PER		14,277,876 A		14,115,910 A	
		PER		500,000 U		500,000 U	
21.	PER191 - SUPPORTING SERVICES-PERSONNEL SERVICES			17.00 *		17.00 *	
	OPERATING	PER		821,989 A		850,693 A	
22.	BUF141 - RETIREMENT						

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ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
				29.90 *		29.90 *	
		OPERATING	BUF	68,716,659 A		153,975,954 A	
				10.10 *		10.10 *	
			BUF	515,124 S		520,180 S	
23.	BUF142	- HEALTH & LIFE INSURANCE BENEFITS			14.00 *		14.00 *
		OPERATING	BUF	653,759 A		678,495 A	
24.	LNR101	- PUBLIC LANDS MANAGEMENT			40.00 *		40.00 *
		OPERATING	LNR	1,159,566 A		1,148,574 A	
		INVESTMENT CAPITAL	AGS	20,000,000 A		A	
			LNR	250,000 A		A	
			LNR	1,051,000 C		766,000 C	
25.	AGS203	- RISK MANAGEMENT			4.00 *		4.00 *
		OPERATING	AGS	7,341,675 A		7,372,515 A	
			AGS	615,000 U		646,000 U	
26.	AGS211	- LAND SURVEY			28.00 *		28.00 *
		OPERATING	AGS	831,620 A		834,674 A	
27.	AGS221	- CONSTRUCTION			26.00 *		26.00 *
		OPERATING	AGS	13,854,393 A		11,298,993 A	
			AGS	3,500,000 U		3,600,000 U	
		INVESTMENT CAPITAL	AGS	49,997,000 A		250,000 A	
			AGS	5,000,000 B		B	
			AGS	6,929,000 C		6,921,000 C	
28.	AGS231	- CUSTODIAL SERVICES			162.50 *		162.50 *
		OPERATING	AGS	7,818,562 A		8,204,279 A	
			AGS	370,440 U		389,365 U	
29.	AGS232	- GROUNDS MAINTENANCE			37.00 *		37.00 *
		OPERATING	AGS	1,027,634 A		1,043,812 A	
30.	AGS233	- BUILDING REPAIRS AND ALTERATIONS			26.00 *		26.00 *
		OPERATING	AGS	4,179,622 A		4,128,131 A	
31.	AGS240	- CENTRAL PURCHASING			16.00 *		16.00 *
		OPERATING	AGS	453,841 A		446,136 A	
			AGS	30,929 W		32,537 W	
32.	AGS244	- SURPLUS PROPERTY MANAGEMENT			5.00 *		5.00 *
		OPERATING	AGS	157,463 W		163,410 W	
33.	AGS251	- MOTOR POOL			10.00 *		10.00 *
		OPERATING	AGS	682,786 W		684,036 W	
34.	AGS252	- PARKING CONTROL					

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1989-90	M O F	FISCAL YEAR 1990-91	M O F
		OPERATING	AGS	15.00 *		15.00 *	
				2,162,026 W		2,052,782 W	
35.	AGS111	- RECORDS MANAGEMENT					
		OPERATING	AGS	28.00 *		28.00 *	
				893,903 A		816,156 A	
36.	ATG801	- CAPITOL BUILDING SECURITY					
		OPERATING	ATG	54.00 *		54.00 *	
				1,262,303 A		1,269,186 A	
			ATG	1.00 *		1.00 *	
				18,528 U		18,528 U	
37.	AGS901	- GENRL ADM SVCS - ACCOUNTING & GENERAL SVCS					
		OPERATING	AGS	49.00 *		49.00 *	
				1,827,787 A		1,684,816 A	
38.	SUB101	- GRANTS-IN-AID TO COUNTIES					
		OPERATING	SUB	71,968,254 A		39,447,551 A	
39.	SUB201	- CITY AND COUNTY OF HONOLULU					
		OPERATING	SUB	300,000 A		300,000 A	
		INVESTMENT CAPITAL	CCH	5,071,000 A			
40.	SUB301	- COUNTY OF HAWAII					
		OPERATING	SUB	100,000 A		100,000 A	
		INVESTMENT CAPITAL	COH	8,135,000 A			
41.	SUB401	- COUNTY OF MAUI					
		OPERATING	SUB	650,000 A		100,000 A	
		INVESTMENT CAPITAL	COM	4,390,000 A			
42.	SUB501	- COUNTY OF KAUAI					
		OPERATING	SUB	100,000 A		100,000 A	
		INVESTMENT CAPITAL	COK	3,400,000 A			

**PART III. PROGRAM APPROPRIATION PROVISIONS****ECONOMIC DEVELOPMENT**

SECTION 5. Provided that of the general fund appropriation for commerce and industry (BED 102), the department of business and economic development is authorized to establish and fund 2.00 positions, exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes, to effectively assist in the management of its marketing, promotion, and development program.

SECTION 6. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$1,069,055 in fiscal year 1989-90 shall be expended by the high technology development corporation of the department of business and economic development, in the amounts specified, for the management, operation, and maintenance of the following facilities:

Hawaii Ocean Science and Technology Park (HOST)	\$612,692
Manoa Innovation Center (MIC)	\$289,925
Kaimuki Pre-Incubator Facility (KAITEC)	\$166,438

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SECTION 7. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$525,000 in fiscal year 1989-90 and \$525,000 in fiscal year 1990-91 shall be expended for the following projects to promote, support, and expand the State's motion picture industry which is deemed to be a public purpose:

	<u>FY 89-90</u>	<u>FY 90-91</u>
Hawaii International Film Festival	\$250,000	\$250,000
Local Motion Picture and Video Productions	\$ 25,000	\$ 25,000

Provided further that the sum of \$250,000 in fiscal year 1989-90 and \$250,000 in fiscal year 1990-91 shall be used for the promotion of the film industry in Hawaii; provided further that no funds shall be made available for such promotion unless matched on a dollar-for-dollar basis by the Hawaii film industry.

SECTION 8. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$3,780,000 in fiscal year 1989-90 and \$3,780,000 in fiscal year 1990-91 shall be provided to the Pacific international center for high technology research for independent research in high technology and alternate energy utilization; provided further that the Pacific international center for high technology research shall submit an expenditure plan/report to the legislature twenty days prior to the convening of the 1990 and the 1991 regular sessions.

SECTION 9. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$120,000 in fiscal year 1989-90 and \$120,000 in fiscal year 1990-91 shall be used for trade shows and other promotions for the garment and fashion industry, based on a two year program developed jointly by the department of business and economic development and the garment and fashion industry advisory group; provided further that no funds shall be made available unless matched on a dollar-for-dollar basis by the garment and fashion industry.

SECTION 10. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$90,000 in fiscal year 1989-90 and \$25,000 in fiscal year 1990-91 shall be expended for the military affairs council of the chamber of commerce.

SECTION 11. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$200,000 in fiscal year 1989-90 shall be used to complete the launch site environmental impact statement, and master plan; provided further the department shall submit a report on their (a) actual and projected expenditures; (b) the activities contemplated, underway, and completed by the office of space administration; and (c) an updated assessment as to Hawaii's chances of establishing a successful launch facility in light of worldwide competition; provided further that the department of business and economic development shall submit this report to the legislature twenty days prior to the convening of the 1989-90 and 1990-91 regular sessions.

SECTION 12. Provided that each participating Main Street town under contract with the Historic Hawaii Foundation at the end of the 1989 legislative session, and which retains the services of a full-time project manager, shall receive no less than \$50,000 in each year of the biennium in the form of payments, technical assistance and/or services planned and as mutually agreed upon by Historic Hawaii and each participating town.

SECTION 13. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$330,000 in fiscal year 1989-90 and \$318,500 in fiscal year 1990-91 shall be used for a grant-in-aid as provided in Chapter 42, Hawaii Revised Statutes and is deemed to be for a public purpose.

SECTION 14. Provided that of the general fund appropriation for state tourism office (BED 113), the sum of \$1,500,000 in fiscal year 1989-90 shall be expended for participation by Hawaii at the Osaka Expo 1990.

SECTION 15. Provided that of the general fund appropriation for the state tourism office (BED 113), the sum of \$365,000 in fiscal year 1989-90 and \$385,000 in fiscal year 1990-91 shall be used for sports promotions as follows:

	<u>FY 1989-90</u>	<u>FY 1990-91</u>
Great Aloha Run	\$45,000	\$45,000
Honolulu Marathon	\$75,000	\$75,000
Aloha Bowl	\$50,000	\$70,000
Hula Bowl	\$70,000	\$70,000
Amateur Baseball	\$75,000	\$75,000
Hawaii Canoe/Kayak	\$50,000	\$50,000

SECTION 16. Provided that of the general fund appropriation for the state tourism office (BED 113), the sum of \$2,150,000 in fiscal year 1989-90 and \$2,150,000 in fiscal year 1990-91 shall be used for island destination marketing activities as follows:

	<u>FY 1989-90</u>	<u>FY 1990-91</u>
Hawaii	\$512,000	\$512,000
Kauai	\$450,000	\$450,000
Maui	\$782,000	\$782,000
Oahu	\$256,000	\$256,000
Molokai	\$150,000	\$150,000

Provided further that the department of business and economic development shall enter into separate contracts with qualified island destination marketing associations or organizations for the purpose of this section.

SECTION 17. Provided that of the general fund appropriation for state tourism office (BED 113), the sum of \$429,781 in fiscal year 1989-90 and \$451,270 in fiscal year 1990-91 shall be used for the operations of the Hawaii visitors bureau neighbor island offices as follows:

	<u>FY 1989-90</u>	<u>FY 1990-91</u>
Island of Hawaii	\$151,956	\$159,555
Island of Maui	\$173,633	\$182,315
Island of Kauai	\$104,192	\$109,400

SECTION 18. Provided that of the general fund appropriation for state tourism office (BED 113), the sum of \$500,000 in fiscal year 1989-90 and \$550,000 in fiscal year 1990-91 shall be expended by the department of business and economic development for market research.

SECTION 19. Provided that of the general fund appropriation for state tourism office (BED 113), the sum of \$397,000 in fiscal year 1989-90 and \$337,000 in fiscal year 1990-91 shall be expended for the advertising and promotion of the Hawaii maritime museum.

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**SECTION 20.** Provided that of the general fund appropriation for state tourism office (BED 113), the sum of \$62,500 in fiscal year 1989-90 and \$63,500 in fiscal year 1990-91 shall be expended for the Festival of the Pacific; provided further that a report shall be submitted to the state tourism office which shall include but not be limited to:

- (1) an expenditure and projected expenditure report;
- (2) a summary of activities contemplated, underway, and completed;
- (3) a measure of effectiveness as deemed appropriate by the department.

**SECTION 21.** Provided that of the general fund appropriation for state tourism office (BED 113), the sum of \$408,000 in fiscal year 1989-90 and \$408,000 in fiscal year 1990-91 shall be expended for the administration and operations of the Waikiki Convention Center Authority.

**SECTION 22.** Provided that of the general fund appropriation for the state tourism office (BED 113), the sum of \$125,000 in fiscal year 1990-91 shall be used in an effort to place a bid to host the 1992 Pacific Asia Travel Association (PATA) International Conference in Hawaii; provided further that a report shall be submitted to include but not be limited to:

- (1) an updated assessment as to Hawaii's chances of hosting the PATA 1992 conference;
- (2) a projected funding requirements needed to host the PATA 1992 conference; and

(3) the economic impact or value to Hawaii's tourist industry;

provided further that the department of business and economic development shall submit this report to the legislature twenty days prior to the convening of the 1991 regular session.

**SECTION 23.** Provided that of the general fund appropriation for state tourism office (BED 113), the sum of \$750,000 in fiscal year 1989-90 and \$750,000 in fiscal year 1990-91 shall be expended for special promotions; provided further that in order to ensure the proper expenditure of funds, the state tourism office shall submit a report to the legislature describing the economic conditions which necessitate any expenditures for this purpose and identification of the source and the application of funds used for this purpose; provided further that this report shall be submitted to the legislature twenty days prior to the convening of the 1990 and the 1991 regular session.

**SECTION 24.** Provided that in order to ensure the proper expenditure of funds from the state tourism office (BED 113), the department of business and economic development for the purpose of tourism marketing and promotion and support of the Hawaii visitors bureau overhead costs, may enter into formal contract with the Hawaii visitors bureau; provided further that the contract shall include a separate provision for the sole purpose of identifying and state general funds for the Hawaii visitors bureau overhead costs; provided further that this section shall not prohibit the department from entering into contracts with other private agencies and organizations for tourism promotion, marketing, and advertising.

**SECTION 25.** Provided that of the general fund appropriation for state tourism office (BED 113), the sum of \$3,000,000 in fiscal year 1989-90 and \$3,000,000 in fiscal year 1990-91 shall be expended for advertising, promotion and literature in the base markets, which consists of the thirteen western states of the United States and the three western Canadian provinces.

**SECTION 26.** Provided that the Hawaii visitors bureau's marketing efforts shall be directed towards the State's tourism program's meetings and conventions

markets, and the base markets, which consists of the thirteen western states of the United States and the three western Canadian provinces; provided further that the state tourism office's marketing program shall be limited to new markets.

SECTION 27. Provided that the department of business and economic development may expend general funds appropriated to the state tourism office (BED 113) for changing market conditions in the event of serious economic downturns in the state tourism industry; provided that funds expended for this purpose shall not exceed \$280,000 for fiscal year 1989-90 and fiscal year 1990-91; provided further that funds for this purpose shall not be incorporated into any pre-existing Hawaii visitors bureau contract.

SECTION 28. Provided that of the general fund appropriation for state tourism office (BED 113), the sum of \$245,000 in fiscal year 1989-90 shall be used for a grant-in-aid, as provided in Chapter 42, Hawaii Revised Statutes and deemed to be for a public purpose.

SECTION 29. Provided that of the general fund appropriation for state tourism office (BED 113), the department of business and economic development is authorized to establish and fund 3.00 positions, exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes, to assist the staff of the state tourism office in promoting tourism.

SECTION 30. Provided that of the general fund appropriation for foreign trade (BED 107), funds for the rental or purchase of microcomputer and word processing equipment shall be expended towards the completion of the zone information processing system (ZIPS).

SECTION 31. Provided that the department of agriculture by the end of each calendar month shall conduct an independent audit with Federal Milk Marketing Order specifications of the previous calendar month on the utilization of milk received by the milk processors in relation to the volume of production by the processor; provided further that of the general fund appropriation for price and production controls for dairy products (AGR 103), the sum of \$144,000 in fiscal year 1989-90 and \$144,000 in fiscal year 1990-91 shall be used to conduct the monthly milk audit; provided further that the department of agriculture shall submit a report of its findings to the board of agriculture and to producers and processors within the Honolulu and Hawaii milksheds upon completion of its audit on a monthly basis; provided further that the department of agriculture shall submit a report of its findings to the legislature twenty days prior to the convening of the 1990 and 1991 regular session for the calendar years 1989 and 1990, respectively.

SECTION 32. Provided that of the general fund appropriation for plant quarantine (AGR 121), the sum of \$50,000 in fiscal year 1989-90 shall be used to establish a program to utilize beagle dogs in the detection of illegal plants and animals at the State's ports of entry.

SECTION 33. Provided that of the general fund appropriation for plant pest control (AGR 122), the sum of \$170,000 in fiscal year 1989-90 shall be expended for research on various fruit fly control and eradication projects; provided further that if federal funds are received for this purpose, the unexpended amount of the general funds for this purpose referred to in this provision shall be used for no other purpose and shall lapse.

SECTION 34. Provided that of the general fund appropriation for plant pest control (AGR 122), the sum of \$30,000 in fiscal year 1989-90 and \$30,000 in

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fiscal year 1990-91 shall be used for a biological control project to control the sod webworm population on the island of Maui.

**SECTION 35.** Provided that of the general fund appropriation for plant pest control (AGR 122), the sum of \$79,828 in fiscal year 1989-90 and \$79,828 in fiscal year 1990-91 shall be used for the containment of gorse infestation on the islands of Hawaii and Maui; provided further that containment shall be done through conventional chemical and mechanical methods and through biological control programs using insects and plant pathogens.

**SECTION 36.** Provided that of the general fund appropriation for plant pest control (AGR 122), the sum of \$30,000 in fiscal year 1989-90 and \$30,000 in fiscal year 1990-91 shall be used for yellow sugar cane aphid research and control.

**SECTION 37.** Provided that of the general fund appropriation for plant pest control (AGR 122), the sum of \$79,500 in fiscal year 1989-90 and \$79,500 in fiscal year 1990-91 shall be expended to control firetree infestation throughout the State.

**SECTION 38.** Provided that of the general fund appropriation for plant pest control (AGR 122), the sum of \$35,000 in fiscal year 1989-90 shall be expended for the development and implementation of a program to control the proliferation of the European brown snail.

**SECTION 39.** Provided that of the general fund appropriation for animal quarantine (AGR 131), the sum of \$100,000 in fiscal year 1989-90 and \$100,000 in fiscal year 1990-91 shall be expended for the care of animals while in quarantine at the animal quarantine station in Halawa Valley and the airport animal holding facility; provided further that of that amount \$75,000 in fiscal year 1989-90 and \$75,000 in fiscal year 1990-91 shall be used for supplies to disinfect all kennels and catteries once every two weeks, and supplies to control and eliminate ticks and fleas; provided further that of that amount \$25,000 in fiscal year 1989-90 and \$25,000 in fiscal year 1990-91 shall be used for medical supplies and equipment for the animal quarantine station clinic.

**SECTION 40.** Provided that of the general fund appropriation for animal quarantine (AGR 131), the sum expended for the quarantine of cats and dogs, excluding amortization of capital improvement costs, shall not exceed the sum collected as revenue fees and deposited into the general fund for that purpose.

**SECTION 41.** Provided that of the general fund appropriation for distribution systems improvement for agriculture (AGR 151), the sum of \$45,000 in fiscal year 1989-90 and \$45,000 in fiscal year 1990-91 shall be used for promotion of Hawaiian beef products; provided that no funds shall be made available under this Act unless matched on a dollar-for-dollar basis by private contributions.

**SECTION 42.** Provided that of the general fund appropriation for distribution systems improvement for agriculture (AGR 151), the sum of \$220,000 in fiscal year 1989-90 and \$220,000 in fiscal year 1990-91 shall be used for promotion of papayas; provided further that of the above sum, \$200,000 in fiscal year 1989-90 and \$200,000 in fiscal year 1990-91 shall be made available under this Act only if matched on a dollar-for-dollar basis by private contributions; provided further that of the above sum, \$20,000 in fiscal year 1989-90 and \$20,000 in fiscal year 1990-91 shall be made available under this Act only if matched on a dollar-for-dollar basis by Kauai sunshine papaya.

SECTION 43. Provided that of the general fund appropriation for distribution systems improvement for agriculture (AGR 151), the sum of \$30,000 in fiscal year 1989-90 and \$30,000 in fiscal year 1990-91 shall be used for promotion of anthuriums for export markets; provided further that no funds shall be made available under this Act unless matched on a dollar-for-dollar basis by the Hawaii anthurium industry.

SECTION 44. Provided that of the general fund appropriation for distribution systems improvement for agriculture (AGR 151), the sum of \$50,000 in fiscal year 1989-90 shall be used for the advertising and promotion of milk produced in Hawaii; provided further that no funds shall be made available under this Act unless matched on a dollar-for-dollar basis by the fresh milk industry of Hawaii.

SECTION 45. Provided that of the general fund appropriation for distribution systems improvement for agriculture (AGR 151), the sum of \$30,000 in fiscal year 1989-90 and \$30,000 in fiscal year 1990-91 shall be used for programs to promote ginger root produced in the State of Hawaii; provided further that no funds shall be made available under this Act unless matched on a dollar-for-dollar basis by private contributions.

SECTION 46. Provided that of the general fund appropriation for distribution systems improvement for agriculture (AGR 151), the sum of \$300,000 in fiscal year 1989-90 shall be expended for the promotion of fresh Hawaiian pineapples, which is deemed to be a public purpose, in the twenty-two western states and western Canada; provided further that no funds shall be expended under this Act, unless funds are matched dollar-for-dollar by private contributions.

SECTION 47. Provided that of the general fund appropriation for distribution systems improvement for agriculture (AGR 151), the sum of \$30,000 in fiscal year 1989-90 shall be expended for the promotion of dendrobium orchids, which is deemed to be a public purpose; provided further that no funds shall be expended under this Act unless matched dollar-for-dollar by private contributions.

SECTION 48. Provided that of the general fund appropriation for distribution systems improvement for agriculture (AGR 151), the sum of \$100,000 in fiscal year 1989-90 shall be expended for the purpose of promoting and conducting marketing related activities of Hawaiian grown coffee, which is deemed to be a public purpose; provided further that no funds shall be expended under this Act unless matched dollar-for-dollar by private contributions.

SECTION 49. Provided that of the general fund appropriation for energy development and management (BED 120), the sum of \$100,000 in fiscal year 1989-90 shall be expended to study the possibility of hydrogen production from ocean thermal energy conversion electricity.

SECTION 50. Provided that of the general fund appropriation for energy development and management (BED 120), the sum of \$50,000 in fiscal year 1989-90 shall be used for a grant-in-aid as provided in Chapter 42, Hawaii Revised Statutes and deemed to be for a public purpose.

SECTION 51. Provided that of the general appropriation for energy development and management (BED 120), the sum of \$300,000 in fiscal year 1989-90 shall be used to expand the current cooperative outreach and technology transfer programs of the Hawaii natural energy institute in the Pacific Basin and the People's

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Republic of China; provided further that the department of business and economic development shall submit a progress report to the legislature twenty days prior to the convening of the 1990 regular session.

### **EMPLOYMENT**

**SECTION 52.** Provided that of the general fund appropriation for employment and training programs (LBR 131), the sum of \$250,000 in fiscal year 1989-90 shall be used for the aloha state specialized employment training program (AS-SET); provided further that the department of labor and industrial relations shall submit a report to the legislature on the program's effectiveness in achieving stated goals not less than twenty days prior to the convening of the 1990 regular session.

**SECTION 53.** Provided that of the general fund appropriation for employment and training programs (LBR 131), the sum of \$300,000 in fiscal year 1989-90 shall be used for the training of Hawaii residents in high demand occupations; provided further that the department of labor and industrial relations shall submit a report to the legislature on the program's effectiveness in achieving the stated goals not less than twenty days prior to the convening of the 1990 regular session.

**SECTION 54.** Provided that of the general fund appropriation for transition center (LBR 136), the sum of \$122,673 in fiscal year 1989-90 and \$252,760 in fiscal year 1990-91 shall be used to expand the transition center program to include two new schools; provided further that the department of labor and industrial relations shall submit a report to the legislature on the program's measures of effectiveness not less than twenty days prior to the convening of the 1990 regular session.

**SECTION 55.** Provided that of the general fund appropriation for vocational rehabilitation (HMS 802), the sum of \$1,135,839 in fiscal year 1989-90 and \$1,201,566 in fiscal year 1990-91 and of the federal funds authorized, the sum of \$503,640 in fiscal year 1989-90 and \$507,236 in fiscal year 1990-91 shall be used for purchases of service for vocational rehabilitation as provided in Chapter 42, Hawaii Revised Statutes, which the legislature finds to be for a public purpose.

**SECTION 56.** Provided that of the general fund appropriation for data gathering, research and analysis (LBR 901), the sum of \$130,000 in fiscal year 1989-90 and \$130,000 in fiscal year 1990-91 shall be expended for the research and statistics data base project; provided also that if the project is deemed unfeasible by the consultant engaged to do the system requirement definition study, then the appropriations shall lapse into the state general funds; provided further that the department of labor and industrial relations shall submit a report to the legislature no later than twenty days prior to the convening of the 1990 regular legislative session evaluating the progress of the project.

**SECTION 57.** Provided that of the general fund appropriation for office of community services (LBR 903), the sum of \$2,770,176 in fiscal year 1989-90 and \$3,028,728 in fiscal year 1990-91 shall be used for purchase of service; provided further that of the federal funds authorized for the program (LBR 903), the sum of \$1,314,975 in fiscal year 1989-90 and \$1,314,975 in fiscal year 1990-91 shall be used for purchases of service as provided in chapter 42, Hawaii Revised Statutes and deemed to be for a public purpose.

**SECTION 58.** Provided that of the general fund appropriation for office of community services (LBR 903), the sum of \$2,740,735 in fiscal year 1989-90 and

\$2,797,083 in fiscal year 1990-91 shall be used for a grant-in-aid as provided in chapter 42, Hawaii Revised Statutes which is deemed to be for a public purpose.

SECTION 59. Provided that of the general fund appropriation for vocational rehabilitation (HMS 802), the sum of \$62,000 in fiscal year 1989-90 and \$64,000 in fiscal year 1990-91 shall be used for grants-in-aid as provided in chapter 42, Hawaii Revised Statutes, relating to services, which the legislature finds to be a public purpose, for vocational rehabilitation.

#### TRANSPORTATION

SECTION 60. Provided that the passenger flight coordinator authorized for Honolulu international airport (TRN 102), for the fiscal year 1989-90, currently not civil service, shall be converted to permanent civil service status within the meaning of chapters 76 and 77, Hawaii Revised Statutes, without the necessity of examination and without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges; provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

SECTION 61. Provided that of the special fund appropriation for air transportation (TRN 195), the sum of \$500,000 in fiscal year 1989-90 shall be expended for consulting services to augment the efforts of the Governor's Task Force on International Aviation; provided further that this task force shall work to ensure that the transportation infrastructure is available to meet the increase in international travel demand.

SECTION 62. Provided that of the general fund appropriation for air transportation facilities and services support (TRN 195), the sum of \$190,600 in fiscal year 1989-90 and \$190,600 in fiscal year 1990-91 shall be used to provide air transportation services support for the civil air patrol program, which the legislature finds to be a public purpose, through purchase of services agreements under chapter 42, Hawaii Revised Statutes.

SECTION 63. Provided that of the special fund appropriation for water transportation (TRN 395), the sum of \$650,000 in fiscal year 1989-90 shall be expended to initiate a new accounts receivable (A/R) billing system utilizing a modified version of the Airports Accounts Receivable System; provided further that in order to determine if the department of transportation is appropriately expending the moneys in this provision a progress report shall be submitted to the legislature twenty days prior to the convening of the 1990 regular session.

SECTION 64. Provided that of the special fund appropriation for land transportation (TRN 595), the sum of \$750,000 in fiscal year 1989-90 shall be expended to streamline the Highways Accounting System (HWYAC) with the DAGS Statewide Accounting System and to reduce duplicating efforts in accounting and reporting between the two systems and minimize processing time; provided further that in order to determine if the department of transportation is appropriately expending the moneys in this provision a progress report shall be submitted to the legislature twenty days prior to the convening of the 1990 regular session.

SECTION 65. Provided that of the special fund appropriation for overall program support for transportation facilities and service (TRN 995), the sum of \$416,000 in fiscal year 1990-91 shall be expended for the Kalanianaole highway

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utilities relocation; provided further that if the department of transportation determines it will be unable to expend the \$416,000 in fiscal year 1990-91 for that purpose, those funds shall be transferred to Maui highways and service (TRN 531) and shall be expended in fiscal year 1990-91 for safety improvements or special maintenance projects for Maui.

**SECTION 66.** Provided that overall program support for transportation facilities and services (TRN 995) shall conduct a fleet management diagnostic review for the highways division and shall consider rental cars as another possibility for replacement of department of transportation motor vehicles.

**SECTION 67.** Provided that the Community Affairs Specialist located in the Office of the Director (TRN 995), currently not civil service, shall be converted to permanent civil service status within the meaning of chapters 76 and 77, Hawaii Revised Statutes, without the necessity of examination and without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges; provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

### **ENVIRONMENTAL PROTECTION**

**SECTION 68.** Provided that of the general fund appropriation for pesticides (AGR 846), the sum of \$155,000 in fiscal year 1989-90 shall be expended for the completion of a computerized system to detect pesticides and other chemicals in Hawaii's groundwater.

**SECTION 69.** Provided that of the general fund appropriation for forests and wildlife resources (LNR 402), the sum of \$122,000 in fiscal year 1989-90 and \$122,000 in fiscal year 1990-91 shall be used for the manual eradication of banana poka (Passiflora molissima).

**SECTION 70.** Provided that of the general fund appropriation for policy development, coordination and analysis for natural physical environment (HTH 850), the sum of \$70,000 in fiscal year 1989-90 shall be used for grant-in-aid as provided in Chapter 42, Hawaii Revised Statutes, and which is deemed to be for a public purpose.

**SECTION 71.** Provided that of the general fund appropriation for natural physical environmental (HTH 849), the sum of \$100,000 in fiscal year 1989-90 and \$100,000 in fiscal year 1990-91 shall be used to prepare a statewide integrated solid waste management plan which should set the goals and direction for the State in the reduction of the solid waste stream through source reduction, recycling, incineration, and landfilling.

### **HEALTH**

**SECTION 72.** Provided that of the positions and position-related funds authorized to the department of health, the department may trade-off/transfer positions within its authorized position ceiling for the purpose of maximizing the utilization of personnel resources and staff productivity; provided further that all such actions shall be with the prior approval of the governor, or the director of finance if so delegated by the governor.

**SECTION 73.** Provided that of the general fund appropriation for sexually transmitted diseases (HTH 121), the sum of \$727,839 in fiscal year 1989-90 and

\$1,023,231 in fiscal year 1990-91 shall be used for purchase of service as provided in chapter 42 Hawaii Revised Statutes, and which is deemed to be for a public purpose.

**SECTION 74.** Provided that of the general fund appropriation for sexually transmitted diseases (HTH 121), the sum of \$53,257 in fiscal year 1989-90 and \$29,669 in fiscal year 1990-91 shall be used for grant-in-aid as provided in chapter 42, Hawaii Revised Statutes, and which is deemed to be for a public purpose.

**SECTION 75.** Provided that of the general fund appropriation for chronic diseases (HTH 151), the sum of \$232,959 in fiscal year 1989-90 and \$244,607 in fiscal year 1990-91 shall be used for purchase of service as provided in chapter 42, Hawaii Revised Statutes, and which is deemed to be for a public purpose.

**SECTION 76.** Provided that of the general fund appropriation for chronic diseases (HTH 151), the sum of \$50,000 in fiscal year 1989-90 and \$50,000 in fiscal year 1990-91 shall be used for grants-in-aid as provided in chapter 42, Hawaii Revised Statutes, relating to treatment for chronic diseases, which the legislature finds to be a public purpose.

**SECTION 77.** Provided that of the federal funds authorized for nutrition services (HTH 160), the sum of \$299,543 in fiscal year 1989-90 and \$333,242 in fiscal year 1990-91 shall be used for purchase of service as provided in chapter 42, Hawaii Revised Statutes, and which is deemed to be for a public purpose.

**SECTION 78.** Provided that of the general fund appropriation for emergency medical services (HTH 170), the sum of \$336,652 in fiscal year 1989-90 and \$372,257 in fiscal year 1990-91 shall be used to establish an Emergency Ambulance - Advanced Life Support System (ALS) unit in the Puna district; provided further that the sum of \$336,652 in fiscal year 1990-91 shall be used to establish an Emergency Ambulance - ALS unit in Waikaloa, Hawaii.

**SECTION 79.** Provided that of the general fund appropriation for emergency medical services (HTH 170), the sum of \$205,917 in fiscal year 1989-90 and \$216,212 in fiscal year 1990-91 shall be used for purchase of service as provided in chapter 42, Hawaii Revised Statutes, and which is deemed to be for a public purpose.

**SECTION 80.** Provided that of the general fund appropriation for family planning (HTH 185), the sum of \$100,000 in fiscal year 1989-90 shall be used to provide health services for pregnant minors.

**SECTION 81.** Provided that of the general fund appropriation for family planning (HTH 185), the sum of \$788,488 in fiscal year 1989-90 and \$819,662 in fiscal year 1990-91 shall be used for purchase of service and of the federal funds authorized for that program (HTH 185), the sum of \$372,165 in fiscal year 1989-90 and \$372,165 in fiscal year 1990-91 shall be used for purchase of service as provided in chapter 42, Hawaii Revised Statutes, and which is deemed to be for a public purpose.

**SECTION 82.** Provided that of the general fund appropriation for health care services (HTH 801), the sum of \$4,494,240 in fiscal year 1989-90 and \$5,078,146 in fiscal year 1990-91 shall be used for purchase of service and of the federal funds authorized for that program (HTH 801), the sum of \$275,047 in fiscal year 1989-

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90 and \$280,366 in fiscal year 1990-91 shall be used for purchase of service as provided in chapter 42, Hawaii Revised Statutes, and which is deemed to be for a public purpose.

**SECTION 83.** Provided that of the general fund appropriation for health care services (HTH 801), the sum of \$125,000 in fiscal year 1989-90 and \$125,000 in fiscal year 1990-91 shall be used for grants-in-aid as provided in chapter 42, Hawaii Revised Statutes, relating to health care services, which the legislature finds to be a public purpose.

**SECTION 84.** Provided that of the special fund appropriation for Leahi hospital (HTH 242), the sum of \$136,564 in fiscal year 1989-90 and \$137,020 in fiscal year 1990-91 shall be used for the adult day health program.

**SECTION 85.** Provided that community based services for mental health (HTH 401), shall complete the required fee structure procedures to amend the state Medicaid plan, and to obtain additional Medicaid funds for expanded mental health services.

**SECTION 86.** Provided that of the general fund appropriation for community based services for mental health (HTH 401), the sum of \$32,000 in fiscal year 1989-90 shall be used for hiring a consultant with previous professional experience in establishing statewide mental health programs for the hearing-impaired population, along with necessary support staff; provided further that the consultant shall:

- (1) Identify existing cases;
- (2) Outline existing and future needs;
- (3) Assess existing services and identify private and state resources;
- (4) Make immediate program recommendations to be established for fiscal year 1990-91;
- (5) Specify all necessary program components for a comprehensive and long-range plan;
- (6) Establish acceptable standards for services; and
- (7) Identify long-range planning goals.

**SECTION 87.** Provided that of the general fund appropriation for community based services for mental health (HTH 401), the sum of \$9,174,192 in fiscal year 1989-90 and \$9,413,446 in fiscal year 1990-91 shall be used for purchase of service and of the federal funds authorized for that program (HTH 401), the sum of \$2,127,002 in fiscal year 1989-90 and \$2,126,148 in fiscal year 1990-91 shall be used for purchase of service as provided in Chapter 42, Hawaii Revised Statutes, and which is deemed to be for a public purpose.

**SECTION 88.** Provided that of the general fund appropriation for community based services for mental health (HTH 401), the sum of \$547,391 in fiscal year 1989-90 and \$528,303 in fiscal year 1990-91 shall be used for a grant-in-aid as provided in Chapter 42, Hawaii Revised Statutes, which is deemed to be for a public purpose.

**SECTION 89.** Provided that of the general fund appropriation for community based services for developmentally disabled and mentally retarded (HTH 501), the sum of \$5,660,527 in fiscal year 1989-90 and \$5,969,338 in fiscal year 1990-91 shall be used for purchase of service as provided in Chapter 42, Hawaii Revised Statutes, and which is deemed to be for a public purpose.

**SECTION 90.** Provided that of the general fund appropriation for Waimano training school and hospital (HTH 511), the sum of \$935,550 in fiscal year 1989-

90 and \$982,328 in fiscal year 1990-91 shall be used for purchase of service as provided in Chapter 42, Hawaii Revised Statutes, and which is deemed to be for a public purpose.

**SECTION 91.** Provided that of the general fund appropriation for health education (HTH 908), the sum of \$127,652 in fiscal year 1989-90 and \$134,034 in fiscal year 1990-91 shall be used for purchase of service as provided in chapter 42, Hawaii Revised Statutes, and which is deemed to be for a public purpose.

**SECTION 92.** Provided that general administration (HTH 907) shall request all purchase of service and grant-in-aid providers to identify, where possible, clients who do not have health insurance, and who might qualify for the department of health's proposed new universal health insurance program.

**SECTION 93.** Provided that of the general fund appropriation for general administration (HTH 907), the sum of \$286,451 in fiscal year 1989-90 and \$295,775 in fiscal year 1990-91 shall be used for purchase of service and of the federal funds authorized for that program (HTH 907), the sum of \$9,480 in fiscal year 1989-90 and \$9,480 in fiscal year 1990-91 shall be used for purchase of service as provided in chapter 42, Hawaii Revised Statutes, and which is deemed to be for a public purpose.

**SECTION 94.** Provided that in expending the general funds appropriated for general administration of the department of health (HTH 907), for the fiscal year 1989-90, for the departmental reorganization and in order to ensure the efficient expenditures of these funds the department shall conduct public meetings and presentations which address, among other things, specific plans for mental health services covering (1) children/adolescents; (2) adults; and (3) drug and alcohol abuse with special emphasis on the seriously disabled mentally ill.

**SECTION 95.** Provided that of the general funds appropriation for general administration (HTH 907) \$60,000, or the necessary portion thereof, in fiscal year 1989-90 shall be spent to support activities to promote Hawaii's health care industry in Asian and the Pacific, and in the future these activities shall include, but not be limited to the study of interest compacts and commissions to ensure compliance with Hawaii's interstate efforts with the federal laws, the coordination of legislative and administrative policy development between Hawaii and other states, formal liaison activities with legislatures and governors of other states, drafting of by-laws or rules needed to develop organizations to implement such promotion, and research of governmental contracts in Asian and Pacific nations.

**SECTION 96.** Provided that the County/State Hospitals Division is authorized to establish a two-year pilot project whereby the Department of Health's County/State Hospitals Division would be delegated the authority to recruit, screen, certify, and hire eligible applicants for selected classes for the public hospitals in the County/State Hospitals Division. By setting the implementation date for January 1, 1990, the Division will be able to complete discussions with the Department of Personnel Services regarding this project and develop the framework and staff to assume the additional requested authority. During the two-year pilot project, the Division would delegate authority to Maui Memorial Hospital. This would occur after the program becomes functional at the Division level. Provided further that the Department of Health shall submit a report of specific concerns and recommendations to the governor and the legislature twenty days prior to the convening of the 1991 regular session.

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**SECTION 97.** Provided that any increase in the ceiling in part II in the special fund appropriation for fiscal year 1989-90 for county/state hospitals (HTH 211), (HTH 212), (HTH 213), (HTH 214), (HTH 215), (HTH 221), (HTH 222), (HTH 223), (HTH 224), (HTH 231), (HTH 232), (HTH 241), (HTH 242), in any one of them individually or all of them to be used for the payment of lawful expenditures and approved by the governor or the director of finance if so delegated by the governor shall result in a reduction in the general fund appropriation for fiscal year 1989-90 for county/state hospitals (HTH 212), (HTH 213), (HTH 214), (HTH 215), (HTH 222), (HTH 223), (HTH 224), (HTH 231), (HTH 232), (HTH 241), (HTH 242), in any one of them individually or all of them partially in an amount equal to the increase in the special fund appropriation ceiling in part II; provided further that the general fund appropriation for fiscal year 1989-90 for county/state hospitals (HTH 213), (HTH 214), (HTH 215), (HTH 222), (HTH 223), (HTH 224), (HTH 231), (HTH 232), (HTH 241), (HTH 242), to be reduced shall be in the discretion of the department with the approval of the governor or the director of finance if so delegated by the governor; provided further the general administration fund (HTH 907), may be used to assist in making such general fund reductions or the general funds in the general administration fund may be so reduced.

**SECTION 98.** Provided that Article VII, Section 8, of the Constitution of the State of Hawaii provides that the budget shall be submitted in a form provided by law setting forth a complete plan of expenditures of the executive branch; provided further that this budget when it becomes an Act is a law which may add additional requirements for future budget submittals under Article VII, Section 8, of the Constitution of the State of Hawaii where they are not in conflict with other law; provided further that the executive budget for fiscal year 1990-91 submitted to the legislature shall further reduce the appropriation for the county/state hospitals division to \$7,798,279; provided further that the executive budget for fiscal year 1991-92 shall further reduce the appropriation for the county/state hospitals division to \$6,667,499; provided further that the executive budget submitted to the legislature shall reduce the appropriation for the county/state hospitals division submitted in fiscal year 1992-93 by \$1,130,780; provided further that the executive budget submitted to the legislature shall continue to reduce the appropriation for the county/state hospitals division in each fiscal year following 1992-93 until the appropriation for the division is zero; and provided further that the executive budget submitted to the 1990 legislature shall contain this provision updated one year.

**SECTION 99.** Provided that of the general fund appropriation for general administration (HTH 907), the sum of \$140,000 in fiscal year 1989-90 and \$140,000 in fiscal year 1990-91 shall be used for grants-in-aid as provided in chapter 42, Hawaii Revised Statutes, relating to health services which the legislature finds to be a public purpose, for general administration.

**SECTION 100.** Provided that of the general fund appropriation for private hospitals and medical services (SUB 601), the sum of \$400,000 in fiscal year 1989-90 and \$325,000 in fiscal year 1990-91 shall be used for grants-in-aid as provided in chapter 42, Hawaii Revised Statutes, relating to private hospitals and medical services, which the legislature finds to be a public purpose.

**SECTION 101.** Provided that of the general fund appropriation for private hospitals and medical services (SUB 601), the sum of \$1,743,643 in fiscal year 1989-90 and \$1,630,977 in fiscal year 1990-91 shall be used for subsidy as provided in chapter 42, Hawaii Revised Statutes, and which is deemed to be for a public purpose.

**SOCIAL SERVICES**

SECTION 102. Provided that the department of human services is authorized to trade-off/transfer, or establish a total of 25.0 positions to augment staff services offices within the existing authorized position counts and without regard to means of financing for the purpose of maximizing the utilization of personnel resources and staff productivity; provided further that the department of human services shall submit a report to the legislature twenty days prior to the convening of the 1990 regular session that includes (1) the status of all positions provided for in this Act; and (2) a description and an explanation of the reasons for the actions taken pursuant to this Act.

SECTION 103. Provided that of the general fund appropriation for services to individuals and families (HMS 111), the sum of \$8,682,413 in fiscal year 1989-90 and \$8,854,662 in fiscal year 1990-91 and of the federal funds authorized for that program (HMS 111), the sum of \$3,192,521 in fiscal year 1989-90 and \$3,192,521 in fiscal year 1990-91 shall be used to provide services, which the legislature finds to be for a public purpose, to individuals and families through purchase of service agreements under Chapter 42, Hawaii Revised Statutes.

SECTION 104. Provided that of the general fund appropriation for services to individuals and families (HMS 111), the sum of \$971,267 in fiscal year 1989-90 and \$746,849 in fiscal year 1990-91 shall be used to provide services, which the legislature finds to be for a public purpose, to individuals and families through grants-in-aid as provided for in Chapter 42, Hawaii Revised Statutes.

SECTION 105. Provided that, in order to determine if the department of human services is appropriately expending moneys appropriated for the rental housing augmentation and assistance program, the legislative auditor shall conduct a financial and management audit of the rental housing augmentation and assistance program (HMS 220), which shall include, but not be limited to, a review of the department of human services' compliance with Act 217, Session Laws of Hawaii 1988, relating to an amendment of, and appropriation to, the state rent supplement program and the management controls in place to administer rent supplement payments to "housing owners" on behalf of "qualified tenants"; provided further that the auditor shall conduct a review of the median gross rent rate per month, by county, and submit a progress report of actual expenditures for this purpose for fiscal year 1988-1989 and the first half of fiscal year 1989-90, and projected expenditures for the second half of fiscal year 1989-90 to the 1990 regular session; provided further that the auditor shall also evaluate the department's efforts in implementing the intent of Act 217, Session Laws of Hawaii 1988, to raise the rent supplement limit and to address the needs of families and elderly individuals on the waiting list by providing payments and services in a more efficient manner; and provided further that the auditor shall submit a report of findings and recommendations to the legislature twenty days prior to the convening of the 1990 regular session.

SECTION 106. Provided that of the general fund appropriation for rental housing augmentation and assistance (HMS 220), the sum of \$79,000 in fiscal year 1989-90 shall be expended as follows: \$75,000 to compile and evaluate statewide data on the homeless population in order to determine appropriate budgetary needs; and \$4,000 to design and construct a fence for the Kilauea elderly housing project.

SECTION 107. Provided that of the general fund appropriation for rental housing augmentation and assistance (HMS 220), the sum of \$220,000 in fiscal

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year 1989-90 and \$150,000 in fiscal year 1990-91 shall be expended to implement a security traffic control system demonstration project which shall utilize manned guardshacks at Mayor Wright homes; provided further that the sum of \$100,000 in fiscal year 1989-90 and \$100,000 in fiscal year 1990-91 shall be expended to implement a security demonstration project which shall utilize guard patrols at Kalihi valley homes.

**SECTION 108.** Provided that of the general fund appropriation for private housing development and ownership (BED 225), the sum of \$1,244,900 in fiscal year 1989-90 and \$419,100 in fiscal year 1990-91 shall be used to provide services, which the legislature finds to be for a public purpose, to private housing development, through grants-in-aid as provided for in Chapter 42, Hawaii Revised Statutes.

**SECTION 109.** Provided that of the general fund appropriation for housing finance and development administration (BED 229), the sum of \$50,000 in fiscal year 1989-90 shall be expended for the publication of an educational brochure about leasehold arrangements in Hawaii for distribution to the public.

**SECTION 110.** Provided that of the general fund appropriation for health care payments (HMS 230), the sum of \$29,288 in fiscal year 1989-90 and \$24,744 in fiscal year 1990-91 shall be expended for the Queen's Hospital community care program to provide community-based alternatives to additional frail and vulnerable elders on the island of Oahu which is deemed to be a public purpose; provided further that of the federal funds authorized for that program (HMS 230), the sum of \$24,948 in fiscal year 1989-90 and \$21,078 in fiscal year 1990-91 shall be expended for the Queen's Hospital community care program to provide additional community-based alternatives to additional frail and vulnerable elders on the island of Oahu; provided further that, in light of the impending expiration of the current waiver period authorized for the Queen's Hospital community care program, expenditures under this provision are subject to authorization of Hawaii's home and community-based waiver renewal request by the United States secretary of health and human services.

**SECTION 111.** Provided that of the general fund appropriation for health care payments (HMS 230), the sum of \$119,966 in fiscal year 1989-90 and \$161,101 in fiscal year 1990-91 shall be expended for the Queen's Hospital community care program to provide community-based alternatives to frail and vulnerable elders on the island of Maui which is deemed to be for a public purpose; provided further that of the federal funds authorized for that program (HMS 230), the sum of \$102,194 in fiscal year 1989-90 and \$137,235 in fiscal year 1990-91 shall be expended for the Queen's Hospital community care program to provide community-based alternatives to frail and vulnerable elders on the island of Maui; provided further that funds shall be used to augment resources of Hale Makua for expansion of its services which are deemed to be for a public purpose; provided further that, in light of the impending expiration of the current waiver period authorized for the Queen's Hospital community care program, expenditures under this provision are subject to authorization of Hawaii's home and community-based waiver renewal request by the United States secretary of health and human services.

**SECTION 112.** Provided that of the general fund appropriation for health care payments (HMS 230), the sum of \$250,000 in fiscal year 1989-90 and \$500,000 in fiscal year 1990-91 shall be expended for planning and initial implementation of comprehensive community-based care for ventilator-dependent individuals; pro-

vided further that of the federal funds authorized for that program (HMS 230), the sum of \$250,000 in fiscal year 1989-90 and \$500,000 in fiscal year 1990-91 shall be expended for planning and initial implementation of comprehensive community-based care for ventilator-dependent individuals; provided further that, in order to ensure the most appropriate expenditure of funds appropriated for this program, the department of human services shall submit a status report to the legislature twenty days prior to the convening of the 1990 and 1991 regular sessions; provided further that the status report shall include, but not be limited to: program objectives and activities; a detailed breakdown of expenditures for the first half of both fiscal years 1989-90 and 1990-91 and estimated expenditures for the second half of each fiscal year; program measures of effectiveness; the number of individuals eligible for the program; the number of participants served; and a description and cost-benefit analysis of services provided in comparison to those services now available to ventilator-dependent individuals; provided further that no funds shall be expended without the required medicaid waiver authorization by the appropriate federal agency.

**SECTION 113.** Provided that of the general fund appropriation for health care payments (HMS 230), the sum of \$973,900 in fiscal year 1989-90 and \$1,577,850 in fiscal year 1990-91 shall be expended for planning and initial implementation of comprehensive community and home-based care for AIDS infected individuals; provided further that of the federal funds authorized for that program (HMS 230), the sum of \$973,900 in fiscal year 1989-90 and \$1,577,850 in fiscal year 1990-91 shall be expended for planning and initial implementation of comprehensive community and home-based care for AIDS infected individuals; provided further that, in order to ensure the most appropriate expenditure of funds appropriated for this provision, the department of human services shall submit a status report to the legislature twenty days prior to the convening of the 1990 and 1991 regular sessions; provided further that the status report shall include, but not be limited to: an assessment of the magnitude of need for services; program objectives and activities; a detailed breakdown of expenditures for the first half of both fiscal years 1989-90 and 1990-91 and estimated expenditures for the second half of each fiscal year; an analysis of the feasibility of funding community-based care through reallocation of existing recurring funds saved from decreased utilization of costly inpatient care; program measures of effectiveness; the number of individuals requiring community-based and home-based services; the number of individuals actually served; and a description and cost-benefit analysis of services provided in comparison to other public and private agency services; provided further that no funds shall be expended without the required medicaid waiver authorization by the appropriate federal agency.

**SECTION 114.** Provided that, in order to ensure the appropriate expenditure of funds, in establishing fees for individual practitioners for health care payments (HMS 230) in fiscal year 1989-90, the department of human services shall use 56 per cent of the 1987 profile of usual and customary fees of health care practitioners adjusted to the 75th percentile within the limits of this appropriation; provided further that the reimbursement shall not be less than the amount provided for fiscal year 1987-88; provided further that for fiscal year 1990-91, the department of human services shall use 56 per cent of the most recent available profile of usual and customary fees of health care practitioners adjusted within the limits of this appropriation; provided further that the reimbursement shall not be less than the amount provided for fiscal year 1988-89.

**SECTION 115.** Provided that of the general fund appropriation for planning, program development and coordination of services for children and youth (GOV 861), the sum of \$35,000 in fiscal year 1989-90 and \$35,000 in fiscal year 1990-

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91 shall be expended for expenses relating to the establishment of a child care/early childhood education program coordinator; provided further that these funds shall be expended by the governor's office of children and youth.

**SECTION 116.** Provided that of the general fund appropriation for planning, program development and coordination of services for children and youth (GOV 861), the sum of \$54,890 in fiscal year 1989-90 and \$2,625 in fiscal year 1990-92 shall be expended to develop a state strategic child care plan in order to determine future funding needs in this area which shall include, but not be limited to: (1) a statement of the goals and objectives of the plan; (2) action plans for the coordination, implementation and evaluation of the various child care and family support services projects and programs for which funds have been appropriated in the fiscal biennium 1989-1991; (3) identification of the State's child care needs and alternatives to fulfilling these needs; (4) a comparative cost and analysis of the various alternatives; and (5) a recommendation for short-term and long-term plans to meeting the state's child care needs; provided further that the office of children and youth shall submit the strategic child care plan and a progress report on the various child care and family support services projects and programs to the legislature not less than twenty days prior to the convening of the 1990 regular session.

**SECTION 117.** Provided that of the general fund appropriation for planning, program development and coordination of services for children and youth (GOV 861), the sum of \$50,000 shall be expended as matching funds for logistical and program expenses for a conference on children, youth and families; provided further that these funds shall be expended by the governor's office of children and youth.

**SECTION 118.** Provided that of the general fund appropriation for planning, program development, and coordination of services for children and youth (GOV 861), the sum of \$750,000 in fiscal year 1989-90, and \$2,300,000 in fiscal year 1990-91 shall be used for statewide two-year early childhood education and child care demonstration projects for 3 1/2 to 5 year old children; provided further that the demonstration project shall target each of the school districts; provided further that this funding shall include tuition waivers up to \$300 per month for each eligible child attending a licensed preschool program of their parents' choice.

**SECTION 119.** Provided that of the general fund appropriation for planning, program development and coordination of services for elderly (GOV 602), the sum of \$50,000 in fiscal year 1989-90 shall be expended for the establishment of a statewide long-term care data program in order to determine proper future funding needs of such a program whose responsibilities shall include: the establishment of a long-term care data base, the identification of long-term care data needed to facilitate the effective delivery of long-term care services to the state's elderly, and the training of long-term care providers to gather and input data into the system.

**SECTION 120.** Provided that of the general fund appropriation for elderly (GOV 602), the sum of \$40,000 in fiscal year 1989-90 and \$41,200 in fiscal year 1990-91 shall be to provide services which the legislature finds to be for a public purpose, to the elderly, through grants-in-aid as provided in Chapter 42, Hawaii Revised Statutes.

**SECTION 121.** Provided that of the general fund appropriation for elderly (GOV 602), the sum of \$4,192,778 in fiscal year 1989-90 and \$4,373,633 in fiscal year 1990-91 shall be to provide services which the legislature finds to be for a public purpose, to the elderly, through purchase of service agreements as provided in Chapter 42, Hawaii Revised Statutes.

SECTION 122. Provided that of the general fund appropriation for elderly (GOV 602), the sum of \$314,622 in fiscal year 1989-90 and \$314,622 in fiscal year 1990-91 shall be to provide services which the legislature finds to be for a public purpose, to the elderly, through subsidies as provided in Chapter 42, Hawaii Revised Statutes.

SECTION 123. Provided that of the general fund appropriation for elderly (GOV 602), the sum of \$100,000 in fiscal year 1989-90 and \$100,000 in fiscal year 1990-91 shall be expended to implement a short-term crisis intervention program, which would provide for intensive social work intervention for a short period of time to offer basic and necessary community-based services to persons awaiting comprehensive case management program services; provided further that, the pilot emergency service program is intended to address the increasing number of individuals in crisis situations that lack available case management services; provided further that the duration of this demonstration project shall not exceed two years; provided further that, the department shall submit a progress report to the legislature not less than twenty days prior to the convening of the 1990 regular session; provided further that the report shall include, but not be limited to, data on actual expenditures, the projected total number of individuals eligible to receive service, and the estimated level of funding required for permanent full-scale implementation of this project.

SECTION 124. Provided that of the general fund appropriation for general support for health care payments (HMS 902), the sum of \$69,787 in fiscal year 1989-90 and \$55,562 in fiscal year 1990-91 shall be used to fund one program specialist V position, one clerk II position, equipment, and related start up costs necessary to establish a medicaid research and development unit within the department of human services.

SECTION 125. Provided that of the general fund appropriation for general support for public welfare (HMS 903), the sum of \$1,200,000 in fiscal year 1989-90 and \$1,200,000 in fiscal year 1990-91 shall be expended for the voluntary workfare program; provided further that of the amount appropriated for fiscal year 1989-90, \$50,000 shall be for consultant fees for an evaluation of the program to determine if the funds are being most efficiently expended to accomplish the goals of the program.

#### FORMAL EDUCATION

SECTION 126. Provided that the amounts shown for regular instruction (EDN 105) are intended for regular instruction student enrollment projections of 159,723 for fiscal year 1989-90 and 161,786 for fiscal year 1990-91; provided further that the amounts shown for special education (EDN 107) are attended for special education student enrollment projections of 9,286 for fiscal year 1989-90 and 9,290 for fiscal year 1990-91.

SECTION 127. Provided that in order to determine the impact and cost of providing increased general fund appropriations to the department of education (EDN 105) for fiscal year 1990-91, the legislative auditor shall study the impact of changing the current Class VII in section 297-31.1, Hawaii Revised Statutes, to Class VIII and establishing a new Class VII for teachers who hold a certificate issued by the department of education based upon five acceptable years of college education and sixty additional earned credits; provided further that the new Class VII shall be studied as an earned incentive to enhance the professional development

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of teachers and not as an incremental step or a pay raise; provided further that the study shall include a review of how criteria for approved credits are developed and applied by the department of education; and provided further that the auditor shall submit this study to the legislature twenty days prior to the convening of the regular session of 1990.

SECTION 128. Provided that during the fiscal year 1989-90, the department of education is authorized to convert to permanent status 322.0 full time equivalent general funded temporary teacher positions for regular education (EDN 105); provided further that only those temporary teacher positions established to implement the department of education's policy to reduce student-teacher ratios in kindergarten and first grade classes shall be considered for conversion to permanent status.

b) Provided further that during the fiscal year 1989-90, the department is authorized to convert to permanent status the following 181.0 full time equivalent general funded temporary positions which were established in or prior to fiscal year 1982-83:

EDN 106	27.5 positions
EDN 107	15.5 positions
EDN 108	62.5 positions
EDN 203	2.0 positions
EDN 204	6.0 positions
EDN 205	12.0 positions
EDN 206	17.0 positions
EDN 304	34.5 positions
EDN 406	4.0 positions

c) Provided further that incumbent non-permanent employees who may be transferred or appointed to a permanent position as a consequence of this Section shall become a permanent employee without the loss of salary, seniority, prior service credit, accrued vacation, sick leave, or other prior employee benefits or privileges and without the necessity of examination; provided further that such employee possess the minimum qualifications for the position to which transferred or appointed; provided further that the department of education shall compile a listing of positions converted under this Section by their former temporary position number, current established permanent position number, position title, and program area; provided further that the department shall submit this listing to the legislature at least twenty days before the convening of the 1990 regular session.

d) Provided further that the department of budget and finance conduct a review of instructional and administrative conditions within the department of education associated with the creation, establishment, and utilization of temporary positions; provided further that such a review shall include, but not be limited to:

- 1) a detailed listing of the temporary positions by temporary position number, position title, vacancy status, and the program I.D.;
- 2) the act which authorized these positions, or a determination as to whether the positions were established by the department and not authorized by the legislature;
- 3) the fiscal year in which these temporary positions were established; and
- 4) the programs for which these positions were originally established, the current status of these programs, and the current program to which the positions are assigned;

provided further that the department of budget and finance, and the department of education shall propose a process and criteria for determining and prioritizing the

conversion of additional department of education temporary positions to permanent status; provided further that the department of budget and finance shall submit this review and position conversion proposal to the legislature at least twenty days before the convening of the 1990 regular session.

SECTION 129. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$223,678 in fiscal year 1989-90 and \$408,353 in fiscal year 1990-91 shall be expended for expansion of the Hawaiian language immersion program.

SECTION 130. Provided that in order to determine if the department of education is appropriately expending funds appropriated under this Act to other regular instruction (EDN 106) the department of education shall submit an expenditure report on the usage of the school priority fund to the legislature twenty days prior to the convening of the 1990 regular session; provided further that the expenditure report shall include, but not be limited to: A summary of expenditures per school to include object code and a short description.

SECTION 131. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$25,000 in fiscal year 1989-90 shall be used to pilot a summer instruction program for at-risk students; provided further that the department of education shall evaluate the effectiveness of the summer instruction program for at-risk students and shall submit the results of the evaluation to the legislature twenty days prior to the convening of the 1990 regular session.

SECTION 132. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$1,055,355 in fiscal year 1989-90 and \$1,238,930 in fiscal year 1990-91 shall be expended for microcomputers and software.

SECTION 133. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$60,824 and 2.00 positions in fiscal year 1989-90, and \$72,989 and 2.00 positions in fiscal year 1990-91 shall be used for a district technology specialist in Maui district and a technology specialist II for the telecommunication branch.

SECTION 134. Provided that of the general fund appropriation for other regular program (EDN 106), the sum of \$150,000 in fiscal year 1989-90 shall be used for grants-in-aid as provided in Chapter 42, Hawaii Revised Statutes, relating to services for other regular education, which the legislature finds to be a public purpose.

SECTION 135. Provided that of the general fund appropriation for other regular education (EDN 106), the sum of \$123,764 in fiscal year 1989-90 and \$129,952 in fiscal year 1990-91 shall be used for purchases of services as provided in Chapter 42, Hawaii Revised Statutes, relating to services for other regular education, which the legislature finds to be a public purpose.

SECTION 136. Provided that of the general fund appropriation for other regular instruction (EDN 106), the sum of \$1,660,000 in fiscal year 1989-90 and \$1,725,520 in fiscal year 1990-91 shall be used for the continuation and expansion of the learning center program; provided further that of the sum provided, \$30,000 in fiscal year 1989-90 and \$30,000 in fiscal year 1990-91 shall be used for funding of a second learning center at McKinley high school.

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**SECTION 137.** Provided that of the general funds appropriation for other regular instruction (EDN 106), the sum of \$1,089,829 and 54.0 positions in fiscal year 1989-90 and \$2,902,150 and 133 positions in fiscal year 1990-91 shall be used to supplement core learning; provided further that these positions and funds shall be used to provide direct instructional services to students; provided further that the department of education shall prepare a report that accurately reflects the types and physical locations of these positions; provided further that this report shall be presented to the legislature at least twenty days prior to the convening of the 1990 legislative regular session.

**SECTION 138.** Provided that of the general funds appropriation for special education (EDN 107), the sum of \$59,408 in fiscal year 1989-90 and \$790,753 in fiscal year 1990-91 shall be used for a transitional program for special education.

**SECTION 139.** Provided that of the general fund appropriation for special education (EDN 107), the sum of \$161,200 in fiscal year 1989-90 shall be used for grants-in-aid as provided in Chapter 42, Hawaii Revised Statutes, relating to services for special education, which the legislature finds to be a public purpose.

**SECTION 140.** Provided that of the general fund appropriation for compensatory education (EDN 108), the sum of \$657,107 in fiscal year 1989-90 and \$694,398 in fiscal year 1990-91 shall be used for purchases of services as provided in Chapter 42, Hawaii Revised Statutes, relating to services for compensatory education, which the legislature finds to be a public purpose.

**SECTION 141.** Provided that of the general fund appropriation for school administration (EDN 203), the sum of \$361,045 and 28.00 positions in fiscal year 1989-90 and \$433,254 and 29.00 positions in fiscal year 1990-91 shall be used for the school clerical positions; provided further that these positions shall include an attendance clerk at Stevenson intermediate school, a half time clerk typist at Heeia elementary school, and a half time clerk typist at Kainalu elementary school.

**SECTION 142.** Provided that of the general fund appropriation for student activities (EDN 207), the sum of \$12,000 in fiscal year 1989-90 and \$12,000 in fiscal year 1990-91 shall be used for the school mediation program; provided further that the sum of \$10,000 in fiscal year 1989-90 and \$10,000 in fiscal year 1990-91 shall be used for a statewide conference on conflict management.

**SECTION 143.** Provided that of the general fund appropriation for student activities (EDN 207), the sum of \$51,779 in fiscal year 1989-90 and \$54,368 in fiscal year 1990-91 shall be used for purchases of services as provided in Chapter 42, Hawaii Revised Statutes, relating to services for student activities, which the legislature finds to be a public purpose.

**SECTION 144.** Provided that of the general fund appropriation for district administration (EDN 304), the sum of \$12,630 and 1.00 position in fiscal year 1989-90 and \$15,156 and 1.00 position in fiscal year 1990-91 shall be used for a clerk typist for the Maui district office.

**SECTION 145.** Provided that of the general fund appropriation for adult education (EDN 406), the sum of \$367,183 and 8.00 positions in fiscal year 1989-90 and \$390,952 and 8.00 positions in fiscal year 1990-91 shall be used for one principal, one vice-principal, and one school administrative services assistant for Kauai community school; and one registrar and one half time school administrative

services assistant for Hilo community school; and one vice-principal, one secretary, and one half time school administrative services assistant for Maui community school; and one accounting clerk for Waipahu adult school; and for other instructors.

SECTION 146. Provided that of the general fund appropriation for the university of Hawaii, the sum of \$13,665,397 in fiscal year 1989-90 and \$12,204,637 in fiscal year 1990-91 shall be expended for nonrecurring repair and maintenance projects in the following institutional support programs:

<u>PROGRAM ID</u>	<u>FY 1989-90</u>	<u>FY 1990-91</u>
UOH 106	10,091,000	9,081,000
UOH 216	1,030,000	905,000
UOH 906	2,544,397	2,218,637

Provided further that in the implementation of this requirement, the university of Hawaii may use its present staff, student help, and other such temporary personnel pursuant to section 76-16, Hawaii Revised Statutes; provided further that unless otherwise prohibited by law, the university of Hawaii may make expenditures and enter into contracts for necessary equipment, supplies, materials, labor, and professional services, and technical assistance to satisfy the objectives of this appropriation; provided further that in order to ensure the proper expenditure of appropriate funds the university of Hawaii shall submit a report to the legislature on the expenditure of these funds twenty days prior to the convening of the 1990 and 1991 regular session.

SECTION 147. Provided that of the general fund appropriation for the university of Hawaii, the sum of \$9,232,020 in fiscal year 1989-90 and \$7,805,646 in fiscal year 1990-91 shall be expended for nonrecurring equipment expenditures to (1) replace obsolete or inoperable educational classroom and scientific equipment, and (2) acquire new educational classroom or scientific equipment to keep pace with new technological advances in the following institutional support programs:

<u>PROGRAM ID</u>	<u>FY 1989-90</u>	<u>FY 1990-91</u>
UOH 106	5,160,068	4,915,582
UOH 216	236,650	236,650
UOH 906	3,835,300	2,653,414

Provided further that the respective Manoa vice presidents' offices and the community colleges and west Oahu college/university of Hawaii, Hilo chancellors' offices shall act as the administrators for the expenditure of these funds in order to ensure conformance with legislative intent and institutional requirements; provided further that if there are any remaining funds in excess of each campus' instructional or research requirements under (1) or (2) of this section, each vice president or chancellor may use such funds to meet other institutional equipment needs, with the exception of administration office equipment and furniture; provided further that in order to ensure the proper expenditure of appropriate funds the university of Hawaii shall submit a report to the legislature on the expenditure of these funds twenty days prior to the convening of the 1990 and 1991 regular session.

SECTION 148. Provided that of the general fund appropriation for the university of Hawaii level IV instruction programs, the following sums shall be used to expand the nursing education programs to meet the current and future demands for trained nurses:

<u>PROGRAM ID</u>	<u>FY 1989-90</u>	<u>FY 1990-91</u>
UOH 101	(4.00) \$ 160,782	(4.00) \$ 157,332

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	(3.00)	(4.00)
UOH 211	104,100	107,400
	(18.00)	(29.00)
UOH 311	810,997	1,191,085
	(7.00)	(7.00)
UOH 501	324,105	325,160
	(5.00)	(6.00)
UOH 601	165,061	208,752

Provided further that in order to ensure the proper expenditure of appropriate funds the university of Hawaii shall submit a preliminary status report of the number of additional and projected graduates and number of students enrolled in the nursing program to the legislature twenty days prior to the convening of the 1990 regular session; provided further that the university of Hawaii shall submit a final status report of additional and projected graduates and number of students enrolled to the legislature twenty days prior to the convening of the 1991 regular session.

SECTION 149. Provided that of the general fund appropriation for the university of Hawaii level IV instruction programs, the sum of \$65,000 in fiscal year 1989-90 and \$65,000 in physical age in the fiscal year 1990-91 shall be expended for the marine option program:

<u>PROGRAM ID</u>	<u>FY 1989-90</u>	<u>FY 1990-91</u>
UOH 211	\$37,000 A	\$37,000 A
UOH 331	\$14,000 A	\$14,000 A
UOH 501	\$14,000 A	\$14,000 A

SECTION 150. Provided that of the general fund appropriation for instruction, university of Hawaii, Manoa (UOH 101), the sum of \$80,000 in fiscal year 1989-90 and \$80,000 in fiscal year 1990-91 shall be expended for a pilot program in youth sports and fitness by the college of education; provided further that in order to ensure the appropriate expenditure of funds a report on the progress of this program shall be submitted to the legislature twenty days prior to the convening of the 1990 and 1991 regular session.

SECTION 151. Provided that of the general fund appropriation for instruction, university of Hawaii, Manoa (UOH 101), the sum of \$199,988 and 2.55 positions in fiscal year 1989-90 and \$192,008 and 2.55 positions in fiscal year 1990-91 shall be expended to establish an outreach program for upper division and graduate degree courses for Maui community college.

SECTION 152. Provided that of the general fund appropriation for organized research, university of Hawaii, Manoa (UOH 102), the sum of \$25,000 in fiscal year 1989-90 and \$25,000 in fiscal year 1990-91 shall be expended to continue the development of the Hokule'a curriculum project.

SECTION 153. Provided that of the general fund appropriation for organized research, university of Hawaii, Manoa (UOH 102), the sum of \$75,000 in fiscal year 1989-90 shall be used for a joint venture with the Yanmar Agricultural Equipment Co., Ltd. for the installation of an experimental hydroponic plant at the university of Hawaii; provided further that no funds shall be made available unless matched on a dollar-for-dollar basis by the Yanmar Agricultural Equipment Co., Ltd.

SECTION 154. Provided that of the general fund appropriation for public service, university of Hawaii, Manoa (UOH 103), the sum of \$50,000 and 1.00

position in fiscal year 1989-90 and \$50,000 and 1.00 position in fiscal year 1990-91 shall be expended for the development, implementation, and management of the agricultural leadership program.

SECTION 155. Provided that of the general fund appropriation for public service, university of Hawaii, Manoa (UOH 103), the sum of \$75,000 and 1.00 position in fiscal year 1989-91 and \$75,000 and 1.00 position in fiscal year 1990-91 shall be expended by the family community leadership program.

SECTION 156. Provided that of the general fund appropriation for public service, university of Hawaii, Manoa (UOH 103), the sum of \$45,000 in fiscal year 1989-90 and \$40,000 in fiscal year 1990-91 shall be expended for a orchard crops county agent in the college of tropical agriculture and human resources.

SECTION 157. Provided that of the general fund appropriation for instruction-university of Hawaii, Hilo (UOH 211), the sum of \$115,329 in fiscal year 1989-90 and \$246,731 in fiscal year 1990-91 shall be expended for the establishment and operation of the Hawaii small business development center at University of Hawaii, Hilo.

SECTION 158. Provided that of the general fund appropriation for instruction, university of Hilo (UOH 211), the sum of \$64,710 and 3.0 positions in fiscal year 1989-90 and \$45,408 and 3.0 positions in fiscal year 1990-91 shall be expended for clerical needs for the instructional program; provided further that two of the positions shall be for the Hawaii community college and one position shall be for the university of Hawaii, Hilo.

SECTION 159. Provided that of the general fund appropriation for the institutional support program, university of Hawaii at Hilo (UOH-216), the sum of \$3,000 in fiscal year 1989-90 and \$3,000 in fiscal year 1990-91 may be expended at the discretion of the chancellor of the university of Hawaii at Hilo.

SECTION 160. Provided that of the general fund appropriation for instruction, Honolulu community college, (UOH 301), the sum of \$133,010 and 3.00 positions in fiscal year 1989-90 and \$131,541 and 3.00 positions in fiscal year 1990-91 shall be expended for the automotive technology high technology program.

SECTION 161. Provided that of the general fund appropriation for institutional support, university of Hawaii, system-wide support (UOH 903), the sum of \$25,000 in fiscal year 1989-90 and \$25,000 in fiscal year 1990-91 may be expended at the discretion of the president of the university of Hawaii.

SECTION 162. Provided that of the general fund appropriation for institutional support, university of Hawaii systemwide support (UOH 903), the sum of \$484,521 and 4.00 positions in fiscal year 1989-90 and \$548,078 and 4.00 positions in fiscal year 1990-91 shall be expended to strengthen the alumni program.

SECTION 163. Provided that, in order to determine proper funding appropriations in the future, for general fund appropriation for institutional support, university of Hawaii systemwide support (UOH 903), the sum of \$150,000 in fiscal year 1989-90 shall be expended for a higher education master plan for the future development of university of Hawaii at Manoa, university of Hawaii community college, university of Hawaii at Hilo and west Oahu college.

SECTION 164. Provided that of the general fund appropriation for the community colleges system-wide support program, university of Hawaii (UOH-

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906), the sum of \$10,000 in fiscal year 1989-90 and \$10,000 in fiscal year 1990-91 may be expended at the discretion of the chancellor for community colleges.

**SECTION 165.** Provided that the university of Hawaii may use their general fund appropriation as an advance, or the director of finance may make loans when required to the university of Hawaii, to meet costs incurred in connection with federally financed research and training projects.

### **CULTURE AND RECREATION**

**SECTION 166.** Provided that of the general fund appropriation for Hawaii public broadcasting (CCA 701), the sum of \$450,000 in fiscal year 1989-90 shall be used for the Liaoning television exchange project and a BBC co-production.

**SECTION 167.** Provided that of the general fund appropriation for Hawaii public broadcasting (CCA 701), the sum of \$108,612 in fiscal year 1989-90 and \$104,245 in fiscal year 1990-91 shall be expended for the continuation of the archive documentation unit; and provided further that, in order to ensure the most efficient expenditure of these funds, the program development and production for the archive documentation unit shall be done in consultation with the state historic records advisory board (SHRAB).

**SECTION 168.** Provided that of the general fund appropriation for Hawaii public broadcasting (CCA 701), the sum of \$75,000 in fiscal year 1989-90 shall be expended for local television productions in the culture and arts division.

**SECTION 169.** Provided that of the general fund appropriation for Hawaii public broadcasting (CCA 701), the sum of \$216,000 in fiscal year 1989-90 shall be expended for local television productions in the children's program division of Hawaii public broadcasting.

**SECTION 170.** Provided that of the general fund appropriation for Hawaii public broadcasting (CCA 701), the sum of \$100,000 in fiscal year 1989-90 shall be expended for local television productions in the science and natural history unit.

**SECTION 171.** Provided that of the general fund appropriation for performing and visual arts events (AGS 881), the sum of \$50,000 in fiscal year 1989-90 shall be used for the celebration of the two-hundredth anniversary of the Portuguese people in Hawaii.

**SECTION 172.** Provided that of the general fund appropriation for performing and visual arts events (AGS 881), the sum of \$500,000 in fiscal year 1989-90 and \$500,000 in fiscal year 1990-91 shall be contributed to the state of Hawaii endowment fund for the Honolulu symphony trust; provided further that no funds shall be made available under this Act unless matched by the Honolulu symphony on a dollar-for-dollar basis; provided further that these matching funds shall be generated through a separate fund-raising effort by the Honolulu symphony, separate and apart from the Honolulu symphony's annual fund-raising drive.

**SECTION 173.** Provided that of the general fund appropriation for performing and visual arts events (AGS 881), the sum of \$4,459,850 in fiscal year 1989-90 and \$629,000 in fiscal year 1990-91 shall be used for grants-in-aid as provided in chapter 42, Hawaii Revised Statutes, relating to performing and visual arts events, which the legislature finds to be a public purpose.

SECTION 174. Provided that of the general fund appropriation for performing and visual arts events (AGS 881), the sum of \$3,128,604 in fiscal year 1989-90 and \$3,118,982 in fiscal year 1990-91 shall be used for purchase of service and of the federal funds authorized for that program (AGS 881), the sum of \$308,557 in fiscal year 1989-90 and \$308,557 in fiscal year 1990-91 shall be used for purchase of service agreements as provided in chapter 42, Hawaii Revised Statutes, relating to performing and visual arts events, which the legislature finds to be a public purpose.

SECTION 175. Provided that of the general fund appropriation for heritage and recreation parks (LNR 806), the sum of \$1,053,611 in fiscal year 1989-90 and \$145,037 in fiscal year 1990-91 shall be used for grants-in-aid as provided in chapter 42, Hawaii Revised Statutes, relating to heritage and recreation parks, which the legislature finds to be a public purpose.

SECTION 176. Provided that of the special fund appropriation for spectator events and shows, aloha stadium, (AGS 889), the sum of \$5,000 in fiscal year 1989-90 and \$5,000 in fiscal year 1990-91 may be expended at the discretion of the stadium manager for promotion and other stadium-related purposes.

SECTION 177. Provided that of the general fund appropriation for general administration for culture and recreation (LNR 809), the sum of \$200,000 in fiscal year 1989-90 shall be expended for the installation of emergency telephones at remote beach parks throughout the State.

#### PUBLIC SAFETY

SECTION 178. Provided that, for the determination of proper funding expenditures in the future, the general fund appropriation for women's community correctional center (DOC 409), shall be the sum of \$3,200 in fiscal year 1989-90 shall be utilized for a study of alternatives to incarceration programs for women and for the development of a recommended plan to decrease the inmate population by providing community based rehabilitation services; provided further that the department of corrections shall submit this study to the legislature not less than twenty days prior to the convening of the 1990 regular session.

SECTION 179. Provided that of the positions and funds authorized for fiscal year 1989-90 and fiscal year 1990-91 to the department of corrections for the following correctional facilities: juvenile correctional facility (DOC 401), Halawa correctional facility (DOC 402), Kulani correctional facility (DOC 403), Waiawa correctional facility (DOC 404), Hawaii community correctional center (DOC 405), Maui community correctional center (DOC 406), Oahu community correctional center (DOC 407), Kauai community correctional center (DOC 408), and women's community correctional center (DOC 409), the department may transfer, subject to the approval of the governor, or the director of finance if so delegated by the governor, positions and position-related expenses as well as funds for other current expenses and equipment related to the care, supervision, and maintenance of inmates between correctional facilities; provided further that such transfer shall be based upon corresponding estimates of inmate transfers between each affected correctional facility; provided further that such transfers of positions and funds may also be made to enhance the equity of resources due to population changes within the facilities; and provided further that in order to ensure the proper expenditure of funds in the future, an action plan shall be developed by the department of corrections prior to any transfers or requests for transfers to ensure the systematic and appropriate

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deployment of inmates and staff for the purpose of ensuring the best and most efficient use of appropriated funds.

The action plan shall include, but not be limited to: the current and projected inmate population for each facility, the current and projected resource needs of each facility based upon any changes in population, the security requirements of each facility, and staffing and resource ratios for each facility based upon current and projected inmate population; provided further that in order to ensure the proper expenditure of appropriated funds and to assist in the future appropriation of funds in the most effective manner, the department of corrections shall submit the action plan and a report of all transfers of inmates, positions, position-related expenses, and other resources to the legislature twenty days prior to the convening of the 1990 regular session.

**SECTION 180.** Provided that of the general fund appropriation for general administration (DOC 903), the sum of \$1,148,003 in fiscal year 1989-90 and \$1,219,727 in fiscal year 1990-91 shall be used for services which the legislature finds to be a public purpose, to general administration, for purchase of service agreements under chapter 42, Hawaii Revised Statutes.

**SECTION 181.** Provided that of the general fund appropriation for Oahu community correctional center (DOC 407), the sum of \$40,600 in fiscal year 1989-90 and \$40,700 in fiscal year 1990-91 shall be used to provide services, which the legislature finds to be for a public purpose, to the Oahu community correctional center, through purchase of services agreements under chapter 42, Hawaii Revised Statutes.

**SECTION 182.** Provided that of the general fund appropriations for fiscal year 1989-90 and for fiscal year 1990-91, the following correctional facilities: juvenile correctional facility (DOC 401), Halawa correctional facility (DOC 402), Kulani correctional facility (DOC 403), Waiawa correctional facility (DOC 404), Hawaii community correctional center (DOC 405), Maui community correctional center (DOC 406), Oahu community correctional center (DOC 407), Kauai community correctional center (DOC 408), and women's community correctional center (DOC 409), the department of corrections shall utilize appropriate amounts to fill all vacancies, increase the basic compensation of correctional officers, including such measures as the declaration of a shortage category; provided further that the administration of the department of corrections and of each of the respective correctional facilities shall adopt and, or, continue measures to reduce overtime expenditures; provided further that, in order to determine if the department of corrections is properly reducing, or restraining increases in budgeted costs, the department shall submit a report to the legislature twenty days prior to the convening of the regular sessions of 1990 and 1991 on the measures taken to reduce overtime expenditures including such measures as (1) a policy which requires a single correctional officer roster in each institution, (2) a fixed budget for overtime, (3) prioritization of officer posts so that the least critical can be deactivated to stay within the overtime allotment, (4) requiring employees who used more than the expected amount of sick leave to present evidence of illness or take unpaid leave, (5) requiring employees suspected of abusing sick leave to undergo a fitness for duty examination by physicians selected and paid by the department, and (6) including the management of overtime as a critical element in the annual performance rating for all supervisors, including branch administrators.

**SECTION 183.** Provided that of the general fund appropriation for juvenile correctional facilities (DOC 401), the sum of \$51,232 in fiscal year 1989-90 and

\$52,769 in fiscal year 1990-91 shall be used to provide services, which the legislature finds to be for a public purpose, to the juvenile correctional facility, through purchase of services agreements under chapter 42, Hawaii Revised Statutes.

SECTION 184. Provided that of the general fund appropriation for Kulani correctional facility (DOC 403), the sum of \$45,000 in fiscal year 1989-90 shall be used for services, which the legislature finds to be for a public purpose, to the Kulani correctional facility, through purchase of services agreements under chapter 42, Hawaii Revised Statutes.

SECTION 185. Provided that of the general fund appropriation for intake service centers (DOC 410), the sum of \$323,772 in fiscal year 1989-90 and \$323,772 in fiscal year 1990-91 shall be expended for the youth development project; provided further that the additional sum of \$50,700 in fiscal year 1989-90 and \$50,700 in fiscal year 1990-91 shall be expended for the expansion of the youth development project to include the district of Puna, Hawaii.

SECTION 186. Provided that of the general fund appropriation for general administration (DOC 903), in order to more efficiently utilize funds appropriated for this program, the sum of \$50,631 in fiscal year 1989-90 shall be used to (1) revise the classification system for adult correctional officers and youth correctional officers; (2) develop a new compensation schedule for these officers; (3) initiate the development of a meaningful worker incentive program for these officers to increase worker satisfaction by conducting a study with the assistance and input of other related agencies and appropriate labor unions; and (4) study the feasibility of establishing an adult correctional officer and youth correctional officer reserve force.

SECTION 187. Provided that of the general fund appropriation for general administration (DOC 903), the sum of \$35,000 in fiscal year 1989-90 and \$35,000 in fiscal year 1990-91 shall be expended to establish a temporary religious program manager position to ensure that the religious needs of all inmates are met; provided further that the department, with assistance and input from various religions, shall prepare a policy statement to ensure all religions equal status and opportunity to minister to inmates.

SECTION 188. Provided that of the general fund appropriation for general administration (DOC 903), for fiscal year 1989-90 and fiscal year 1990-91 appropriate resources shall be expended to review the status of the prison industries program and to develop an action plan to expand present and potential activities including but not limited to manufacturing uniforms, printing, farming, and refurbishing of various state inventory and property.

SECTION 189. Provided that of the general fund appropriation for the Hawaii youth correctional facility (DOC 401), the sum of \$890,000 in fiscal year 1989-90 and \$260,000 in fiscal year 1990-91 shall be expended for various youth offender programs which the legislature finds to be for a public purpose, under chapter 42, Hawaii Revised Statutes; provided further that the preceding funds shall be allocated as follows: \$90,000 in fiscal year 1989-90 and \$94,500 in fiscal year 1990-91 for a substance abuse treatment program; \$200,000 in fiscal year 1989-90 and \$100,000 in fiscal year 1990-91 for a wilderness-ocean challenge program; \$200,000 in fiscal year 1989-90 for a youth forestry work program with an educational component including, if possible, combatting the faya tree where it threatens native habitats; \$150,000 in fiscal year 1989-90 and \$65,500 in fiscal year 1990-91 for a group transition program; \$150,000 for a staff development and training

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program; and \$100,000 for a feasibility study on developing a new Hawaii youth correctional facility complex.

**SECTION 190.** Provided that of the general fund appropriation for general administration (DOC 903), for the fiscal year 1989-90 and fiscal year 1990-91, in order to more efficiently utilize funds appropriated for this program, appropriate resources shall be used to design and implement a plan of action to identify special needs offenders and provide appropriate rehabilitative programs as part of the department of corrections inmate classification system development.

**SECTION 191.** Provided that of the general fund appropriation for general administration (DOC 903), for the fiscal year 1989-90 and fiscal year 1990-91, in order to more efficiently utilize funds appropriated for this program, the sum of \$150,000 in fiscal year 1989-90 and \$100,000 in fiscal year 1990-91 shall be expended to conduct a pilot project at the Maui community corrections center (MCCC) and a feasibility study for statewide implementation of a department of corrections funded inmate community service program; provided further that the department shall incur the cost of transportation, food, inmate compensation, correctional staff, and other related expenses for the MCCC pilot project, and shall submit a report to the legislature not less than twenty days prior to the convening of the 1990 and 1991 regular sessions to include, but not be limited to, data on actual expenditures and projected statewide costs, and an action plan for implementing a statewide comprehensive inmate community service program by providing necessary resources to the department.

**SECTION 192.** Provided that of the general fund appropriation for general administration (DOC 903), the sum of \$25,000 in fiscal year 1989-90 and \$25,000 in fiscal year 1990-91 shall be expended for a communication and information network to disseminate information through a comprehensive, statewide publication to be distributed on a monthly basis to all departmental personnel and other interested parties.

### **GOVERNMENT-WIDE SUPPORT**

**SECTION 193.** Provided that of the general fund appropriation for office of the governor (GOV 100), the sum of \$300,000 in fiscal year 1989-90 and \$300,000 in fiscal year 1990-91 shall be used for the governor's contingency fund, which may be transferred to other programs and agencies and allotted, with the approval of the governor, for unexpected or unforeseen needs.

**SECTION 194.** Except as otherwise provided, the appropriation for office of the governor (GOV 100), shall be expended at the discretion of the governor.

**SECTION 195.** Provided that of the general fund appropriation for office of the governor (GOV 100), the sum of \$10,000 in fiscal year 1989-90 and \$10,000 in fiscal year 1990-91 may be used by the administrative director for protocol purposes.

**SECTION 196.** Provided that of the general fund appropriation for office of the governor (GOV 100), the sum of \$100,000 in fiscal year 1989-1990 and \$100,000 in fiscal year 1990-1991 shall be expended for the expenses relating to the appointment by the governor of a special master to oversee and expedite improvements to the state correctional system; provided further that the special master shall give priority to such matters as the establishment of clear goals and objectives,

reorganization as appropriate, improving communication, a computerized information system, improved inmate classification system and work programs, personnel administration, a comprehensive training program, establishment of standards of conduct and accountability requirements, and such other priorities as the special master may deem necessary and urgent to improve the state correctional system; provided further that a progress report shall be prepared by the special master and shall be submitted by the governor to the legislature no later than twenty days prior to the convening of the regular session of 1990.

**SECTION 197.** Provided that of the general fund appropriation for office of the lieutenant governor (LTG 100), the sum of \$275,000 in fiscal year 1989-90 and \$275,000 in fiscal year 1990-91 may be used to conduct any special election which may be required by law; provided further that if no special election is required, such sums shall not be expended and shall lapse into the general fund at the end of the respective fiscal year.

**SECTION 198.** Provided that any reimbursement of the sums expended from the general fund appropriation to the office of the lieutenant governor (LTG 100) for the purpose of conducting any county-associated elections in fiscal biennium 1989-91 shall be deposited into the general fund.

**SECTION 199.** Provided that of the general fund appropriation for office of the lieutenant governor (LTG 100), the sum of \$842,983 in fiscal year 1989-90 and \$885,820 in fiscal year 1990-91 shall be expended at the discretion of the lieutenant governor, except as otherwise provided in this Act.

**SECTION 200.** Provided that of the general fund appropriation for the office of the lieutenant governor (LTG 100), the sum of \$35,000 in fiscal year 1989-1990 shall be expended for a trip for a temporary advisory committee on electronic voting to visit locales which already have such technology in place.

**SECTION 201.** Provided that of the general fund appropriation for the office of the lieutenant governor (LTG 100), the sum of \$32,000 in fiscal year 1989-1990 shall be expended for a voter pamphlet pilot project.

**SECTION 202.** Provided that of the general fund appropriation for other policy development and coordination (GOV 102), the sum of \$150,500 in fiscal year 1989-1990 and \$139,000 in fiscal year 1990-1991 shall be expended to support the macadamia industry as follows: (1) \$7,000 in fiscal year 1989-1990 shall be expended for a complete assessment of crop loss and to develop a wall chart with common macadamia problems; (2) \$50,000 in fiscal year 1989-1990 and \$50,000 in fiscal year 1990-1991 shall be expended for an entomological study of major identified macadamia pests focussing on life cycle and biological control (including parasites); (3) \$11,500 in fiscal year 1989-1990 and \$7,000 in fiscal year 1990-1991 shall be expended for a parasite breeding program for stink bug control; (4) \$27,000 in fiscal year 1989-1990 and \$27,000 in fiscal year 1990-1991 shall be expended to determine the biology of kretzschmaria and develop control strategies; (5) \$45,000 in fiscal year 1989-1990 and \$45,000 in fiscal year 1990-1991 shall be expended to identify the fungus symbiont of ambrosia beetle and determine pathogenicity - develop control strategy; (6) \$10,000 in fiscal year 1989-1990 and \$10,000 in fiscal year 1990-1991 shall be expended to identify and register new materials to replace difolatan and atrazine; provided further that these funds shall be expended by the governor's agriculture coordinating committee.

**SECTION 203.** Provided that of the general fund appropriation for other policy development and coordination (GOV 102), the sum of \$87,000 in fiscal year

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1989-1990 and \$42,000 in fiscal year 1990-1991 shall be expended to conduct tissue culture research for anthurium blight; provided further that \$70,000 in fiscal year 1989-1990 and \$60,000 in fiscal year 1990-1991 shall be expended for two temporary technicians to carry out the tests for anthurium blight organism and to certify disease-free plants; provided further that \$30,000 in fiscal year 1989-1990 and \$30,000 in fiscal year 1990-1991 shall be expended to control leaf miner on celery; provided further that \$100,000 in fiscal year 1989-1990 and \$100,000 in fiscal year 1990-1991 shall be expended for a joint research project by the college of tropical agriculture and human resources, department of agriculture, and MacFarms of Hawaii concerning low input agriculture; provided further that \$90,000 in fiscal year 1989-1990 and \$90,000 in fiscal year 1990-1991 shall be expended for a spotted wilt research project; provided further that \$60,000 in fiscal year 1989-1990 and \$60,000 in fiscal year 1990-1991 shall be expended for the continuation of the pesticide information program; provided further that \$35,000 in fiscal year 1989-1990 and \$35,000 in fiscal year 1990-1991 shall be expended for alternative crop research with emphasis on saline water irrigation and the economic feasibility of subtropical crops at various elevations; provided further that \$30,000 in fiscal year 1989-1990 and \$30,000 in fiscal year 1990-1991 shall be expended to support the state farm fairs, which are deemed to serve a public purpose, to be conducted by the Hawaii Farm Bureau; provided further that \$20,000 in fiscal year 1989-1990 and \$20,000 in fiscal year 1990-1991 shall be expended to provide statewide marketing training to farmers; provided further that these funds shall be expended by the governor's agriculture coordinating committee.

**SECTION 204.** Provided that of the general fund appropriation for other policy development and coordination (GOV 102), the sum of \$100,000 in fiscal year 1989-1990 shall be used for a study on the formulation and implementation of an agricultural-economic diversification plan for the Hamakua Coast in order to determine future appropriations and budgetary priorities for that area; provided further that the sum of \$332,463 in fiscal year 1989-1990 and \$434,366 in fiscal year 1990-1991 shall be used as a contingency fund to be expended only to address emergency situations as deemed necessary by the department of agriculture, with the approval of the director of finance; provided further that the expenditure of these funds shall be itemized and reported to the legislature no later than twenty days prior to the convening of the 1990 regular session.

**SECTION 205.** Provided that of the general fund appropriation for fiscal years 1989-1990 and 1990-1991 for other policy development and coordination (GOV 102), the funds appropriated for any research project, testing, laboratory work, or any other program which can be handled by the private or public sector rather than the University of Hawaii, shall be contracted out to the appropriate body; provided further that the awarding of such contracts shall be based upon proposals or bids submitted to the governor's agriculture coordinating committee.

**SECTION 206.** Provided further that of the general fund appropriation for statewide plan and coordination (GOV 103), the sum of \$10,000 in fiscal year 1989-90 and \$10,000 in fiscal year 1990-91 may be used by the director of the office of state planning for protocol purposes.

**SECTION 207.** Provided that of the general fund appropriation for statewide plan and coordination (GOV 103), the sum of \$75,000 in fiscal year 1989-1990 shall be expended for a Waikiki general planning conference which is deemed to be a public purpose; provided further that these funds shall be expended by the office of state planning; provided further that, in order to properly appropriate funds

for planning, the findings and recommendations of this conference shall be submitted in a report to the legislature no later than twenty days prior to the convening of the 1990 regular session.

**SECTION 208.** Provided that of the general fund appropriation for statewide plan and coordination (GOV 103), the sum of \$100,000 in fiscal year 1989-1990 shall be used to study the creation of a center for non-violence to develop philosophical, scientific, organizational, and material resources and procedures in problem-solving and dispute resolution without resort to violence; provided further that this study shall also examine the application of traditional Hawaiian and Asian methodologies of problem-solving.

**SECTION 209.** Provided that if the expenses specified in section 621-9, Hawaii Revised Statutes (witness fees), and section 802-5, Hawaii Revised Statutes (court appointed private counsel for indigents), exceed the general fund appropriations made to the program planning, analysis and budgeting program (BUF 101), in each fiscal year of the fiscal biennium 1989-91 for the purpose stated therein, the director of finance with the approval of the governor is authorized to utilize savings as determined to be available from any other state program for the purpose of meeting deficits incurred by the department of budget and finance.

**SECTION 210.** Provided that of the general fund appropriation for program planning, analysis and budgeting (BUF 101), the sum of \$2,247,900 in fiscal year 1989-90 and \$1,996,800 in fiscal year 1990-91 shall be used for subsidy as provided in chapter 42, Hawaii Revised Statutes, and which is deemed to be for a public purpose.

**SECTION 211.** Provided that of the general fund appropriation for program planning, analysis and budgeting (BUF 101), the sum of \$150,000 in fiscal year 1989-90 shall be used for a review of section 89 of the tax reform act of 1986 for planning, testing, and analyzing the State's benefit plans; provided further that these funds shall be expended only if the attorney general rules that the state must comply with the provisions of section 89 of the tax reform act of 1986.

**SECTION 212.** Provided that in order to provide more productive state service and utilization of state resources and funds, the department of budget and finance shall conduct a review of temporary positions in the executive branch; provided further that such a review shall include but not be limited to: (1) a detailed listing of the temporary positions by temporary position number, position title, vacancy status, and the program I.D.; (2) the act which authorized these positions, or a determination as to whether the positions were established by the department and not authorized by the legislature; (3) the fiscal year in which these temporary positions were established and (4) the programs for which these positions were originally established, the current status of these programs, the current program to which these positions are assigned; provided further that; the department of budget and finance shall propose a process and criteria for determining and prioritizing the conversion of additional temporary positions to permanent status; provided further that the department of budget and finance shall propose a process and criteria for determining and prioritizing the conversion of temporary positions to permanent status; provided further that the department of budget and finance shall submit this review and position conversion proposal to the legislature at least twenty days before the convening of the 1990 regular session.

**SECTION 213.** Provided that of the general fund appropriation for supporting services - revenue collection (TAX 107), the sum of \$5,000 in fiscal year

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1989-1990 and \$5,000 in fiscal year 1990-1991 shall be expended for a member of the council on revenues and the departmental staff person assigned to assist the council as stated in section 37-111, Hawaii Revised Statutes, to attend the National Association of Tax Administrators workshop on revenue estimating.

**SECTION 214.** Provided that of the general fund appropriation for supporting services, revenue collection (TAX 107), the sum of \$35,000 in fiscal year 1989-90 and \$35,000 in fiscal year 1990-91 shall be used for the requirements of litigated tax claims pursuant to section 40-35, Hawaii Revised Statutes.

**SECTION 215.** Provided that in order to determine if the department of accounting and general services is appropriately and efficiently expending funds appropriated under this Act to accounting system development and maintenance (AGS 101), the legislative auditor is requested to conduct a study of the state payroll system; provided further that this study shall include but not be limited to: (1) a survey of existing payroll software packages currently available; (2) a review of the current payroll system to include an assessment of system performance and efficiency; and (3) a review of selected other state payroll systems; provided further that this study with recommendations shall be presented to the legislature at least twenty days prior to the start of the 1990 regular session.

**SECTION 216.** Provided that of the general fund appropriation for cash and debt management (BUF 110), the sum of \$165,000 in fiscal year 1989-90 and \$173,000 in fiscal year 1990-91 shall be used to meet the requirements of the uniform disposition of unclaimed property program pursuant to chapter 523A, Hawaii Revised Statutes; provided further that in the event that such claims exceed the general fund appropriation for the respective fiscal year, the director of finance with the approval of the governor is authorized to utilize savings as determined to be available from any other state program for the purpose of meeting deficits incurred by the department of budget and finance.

**SECTION 217.** Provided that, in order to determine if appropriated funds are appropriately being expended, the narcotics enforcement division and the investigation division (ATG 100) shall both be subject to a report and analysis by the legislative auditor, who shall submit findings and recommendations to the legislature twenty days prior to the convening of the 1990 regular session on the appropriateness of each division's duties; provided further that the legislative auditor shall also conduct a financial audit on the moneys forfeited to the department of the attorney general through the narcotics enforcement division.

**SECTION 218.** Provided that of the general fund appropriation for legal services (ATG 100), the sum of \$1,700,000 in fiscal year 1989-90 and \$1,700,000 in fiscal year 1990-91 shall be used to pay for litigation expenses; provided further that in order to ensure oversight on the expenditure of these funds the attorney general shall submit a quarterly accountability report to the legislature on all expenses incurred for litigation expenses and the hire of special deputies to the governor not less than twenty days prior to the convening of the 1990 regular session; provided further that the report shall identify such litigation expenses and costs of special deputies incurred by any general funded and any non-general funded state department, agency, or program by the program ID and organization code.

**SECTION 219.** Provided that, notwithstanding any appropriation or position ceiling, the governor may transfer positions and funds between existing programs of the state government to work force attraction, selection, classification, and

effectiveness (PER 102) for the purpose of implementing a centralized workers' compensation program.

**SECTION 220.** Provided that of the general fund appropriation for general administrative services, accounting and general services (AGS 901), the sum of \$73,000 in fiscal year 1989-90 and \$110,000 in fiscal year 1990-91 shall be used for a study to review the feasibility of establishing a state historical museum that addresses the significant and invaluable contributions made by the working people of Hawaii's diverse ethnic groups in the arts, sciences, religion, education, literature, entertainment, politics, sports, and history of the State of Hawaii; provided further that the study shall offer recommendations for the museum's organization, facilities, budget, funding methods and other issues relevant to the establishment of a state historical museum; provided further that the study shall be prepared by independent consultant(s) with the assistance of an advisory committee, including representatives of government, business, labor, museums, historic institutions, ethnic organizations, and the general public; provided further that the department of accounting and general services shall submit an interim report to the legislature on or before December 31, 1990; provided further that the department shall submit a final report, including an accounting of all funds received and disbursed, to the legislature on or before December 31, 1991.

**SECTION 221.** Provided that of the general fund appropriation for grants-in-aid to counties (SUB 101), the sum of \$71,968,254 in fiscal year 1989-1990 shall be apportioned as follows:

city and county of Honolulu	\$31,747,637
county of Hawaii	13,415,364
county of Maui	16,385,685
county of Kauai	10,419,568

Provided further that these apportionments shall be allotted on a quarterly basis beginning July 1, 1989.

#### **PART IV. CAPITAL IMPROVEMENT PROJECTS**

**SECTION 222. CAPITAL IMPROVEMENT PROJECTS AUTHORIZED.** The sums of money appropriated or authorized in Part II of this Act for capital investment shall be expended for the projects listed below. Accounting of the appropriations by the department of accounting and general services shall be based on the projects listed in this section. Several related or similar projects may be combined into a single project, if such combination is advantageous or convenient for implementation; provided that the total cost of the project thus combined shall not exceed the total of the sum specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

**ACT 316****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)				
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F			
<b>A. ECONOMIC DEVELOPMENT</b>								
<b>BED102 - COMMERCE AND INDUSTRY</b>								
1. HTDC-2 MANOA INNOVATION CENTER, OAHU								
PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ADJOINING TWO-STORY CONCRETE FRAME AND BLOCK STRUCTURES. FACILITIES TO OFFER ADMINISTRATIVE AND LAB SPACE AND SERVE AS FUTURE HOME OF PICHTR AND HTDC'S INCUBATOR FACILITY. THE LOCATION OF THE RCUH AT THE SITE IS BEING CONSIDERED.								
PLANS 5 DESIGN 1 CONSTRUCTION 1,711 EQUIPMENT 1 TOTAL FUNDING BED 1,718 A								
2. HTDC-5 OCEAN OUTFALL AT KEAHOLE POINT, HAWAII								
PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A 48" DIAMETER, 400' LONG, 15,000-20,000 GALLONS PER MINUTE OUTFALL PIPE TO RETURN OCEAN WATER.								
DESIGN 150 TOTAL FUNDING BED 150 A								
3. HTDC-6 HAWAII OCEAN SCIENCE AND TECHNOLOGY (HOST) PARK WARM WATER PIPE, HAWAII								
PLANS AND DESIGN FOR A WARM WATER OR SURFACE SEAWATER PIPE TO SERVICE THE HAWAII OCEAN SCIENCE AND TECHNOLOGY PARK, KEAHOLE, KONA, HAWAII.								
PLANS 66 DESIGN 764 TOTAL FUNDING BED 830 A								
4. HTDC-7 HAWAII OCEAN SCIENCE AND TECHNOLOGY (HOST) PARK ON-SITE BUILDING, HAWAII								
DESIGN FOR AN ON-SITE BUILDING TO PROVIDE MANAGEMENT, MARKETING AND TENANT OFFICE SPACE AT THE HAWAII OCEAN SCIENCE AND TECHNOLOGY PARK, KEAHOLE, KONA, HAWAII.								
DESIGN 383 TOTAL FUNDING BED 383 A								

**AGR121 - PLANT QUARANTINE**

5. A-043 RENOVATION OF PLANT QUARANTINE FACILITY,  
OAHU

DESIGN AND CONSTRUCTION FOR FACILITY  
RENOVATIONS TO PROVIDE OFFICE SPACE,

**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90	FISCAL M YEAR O 1990-91
		A GREENHOUSE, CONFERENCE ROOM, RESTROOM, AND OTHER IMPROVEMENTS.			
		DESIGN		50	
		CONSTRUCTION		442	
		TOTAL FUNDING	AGS	492	A

**LNR172 - FORESTRY - PRODUCTS DEVELOPMENT****6. D53 KAPAPALA KOA MANAGEMENT AREA, HAWAII**

PLANS, DESIGN AND CONSTRUCTION OF APPROXIMATELY THREE MILES OF STOCK PROOF FENCE ALONG THE NORTHEAST AND SOUTHEAST BOUNDARIES OF THE KOA MANAGEMENT AREA. PROJECT WILL REQUIRE CLEARING OF ALIGNMENT, GRADING OF A FOUR-WHEEL DRIVE ACCESS ROAD, AND CONSTRUCTION OF A WOVEN WIRE FENCE.

PLANS		2	
DESIGN		3	
CONSTRUCTION		90	
TOTAL FUNDING	AGR	95	C

**AGR151 - DISTRIBUTION SYSTEMS IMPROVEMENT FOR AGR****7. KULA VACUUM COOLING PLANT, MAUI**

CONSTRUCTION TO COMPLETE BUILDING TO HOUSE FORCED AIR COOLER AND ICE MACHINE.

CONSTRUCTION		435	
TOTAL FUNDING	AGR	435	A

**8. MOLOKAI COOLING FACILITY, MOLOKAI**

CONSTRUCTION TO COMPLETE BUILDING TO HOUSE FORCED AIR COOLING FACILITY ON MOLOKAI.

CONSTRUCTION		573	
TOTAL FUNDING	AGR	573	A

**AGR192 - GENERAL ADMINISTRATION FOR AGR****9. A01 AGRICULTURAL PARK SUBDIVISION,  
STATEWIDE**

PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION OF ON AND OFF SITE IMPROVEMENTS FOR DEVELOPMENT OF AGRICULTURAL PARK, SUBDIVISIONS, STATEWIDE, INCLUDING ACQUISITION OF LAND BY FEE SIMPLE PURCHASE OR LEASE.

PLANS		300	
LAND		1,000	
DESIGN		700	
CONSTRUCTION		5,000	
TOTAL FUNDING	AGR	7,000	A

**10. A-050 POAMOHO EXPERIMENT STATION, OAHU**

**ACT 316****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLAN, DESIGN AND CONSTRUCTION FOR RENOVATION AND REROUTING OF DOMESTIC WATER LINE AND OTHER IMPROVEMENTS.			
		DESIGN		20	
		CONSTRUCTION		230	
		TOTAL FUNDING	AGR	250	C
LNR153 - COMMERCIAL FISHERY AND AQUACULTURE					
11.	C36	LARGE-SCALE POND RESEARCH, TRAINING AND DEMONSTRATION FACILITY			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A POND RESEARCH FACILITY TO PROVIDE BETWEEN 15-50 ACRES OF VARIOUS SIZED PONDS OF UP TO 1 ACRE IN SIZE WITH REQUIRED EQUIPMENT AND PLUMBING. FACILITY TO CONSIST OF CLASS- ROOMS, LABS, AND DORMS. FACILITY TO REQUIRE FRESH, BRACKISH OR SALTWATER.			
		PLANS		200	
		DESIGN		300	
		TOTAL FUNDING	LNR	500	A
BED120 - ENERGY DEVELOPMENT AND MANAGEMENT					
12.	AEBOO1	INTERISLAND CABLE SYSTEM GEOTHERMAL MASTER PLAN			
		COMPLETE MASTER PLAN FOR 500 MEGAWATT (NET) OF GEOTHERMAL DEVELOPMENT IN PUNA DISTRICT AND ITS TRANSMISSION TO MAUI AND OAHU VIA INTERISLAND CABLE SYSTEM; PERFORM ROUTING STUDIES FOR OVERLAND PORTION OF CABLE SYSTEM; OBTAIN PUBLIC INPUT; CONDUCT ENVIRONMENTAL IMPACT STATEMENT; CONDUCT LEGAL AND FINANCIAL STUDIES LEADING TO A REQUEST FOR PROPOSALS FOR A PRIVATE SECTOR CONSORTIUM TO UNDERTAKE THE PROJECT.			
		PLANS		850	
		TOTAL FUNDING	BED	850	C
13.	P00045	PUNA GEOTHERMAL FACILITY, HGP-A POWER PLANT OVERHAULS, HAWAII			
		CONSTRUCTION FOR REPLACEMENT, REFURBISHING, AND UPGRADING OF ROCK MUFFLER AND H2S ABATEMENT SYSTEM; OVERHAUL STEAM TURBINE AND COOLING TOWER; FENCE PERCOLATION PONDS; FACILITY UPGRADES AND SITE IMPROVEMENTS.			
		CONSTRUCTION		350	
		TOTAL FUNDING	BED	350	A
14.	P00113	GEOTHERMAL RESOURCE DEVELOPMENT, HAWAII			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT TO CONTINUE TO PERFORM			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		EXPLORATORY GEOTHERMAL DRILLING AND RESERVOIR ASSESSMENT TO DETERMINE IF AND WHERE SUFFICIENT RETRIEvable RESOURCES ARE AVAILABLE TO GENERATE 500 MEGAWATT (NET) OF ELECTRICITY FOR TRANSMISSION TO OAHU AND MAUI.			
		PLANS		400	
		DESIGN		800	
		CONSTRUCTION		1,400	
		EQUIPMENT		1	
		TOTAL FUNDING	AGS	2,601 A	A
15.		15. THERMAL ENERGY CONVERSION PROJECTS, HAWAII			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A WARM AND COLD WATER PIPELINE OF APPROXIMATELY FORTY INCHES IN DIAMETER FOR THE CLOSED CYCLE OCEAN THERMAL ENERGY CONVERSION.			
		PLANS		200	
		DESIGN		300	
		CONSTRUCTION		4,000	
		EQUIPMENT		500	
		TOTAL FUNDING	BED	5,000 A	A
16.		16. DIRECTIONAL DRILLING AND DEMONSTRATION PROJECT, HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION FOR A DIRECTIONAL DRILLING RESEARCH AND DEMONSTRATION PROJECT AT THE NATURAL ENERGY LABORATORY OF HAWAII AT KEAHOLE POINT.			
		PLANS		100	
		DESIGN		200	
		CONSTRUCTION		2,200	
		TOTAL FUNDING	BED	2,500 A	A

## AGR141 - AGRICULTURAL WATER DEV &amp; IRRIG SERVICES

17. G86 WAIMEA IRRIGATION SYSTEM IMPROVEMENTS, UPPER HAMAKUA DITCH, HAWAII

PLANS, DESIGN AND CONSTRUCTION FOR INCREMENTAL DEVELOPMENT, RENOVATION, AND REHABILITATION OF UPPER HAMAKUA DITCH FOR THE WAIMEA IRRIGATION SYSTEM. THIS PROJECT IS NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS	50	100
DESIGN	60	120
CONSTRUCTION	765	
TOTAL FUNDING	875 A	220 A

18. G96 KUALAPUU RESERVOIR IMPROVEMENTS, MOLOKAI IRRIGATION SYSTEM, MOLOKAI

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANS, DESIGN, AND CONSTRUCTION OF INCREMENTAL IMPROVEMENTS CONSISTING OF REHABILITATING RESERVOIR BANKS AND INSTALLING LINING AND WAVE DISSIPATORS.			
		PLANS		10	
		DESIGN		30	
		CONSTRUCTION		360	
		TOTAL FUNDING	LNR	400 A	A
19.	J07	DEVELOPMENT OF WAIKOLU VALLEY WELLS, MOLOKAI IRRIGATION SYSTEM, MOLOKAI			
		PLANS, DESIGN AND CONSTRUCTION FOR INCREMENTAL INSTALLATION OF PUMPS, CONTROLS, AND CONNECTING PIPELINES FOR WAIKOLU WELLS FOR MOLOKAI IRRIGATION SYSTEM.			
		PLANS		25	
		DESIGN		55	
		CONSTRUCTION		500	
		TOTAL FUNDING	LNR	580 A	A
20.	J08	TELEMETRY & SUPERVISORY CONTROL SYSTEM, MOLOKAI IRRIGATION SYSTEM, MOLOKAI			
		PLANS, DESIGN AND CONSTRUCTION OF IMPROVEMENTS TO EXISTING TELEMEETING SYSTEM AND TO CONSTRUCT A SUPERVISORY CONTROL SYSTEM FOR THE MOLOKAI IRRIGATION SYSTEM.			
		CONSTRUCTION		390	
		TOTAL FUNDING	LNR	390 A	A
21.	J11	PUU PULEHU RESERVOIR, KAMUELA, HAWAII			
		DESIGN & CONSTRUCTION OF IMPROVEMENTS TO THE PUU PULEHU RESERVOIR, WAIMEA IRRIGATION SYSTEM, HAWAII. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		400	
		CONSTRUCTION			4,200
		TOTAL FUNDING	LNR	400 A C	200 A C 4,000 C
22.	J13	WAIMANALO IRRIGATION SYSTEM IMPROVEMENTS KOOLAUPOKO, OAHU			
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION OF INCREMENTAL IMPROVEMENTS TO THE WAIMANALO IRRIGATION SYSTEM; TO CONSIST OF A 60MG RESERVOIR AND A CLOSED PRESSURIZED DISTRIBUTION PIPELINE AS OUTLINED IN THE WAIMANALO WATERSHED PLAN AND AS AUTHORIZED UNDER PL-566 FOR			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		MATCHING FEDERAL FUNDS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		750	
		TOTAL FUNDING	LNR	750 A	A
23.	L00003	TELEMETRY & SUPERVISORY CONTROLS, WAIMEA IRRIGATION SYSTEM, HAWAII			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A TELEMETRERING AND SUPERVISORY CONTROL SYSTEM TOGETHER WITH APPURtenant FACILITIES.			
		PLANS		35	
		DESIGN		50	
		CONSTRUCTION		1,090	
		EQUIPMENT		30	
		TOTAL FUNDING	LNR	1,205 A	A
24.	W00001	BASEYARD BUILDING RENOVATION, WAIMANALO IRRIGATION SYSTEM, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A WORKSHOP AND MATERIALS AND SUPPLY STORAGE BUILDINGS.			
		PLANS		5	
		DESIGN		10	
		CONSTRUCTION		28	
		EQUIPMENT		5	
		TOTAL FUNDING	LNR	48 A	A
25.	W00002	ACCESS ROAD IMPROVEMENTS, WAIMANALO IRRIGATION SYSTEM, OAHU			
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION OF IMPROVEMENTS TO ACCESS ROADS TO VARIOUS IRRIGATION SYSTEM FACILITIES.			
		PLANS		5	
		LAND		5	
		DESIGN		10	
		CONSTRUCTION		60	
		TOTAL FUNDING	LNR	20 A	A
26.	W00003	IMPROVEMENTS TO MAUNAWILI DITCH INTAKE STRUCTURES, WAIMANALO IRRIGATION SYSTEM			
		PLANS, DESIGN, AND CONSTRUCTION OF IMPROVEMENTS TO INTAKE STRUCTURES TOGETHER WITH APPURtenant FACILITIES.			
		PLANS		5	
		DESIGN		10	
		CONSTRUCTION		120	
		TOTAL FUNDING	LNR	135 A	A

## C. TRANSPORTATION FACILITIES

TRN102 - HIA FACILITIES &amp; SVCS

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
1. A10 HIA ROADWAYS AND PARKING, OAHU					
		DESIGN & CONSTRUCT ROADS & PARKING AREAS INCLUDING GROUND AND ELEVATED STRUCTURES AND EXIT PLAZA FOR OVERSEAS AND INTERISLAND TERMINALS AND SUPPORT AREAS. ALTERATIONS TO EXISTING ROADS AND PARKING FACILITIES AND OTHER MISC. IMPROVEMENTS. NEW PARKING STRUCTURE. RELOCATE EXISTING TENANTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		4,980	
		CONSTRUCTION			43,000
		TOTAL FUNDING	TRN	4,980 E	43,000 E
2. A11 HIA INTERISLAND COMPLEX, OAHU					
		DESIGN & CONSTRUCT INTERISLAND COMPLEX INCLUDING BUILDINGS, APRONS & TAXIWAYS, ROADWAYS, PARKING & OTHER MISC IMPROVEMENTS. LAND ACQUISITION. RELOCATE EXISTING INTERISLAND MAINTENANCE, CARGO & ADMIN OFFICES. ALTERATIONS TO EXISTING BLDGS, APRONS, ROADWAYS & PARKING. INSTALL FURNITURE, LANDSCAPING & MISC EQUIPMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		1,000	2,500
		CONSTRUCTION		62,050	14,500
		TOTAL FUNDING	TRN	62,800 E	16,500 E
				250 N	500 N
3. A20 INTRA-TERMINAL TRANSPORTATION SYSTEM AT HIA, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A PEOPLE MOVER SYSTEM FOR INTRA-TERMINAL TRANSPORTATION.			
		DESIGN		3,000	
		CONSTRUCTION			10,000
		TOTAL FUNDING	TRN	3,000 E	10,000 E
4. A23 HIA AIRFIELD IMPROVEMENTS, OAHU					
		DESIGN & CONSTRUCT IMPROVEMENTS TO AIRFIELD FACILITIES INCLUDING TAXIWAYS, RUNWAYS, SIGNS, ENGINE RUN UP PAD, SERVICE ROADS, SAFETY AREAS, LIGHTING SYSTEMS, EMERGENCY GENERATOR AND OTHER MISC. IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		100	250
		CONSTRUCTION			1,500

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	TRN TRN	100 E N	1,250 E 500 N

## 5. A37 AIRPORT SYSTEMS IMPROVEMENTS, OAHU

DESIGN & CONSTRUCT SYSTEM IMPROVEMENTS INCLUDING ENERGY MANAGEMENT, SIGNS, FLIGHT INFORMATION, FIRE ALARM, SECURITY, OPERATIONAL CONTROLS, LOADING BRIDGES, UTILITIES, RAMP AIR, AND FUELING. IMPROVE ENERGY EFFICIENCY AND OPERATIONAL EFFICIENCY AND OTHER MISC. IMPROVEMENTS.

DESIGN	2,600		
CONSTRUCTION	3,000		
TOTAL FUNDING	TRN	5,600 E	E

## 6. A41 HIA TERMINAL MODIFICATIONS, OAHU

DESIGN AND CONSTRUCT IMPROVEMENTS TO FACILITIES INCLUDING EXPANSIONS OF INTERNATIONAL ARRIVALS FACILITIES, GATES, ROADS, BUILDINGS, PARKING, UTILITIES, AIRCRAFT PARKING APRONS, SIGNS, FURNITURE AND LANDSCAPING. RELOCATE EXISTING TENANTS. PROJECTS FOR OPERATIONAL AND ENERGY EFFICIENCY, PASSENGER CONVENIENCE AND OTHER MISCELLANEOUS IMPROVEMENTS.

DESIGN	14,700	8,000	
CONSTRUCTION	130,500	72,500	
TOTAL FUNDING	TRN	145,200 E	E

## 7. A43 SERVICE SUPPORT FACILITIES AT HIA, OAHU

DESIGN & CONSTRUCT BLDGS, ROADS, PARKING, UTIL, APRONS, LDNSCPG, TELEPHONE, NON-POTABLE WATER, LEASE LOTS, SERVICE CT DEVELOPMENT, TAXIWAY, CARGO FACIL, AIRCRAFT MAINT FACIL, GEN AVIATION FACIL, HELICOPTER FACIL, AIR TAXI FACIL, AIRCRAFT FUEL FACIL, AIR MUSEUM, AVIONICS SCH, FAA FLT SERV STA AND OTHER MISC. IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION	22,300		
TOTAL FUNDING	TRN	21,700 E	E
	TRN	600 N	N

## 8. A81 HICKAM AIRFIELD IMPROVEMENTS AT HIA, OAHU

DESIGN & CONSTRUCT HICKAM AIRFIELD FACILITIES INCLUDING BUILDINGS, RUNWAYS, TAXIWAYS, APRONS, ROADS, UTILITIES, LANDSCAPING, HANGERS AND OTHER MISC.

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## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		IMPROVEMENTS FOR HICKAM AIR FORCE BASE IN EXCHANGE FOR TRANSFER OF HICKAM AIR FORCE BASE PROPERTY TO THE STATE AIRPORTS DIVISION.			
		DESIGN		5,000	
		CONSTRUCTION			25,000
		TOTAL FUNDING	TRN	5,000 E	25,000 E

### TRN111 - GENERAL LYMAN FIELD FACILITIES & SERVICES

#### 9. B10 GENERAL LYMAN IMPROVEMENTS, HAWAII

DESIGN & CONSTRUCT IMPROVEMENTS TO  
FACILITIES INCLUDING BLDGS, ROADS, PARK-  
ING, UTILITIES, TAXIWAYS, APRONS, CARGO  
FACIL, GENERAL AVIATION FACIL, LEASE  
LOTS, HELICOPTER FACIL AND OTHER MISC.  
IMPROVEMENTS. MODIFICATIONS TO EXISTING  
FACILITIES & RELOCATION OF TENANTS. THIS  
PROJECT IS DEEMED NECESSARY TO QUALIFY  
FOR FEDERAL AID FINANCING AND/OR  
REIMBURSEMENT.

DESIGN	100	600
CONSTRUCTION	500	500
TOTAL FUNDING	600 E	1,100 E

### TRN114 - KE-AHOLE AIRPORT FACILITIES AND SERVICES

#### 10. CO3 KEAHOLE AIRPORT IMPROVEMENTS, HAWAII

DESIGN & CONSTRUCT IMPROVEMENTS TO  
FACILITIES INCLUDING TERMINAL EXPANSION,  
BLDGs, ROADS, PARKING, APRONS, RUNWAYS,  
TAXIWAYS, LEASE LOTS, GEN AVIATION  
FACIL, UTIL, LANDSCAPING, FURNITURE AND  
OTHER MISC IMPROVEMENTS. ALTERATION TO  
EXISTING FACILITIES & RELOCATION OF  
TENANTS. THIS PROJECT IS DEEMED  
NECESSARY TO QUALIFY FOR FEDERAL AID  
FINANCING AND/OR REIMBURSEMENT.

DESIGN	3,400	540
CONSTRUCTION	20,600	10,900
TOTAL FUNDING	23,000 E	11,440 E
TRN	1,000 N	N

#### 11. C10 KEAHOLE AIRFIELD IMPROVEMENTS, HAWAII

DESIGN AND CONSTRUCT IMPROVEMENTS TO  
AIRFIELD INCLUDING RUNWAY EXTENSION,  
TAXIWAYS, SERVICE ROADS, SITEWORK, PAV-  
ING, PAINTING, ELECTRICAL AND STRENGTHEN  
EXISTING PAVEMENT. ALTERATION OR RELO-  
CATION OF EXISTING FACILITIES AND OTHER  
MISC. IMPROVEMENTS.

DESIGN	2,400	300
CONSTRUCTION	35,000	46,000
TOTAL FUNDING	32,400 E	31,300 E

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
			TRN	5,000 N	15,000 N

## TRN131 - KAHULUI AIRPORT FACILITIES AND SERVICES

## 12. D04 KAHULUI AIRPORT EXPANSION, MAUI

DESIGN & CONSTRUCT ADDITIONS & ALTERATIONS TO BLDGS, ROADS & PARKING, APRONS, NEW TERMINAL, TAXIWAYS, RUNWAYS, LANDCPG, FURNITURE, SITEWORK, CARGO TERMINAL, OFFSITE DRAINAGE, UTIL, ACCESS ROAD, RELOCATE CONTROL TOWER AND OTHER MISC IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN	2,850	530
CONSTRUCTION	44,400	16,300
TOTAL FUNDING	47,250	16,680 E

TRN

E

150 N

## 13. D08 SERVICE SUPPORT FACILITIES AT KAHULUI AIRPORT, MAUI

DESIGN & CONSTRUCTION OF BUILDINGS, ROADS, APRONS, TAXIWAYS, LEASELOTS, CARGO TERMINALS, HELIPADS, AIRLINES, MAINTENANCE FACIL, FUEL STORAGE SITE, GENERAL AVIATION FACIL, UTILITIES, FLIGHT KITCHEN, ARFF FACIL, AIR TOUR FACIL, PARK, LANDSCAPING AND OTHER MISC. IMPROVEMENTS. RELOCATION OF EXISTING TENANTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN	310	
CONSTRUCTION	3,050	
TOTAL FUNDING	2,360	E

TRN

E

N

## 14. D10 KAHULUI AIRFIELD IMPROVEMENTS, MAUI

DESIGN AND CONSTRUCT EXTENSION TO RUNWAY & TAXIWAYS INCLUDING SITEWORK, PAVING, PAINTING, ELECTRICAL, STRENGTHEN EXISTING PAVEMENT, SERVICE ROADS, AIRCRAFT PARKING APRONS, ALTERATION OR RELOCATION OF EXISTING FACILITIES AND OTHER MISC. IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN	1,500	
CONSTRUCTION	16,500	15,000
TOTAL FUNDING	12,900	E

TRN

E

10,000 E

5,100 N

5,000 N

## TRN141 - MOLOKAI AIRPORT FACILITIES AND SERVICES

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)				
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F			
15. D55 MOLOKAI AIRPORT IMPROVEMENTS, MOLOKAI								
DESIGN & CONSTRUCT BUILDINGS, ROADS, PARKING, APRONS, UTILITIES LANDSCAPING, MODIFICATIONS TO EXISTING FACILITIES, RELOCATION OF EXISTING TENANTS AND OTHER MISC. IMPROVEMENTS.								
		DESIGN			100			
		CONSTRUCTION			700			
		TOTAL FUNDING	TRN	1,200 E	800 E			
TRN143 - KALAUPAPA AIRPORT FACILITIES AND SERVICES								
16. D60 KALAUPAPA AIRPORT IMPROVEMENTS, MOLOKAI								
DESIGN & CONSTRUCT IMPROVEMENTS TO RUNWAY, TAXIWAY, ACCESS ROAD, APRON, UTILITIES, EXISTING TERMINALS, AND OTHER MISC. IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.								
		DESIGN			750			
		CONSTRUCTION			5,000			
		TOTAL FUNDING	TRN	5,750 E	E			
TRN151 - LANAI AIRPORT FACILITIES AND SERVICES								
17. D70 LANAI AIRPORT IMPROVEMENTS, LANAI								
DESIGN & CONSTRUCT IMPROVEMENTS TO RUNWAY, ACCESS ROAD, PARKING, BUILDINGS, TAXIWAY, APRON, RUNWAY EXTENSION, STRENGTHEN EXISTING PAVEMENT, TERMINAL EXPANSION, UTILITIES, ALTERATION TO EXISTING FACILITIES, AND RELOCATION OF TENANTS AND OTHER MISC. IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBUSEMENT.								
		DESIGN			1,200			
		CONSTRUCTION			4,000			
		TOTAL FUNDING	TRN	5,200 E	10,000 E			
			TRN	N	9,000 E			
					1,000 N			

## TRN161 - LIHUE AIRPORT FACILITIES AND SERVICES

## 18. E03 LIHUE AIRPORT COMPLEX, KAUAI

DESIGN AND CONSTRUCT AIRPORT  
FACILITIES, INCLUDING: BUILDINGS, ROADS,  
PARKING, UTILITIES, AIRCRAFT APRONS,  
TAXIWAYS, RUNWAYS, CARGO TERMINAL, LEASE  
LOTS AND HANGARS, ALTERATION TO EXISTING  
FACILITIES INCL. BLDGS, AIRFIELD, ROADS,  
PARKING AND OTHER MISC. IMPROVEMENTS.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		RELOCATION OF TENANTS AND MODIFICATIONS TO EXISTING FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		1,720	900
		CONSTRUCTION		27,550	4,000
		TOTAL FUNDING	TRN	26,770 E	3,900 E
			TRN	2,500 N	1,000 N
19.	E10	LIHUE AIRFIELD IMPROVEMENTS, KAUAI			
		DESIGN & CONSTRUCT EXTENSION TO EXISTING RUNWAY AND TAXIWAYS INCLUDING SITWORK, PAVING, PAINTING, ELECTRICAL, STRENGTHEN EXISTING PAVEMENT, ALTERATION OR RELOCATION OF EXISTING FACILITIES AND OTHER MISC. IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		800	
		CONSTRUCTION			15,000
		TOTAL FUNDING	TRN	800 E	10,000 E
			TRN	N	5,000 N
20.	E61	KAUAI INLAND HELIPORT IMPROVEMENTS, KAUAI			
		DESIGN & CONSTRUCT INLAND HELIPORT INCLUDING BUILDINGS, APRONS, TAXIWAY, ROADS, UTILITIES, PARKING, FENCE, LEASE LOTS, SERVICE SUPPORT FACILITIES, ACCESS ROAD AND OTHER MISC. IMPROVEMENTS. LAND ACQUISITION, MASTER PLAN, NOISE COMPATIBILITY PROGRAM PLANNING, AND ENVIRONMENTAL ASSESSMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		400	
		LAND		200	
		DESIGN		500	
		CONSTRUCTION			5,000
		TOTAL FUNDING	TRN	1,000 E	3,000 E
			TRN	N	2,000 N

## TRN195 - AIR TRANSPORTATION FACILITIES &amp; SVCS SUPPORT

## 21. F04 AIRPORT PLANNING, STATEWIDE

PROVIDE BASIC DATA AND INFORMATION FOR PROPER PLANNING, PRELIMINARY DESIGN, SPECIAL ENGINEERING, ARCHITECTURAL, ENVIRONMENTAL, NOISE COMPATIBILITY, AND SPECIAL STUDIES FOR STATEWIDE SYSTEM OF AIRPORTS AND CONTINUE REVIEW AND UPDATING MASTER PLANS AND NOISE COMPATIBILITY PROGRAM. THIS PROJECT IS

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		1,750	1,750
		TOTAL FUNDING	TRN	1,500 E	1,400 E
			TRN	250 N	350 N
22.	F06	LAND ACQUISITION, STATEWIDE			
ACQUISITION OF LAND, AIRPORT FACILITIES AND LEASE RIGHTS FOR STATEWIDE AIRPORTS.					
		LAND		18,500	55,000
		TOTAL FUNDING	TRN	18,500 E	55,000 E
23.	F08	AIRPORT IMPROVEMENTS, STATEWIDE			
CONSTRUCTION OF MISCELLANEOUS IMPROVEMENTS TO VARIOUS AIRPORTS. IMPROVEMENTS FOR SAFETY AND CERTIFICATION REQUIREMENTS. IMPROVEMENT TO FACILITIES AND IMPROVEMENTS FOR OPERATIONAL EFFICIENCY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		6,000	4,100
		TOTAL FUNDING	TRN	5,900 E	4,000 E
			TRN	100 N	100 N
24.	F09	LAND ACQUISITION, STATEWIDE			
LAND ACQUISITION FOR ADDITIONAL OFFICE AND PARKING REQUIREMENTS.					
		LAND		7,000	
		TOTAL FUNDING	TRN	7,000 E	E
<b>TRN301 - HONOLULU HARBOR FACILITIES AND SERVICES</b>					
25.	J02	IMPROVEMENTS TO FACILITIES AT PIERS 19 TO 34, HONOLULU HARBOR, OAHU			
DESIGN AND CONSTRUCT A WOMEN'S TOILET AND FIRE SPRINKLER SYSTEM IN PIER 29 SHED AND ACCOMPLISH OTHER IMPROVEMENTS.					
		DESIGN		10	50
		CONSTRUCTION		50	
		TOTAL FUNDING	TRN	60 B	50 B
26.	J03	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT HONOLULU HARBOR, OAHU			
DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO PIERS, SHEDS, AND YARD FACILITIES AT HONOLULU HARBOR, INCLUDING IMPROVEMENTS TO LIGHTING, PAVING, AND OTHER FACILITIES.					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO. TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
			FISCAL M YEAR O 1989-90 F	180 B		
	DESIGN		40		45	
	CONSTRUCTION		140		145	
	TOTAL FUNDING	TRN		180 B		190 B

27. J06 CONTAINER FACILITIES AT SAND ISLAND,  
OAHU

DESIGN AND CONSTRUCTION FOR  
DEVELOPMENT OF SAND ISLAND CONTAINER  
YARD AREAS, PIERS, AND OTHER  
IMPROVEMENTS.

DESIGN	150	200
CONSTRUCTION	3,850	4,000
TOTAL FUNDING	TRN	150 B

TRN 3,850 E 200 B 4,000 E

28. J20 IMPROVEMENTS TO PIERS 39-40 COMPLEX,  
HONOLULU HARBOR, OAHU

DESIGN AND CONSTRUCTION TO PIER, YARD,  
SHED, AND OTHER IMPROVEMENTS AT PIERS  
39-40.

DESIGN	600	
CONSTRUCTION	4,000	6,500
TOTAL FUNDING	TRN	4,600 E

6,500 E

29. J21 INTER-ISLAND MASS TRANSIT

CONSTRUCTION OF LOADING DOCKS,  
PASSENGER SHELTERS, AND OTHER  
IMPROVEMENTS AT BLACK ROCK, MAUI AND  
KAUNAKAKAI HARBOR, MOLOKAI.

CONSTRUCTION	1,000	
TOTAL FUNDING	TRN	1,000 A

A

30. J31 PIER 36 IMPROVEMENTS, HONOLULU HARBOR,  
OAHU

DESIGN AND CONSTRUCTION OF A BARGE  
PIER, DREDGING, AND OTHER IMPROVEMENTS.

DESIGN	75	
CONSTRUCTION	500	
TOTAL FUNDING	TRN	575 E

E

## TRN303 - BARBERS POINT HARBOR FACILITIES AND SERVICES

31. J11 BARBERS POINT DEEP DRAFT HARBOR  
IMPROVEMENTS, OAHU

DESIGN AND CONSTRUCTION FOR  
INCREMENTAL DEVELOPMENT OF BARBERS  
POINT; TO INCLUDE: PIER, YARD AND SHED  
FACILITIES, UTILITIES, AND OTHER  
IMPROVEMENTS.

DESIGN	300	
CONSTRUCTION		3,000

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	TRN TRN	300 B E	3,000 B E
32.		BARBERS POINT HARBOR MODIFICATIONS, OAHU			
		PLANS FOR THE TECHNICAL MODIFICATION STUDIES OF THE BARBERS POINT HARBOR CHANNEL.			
		PLANS		300	
		TOTAL FUNDING	TRN	300 A	A
		TRN313 - KAWAIHAE HARBOR FACILITIES AND SERVICES			
33.	LO3	KAWAIHAE HARBOR IMPROVEMENTS, HAWAII			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS; TO INCLUDE: PIER EXTENSION AND OTHER IMPROVEMENTS.			
		DESIGN		300	
		CONSTRUCTION		4,700	
		TOTAL FUNDING	TRN TRN	300 B 4,700 E	B
		TRN331 - KAHULUI HARBOR FACILITIES AND SERVICES			
34.	M09	KAHULUI HARBOR IMPROVEMENTS, MAUI			
		LAND ACQUISITION AND CONSTRUCTION FOR DREDGING, BERTHING, YARD AND OTHER IMPROVEMENTS.			
		LAND		200	500
		CONSTRUCTION		1,000	
		TOTAL FUNDING	TRN TRN	200 B 1,000 E	B E
		TRN341 - KAUNAKAKAI HARBOR FACILITIES AND SERVICES			
35.	M07	KAUNAKAKAI HARBOR SHED IMPROVEMENTS, MOLOKAI			
		DESIGN AND CONSTRUCT ADDITIONAL SHED AREAS AND OTHER IMPROVEMENTS.			
		DESIGN		25	
		CONSTRUCTION		150	
		TOTAL FUNDING	TRN	175 B	B
		TRN361 - NAWILIWILI HARBOR FACILITIES AND SERVICES			
36.	K11	SECOND PIER NAWILIWILI HARBOR, KAUAI			
		CONSTRUCTION OF A SECOND PIER; TO INCLUDE: YARDS, PIER FACILITIES, ACCESS ROADS AND OTHER IMPROVEMENTS.			
		CONSTRUCTION		8,500	6,000
		TOTAL FUNDING	TRN	8,500 E	E
		TRN395 - WATER TRANSPORTATION FAC & SVCS SUPPORT			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
<b>37. I01 STATEWIDE HARBOR PLANNING</b>					
		CONTINUING HARBOR STUDIES, RESEARCH AND ADVANCE PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS. OFFSHORE LANDFILL FOR CONTAINER YARD EXPANSION AT KAHULUI HARBOR.			
		PLANS		150	150
		TOTAL FUNDING	TRN	150 B	150 B
<b>38. I03 MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT NEIGHBOR ISLAND PORTS</b>					
		DESIGN AND CONSTRUCTION OF IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS AND OTHER FACILITIES.			
		DESIGN		50	50
		CONSTRUCTION		150	150
		TOTAL FUNDING	TRN	200 B	200 B
<b>TRN501 - OAHU HIGHWAYS AND SERVICES</b>					
<b>39. Q53 INTERSTATE H-1, MIDDLE STREET TO KEEAUMOKU STREET, OAHU</b>					
		DESIGN TO INCREASE THE CAPACITY OF THE HIGHWAY FROM MIDDLE STREET TO KEEAUMOKU STREET. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		1,249	
		TOTAL FUNDING	TRN	349 B	
			TRN	900 J	J
<b>40. R12 INTERSTATE ROUTE H-1, EAST OF HALAWA I. C. TO MIDDLE ST. SEPARATION, OAHU</b>					
		INCREMENTAL CONSTRUCTION OF EIGHT FREEWAY LANES, INCLUDING PEARL HARBOR, AIRPORT AND KEEHI INTERCHANGES.			
		CONSTRUCTION OF A TRESTLE STRUCTURE AT KEEHI INTERCHANGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		7,725	
		TOTAL FUNDING	TRN	865 D	
			TRN	6,860 J	J
<b>41. R30 INTERSTATE ROUTE H-3, JUNCTION AT H-1 TO KANEOHE MARINE CORPS AIR STATION, OAHU</b>					
		LAND ACQUISITION AND CONSTRUCTION OF DIVIDED HIGHWAY FROM JUNCTION AT H-1 TO KANEOHE MARINE CORPS AIR STATION, OAHU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		LAND		6,669	
		CONSTRUCTION		208,654	39,657
		TOTAL FUNDING	TRN	28,715 D TRN	5,222 D 34,435 J
42.	R76	KALANIANAOLE HIGHWAY, AINA KOA TO KEAHOLE STREET, OAHU			
		PLANS, LAND, DESIGN, AND CONSTRUCTION FOR WIDENING KALANINAOLE HIGHWAY TO A SIX LANE DIVIDED HIGHWAY FROM WEST HIND DRIVE TO KEAHOLE STREET; TO INCLUDE: SIDEWALKS, SHOULDERS, MEDIAN, AND OTHER IMPROVEMENTS FROM AINA KOA TO KEAHOLE STREET, OAHU.			
		PLANS		257	
		LAND		6,901	
		DESIGN		585	
		CONSTRUCTION		15,094	5,477
		TOTAL FUNDING	TRN	6,154 D TRN	1,548 D 3,929 K
43.	S05	VINEYARD BOULEVARD AND PUNCHBOWL STREET INTERSECTION IMPROVEMENT, OAHU			
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR AN ADDITIONAL LEFT TURN LANE FROM VINEYARD BLVD. INTO PUNCHBOWL STREET.			
		LAND		25	
		DESIGN		5	
		CONSTRUCTION		900	
		TOTAL FUNDING	TRN	930 B	B
44.	S06	KALIHI STREET IMPROVEMENTS FROM KING STREET TO NIMITZ HIGHWAY, OAHU			
		LAND ACQUISITION, DESIGN AND CONSTRUCTION TO WIDEN FOUR LANES; TO INCLUDE: CURB, GUTTERS, SIDEWALKS, DRAINAGE, AND OTHER IMPROVEMENTS.			
		LAND		50	
		DESIGN		150	
		CONSTRUCTION		200 B TRN	3,000 B 3,000 D
45.	S07	Likelike Highway Intersection Improvements at School Street, Oahu			
		CONSTRUCTION OF LEFT TURN LANES ON SCHOOL STREET, MODIFICATION OF THE EXISTING TRAFFIC SIGNAL SYSTEM, AND RELATED IMPROVEMENTS, OAHU.			
		CONSTRUCTION		300	
		TOTAL FUNDING	TRN	45 B 255 N	B N

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
46.	S08	PALI HIGHWAY, HIGHWAY LIGHTS, PALI TUNNEL TO WAOKANAKA STREET, OAHU			
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF HIGHWAY LIGHTS.			
		DESIGN		112	
		TOTAL FUNDING	TRN	112 B	B
47.	S09	Likelike Highway Lights, Wilson Tunnel to Valley View Road, Oahu			
		Design Installation of Highway Lights Between Wilson Tunnel and Valley View Road, Oahu.			
		DESIGN		50	
		TOTAL FUNDING	TRN	50 B	B
48.	S10	PALI HIGHWAY AND/OR LIKELIKE HIGHWAY CONTRAFLOW LANE, OAHU			
		DESIGN THE IMPLEMENTATION OF CONTRAFLOW LANE ON THE PALI HIGHWAY AND/OR THE LIKELIKE HIGHWAY DURING THE PEAK TRAFFIC PERIODS.			
		DESIGN		250	
		TOTAL FUNDING	TRN	250 B	B
49.	S15	SHORELINE PROTECTION ALONG KAMEHAMEHA HIGHWAY, OAHU			
		INVESTIGATE, PLAN, DESIGN, AND CONSTRUCT SHORELINE PROTECTION FOR THOSE AREAS OF KAMEHAMEHA HIGHWAY SUSCEPTIBLE TO OCEAN EROSION DUE TO WAVE ACTION, PARTICULARLY IN THE VICINITY OF KAAAWA, PUNALUU, AND HAULA, OAHU.			
		PLANS		150	
		TOTAL FUNDING	TRN	150 B	B
50.	S16	RELOCATION OF KANEOHE BAY BASEYARD, OAHU			
		DESIGN AND CONSTRUCTION FOR A NEW BASEYARD FACILITY TO REPLACE EXISTING BASEYARD.			
		DESIGN		60	
		CONSTRUCTION		620	
		TOTAL FUNDING	TRN	60 B	B
			TRN	620 D	D
51.	S70	FORT WEAVER ROAD REALIGNMENT AND WIDENING, EWA, OAHU			
		CONSTRUCT THE REALIGNMENT AND WIDENING OF FORT WEAVER ROAD INCLUDING IMPROVEMENTS TO KUNIA ROAD TO PROVIDE			

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## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		FOR A CONNECTION TO H-1 AND IMPROVEMENTS OF EXISTING TWO-LANE HIGHWAY TO A DIVIDED HIGHWAY, AND FOR THE EXTENTION OF THE RENTON ROAD-HANAKAHI STREET SECTION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		CONSTRUCTION		11,773	
		TOTAL FUNDING	TRN	2,843 D	D
			TRN	8,930 K	K
52.	S78	GUARDRAIL & SHOULDER IMPROV. AT VARIOUS LOCATIONS ON STATE HIGHWAYS, OAHU			
		DESIGN THE UPGRADING OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING AND INSTALLATION OF METAL GUARDRAILS, CONCRETE SAFETY BARRIERS AND MODERNIZATION OF EXISTING GUARDRAILS AT VARIOUS LOCATIONS ON STATE HIGHWAYS ON OAHU.			
		DESIGN		50	50
		TOTAL FUNDING	TRN	B	B
53.	S80	HIGHWAY LIGHTING IMPROVEMENTS, OAHU			
		DESIGN THE HIGHWAY LIGHTING IMPROVEMENTS AND REHABILITATION AT VARIOUS LOCATIONS ON OAHU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		145	
		TOTAL FUNDING	TRN	145 B	B
54.	S85	REHABILITATE EXISTING SPRINKLER SYSTEMS AT VARIOUS LOCATIONS, OAHU			
		DESIGN AND CONSTRUCTION FOR THE REHABILITATION OF THE EXISTING SPRINKLER SYSTEM TO CONSERVE WATER ON LANDSCAPED AREAS ALONG THE INTERSTATE FREEWAYS AND OTHER MAJOR URBAN HIGHWAYS, AND REESTABLISH LANDSCAPING WHERE NEEDED.			
		DESIGN		15	
		CONSTRUCTION		165	
		TOTAL FUNDING	TRN	180 B	B
55.		INTERSTATE ROUTE H-1, KUNIA INTERCHANGE, OAHU			
		DESIGN FOR MODIFICATIONS TO KUNIA INTERCHANGE, INTERSTATE ROUTE H-1, OAHU.			
		DESIGN		1,000	
		TOTAL FUNDING	TRN	100 D	D
			TRN	900 J	J

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
56.		HIGHWAY LIGHTS, KUNIA INTERCHANGE TO PALAILAI INTERCHANGE, INTERSTATE H-1			
		DESIGN AND CONSTRUCTION FOR LIGHTING IMPROVEMENTS TO INTERSTATE ROUTE H-1, KUNIA INTERCHANGE TO PALAILAI INTERCHANGE, OAHU.			
		DESIGN		60	
		CONSTRUCTION		540	
		TOTAL FUNDING	TRN	60 D	D
			TRN	540 J	J
57.		FARRINGTON HIGHWAY IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR FARRINGTON HIGHWAY IMPROVEMENTS FROM HELEUMA STREET TO JADE STREET.			
		DESIGN		168	
		CONSTRUCTION		832	
		TOTAL FUNDING	TRN	168 B	B
			TRN	832 D	D
58.		INTERSTATE H-2, KIPAPA GULCH TO MILLANI SAFETY IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION OF SAFETY IMPROVEMENTS AT KIPAPA GULCH TO CONTROL HILLSIDE EROSION ONTO THE INTERSTATE H-2.			
		DESIGN		45	
		CONSTRUCTION		405	
		TOTAL FUNDING	TRN	450 D	D
59.		KANEHOE BAY DRIVE/MOAKAKA INTERSECTION IMPROVEMENTS, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO INTERSECTION.			
		PLANS		1	
		DESIGN		24	
		CONSTRUCTION		125	
		TOTAL FUNDING	TRN	150 D	D
60.		KAMEHAMEHA HIGHWAY, HELEMANO-WAIALUA JUNCTION TO HALEIWA BEACH PARK, OAHU.			
		CONSTRUCTION FOR REALIGNMENT AND IMPROVEMENT OF HIGHWAY FROM HELEMANO- WAIALUA JUNCTION TO HALEIWA BEACH PARK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL-AID FINANCING OR REIMBURSEMENT.			
		CONSTRUCTION		500	
		TOTAL FUNDING	TRN	500 D	D

## TRN511 - HAWAII HIGHWAYS AND SERVICES

61. T03 HAWAII BELT ROAD, HOLUALOA TO PAPA,  
HAWAII

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90	FISCAL M YEAR O 1990-91
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE INCREMENTAL CONSTRUCTION OF TWO-LANE HIGHWAY FROM HOLUALOA TO PAPA. THIS IS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID AND/OR REIMBURSEMENT.			
		LAND		400	400
		DESIGN		300	300
		CONSTRUCTION			2,300
		TOTAL FUNDING	TRN	700 D	3,000 D
62.	T77	GUARDRAIL & SHOULDER IMPROV. AT VARIOUS LOCATIONS ON STATE HIGHWAYS, HAWAII			
		DESIGN THE UPGRADING OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING, INSTALLATION OF METAL GUARDRAILS AND MODERNIZATION OF EXISTING GUARDRAILS AT VARIOUS LOCATIONS ON STATE HIGHWAYS ON HAWAII.			
		DESIGN		30	30
		TOTAL FUNDING	TRN	30 B	30 B
63.	T83	SADDLE ROAD IMPROVEMENTS, HAWAII			
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR WIDENING AND REALIGNMENT OF EXISTING ROADWAY TO CURRENT DESIGN STANDARDS. PROJECT CONSTITUTES THE INITIAL IMPROVEMENTS TO BE MADE WHEN PHASE IV TAKEOVER OF COUNTY ROAD IS IMPLEMENTED.			
		LAND			85
		DESIGN		160	570
		CONSTRUCTION		1,781	
		TOTAL FUNDING	TRN	1,941 D	655 D
<b>TRN531 - MAUI HIGHWAYS AND SERVICES</b>					
64.	V41	HALEAKALA HIGHWAY, HANA HIGHWAY TO KULA HIGHWAY, MAKAWAO, MAUI			
		DESIGN AND CONSTRUCTION OF HIGHWAY FROM HALIIMAILE ROAD TO KULA HIGHWAY JUNCTION, AND A TRUCK CLIMBING LANE FROM HANA HIGHWAY TO HALIIMAILE ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		130	
		CONSTRUCTION			900
		TOTAL FUNDING	TRN	55 B	B
			TRN	D	900 D
			TRN	75 K	K
65.	V45	HUELO TO HANA, MAUI			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN AND CONSTRUCTION TO REPAIR AND REPLACE BRIDGES, ROADWAYS, AND CULVERTS, SAFETY IMPROVEMENTS, AND RESURFACING OF HANA HIGHWAY FROM HUELO TO HANA. REPAIR AND REPLACEMENT OF BRIDGES TO INCLUDE THE KAWAIPAPA STREAM BRIDGE IN HANA.			
		DESIGN		760	
		CONSTRUCTION		7,400	
		TOTAL FUNDING	TRN	660 B	B
			TRN	7,500 D	D
66.	V48	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MAUI			
		DESIGN THE UPGRADING OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING, THE INSTALLATION OF METAL GUARDRAILS AND THE MODERNIZATION OF EXISTING GUARDRAILS AT VARIOUS LOCATIONS ON STATE HIGHWAYS ON MAUI.			
		DESIGN		66	
		TOTAL FUNDING	TRN	66 B	66 B
67.	V51	HONOAPIILANI HWY WIDENING AND/OR REALIGNMENT, HONOKOWAI TO PUAMANA, MAUI			
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR THE WIDENING OF THE EXISTING HIGHWAY AND/OR CONSTRUCTION OF A NEW ALIGNMENT FROM HONOKOWAI TO PUAMANA, LAHAINA. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID AND/OR FINANCING.			
		LAND		3,697	
		DESIGN		2,391	
		CONSTRUCTION			9,020
		TOTAL FUNDING	TRN	1,569 D	2,255 D
			TRN	4,519 K	6,765 K
68.	V53	HONOAPIILANI HIGHWAY, REVETMENT PROTECTION AT LAUNIUPOKO, MAUI			
		DESIGN THE CONSTRUCTION OF A REVETMENT AT LAUNIUPOKO TO PROTECT A 1000 FOOT LONG SECTION OF THE HIGHWAY ALONG THE SHORELINE FROM EROSION DUE TO WAVE ACTIVITY.			
		DESIGN		170	
		TOTAL FUNDING	TRN	170 B	B
<b>TRN541 - MOLOKAI HIGHWAYS AND SERVICES</b>					
69.	W08	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MOLOKAI			
		DESIGN THE UPGRADING OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE			

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				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		AND SURFACE TREATMENT OR PAVING, THE INSTALLATION OF METAL GUARDRAILS AND THE MODERNIZATION OF EXISTING GUARDRAILS AT VARIOUS LOCATIONS ON STATE HIGHWAYS ON MOLOKAI.			
		DESIGN TOTAL FUNDING	TRN	60 60 B	B
<b>TRN561 - KAUAI HIGHWAYS AND SERVICES</b>					
70.	X51	GUARDRAIL & SHOULDER IMPROV. AT VARIOUS LOCATIONS ON STATE HIGHWAYS, KAUAI			
		DESIGN THE UPGRADING OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING, AND THE INSTALLATION OF METAL GUARDRAILS AND THE MODERNIZATION OF EXISTING GUARDRAILS AT VARIOUS LOCATIONS ON STATE HIGHWAYS ON KAUAI.			
		DESIGN TOTAL FUNDING	TRN	30 30 B	30 30 B
71.	X60	INTERSECTION IMPROVEMENTS AT KAUMUALII HIGHWAY AND KOLOA ROAD, KAUAI			
		DESIGN THE RECONSTRUCTION OF THE INTERSECTION, INCLUDING LEFT-TURN AND RIGHT-TURN LANES AND TRAFFIC SIGNAL SYSTEM, TOGETHER WITH THE ADDITION OF TWO LANES TO LAWAII BRIDGE.			
		DESIGN TOTAL FUNDING	TRN	B	179 179 B
72.	X62	KUHIO HIGHWAY - WAILUA BRIDGE AND COCO PALMS INTERSECTION IMPROVEMENTS, KAUAI			
		LAND ACQUISITION, DESIGN AND CONSTRUCTION OF KUHIO HIGHWAY INTERSECTION IMPROVEMENTS AT WAIALUA BRIDGE AND COCO PALMS INTERSECTION.			
		LAND DESIGN CONSTRUCTION TOTAL FUNDING	TRN	20 50 430 500 D	D
73.	X63	KAUMUALII HIGHWAY - SHORING CAUSEWAY, KAUAI			
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A KAUMUALII HIGHWAY SHORING CAUSEWAY AT KAUMUALII HIGHWAY, KUHIO HIGHWAY AND RICE STREET INTERSECTION.			
		LAND DESIGN CONSTRUCTION		50 100 980	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	TRN	1,130 D	D

74. X64 KUHIO HIGHWAY, KAPAA - LEFT TURN LANE,  
KAUAI

LAND ACQUISITION, DESIGN, AND  
CONSTRUCTION FOR LEFT TURN STORAGE LANES  
AT TWO INTERSECTIONS AT WAIPOULI TOWN  
CENTER AND BIG SAVE.

LAND	5
DESIGN	25
CONSTRUCTION	220
TOTAL FUNDING	250 D

75. X61 NAWILIWILI ROAD - WAAPA ROAD  
INTERSECTION, KAUAI

LAND ACQUISITION, DESIGN, AND  
CONSTRUCTION FOR THE REALIGNMENT OF  
THE HIGHWAY AT THE INTERSECTION OF  
NAWILIWILI ROAD AND WAAPA ROAD.

LAND	20
DESIGN	60
CONSTRUCTION	520
TOTAL FUNDING	600 D

76. PUHI AND KAPAA BYPASS ROAD, KAUAI

PLANS, DESIGN, AND CONSTRUCTION FOR A  
BYPASS ROAD BETWEEN PUHI AND KAPAA,  
KAUAI.

PLANS	120
DESIGN	800
CONSTRUCTION	80
TOTAL FUNDING	1,000 B

## TRN595 - LAND TRANSPORTATION FAC &amp; SVCS SUPPORT

77. X90 MATERIAL TESTING LAB, CHEMICALS HANDLING  
UPGRADES, OAHU

DESIGN, CONSTRUCTION AND EQUIPMENT TO  
CONSTRUCT HAZARDOUS WASTE STORAGE AND  
RECLAMATION SHED AND TO REPLACE AND  
CONSTRUCT EXHAUST SYSTEM AND FUME HOOD  
IN CHEMICAL LAB.

DESIGN	15
CONSTRUCTION	45
EQUIPMENT	85
TOTAL FUNDING	145 C

78. X98 MISCELLANEOUS IMPROVEMENTS TO EXISTING  
INTERSECT. & HWY. FACILITIES, STATEWIDE

LAND ACQUISITION, DESIGN AND  
CONSTRUCTION OF MISCELLANEOUS

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR TRAFFIC SAFETY, INCLUDING ELIMINATION OF CONSTRICTIONS ON- & OFF-SITE, EFFECTING EFFICIENT FLOW OF TRAFFIC ON INTERSTATE HIGHWAYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		LAND		100	
		DESIGN		345	
		CONSTRUCTION		2,205	
		TOTAL FUNDING	TRN	1,025 B	B
			TRN	1,625 N	N

#### 79. X99 HIGHWAY PLANNING, STATEWIDE

PLANS FOR ROAD USE, ROAD LIFE, ECONOMIC STUDIES, RESEARCH AND ADVANCED PLANNING OF FEDERAL-AID AND NON-FEDERAL-AID HIGHWAY PROJECTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS		3,251	3,251
TOTAL FUNDING	TRN	1,098 B	1,098 B
	TRN	2,153 N	2,153 N

## D. ENVIRONMENTAL PROTECTION

### LNR402 - FORESTS AND WILDLIFE RESOURCES

#### 1. D08 DEPARTMENT OF LAND AND NATURAL RESOURCES BASEYARD, OAHU

PLANS, LAND ACQUISITION, DESIGN AND INCREMENTAL CONSTRUCTION OF FACILITIES FOR A CENTRALLY LOCATED BASE OF OPERATIONS. THE IMPROVEMENTS SHALL CONSIST OF WAREHOUSING, MECHANICAL REPAIR SHOP, FIRE CACHE, NURSERY, ADMIN OFFICE, RESEARCH FACILITIES, SECURITY PARKING, AND OTHER APPURTENANT AND INCIDENTAL WORKS.

PLANS		250	
LAND		150	
DESIGN		150	100
CONSTRUCTION			500
TOTAL FUNDING	LNR	550 C	600 C

#### 2. D-23 HAWAII ENDANGERED SPECIES FACILITY, MAUI

DESIGN, CONSTRUCTION AND EQUIPMENT FOR RENOVATION OF AN ENDANGERED SPECIES FACILITY TO MAINTAIN AND BREED ENDANGERED SPECIES IN CAPTIVITY FOR RESEARCH AND RELEASE INTO THE WILD; TO INCLUDE FACILITIES FOR RESEARCH,

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				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		VETERINARY MEDICINE AND SECURITY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		49	
		CONSTRUCTION		656	
		EQUIPMENT		75	
		TOTAL FUNDING	LNR	680 C	C
			LNR	100 N	N
3.	D-42 KAMUELA SUPPORT FACILITY, HAWAII				
		DESIGN AND CONSTRUCTION OF A STRUCTURE TO PROVIDE COVERED PARKING FOR VEHICLES AND EQUIPMENT AT KAMUELA; ENCLOSED STORAGE SPACE FOR OPERATIONAL AND FIRE TOOLS, SMALL EQUIPMENT, MATERIAL AND SUPPLIES; AND A WORKSHOP TO ACCOMMODATE MAINTENANCE AND MINOR REPAIR WORK ON FACILITIES AND EQUIPMENT.			
		DESIGN		5	
		CONSTRUCTION		150	
		TOTAL FUNDING	LNR	155 C	C
4.	D-44 POLIPOLI ACCESS ROAD, MAUI				
		PLANS, DESIGN, AND CONSTRUCTION FOR INCREMENTAL PAVING OF POLIPOLI ACCESS ROAD TO IMPROVE ACCESS TO PUBLIC HUNTING AREAS - 2.9 MILES.			
		PLANS		2	
		DESIGN		4	
		CONSTRUCTION		170	
		TOTAL FUNDING	LNR	176 C	C
5.	D-45 KAWAINUI MARSH WILDLIFE SANCTUARY, OAHU				
		PLANS, DESIGN, CONSTRUCTION AND EQUIP. FOR WILDLIFE CONSERVATION AND EDUCATION FACILITIES; TO INCLUDE: VEGETATION REMOVAL, BOUNDARY FENCES, ACCESS TRAILS, VIEWING SITES, AND BOUNDARY/INTERPRETIVE SIGNS AND DISPLAYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		40	
		DESIGN		30	
		CONSTRUCTION		111	
		EQUIPMENT		150	
		TOTAL FUNDING	LNR	160 C	210 C
			LNR	171 N	219 N
6.	D-56 ARBORETUM ROAD AND PATHWAY PAVING, KEANAE, MAUI				
		PLANS, DESIGN AND CONSTRUCTION FOR PAVING OF AN 8-FOOT WIDE BY 2640-FOOT			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		LONG ROADWAY INTO THE ARBORETUM AND THE PAVING OF A 5-FOOT WIDE BY 900-FOOT LONG HANDICAPPED ACCESS PATHWAY THROUGH THE ARBORETUM GROUNDS.			
		PLANS		2	
		DESIGN		5	
		CONSTRUCTION		104	
		TOTAL FUNDING	LNR	111	C
7.	D-57	HABITAT IMPROVEMENTS AT KANAHA POND WILDLIFE SANCTUARY, MAUI			C
		PLANS, DESIGN AND CONSTRUCTION FOR INSTALLATION OF A METAL CULVERT WITH A WATER CONTROL GATE TO IMPROVE AND EXPAND WATERBIRD HABITAT CONDITIONS.			
		PLANS		2	
		DESIGN		4	
		CONSTRUCTION		40	
		TOTAL FUNDING	LNR	46	C
		<b>LNR404 - WATER RESOURCES</b>			
8.	G06	KAU WELL DEVELOPMENT, HAWAII			
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION OF PUMP, CONTROLS, RESERVOIR, CONNECTING PIPELINE AND OTHER APPURTEnant WORK.			
		PLANS		20	
		LAND		1	
		DESIGN		80	
		CONSTRUCTION		750	
		TOTAL FUNDING	LNR	851	C
9.	G14	KEEI NO. 4 WELL DEVELOPMENT, SOUTH KONA, HAWAII			C
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION OF PUMP, CONTROLS, RESERVOIR, CONNECTING PIPELINE AND OTHER APPURTEnant WORK.			
		PLANS		10	
		LAND		1	
		DESIGN		50	
		CONSTRUCTION		750	
		TOTAL FUNDING	LNR	811	C
10.	G21	NORTH KONA WELL DEVELOPMENT, HAWAII			C
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION OF PUMP, CONTROLS, CONNECTING PIPELINE AND OTHER APPURTEnant WORK.			
		PLANS		10	
		LAND		1	
		DESIGN		75	

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ITEM NO.	CAPITAL PROJECT NO. TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
			FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
	CONSTRUCTION TOTAL FUNDING	LNR	600 686 C	C
11.	G22 KULA WATER SYSTEM IMPROVEMENTS, MAUI			
	PLANS, DESIGN AND CONSTRUCTION OF IMPROVEMENTS TO THE UP-COUNTRY WATER SYSTEM, KULA. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
	PLANS DESIGN TOTAL FUNDING	LNR	150 650 800 C	C
12.	G91 INVESTIGATION AND DEVELOPMENT OF DESATLING PLANT TECHNOLOGY			
	ENGINEERING AND ECONOMIC STUDIES, CHEMICAL AND HYDRAULIC INVESTIGATION, DATA COMPILATION, AND ANALYSIS AND EVALUATION OF DESALTING PROCESSES.			
	PLANS TOTAL FUNDING	LNR	100 100 C	100 100 C
13.	G94 WATER RESOURCES, DISTRICTS OF HAMAKUA AND WAIMEA, HAWAII			
	PLANS, DESIGN AND CONSTRUCTION OF PUMP, CONTROLS, CONNECTING PIPELINE AND OTHER APPURtenant WORK.			
	PLANS DESIGN TOTAL FUNDING	LNR	10 50 60 C	C
14.	G95 MAKALEHA VALLEY SPRING WATER SOURCE DEVELOPMENT, WAILUA/KAPAA, KAUAI			
	PLANS, DESIGN AND CONSTRUCTION FOR THE MAKALEHA VALLEY SPRING WATER SOURCE DEVELOPMENT FOR THE WAILUA/KAPAA WATER SYSTEM, KAUAI.			
	PLANS CONSTRUCTION TOTAL FUNDING	LNR	15 850 865 C	C
15.	J17 WAIAHOLE DITCH BULKHEADING PROJECT, OAHU			
	PLANS, DESIGN, AND CONSTRUCTION OF IMPROVEMENTS TO CAPTURE, STORE, AND CONTROL THE WATER FROM THE DIKE COMPLEX THAT FEEDS THE WAIAHOLE DITCH SYSTEMS; TO INCLUDE OTHER INCIDENTAL AND APPURtenant WORKS.			
	DESIGN CONSTRUCTION TOTAL FUNDING	LNR	50 1,450 1,500 C	C
16.	J25 DRILLING WAIHEE (MAKAMAKAOLE) EXPLORATORY WELL, MAUI			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANS, LAND ACQUISITION, AND DESIGN FOR THE DRILLING OF AN EXPLORATORY WELL AND PUMP TESTING, AND OTHER APPURtenant AND INCIDENTAL WORKS.			
		LAND		1	
		TOTAL FUNDING	LNR	1 C	C
17.	GO248D	PUUKAPU DEEPWELL DEVELOPMENT, HAWAII			
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR THE INSTALLATION AND TESTING OF A PUMP, CONTROLS, CONNECTING PIPELINES; TO INCLUDE OTHER APPURtenant AND INCIDENTAL WORKS.			
		PLANS		50	
		LAND		1	
		DESIGN		100	
		CONSTRUCTION		1,001	
		TOTAL FUNDING	LNR	1,152 C	C
18.	G1408F	KAINALIU WATER DEVELOPMENT SHAFT, HAWAII			
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE DRILLING OF FOUR TESTHOLES AT ASCENDING ELEVATIONS; TO INCLUDE CASING AND PUMP TESTING OF THE TWO LOWER TESTHOLES.			
		PLANS		10	
		LAND		1	
		DESIGN		50	
		CONSTRUCTION		1,000	
		TOTAL FUNDING	LNR	1,061 C	C
19.	G6851E	ANAHOLA EXPLORATORY WELL, KAUAI			
		PLANS, DESIGN, AND CONSTRUCTION FOR THE DRILLING OF AN EXPLORATORY WELL APPROXIMATELY 300-FEET DEEP, TO INCLUDE CASING, PUMP TESTING, AND OTHER INCIDENTAL AND APPURtenant WORKS.			
		CONSTRUCTION		250	
		TOTAL FUNDING	LNR	250 C	C
20.	G7517L	HUALALAI EXPLORATORY WELL, HAWAII			
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE DRILLING OF AN EXPLORATORY WELL APPROXIMATELY 1200-FEET DEEP, TO INCLUDE CASING, PUMP TESTING, AND OTHER INCIDENTAL AND APPURtenant WORKS.			
		PLANS		10	
		LAND		1	
		DESIGN		50	
		CONSTRUCTION		870	
		TOTAL FUNDING	LNR	931 C	C
21.	G7517M	WAHIKULI EXPLORATORY WELL, MAUI			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR THE DRILLING OF AN EXPLORATORY WELL, TO INCLUDE CASING INSTALLATION, PUMP TESTING, AND OTHER INCIDENTAL AND APPURtenant WORKS.			
		PLANS		10	
		LAND		1	
		DESIGN		50	
		CONSTRUCTION			550
		TOTAL FUNDING	LNR	61 C	550 C
22.	G7808E	KEAHOLE RESERVOIR AND BOOSTER PUMP, HAWAII			
		PLANS, DESIGN, LAND ACQUISITION, AND CONSTRUCTION OF A TANK, BOOSTER PUMP, CONTROLS, AND OTHER INCIDENTAL AND APPURtenant WORKS.			
		PLANS		10	
		LAND		5	
		DESIGN		50	
		CONSTRUCTION			622
		TOTAL FUNDING	LNR	65 C	622 C
23.	G7808G	KAHALUU WATER SHAFT IMPROVEMENTS, HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION OF A CONCRETE BARRIER WALL AND THE RELOCATION OF PUMPS FOR THE KAHALUU WATER SHAFTS.			
		PLANS		10	
		DESIGN		40	
		TOTAL FUNDING	LNR	50 C	C
24.	G7848D	PUUKAPU SHALLOW EXPLORATORY WELL, HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION OF AN EXPLORATORY WELL APPROXIMATELY 600-FEET DEEP, TO CONSIST OF DRILLING, CASING INSTALLATION, PUMP INSTALLATION AND TESTING, CONTROLS, CONNECTING PIPELINE, AND OTHER INCIDENTAL AND APPURtenant WORKS.			
		PLANS		10	
		DESIGN		25	
		CONSTRUCTION		300	
		TOTAL FUNDING	LNR		335 C
25.	G8010C	KAWAIHAPAI EXPLORATORY WELL, MOKULEIA, OAHU			
		PLANS, DESIGN, LAND ACQUISITION, AND CONSTRUCTION FOR THE DRILLING OF AN EXPLORATORY WELL, TO INCLUDE CASING INSTALLATION, PUMP TESTING, AND OTHER INCIDENTAL AND APPURtenant WORKS.			
		PLANS		10	
		LAND		1	

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN			25
		CONSTRUCTION			300
		TOTAL FUNDING	LNR	C	336 C
26.	G8010D	MOKULEIA EXPLORATORY WELL, OAHU			
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE DRILLING OF AN EXPLORATORY WELL, TO INCLUDE CASING INSTALLATION, PUMP TESTING, AND OTHER INCIDENTAL AND APPURTEnant WORKS.			
		PLANS		10	
		LAND		1	
		DESIGN		25	
		CONSTRUCTION		300	
		TOTAL FUNDING	LNR	336 C	C
27.	G8901A	ALTERNATIVE WATER SOURCE DEVELOPMENT, WAIKELE STREAM IMPOUNDMENT, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION OF A DAM, TO INCLUDE OTHER INCIDENTAL AND APPURTEnant WORKS TO IMPOUND WAIKELE STREAM WATER FOR NON-POTABLE IRRIGATION USE.			
		PLANS		50	
		DESIGN		50	
		TOTAL FUNDING	LNR	100 C	C
28.	G8901B	WASTEWATER EFFLUENT RECYCLING PROJECT, OAHU			
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION OF A DEMONSTRATION PROJECT TO OBTAIN DATA ON RECYCLING WASTEWATER EFFLUENT.			
		PLANS		50	
		LAND		1	
		TOTAL FUNDING	LNR	50 C	1 C
29.	G8901C	ALTERNATIVE WATER SOURCE DEVELOPMENT CHECKDAMS, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION OF WATERSHED CHECKDAMS TO INDUCE INCREASED INFILTRATION INTO UNDERGROUND AQUIFERS.			
		PLANS		50	
		TOTAL FUNDING	LNR	C	50 C
30.	G8908D	ALTERNATIVE WATER SOURCE DEVELOPMENT, KEAUHOU UNDERGRND GROUT CURTAIN, HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION OF AN UNDERGROUND GROUT CURTAIN, TO CONSIST OF DRILLING SEVERAL HOLES, CEMENT GROUTING THE HOLES AND OTHER APPURTEnant WORK TO CREATE AN UNDERGROUND WATER DAM.			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO. TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
			FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
	PLANS DESIGN TOTAL FUNDING	LNR	25 100 C	125 C

31. J3007A HAWAII SATELLITE LINK DATA SYSTEM,  
STATEWIDE

PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE INSTALLATION OF A SYSTEM OF WATER RESOURCES DATA GATHERING INSTRUMENTS AND COMPUTER SIGNAL GENERATION UNITS; INCREMENTAL DEVELOPMENT OF INSTRUMENTATION TO MONITOR, TRANSMIT AND COMPILE DATA FROM FIELD GAUGES.

PLANS	30	
LAND	1	
DESIGN	50	
TOTAL FUNDING	81 C	C

## 32. UPCOUNTRY WATER SYSTEM, UPPER KULA, MAUI

CONSTRUCTION OF IMPROVEMENTS TO THE UPCOUNTRY WATER SYSTEM, UPPER KULA, MAUI.

CONSTRUCTION	3,000	
TOTAL FUNDING	3,000 A	A

## 33. UPCOUNTRY WATER SYSTEM, LOWER KULA, MAUI

CONSTRUCTION OF IMPROVEMENTS TO THE UPCOUNTRY WATER SYSTEM, LOWER KULA, MAUI.

CONSTRUCTION	1,000	
TOTAL FUNDING	1,000 A	A

## TRN903 - COASTAL AREAS

## 34. 280 RESTORATION OF KUHIO BEACH, OAHU

DESIGN AND CONSTRUCTION OF BEACH IMPROVEMENT BY DREDGING AND THE HAULING OF NEW SAND.

DESIGN	30	
CONSTRUCTION	250	
TOTAL FUNDING	30 C	C

## LNR906 - LNR-NATURAL PHYSICAL ENVIRONMENT

## 35. D-54 MASTER PLAN FOR Kawai Nui Marsh, Oahu

DEVELOP AND PUBLISH MASTER PLAN FOR Kawai Nui Marsh and Vicinity to include PLANS FOR WILDLIFE HABITAT IMPROVEMENTS AND FACILITIES, PROTECTION OF HISTORIC AND CULTURAL SITES, PARK FACILITIES,

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## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		FLOOD CONTROL, FLOOD BASIN, RECREATIONAL FACILITIES, ETHNOBOTANICAL GARDEN, WATER QUALITY CONTROL FISHING, BOATING, LANDSCAPING, ACCESS TRAILS, SIGNS, AND INTERPRETIVE FACILITIES.			
		PLANS		250	250
		TOTAL FUNDING	LNR	C	C

### E. HEALTH

#### HTH111 - HANSEN'S DISEASE

1. 111001 HALE MOHALU HOSP. RENOVATIONS TO PATIENT ROOMS TO MEET FIRE CODE DEFICIENCIES

DESIGN AND CONSTRUCTION TO CORRECT HOSPITAL LICENSING DEFICIENCY OF CORRIDOR DOORS LEADING INTO PATIENT ROOMS BY INSTALLING AUTOMATIC DOOR CLOSURES LINKED TO A SMOKE DETECTION UNIT WITH ALARM SIGNAL TO THE NURSES' STATION.

DESIGN	7	
CONSTRUCTION	40	
TOTAL FUNDING	47	C

2. 111003 REPAIR AND IMPROVEMENTS TO KALAUPAPA BARGE WHARF AND HARBOR, MOLOKAI

DESIGN AND CONSTRUCTION OF REPAIRS AND IMPROVEMENTS TO KALAUPAPA HARBOR, TO INCLUDE STRENGTHENING OF WHARF, REPAIR OF SEAWALL, DREDGING (ROCK REMOVAL) OF BARGE BASIN AND OTHER HARBOR IMPROVEMENTS.

DESIGN	39	
CONSTRUCTION		
TOTAL FUNDING	39	C

3. 111005 FEASIBILITY STUDY FOR CONGREGATE LIVING AND CARE HOME SERVICES AT KALAUPAPA

PLAN FEASIBILITY STUDY TO ASSESS CURRENT AND PROJECTED BED UTILIZATION AND NURSING CARE NEEDS FOR KALAUPAPA AND RECOMMEND A PLAN FOR EXISTING AND NEW BUILDING STRUCTURES.

PLANS	50	
TOTAL FUNDING	50	C

4. 111006 REPAIR AND RENOVATE KALAUPAPA STORE WAREHOUSE, BLDG 272-A, MOLOKAI

DESIGN AND CONSTRUCTION TO REPAIR AND RENOVATE KALAUPAPA STORE WAREHOUSE, BLDG 272-A, QUONSET BUILDING ON STONE AND CONCRETE FOUNDATION; REPAIR ROOF;

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		REPLACE 2 METAL SLIDING DOORS; INSTALL ADEQUATE VENTILATION SYSTEM; REPAIR LIGHTING SYSTEM; AND PAINT EXTERIOR. DESIGN CONSTRUCTION TOTAL FUNDING	AGS	12 89 12 C	12 89 89 C
5.	111007	KALAUPAPA ROAD REPAIR, MOLOKAI			
		DESIGN AND CONSTRUCTION FOR THE REPAVING OF EXISTING ROADWAYS AND REGRADING SECONDARY ROADWAYS AT KALAUPAPA. DESIGN CONSTRUCTION TOTAL FUNDING	AGS	88 2,112 88 C	88 2,112 2,112 C
6.	111008	CONSTRUCT TWO NEW WATER STORAGE TANKS, KALAUPAPA, MOLOKAI			
		DESIGN AND CONSTRUCTION TO REPLACE EXISTING WATER STORAGE TANKS. DESIGN CONSTRUCTION TOTAL FUNDING	AGS	66 850 66 C	66 850 850 C
<b>HTH211 - HILO HOSPITAL</b>					
7.		HILO HOSPITAL, PSYCHIATRIC INPATIENT CARE UNIT, HAWAII			
		DESIGN AND CONSTRUCTION FOR A PSYCHIATRIC INPATIENT CARE UNIT. DESIGN CONSTRUCTION TOTAL FUNDING	AGS	54 1,141 1,195 C	C
<b>HTH212 - HONOKAA HOSPITAL</b>					
8.		NEW HOSPITAL FACILITY, HONOKAA, HAWAII			
		PLANS, DESIGN, AND CONSTRUCTION TO RENOVATE AND REPLACE THE PRESENT STRUCTURES; TO INCLUDE: ACUTE CARE, LONG TERM CARE, AND EMERGENCY CARE FACILITIES. PLANS DESIGN CONSTRUCTION TOTAL FUNDING	AGS	500 500 6,500 7,500 A	A
<b>HTH215 - KONA HOSPITAL</b>					
9.	215001	KONA HOSPITAL, HAWAII			
		DESIGN AND CONSTRUCTION FOR RENOVATION AND EXPANSION OF EXISTING FACILITY.			

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### CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		28	
		CONSTRUCTION		2,972	
		TOTAL FUNDING	AGS	3,000 A	A

#### HTH223 - KULA HOSPITAL

10. 223001 KULA HOSPITAL, ELDERLY HOUSING PROJECT, MAUI

PLANS AND DESIGN OF ELDERLY RESIDENTIAL UNITS CONSISTING OF ONE-BEDROOM AND TWO-BEDROOM UNITS INCLUDING EQUIPMENT AND OTHER REQUIRED AMENITIES APPROPRIATE TO THE REQUIREMENTS AND NEEDS OF 65+ ELDERLY POPULATION.

PLANS	125	
DESIGN	450	
TOTAL FUNDING	575 C	C

#### HTH232 - SAMUEL MAHELONA MEMORIAL HOSPITAL

11. 232002 INSTALL NEW SEWER LINE SYSTEM, SAMUEL MAHELONA MEMORIAL HOSPITAL, KAUAI

DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF THE ENTIRE SEWER LINE SYSTEM. SYSTEM UNDER MAIN HOSPITAL BUILDING IS IN AN ACUTE STATE OF DETERIORATION AND COMPLETE REPLACEMENT IS REQUIRED AS SOON AS POSSIBLE TO PREVENT A CATASTROPHE.

DESIGN	29	
CONSTRUCTION	269	
TOTAL FUNDING	298 C	C

#### HTH242 - LEAHI HOSPITAL

12. 242001 ASBESTOS REMOVAL, LEAHI HOSPITAL, OAHU

DESIGN AND CONSTRUCTION FOR THE REMOVAL OF ASBESTOS IN VARIOUS AREAS OF THE HOSPITAL.

DESIGN	81	
CONSTRUCTION	1,032	
TOTAL FUNDING	1,113 C	C

#### HTH401 - COMMUNITY BASED SERVICES FOR MH

13. 401002 HOUSING INITIATIVE FOR MENTAL HEALTH CONSUMERS

LAND ACQUISITION FOR LIVING UNITS FOR CRISIS INTERVENTION, REHABILITATION/RESPITE, SPECIALIZED LONGTERM CARE, AND INDEPENDENT LIVING.

LAND	1,500	
TOTAL FUNDING	1,500 C	C

#### HTH430 - HAWAII STATE HOSPITAL

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F

14. 430001 HAWAII STATE HOSPITAL DEVELOPMENT,  
MODIFICATION AND RENOVATION, OAHU

DESIGN AND CONSTRUCTION FOR  
DEVELOPMENT OF STAFF HOSPITAL INCLUDING  
RENOVATIONS AND MODIFICATIONS. DESIGN  
TO INCLUDE RENOVATIONS TO CISU, GODDARD,  
AND ADOLESCENT BUILDINGS AFTER NEW  
FACILITIES ARE OCCUPIED. DESIGN AND  
CONSTRUCTION TO INCLUDE RELOCATION  
AND/OR CONSTRUCTION TO ACCOMMODATE THE  
COMMUNITY COLLEGE FACILITIES LOCATED ON  
THE STATE HOSPITAL PROPERTY.

DESIGN	52
CONSTRUCTION	6,648
TOTAL FUNDING	6,700 C

C

## HTH511 - WAIMANO TRAINING SCHOOL AND HOSPITAL

15. WAIMANO TRAINING SCHOOL AND HOSPITAL,  
MASTER PLAN, OAHU

PREPARE A MASTER PLAN REPORT TO  
ADDRESS THE NEEDS OF WAIMANO TRAINING  
SCHOOL AND HOSPITAL AS WELL AS OTHER DOH  
AND COMMUNITY PROGRAMS.

PLANS	500
TOTAL FUNDING	500 C

C

## HTH901 - LABORATORY SERVICES

16. 901001 NEW LAB FACILITY-SITE SELECTION STUDY,  
EIS, PDR, DESIGN AND CONSTRUCTION, OAHU

DESIGN, CONSTRUCTION AND EQUIPMENT FOR  
A NEW LAB COMPLEX AND VECTOR CONTROL  
FACILITY.

DESIGN	440
CONSTRUCTION	35,560
EQUIPMENT	100
TOTAL FUNDING	440 A 35,660 A

## HTH907 - GENERAL ADMINISTRATION

17. 907001 LANAKILA HEALTH CENTER RENOVATION AND  
FIRE EXIT ADDITION, OAHU

DESIGN AND CONSTRUCTION TO INSTALL  
A SMOKE DETECTOR SYSTEM FOR THE SECOND  
FLOOR AND A MAKAI FIRE EXIT.

DESIGN	15
CONSTRUCTION	103
TOTAL FUNDING	118 C

C

18. NORTH HAWAII ACUTE CARE HOSPITAL  
FACILITY, HAWAII

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANS, LAND ACQUISITION AND DESIGN FOR A NEW ACUTE CARE HOSPITAL FACILITY IN NORTH HAWAII.			
		PLANS		300	
		LAND		262	
		DESIGN		262	
		TOTAL FUNDING	AGS	824	A

**SUB601 - PRIVATE HOSPITALS & MEDICAL SERVICES**

19. WAIANAE COAST COMPREHENSIVE HEALTH CENTER, OAHU

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR EXPANSION AND RENOVATION OF THE WAIANAE COMPREHENSIVE HEALTH CENTER. (GRANT-IN-AID)

PLANS	20
DESIGN	100
CONSTRUCTION	1,400
EQUIPMENT	192
TOTAL FUNDING	HTH

1,712 A

A

**F. SOCIAL SERVICES****DEF112 - SERVICES TO VETERANS**

1. STATE VETERANS CEMETERY, OAHU

CONSTRUCTION OF A STATE VETERANS CEMETERY ON OAHU. TO BE MATCHED WITH FEDERAL FUNDS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION	5,200
TOTAL FUNDING	AGS
	2,600 A

2,600 A

N

**HMS220 - RENTAL HOUSING AUGMENTATION AND ASSISTANCE**

2. HA901 UPGRADE ELECTRICAL SYSTEM, PALOLO HOMES I HA 203, OAHU

DESIGN AND CONSTRUCTION FOR UPGRADING OF THE INTERIOR AND EXTERIOR ELECTRICAL SYSTEMS.

DESIGN	45
CONSTRUCTION	480
TOTAL FUNDING	HMS

45  
480  
525 A

A

3. HA902 UPGRADE EXTERIOR ELEC. DISTRIBUTION SYSTEM, PALOLO HOMES II, HA 203, OAHU

DESIGN AND CONSTRUCTION TO UPGRADE EXTERIOR ELECTRICAL DISTRIBUTION SYSTEM FOR TRANSFER OF OWNERSHIP TO HECHO.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		68	
		CONSTRUCTION		808	
		TOTAL FUNDING	HMS	876 A	A
4.	HA904	UPGRADE INTERIOR ELEC. SYSTEM, PUHALA HOMES, HA 202, OAHU			
		DESIGN AND CONSTRUCTION TO UPGRADE EXISTING WIRES TO GROUNDING TYPE WIRES.			
		DESIGN		60	
		CONSTRUCTION		542	
		TOTAL FUNDING	HMS	602 A	A
5.	HA906	VEHICLE COMPOUND IMPROVEMENTS, PALOLO HOMES II, HA 203, OAHU			
		DESIGN AND CONSTRUCT VEHICLE CARPORT, TOILET AND SHOWER.			
		DESIGN		12	
		CONSTRUCTION		55	
		TOTAL FUNDING	HMS	67 A	A
6.	HA907	CONSTRUCT TRASH STATIONS, PALOLO HOMES I AND II, HA 203, OAHU			
		DESIGN AND CONSTRUCT TRASH ENCLOSURES, CURBS AND CONCRETE PADS FOR TRASH DUMPSTERS.			
		DESIGN		14	
		CONSTRUCTION		122	
		TOTAL FUNDING	HMS	136 A	A
7.	HA9010	ALTERNATE POWER FOR SEWER PUMP STATION, WAHIWA TERRACE, HA 1-15, OAHU			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF GENERATOR AND APPURTEANCES FOR EMERGENCY OPERATION OF SEWER PUMP STATION.			
		DESIGN		3	
		CONSTRUCTION		17	
		TOTAL FUNDING	HMS	20 A	A
8.	HA9011	SMOKE DETECTORS, WAHIWA TERRACE, HA 1-15, OAHU			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF SMOKE DETECTORS AND OTHER RELATED ITEMS NECESSARY TO MEET CODE REQUIREMENTS.			
		DESIGN		8	
		CONSTRUCTION		36	
		TOTAL FUNDING	HMS	44 A	A
9.	HA9012	SMOKE DETECTORS, WAIMANALO, HA 1-25, OAHU			

**ACT 316****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF SMOKE DETECTORS AND OTHER RELATED ITEMS NECESSARY TO MEET CODE REQUIREMENTS.			
		DESIGN		3	
		CONSTRUCTION		20	
		TOTAL FUNDING	HMS	23	A
10.	HA9013	SMOKE DETECTORS, PUUWAI MOMI, HA 1-26, OAHU			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF SMOKE DETECTORS AND OTHER RELATED ITEMS NECESSARY TO MEET CODE REQUIREMENTS.			
		DESIGN		21	
		CONSTRUCTION		153	
		TOTAL FUNDING	HMS	174	A
11.	HA9014	SMOKE DETECTORS, KOOLAU VILLAGE, HA 1-30, OAHU			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF SMOKE DETECTORS AND OTHER RELATED ITEMS NECESSARY TO MEET CODE REQUIREMENTS.			
		DESIGN		7	
		CONSTRUCTION		51	
		TOTAL FUNDING	HMS	58	A
12.	HA9015	SMOKE DETECTORS, MAILE I, HA 1-33, OAHU			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF SMOKE DETECTORS AND OTHER RELATED ITEMS NECESSARY TO MEET CODE REQUIREMENTS.			
		DESIGN		3	
		CONSTRUCTION		12	
		TOTAL FUNDING	HMS	15	A
13.	HA9016	SMOKE DETECTORS, MAILE II, HA 1-42, OAHU			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF SMOKE DETECTORS AND OTHER RELATED ITEMS NECESSARY TO MEET CODE REQUIREMENTS.			
		DESIGN		2	
		CONSTRUCTION		13	
		TOTAL FUNDING	HMS	15	A
14.	HA9017	SMOKE DETECTORS, NANAKULI, HA 1-35, OAHU			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF SMOKE DETECTORS AND OTHER RELATED ITEMS NECESSARY TO MEET CODE REQUIREMENTS.			

**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN CONSTRUCTION TOTAL FUNDING	HMS	3 17 20 A	A
15.	HA9018	SMOKE DETECTORS, WAIMAHA/SUNFLOWER, HA 1-57, OAHU			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF SMOKE DETECTORS AND OTHER RELATED ITEMS NECESSARY TO MEET CODE REQUIREMENTS.			
		DESIGN CONSTRUCTION TOTAL FUNDING	HMS	8 62 70 A	A
16.	HA9019	SMOKE DETECTORS, SPENCER HOUSE, HA 1-73, OAHU			
		DESIGN AND CONSTRUCTION FOR INSTALLATION OF SMOKE DETECTORS AND OTHER RELATED ITEMS NECESSARY TO MEET CODE REQUIREMENTS.			
		DESIGN CONSTRUCTION TOTAL FUNDING	HMS	3 13 16 A	A
17.	HA9022	MODERNIZE ELEVATOR SYSTEMS, KALANIHUIA, HA 1-24, OAHU			
		DESIGN AND CONSTRUCTION TO CHANGE ELEVATOR FLOOR SYSTEM FROM MECHANICAL TO ELECTRONIC, AND OTHER SYSTEMS WILL BE IMPROVED AS NECESSARY.			
		DESIGN CONSTRUCTION TOTAL FUNDING	HMS	15 120 135 A	A
18.	HA9023	INSTALL SECURITY LIGHTS, KAAHUMANU HOMES, HA 1-09, OAHU			
		DESIGN AND CONSTRUCTION TO PROVIDE SECURITY AS REQUIRED.			
		DESIGN CONSTRUCTION TOTAL FUNDING	HMS	13 108 121 A	A
19.	HA9024	INSTALL SECURITY LIGHTS AT KOOLAU VILLAGE, HA 1-30, OAHU			
		DESIGN AND CONSTRUCTION TO PROVIDE SECURITY LIGHTS AS REQUIRED.			
		DESIGN CONSTRUCTION TOTAL FUNDING	HMS	15 177 192 A	A
20.	HA9025	INSTALL SECURITY LIGHTS AT PIILANI, HA 1-44, MAUI			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
DESIGN AND CONSTRUCTION TO PROVIDE SECURITY LIGHTS AS REQUIRED.					
		DESIGN		12	
		CONSTRUCTION		57	
		TOTAL FUNDING	HMS	69 A	A
21. HA9026 CESSPOOL IMPROVEMENTS, KAIMALINO, HA 1-32, HAWAII					
DESIGN AND CONSTRUCTION TO CONSTRUCT RETAINING WALL FOR BACKFILLING AND LANDSCAPING AROUND CESSPOOLS.					
		DESIGN		13	
		CONSTRUCTION		82	
		TOTAL FUNDING	HMS	95 A	A
22. HA9031 WINDOW MODIFICATIONS, NANI O PUNA, HA 904, HAWAII					
DESIGN AND CONSTRUCTION TO REDESIGN WINDOWS FOR WEATHER PROTECTION.					
		DESIGN		17	
		CONSTRUCTION		208	
		TOTAL FUNDING	HMS	225 A	A
<b>HMS807 - TEACHER HOUSING</b>					
23. HA8825 LANAI TEACHER HOUSING, LANAI					
CONSTRUCTION AND EQUIPMENT FOR THE REPLACEMENT OF NINE COTTAGES.					
		CONSTRUCTION		469	
		EQUIPMENT		1	
		TOTAL FUNDING	HMS	470 A	A
24. HA8829 KAU/PAHALA TEACHER HOUSING, HAWAII					
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND CONSTRUCTION OF ONE 2-BEDROOM, 2-BATH DUPLEX AND THREE 2-BEDROOM, 1-BATH DUPLEXES AT KAU/PAHALA TEACHER COTTAGE SITE.					
		DESIGN		10	
		CONSTRUCTION		189	
		EQUIPMENT		1	
		TOTAL FUNDING	HMS	200 A	A
25. HA8827 WAIMEA AND KOHALA TEACHER HOUSING, HAWAII					
CONSTRUCTION AND EQUIPMENT FOR 3-BEDROOM, 2-BATH COTTAGES AND THREE 2-BEDROOM, 2-BATH DUPLEXES AT KOHALA AND ONE 2-BEDROOM, 2-BATH DUPLEX AT WAIMEA.					
		CONSTRUCTION		585	
		EQUIPMENT		1	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
			HMS	586 A	A

**HMS229 - HOUSING ASSISTANCE ADMINISTRATION**

26. HA9032 LOW INCOME HOUSING DEVELOPMENT,  
STATEWIDE

PLANS, LAND ACQUISITION, DESIGN AND  
CONSTRUCTION FOR THE DEVELOPMENT OF  
APPROXIMATELY 125 LOW-INCOME HOUSING  
UNITS (1, 2, AND 3 BEDROOMS) PER YEAR.

PLANS	281
LAND	750
DESIGN	281
CONSTRUCTION	
TOTAL FUNDING	1,312 A

8,063  
8,063 A

27. SUPERVISED HOMELESS SHELTER, STATEWIDE

PLANS, LAND ACQUISITION, DESIGN, AND  
CONSTRUCTION OF SUPERVISED SHELTERS FOR  
HOMELESS PEOPLE IN THE VARIOUS COUNTIES.

PLANS	75
LAND	2,423
DESIGN	1
CONSTRUCTION	1
TOTAL FUNDING	2,500 A

A

**BED225 - PRIVATE HOUSING DEVELOPMENT & OWNERSHIP**

28. P0051 ACQUISITION BY EMINENT DOMAIN OR THREAT  
OF EMINENT DOMAIN PORTIONS OF QLT LANDS

LAND ACQUISITION BY EMINENT DOMAIN OR  
THREAT OF EMINENT DOMAIN PORTIONS OF  
QUEEN LILIUOKALANI TRUST LANDS  
SITUATED AT KEAHUOLU NORTH KONA, HAWAII,  
TMK 3-7-4-08 PORTION OF PARCEL 12 FOR  
THE PUBLIC PURPOSES OF PROVIDING WEST  
HAWAII WITH A REGIONAL SPORTS-  
RECREATIONAL COMPLEX, CAMPUS SITE FOR  
HIGHER EDUCATION, AND SITES FOR  
INFRASTRUCTURE.

LAND	8,500
TOTAL FUNDING	8,500 A

A

29. P00139 ELDERLY HOUSING FACILITIES, WAHIWAHA,  
OAHU

DESIGN, CONSTRUCTION AND EQUIPMENT FOR  
ELDERLY HOUSING FACILITIES IN WAHIWAHA,  
OAHU.

DESIGN	200
CONSTRUCTION	2,670
EQUIPMENT	277
TOTAL FUNDING	3,147 C

C

30. P00140 WAIAHOLE VALLEY AGRICULTURAL PARK &  
RESIDENTIAL LOTS SUBDIVISION, OAHU

**ACT 316**

**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		CONSTRUCTION OF IMPROVEMENTS TO COMPLETE THE WAIAHOLE AGRICULTURAL PARK AND RESIDENTIAL LOTS SUBDIVISION.			
		CONSTRUCTION		4,000	
		TOTAL FUNDING	BED	4,000 C	C
31.	P00141	ELDERLY HOUSING FACILITIES, CROWN PROPERTY, WAIPAHU, OAHU			
		LAND ACQUISITION, CONSTRUCTION AND EQUIPMENT FOR ELDERLY HOUSING FACILITIES FACILITIES IN WAIPAHU, OAHU.			
		LAND		1,280	
		CONSTRUCTION		8,938	
		EQUIPMENT		150	
		TOTAL FUNDING	BED	10,368 C	C
32.	P00142	RENTAL HOUSING PROJECTS, FINANCING AND REFINANCING, STATEWIDE			
		PLANS, LAND, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FEASIBILITY STUDIES AND ALL COSTS RELATED TO RENTAL HOUSING PROJECTS.			
		PLANS		100	
		LAND		100	
		DESIGN		100	
		CONSTRUCTION		99,600	
		EQUIPMENT		100	
		TOTAL FUNDING	BED	100,000 E	E
33.		SELF-HELP HOME CONSTRUCTION LOANS, MILOLII, HAWAII			
		FUNDS FOR LOW-INTEREST LOANS FOR SELF- HELP HOME CONSTRUCTION FOR HOLDERS OF MILOLII STATE LEASES.			
		PLANS		700	
		TOTAL FUNDING	BED	700 A	A
34.		HALE MOHALU ELDERLY HOUSING PROJECT, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INFRASTRUCTURE IMPROVEMENTS INCLUDING STREAM RECONSTRUCTION, A STREAM BRIDGE, ACCESS ROAD REPAVEMENT, SEWER AND WATER HOOKUP FOR THE HALE MOHALU ELDERLY HOUSING PROJECT.			
		PLANS		50	
		DESIGN		100	
		CONSTRUCTION		1,106	
		EQUIPMENT		50	
		TOTAL FUNDING	BED	1,306 A	A

HHL602 - PLANNING, DEV, MGT & GEN SPPT FOR HAWN HMSTDs

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO. TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
			FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
35.	H-66 NANAKULI RESIDENCE LOTS GRAVITY SEWER SYSTEM, OAHU			
	CONSTRUCT A GRAVITY SEWER SYSTEM FOR SEWAGE DISPOSAL FOR EXISTING AND FUTURE HOMESTEADING OF NANAKULI RESIDENCE LOTS, OAHU. FUNDS MAY USED TO MATCH FEDERAL FUNDS.			
	CONSTRUCTION			
	TOTAL FUNDING	HHL	1,300	A
36.	H-30-B MOLOKAI WATER SYSTEM IMPROVEMENTS (PHASE 3B), MOLOKAI			
	CONSTRUCTION TO UPGRADE THE EXISTING WATER SYSTEM ON MOLOKAI TO COUNTRY OF MAUI STANDARDS AND TO THE STANDARDS OF THE FEDERAL AND STATE SAFE DRINKING WATER REGULATIONS AND TO IMPROVE THE QUANTITY AND QUALITY OF THE WATER AND THE OVERALL EFFICIENCY OF THE WATER SYSTEM.			
	CONSTRUCTION			
	TOTAL FUNDING	HHL	2,400	A
37.	H-30-C MOLOKAI WATER SYSTEM IMPROVEMENTS (PHASE 3C), MOLOKAI			
	CONSTRUCTION TO UPGRADE AND EXPAND THE EXISTING WATER SYSTEM ON MOLOKAI TO COUNTY OF MAUI STANDARDS AND TO THE STANDARDS OF THE FEDERAL AND STATE SAFE DRINKING WATER REGULATIONS.			
	CONSTRUCTION			
	TOTAL FUNDING	HHL	1,600	E
38.	LMD001 HAWAIIAN HOME LANDS DEVELOPMENT, STATEWIDE			
	PLANS, DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF HAWAIIAN HOME LANDS FOR RESIDENTIAL, AGRICULTURAL, AND OTHER PURPOSES PERMITTED BY THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED. TO INCLUDE: PLANS, DESIGN AND THE CONSTRUCTION OF ON-SITE (EX. GRADING, ROADS AND UTILITIES) AND OFF-SITE IMPROVEMENTS. FUNDS NOT NEEDED IN A COST ELEMENT MAY BE USED IN ANOTHER.			
	PLANS		275	50
	DESIGN		600	1,750
	CONSTRUCTION		14,800	20,350
	TOTAL FUNDING	HHL	2,875	A
		HHL	12,800	E
39.	LMD004 HAWAIIAN HOME LANDS ECONOMIC DEVELOPMENT, STATEWIDE			

**ACT 316****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANS, DESIGN AND CONSTRUCTION FOR DEVELOPMENT OF HAWAIIAN HOME LANDS FOR RESIDENTIAL, AGRICULTURAL, COMMERCIAL, INDUSTRIAL, RESORT AND OTHER PURPOSES PERMITTED BY THE HAWAIIAN HOMES COMMISSION ACT, 1920, AS AMENDED, INCLUDING PLANS, DESIGNS AND THE CONSTRUCTION OF ON-SITE (SUCH AS GRADING, ROADS, AND UTILITIES) AND OFF-SITE IMPROVEMENTS. FUNDS NOT NEEDED IN A COST ELEMENT MAY BE USED IN ANOTHER.			
		PLANS		60	
		DESIGN		400	2,000
		CONSTRUCTION		3,008	750
		TOTAL FUNDING	HHL	3,468 E	2,750 E
40.	LMD006	WAIANAE VALLEY INTERCEPTOR SEWER, OAHU			
		CONSTRUCT A GRAVITY SEWER SYSTEM FOR SEWER DISPOSAL FOR EXISTING AND FUTURE HOMESTEADERS OF WAIANAE RESIDENCE LOTS, WAIANAE VALLEY, OAHU. FUNDS MAY BE USED TO MATCH FEDERAL FUNDS.			
		CONSTRUCTION		1,000	
		TOTAL FUNDING	HHL	1,000 E	E
41.	LUALUALEI-PAHEEHEE RIDGE IMPROVEMENTS, OAHU				
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE LUALUALEI-PAHEEHEE RIDGE AGRICULTURE SUBDIVISION INCLUDING ON-SITE AND OFF-SITE IMPROVEMENTS.			
		PLANS		25	
		DESIGN		50	
		CONSTRUCTION		225	
		TOTAL FUNDING	HHL	300 A	A
<b>GOV602 - ELDERLY</b>					
42.	MULTI-PURPOSE SENIOR CENTERS, OAHU				
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT TO CONSTRUCT TWO NEW MULTI-PURPOSE SENIOR CENTERS.			
		PLANS		1	
		LAND		750	
		DESIGN		200	
		CONSTRUCTION		898	
		EQUIPMENT		1	
		TOTAL FUNDING	AGS	1,850 A	A

**G. FORMAL EDUCATION****EDN105 - REGULAR INSTRUCTION PROGRAM**

1. 001 LUMP SUM CIP - RELOCATION OR CONSTRUCTION OF PORTABLE CLASSROOMS

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF PORTABLES EACH SCHOOL YEAR TO MEET ENROLLMENT SHIFTS AMONG SCHOOLS, PROGRAM DEMANDS, UNFORSEEN EMERGENCIES, AND TO PROVIDE TEMPORARY FACILITIES WHILE NEW SCHOOLS ARE BEING PLANNED AND/OR UNDER CONSTRUCTION. THESE FUNDS ARE ALSO FOR SECONDARY SCHOOLS.			
		DESIGN		280	280
		CONSTRUCTION		4,000	4,000
		EQUIPMENT		160	160
		TOTAL FUNDING	AGS	4,440 B	4,440 B
2.	002	LUMP SUM CIP - MINOR RENOVATIONS AND IMPROVEMENTS TO BUILDINGS & SCHOOL SITES			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR MINOR ADDITIONS, RENOVATIONS AND IMPROVEMENTS TO BUILDINGS AND SCHOOL SITES, INCLUDING ELEMENTARY SPECIAL CLASSROOMS (MUSIC, ART AND SCIENCE).			
		DESIGN		100	100
		CONSTRUCTION		1,000	1,000
		EQUIPMENT		20	20
		TOTAL FUNDING	AGS	1,120 B	1,120 B
3.	003	LUMP SUM CIP - MASTER PLANS, SITE STUDIES AND MINOR LAND ACQUISITIONS			
		PLANS AND LAND ACQUISITION FOR MASTER PLANNING, SITE SELECTION, PRE-LAND ACQUISITION STUDIES, ACQUISITION OF SMALL PARCELS, FEASIBILITY STUDIES TO MEET FUTURE AND UNFORSEEN NEEDS AND CIP ASSISTANCE FROM DAGS IN PROVIDING COST ESTIMATES FOR BUDGETING AND EXPENDITURE PLANNING.			
		PLANS		495	500
		LAND		5	
		TOTAL FUNDING	AGS	500 B	500 B
4.	010	LUMP SUM CIP - ASBESTOS REMOVAL IN SCHOOL BUILDINGS			
		DESIGN AND CONSTRUCTION FOR CORRECTION, IMPROVEMENT AND RENOVATION TO ALL EXISTING SCHOOL BUILDINGS WITH IDENTIFIED HEALTH AND SAFETY HAZARDS.			
		DESIGN		150	150
		CONSTRUCTION		1,000	1,000
		TOTAL FUNDING	AGS	1,150 B	1,150 B
5.	008	LUMP SUM CIP - FIRE PROTECTION SYSTEMS AND FIRE ALARM SYSTEMS			
		DESIGN AND CONSTRUCTION FOR INCREMENTAL PROGRAM TO MEET COUNTY FIRE PROTECTION STANDARDS.			

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		100	100
		CONSTRUCTION		500	500
		TOTAL FUNDING	AGS	600 B	600 B
6.	009	LUMP SUM CIP - RENOVATIONS FOR NOISE ABATEMENT			
		DESIGN AND CONSTRUCTION FOR CORRECTIVE MEASURES TO SCHOOLS AFFECTED BY EXCESSIVE EXTERIOR NOISE AND VENTILATION PROBLEMS.			
		DESIGN		100	100
		CONSTRUCTION		405	500
		TOTAL FUNDING	AGS	505 B	600 B
7.	020	LUMP SUM CIP - COUNTY BUILDING PERMIT REQUIREMENTS			
		DESIGN AND CONSTRUCTION FOR ON-SITE AND OFF-SITE IMPROVEMENTS, AS REQUIRED BY THE COUNTIES.			
		DESIGN		100	100
		CONSTRUCTION		1,000	1,000
		TOTAL FUNDING	AGS	1,100 B	1,100 B
8.	140007	MCKINLEY HIGH, OAHU			
		DESIGN AND CONSTRUCTION FOR RENOVATION OF BUILDING A.			
		DESIGN		225	
		CONSTRUCTION			1,500
		TOTAL FUNDING	AGS	225 B	1,500 B
9.	119001	KALAKAUA INTERMEDIATE, OAHU			
		DESIGN AND CONSTRUCTION FOR STRUCTURAL CORRECTIONS TO BUILDING J.			
		DESIGN		20	
		CONSTRUCTION		210	
		TOTAL FUNDING	AGS	230 B	B
10.	203003	ALIAMANU ELEMENTARY, OAHU			
		DESIGN AND CONSTRUCTION FOR PARKING AND BUS LOADING ZONE.			
		DESIGN		72	
		CONSTRUCTION			494
		TOTAL FUNDING	AGS	72 B	494 B
11.	287002	HOAEAE ELEMENTARY, OAHU			
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, PARKING, FENCE, AND GROUND AND SITE IMPROVEMENTS.			
		CONSTRUCTION		1,768	
		EQUIPMENT		32	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	AGS	1,800 B	B
12. 625007 SAMUEL KALAMA INTERMEDIATE, MAUI					
DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.					
		DESIGN		125	
		CONSTRUCTION			2,499
		EQUIPMENT		40	
		TOTAL FUNDING	AGS	125 B	2,539 B
13. 715003 HANAMAULU/WAILUA ELEMENTARY, KAUAI					
CONSTRUCTION AND EQUIPMENT FOR FIRST INCREMENT: CLASSROOMS, PLAYFIELD, PARKING, RENOVATION OF CLASSROOMS FOR SUPPORT NEEDS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		6,367	
		EQUIPMENT		90	
		TOTAL FUNDING	AGS	6,457 B	B
14. 704004 KAPAA HIGH AND INTERMEDIATE, KAUAI					
DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS AND GROUND AND SITE IMPROVEMENTS.					
		DESIGN		113	
		CONSTRUCTION			2,550
		EQUIPMENT		35	
		TOTAL FUNDING	AGS	113 B	2,585 B
15. 626004 MAUI WAENA INTERMEDIATE, MAUI					
CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		5,900	
		EQUIPMENT		49	
		TOTAL FUNDING	AGS	5,949 B	B
16. 525006 WAIAKEA HIGH, HAWAII					
DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.					
		DESIGN		100	
		CONSTRUCTION			1,700
		EQUIPMENT		30	
		TOTAL FUNDING	AGS	100 B	1,730 B
17. 608013 KIHEI ELEMENTARY AND INTERMEDIATE, MAUI					

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEANCES.			
		DESIGN		150	
		CONSTRUCTION			2,826
		EQUIPMENT			35
		TOTAL FUNDING	AGS	150 B	2,861 B
18.	513004	KEAAU ELEMENTARY AND INTERMEDIATE, HAWAII			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, COVERED WALKWAYS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEANCES.			
		DESIGN		125	
		CONSTRUCTION			1,926
		EQUIPMENT			35
		TOTAL FUNDING	AGS	125 B	1,961 B
19.	533002	KEALAKEHE INTERMEDIATE, HAWAII			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEANCES.			
		DESIGN		115	
		CONSTRUCTION			2,060
		EQUIPMENT			30
		TOTAL FUNDING	AGS	115 B	2,090 B
20.	514006	KEALAKEHE ELEMENTARY, HAWAII			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEANCES.			
		DESIGN		110	
		CONSTRUCTION			2,040
		EQUIPMENT			32
		TOTAL FUNDING	AGS	110 B	2,072 B
21.	303002	EWA ELEMENTARY, OAHU			
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEANCES.			
		CONSTRUCTION		1,686	
		EQUIPMENT			32
		TOTAL FUNDING	AGS	1,718 B	B
22.	715004	HANAMAULU/WAILUA ELEMENTARY, KAUAI			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		IMPROVEMENTS, EQUIPMENT AND APPURTEANCES.			
		DESIGN		142	
		CONSTRUCTION			2,647
		EQUIPMENT			32
		TOTAL FUNDING	AGS	142 B	2,679 B
23.	435002	KAHUKU ELEMENTARY, OAHU			
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS AND GROUND AND SITE IMPROVEMENTS.			
		CONSTRUCTION		2,500	
		EQUIPMENT		62	
		TOTAL FUNDING	AGS	2,562 B	B
24.	627002	KAMEHAMEHA III ELEMENTARY ANNEX, MAUI			
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEANCES.			
		CONSTRUCTION		2,527	
		EQUIPMENT		40	
		TOTAL FUNDING	AGS	2,567 B	B
25.	627004	KAMEHAMEHA III ELEMENTARY ANNEX, MAUI			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEANCES.			
		DESIGN		100	
		CONSTRUCTION			1,600
		EQUIPMENT			32
		TOTAL FUNDING	AGS	100 B	1,632 B
26.	517003	KONAWAENA ELEMENTARY, HAWAII			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR FIRST INCREMENT: CLASSROOMS, PLAYFIELD, PARKING, PORTABLE RELOCATION, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEANCES.			
		DESIGN		100	
		CONSTRUCTION		5,913	
		EQUIPMENT		80	
		TOTAL FUNDING	AGS	6,093 B	B
27.	534003	NEW PAHOA ELEMENTARY, HAWAII			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR FIRST INCREMENT: CLASSROOMS, PLAYFIELD, PARKING, PORTABLE RELOCATION, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEANCES.			
		DESIGN		100	
		CONSTRUCTION		5,913	

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		EQUIPMENT TOTAL FUNDING	AGS	80 6,093 B	B
28. 342004 WAIANAE III ELEMENTARY, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR SECOND INCREMENT: CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS	1,791 32 1,823 B	B
29. 517004 KONAWAENA ELEMENTARY, HAWAII					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR SECOND INCREMENT: CLASSROOMS, COVERED WALKWAY, ACCESS ROAD, PARKING, EQUIPMENT AND APPURTENANCES.			
		DESIGN CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS	180 3,000 40 180 B	B
30. 534004 NEW PAHOA ELEMENTARY, HAWAII					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR SECOND INCREMENT: CLASSROOMS, PARKING, COVERED WALKWAYS, EQUIPMENT AND APPURTENANCES.			
		DESIGN CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS	140 2,619 32 140 B	B
31. 207001 HELEMANO ELEMENTARY, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.			
		DESIGN CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS	95 1,513 24 95 B	B
32. 708001 KILAUEA ELEMENTARY, KAUAI					
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS AND GROUND AND SITE IMPROVEMENTS.			
		CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS	950 16 966 B	B
33. 714001 WAIMEA CANYON ELEMENTARY AND INTERMEDIATE, KAUAI					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.			
		DESIGN		82	
		CONSTRUCTION			1,352
		EQUIPMENT		24	
		TOTAL FUNDING	AGS	82 B	1,376 B
34.	624008	LAHAINA INTERMEDIATE, MAUI			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.			
		DESIGN		142	
		CONSTRUCTION			3,006
		EQUIPMENT		9	
		TOTAL FUNDING	AGS	142 B	3,015 B
35.	528007	WAIMEA ELEMENTARY AND INTERMEDIATE, HAWAII			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.			
		DESIGN		63	
		CONSTRUCTION			963
		EQUIPMENT		16	
		TOTAL FUNDING	AGS	63 B	979 B
36.	712001	WAIMEA HIGH, KAUAI			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS AND GROUND AND SITE IMPROVEMENTS.			
		DESIGN		60	
		CONSTRUCTION			950
		EQUIPMENT		16	
		TOTAL FUNDING	AGS	60 B	966 B
37.	705007	KAUAI HIGH, KAUAI			
		DESIGN FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.			
		DESIGN			100
		TOTAL FUNDING	AGS	B	100 B
38.	608004	KIHEI INTERMEDIATE, MAUI			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR MUSIC/BAND BUILDING AND GROUND AND SITE IMPROVEMENTS.			
		DESIGN		79	
		CONSTRUCTION			1,233

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		EQUIPMENT		10	
		TOTAL FUNDING	AGS	79 B	1,243 B
39.	502004	HILO HIGH, HAWAII			
		CONSTRUCTION AND EQUIPMENT FOR WOOD AND METAL TECHNOLOGY SHOPS, PARKING, COVERED WALKWAYS, EQUIPMENT, APPURTEANCES AND DEMOLITION OF OLD STRUCTURE.			
		CONSTRUCTION		1,500	
		EQUIPMENT		10	
		TOTAL FUNDING	AGS	1,510 B	B
40.	526002	WAIAKEA INTERMEDIATE, HAWAII			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, COVERED WALKWAYS, EQUIPMENT AND APPURTEANCES.			
		DESIGN		73	
		CONSTRUCTION			1,082
		EQUIPMENT			20
		TOTAL FUNDING	AGS	73 B	1,102 B
41.	516001	KOHALA HIGH AND ELEMENTARY, HAWAII			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, EQUIPMENT AND APPURTEANCES.			
		DESIGN		70	
		CONSTRUCTION			1,119
		EQUIPMENT			16
		TOTAL FUNDING	AGS	70 B	1,135 B
42.	518007	KONAWAENA HIGH, HAWAII			
		DESIGN FOR RENOVATION OF ELEMENTARY CLASSROOMS TO SECONDARY CLASSROOMS.			
		DESIGN			100
		TOTAL FUNDING	AGS		100 B
43.	343001	NEW EWA II ELEMENTARY, OAHU			
		PLANS FOR ENVIRONMENTAL IMPACT STATEMENT AND SITE SELECTION.			
		PLANS		50	
		TOTAL FUNDING	AGS	50 B	B
44.	343002	NEW EWA II ELEMENTARY, OAHU			
		FUNDS FOR LAND ACQUISITION.			
		LAND			600
		TOTAL FUNDING	AGS		600 B
45.	343003	NEW EWA II ELEMENTARY, OAHU			
		PLANS FOR MASTER PLAN REPORT.			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANS		50	
		TOTAL FUNDING	AGS	B	50 B
46. 628001 NEW UPCOUNTRY MAUI HIGH, MAUI					
PLANS FOR ENVIRONMENTAL IMPACT STATEMENT AND SITE SELECTION.					
		PLANS		50	
		TOTAL FUNDING	AGS	50 B	
47. 628002 NEW UPCOUNTRY MAUI HIGH, MAUI					
FUNDS FOR LAND ACQUISITION.					
		LAND			1,200
		TOTAL FUNDING	AGS	B	1,200 B
48. 628003 NEW UPCOUNTRY MAUI HIGH, MAUI					
PLANS FOR MASTER PLAN REPORT.					
		PLANS			75
		TOTAL FUNDING	AGS	B	75 B
49. 535001 NEW WEST HAWAII ELEMENTARY, HAWAII					
PLANS FOR ENVIRONMENTAL IMPACT STATEMENT AND SITE SELECTION.					
		PLANS		50	
		TOTAL FUNDING	AGS	50 B	
50. 535002 NEW WEST HAWAII ELEMENTARY, HAWAII					
FUNDS FOR LAND ACQUISITION.					
		LAND			600
		TOTAL FUNDING	AGS	B	600 B
51. 535003 NEW WEST HAWAII ELEMENTARY, HAWAII					
PLANS FOR MASTER PLAN REPORT.					
		PLANS			50
		TOTAL FUNDING	AGS	B	50 B
52. 623001 WAILUKU ELEMENTARY, MAUI					
DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.					
		DESIGN		60	
		CONSTRUCTION			875
		EQUIPMENT			16
		TOTAL FUNDING	AGS	60 B	891 B
53. 223002 WAIALUA HIGH, OAHU					
DESIGN FOR CLASSROOMS.					

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN TOTAL FUNDING	AGS		87 87 B
54.	622001	WAIHEE ELEMENTARY, MAUI			
		DESIGN FOR CLASSROOMS. DESIGN TOTAL FUNDING	AGS		100 100 B
55.	618002	MOLOKAI HIGH AND INTERMEDIATE, MOLOKAI			
		DESIGN AND CONSTRUCTION FOR PLAYFIELD AND PARKING. DESIGN CONSTRUCTION TOTAL FUNDING	AGS	76 76 B	1,275 1,275 B
56.	608007	KIHEI INTERMEDIATE, MAUI			
		DESIGN FOR P.E. LOCKER/SHOWER FACILITY, PLAYCOURTS, AND GROUND AND SITE IMPROVEMENTS. DESIGN TOTAL FUNDING	AGS		110 110 B
57.	528003	WAIMEA ELEMENTARY AND INTERMEDIATE, HAWAII			
		DESIGN FOR P.E. LOCKER/SHOWER FACILITY. DESIGN TOTAL FUNDING	AGS		90 90 B
58.	626005	MAUI WAENA INTERMEDIATE, MAUI			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR P.E. LOCKER/SHOWER FACILITY, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEANCES. DESIGN CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS	97 97 B	1,927 30 1,957 B
59.	603008	IAO INTERMEDIATE, MAUI			
		CONSTRUCTION FOR PAVED PLAYCOURTS, PER AGREEMENT WITH MAUI COUNTY. CONSTRUCTION TOTAL FUNDING	AGS	75 75 B	
60.	520007	MOUNTAIN VIEW ELEMENTARY AND INTERMEDIATE, HAWAII			
		DESIGN AND CONSTRUCTION OF DRIVEWAY IMPROVEMENTS, BUS LOADING/UNLOADING AREA AND PARKING.			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		30	
		CONSTRUCTION		180	
		TOTAL FUNDING	AGS	210 B	B
61.	602009	HANA HIGH, MAUI			
		DESIGN AND CONSTRUCTION FOR ROADWAY AND PARKING FOR SCHOOL GYMNASIUM.			
		DESIGN		54	
		CONSTRUCTION		666	
		TOTAL FUNDING	AGS	720 B	B
62.	226003	RADFORD HIGH, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR INDUSTRIAL EDUCATION FACILITY AND PAVING OF PARKING AREA.			
		DESIGN		136	
		CONSTRUCTION			2,228
		EQUIPMENT			9
		TOTAL FUNDING	AGS	136 B	2,237 B
63.	302005	CAMPBELL HIGH, OAHU			
		DESIGN FOR AUTO AND METAL SHOPS AND GROUND AND SITE IMPROVEMENTS.			
		DESIGN			125
		TOTAL FUNDING	AGS	B	125 B
64.	523010	PAHOA HIGH, HAWAII			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR AUTOMOTIVE TECHNOLOGY FACILITY, COVERED WALKWAY, EQUIPMENT AND APPURTENANCES.			
		DESIGN		84	
		CONSTRUCTION			1,378
		EQUIPMENT			5
		TOTAL FUNDING	AGS	84 B	1,383 B
65.	613001	LANAI HIGH, LANAI			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR AUTO/METAL FACILITY AND GROUND AND SITE IMPROVEMENTS.			
		DESIGN		15	
		CONSTRUCTION		1,200	
		EQUIPMENT		10	
		TOTAL FUNDING	AGS	1,225 B	B
66.	507002	HONOKAA HIGH, HAWAII			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR AUTO SHOP.			
		DESIGN		80	
		CONSTRUCTION			1,378
		EQUIPMENT			5

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### CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	AGS	80 B	1,383 B
67. 402002 CASTLE HIGH, OAHU					
DESIGN, CONSTRUCTION AND EQUIPMENT FOR AUTO SHOP.					
		DESIGN		75	
		CONSTRUCTION			800
		EQUIPMENT			20
		TOTAL FUNDING	AGS	75 B	820 B
68. 532609 KAHAKAI ELEMENTARY, HAWAII					
DESIGN AND CONSTRUCTION FOR PLAYCOURTS AND GROUND AND SITE IMPROVEMENTS.					
		DESIGN		15	
		CONSTRUCTION		100	
		TOTAL FUNDING	AGS	115 B	B
69. 600026 BALDWIN HIGH, MAUI					
DESIGN AND CONSTRUCTION FOR PLAYCOURTS AND GROUND AND SITE IMPROVEMENTS.					
		DESIGN		40	
		CONSTRUCTION		350	
		TOTAL FUNDING	AGS	390 B	B
70. 533004 KEALAKEHE INTERMEDIATE, HAWAII					
DESIGN AND CONSTRUCTION FOR PLAYCOURTS AND GROUND AND SITE IMPROVEMENTS.					
		DESIGN		17	
		CONSTRUCTION		145	
		TOTAL FUNDING	AGS		162 B
71. 616002 MAUI HIGH, MAUI					
DESIGN AND CONSTRUCTION FOR ATHLETIC FIELD WITH STORAGE AND TOILET FACILITIES.					
		DESIGN		50	
		CONSTRUCTION			1,200
		TOTAL FUNDING	AGS	50 B	1,200 B
72. 524005 WAIAKEA ELEMENTARY, HAWAII					
DESIGN FOR CLASSROOMS, EQUIPMENT AND APPURTENANCES.					
		DESIGN		100	
		TOTAL FUNDING	AGS		100 B
73. 237009 WHEELER ELEMENTARY, OAHU					
DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		113	
		CONSTRUCTION			1,921
		EQUIPMENT			32
		TOTAL FUNDING	AGS	113 B	1,953 B
74.	309003	KAIMILOA ELEMENTARY, OAHU			
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEANCES.			
		CONSTRUCTION		2,244	
		EQUIPMENT		48	
		TOTAL FUNDING	AGS	2,292 B	
75.	506001	HONAUNAU ELEMENTARY, HAWAII			
		DESIGN FOR CLASSROOMS, COVERED WALKWAY, EQUIPMENT AND APPURTEANCES.			
		DESIGN			60
		TOTAL FUNDING	AGS	B	60 B
76.	215007	MILILANI HIGH, OAHU			
		DESIGN, CONSTRUCTION, EQUIPMENT AND APPURTEANCES FOR CLASSROOMS.			
		DESIGN		113	
		CONSTRUCTION		2,340	
		EQUIPMENT		40	
		TOTAL FUNDING	AGS	B	2,493 B
77.	423001	MOKAPU ELEMENTARY, OAHU			
		DESIGN FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEANCES.			
		DESIGN			105
		TOTAL FUNDING	AGS	B	105 B
78.	415004	KALAHEO HIGH, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR ATHLETIC LOCKER/SHOWER FACILITY, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEANCES.			
		DESIGN		121	
		CONSTRUCTION			1,911
		EQUIPMENT			5
		TOTAL FUNDING	AGS	121 B	1,916 B
79.	600027	BALDWIN HIGH, MAUI			
		DESIGN FOR GYMNASIUM, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEANCES.			
		DESIGN			210
		TOTAL FUNDING	AGS	B	210 B
80.	705001	KAUAI HIGH, KAUAI			

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## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.			
		DESIGN			
		TOTAL FUNDING	AGS		210
				B	210 B
81.	702003	KALAHEO ELEMENTARY, KAUAI			
		DESIGN FOR CLASSROOM BUILDING WITH TEACHER WORKROOM AND TOILETS.			
		DESIGN		363	
		TOTAL FUNDING	AGS	363	B
					B
82.	347001	KAPELEI ELEMENTARY, OAHU			
		MASTER PLAN AND DESIGN FOR THE FIRST INCREMENT OF A NEW ELEMENTARY SCHOOL.			
		PLANS		100	
		DESIGN			
		TOTAL FUNDING	AGS	100	B
					275
					275 B
83.	241001	MILILANI MAUKA ELEMENTARY, OAHU			
		PLANS AND DESIGN FOR THE SITE SELECTION (EIS), AND MASTER PLAN AND DESIGN FOR A NEW ELEMENTARY SCHOOL.			
		PLANS		50	
		DESIGN			
		TOTAL FUNDING	AGS	50	B
					500
					B
84.	010	LUMP SUM CIP - PROJECT ADJUSTMENT FUND			
		DESIGN, CONSTRUCTION AND EQUIPMENT TO ESTABLISH A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT. OTHER DOE PROJECTS WITHIN THIS ACT WITH UNREQUIRED BALANCES MAY BE TRANSFERRED INTO THIS ITEM.			
		DESIGN		300	
		CONSTRUCTION		1,100	
		EQUIPMENT		100	
		TOTAL FUNDING	AGS	1,500	B
					1,500 B
85.	325004	WAIANAE HIGH, OAHU			
		CONSTRUCTION AND EQUIPMENT FOR RENOVATION OF CLASSROOMS FOR SCIENCE, EQUIPMENT AND APPURTENANCES.			
		CONSTRUCTION		750	
		EQUIPMENT		15	
		TOTAL FUNDING	AGS	765	B
					B
86.	503001	HILO INTERMEDIATE, HAWAII			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, EQUIPMENT AND APPURTENANCES;			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		RENOVATE BUILDING A BASEMENT FOR TEMPORARY SHOP.			
		DESIGN		120	
		CONSTRUCTION			1,800
		EQUIPMENT			30
		TOTAL FUNDING	AGS	120 B	1,830 B
87.	609004	KILOHANA ELEMENTARY, MOLOKAI			
		DESIGN FOR CLASSROOMS AND GROUND AND SITE IMPROVEMENTS.			
		DESIGN			100
		TOTAL FUNDING	AGS	B	100 B
88.	602008	HANA HIGH AND ELEMENTARY, MAUI			
		DESIGN AND CONSTRUCTION FOR ELEMENTARY PLAYFIELD.			
		DESIGN			29
		CONSTRUCTION			286
		TOTAL FUNDING	AGS	B	315 B
89.		HANA HIGH AND ELEMENTARY, MAUI			
		CONSTRUCTION TO COMPLETE THE GYMNASIUM, GROUND AND SITE IMPROVEMENTS, AND APPURTENANCES.			
		CONSTRUCTION		646	
		TOTAL FUNDING	AGS	646 B	B
90.		WAHIWAHA INTERMEDIATE, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR A COVERED PLAYCOURT, EQUIPMENT, GROUND AND SITE IMPROVEMENTS AND APPURTENANCES.			
		PLANS		11	
		DESIGN		50	
		CONSTRUCTION		750	
		TOTAL FUNDING	AGS	811 B	B
91.		WAIAHAE HIGH, OAHU			
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A WEIGHTROOM, EQUIPMENT, GROUND AND SITE IMPROVEMENTS, AND APPURTENANCES.			
		PLANS		10	
		DESIGN		20	
		CONSTRUCTION		300	
		EQUIPMENT		10	
		TOTAL FUNDING	AGS	340 B	B
92.		WAIAHAE HIGH, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR A PRESSROOM, GROUND AND SITE IMPROVEMENTS AND IMPROVEMENTS.			

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## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANS		6	
		DESIGN		20	
		CONSTRUCTION		150	
		TOTAL FUNDING	AGS	176 B	B
93.		WAIANAE HIGH, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN EXHAUST BLOWER FOR THE HOME ECONOMICS DEPARTMENT.			
		PLANS		5	
		DESIGN		10	
		CONSTRUCTION		60	
		EQUIPMENT		5	
		TOTAL FUNDING	AGS	80 B	B
94.		WAIANAE HIGH, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PUMP AND WELL TO STORE LIVE SPECIMENS FOR THE MARINE SCIENCE PROGRAMS.			
		PLANS		2	
		DESIGN		5	
		CONSTRUCTION		40	
		EQUIPMENT		3	
		TOTAL FUNDING	AGS	50 B	B
95.		LEIHOKU ELEMENTARY, OAHU			
		PLANS, DESIGN, AND CONSTRUCTION FOR A 4,700 SQUARE FEET PLAYCOURT, EQUIPMENT, GROUND AND SITE IMPROVEMENTS AND APPURTENANCES.			
		PLANS		5	
		DESIGN		10	
		CONSTRUCTION		40	
		TOTAL FUNDING	AGS	55 B	B
96.		RADFORD HIGH, OAHU			
		DESIGN AND CONSTRUCTION TO COMPLETE PAVING OF THE STUDENT PARKING LOT.			
		DESIGN		48	
		CONSTRUCTION		500	
		TOTAL FUNDING	AGS	548 B	B
97.		KAPAA INTERMEDIATE AND HIGH, KAUAI			
		FUNDS TO REVISE SCHOOL MASTER PLAN DUE TO PLANNED RELOCATION OF ELEMENTARY SCHOOL.			
		PLANS		300	
		TOTAL FUNDING	AGS	300 B	B
98.		KAPAA ELEMENTARY, KAUAI			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		FUNDS TO CONDUCT A SITE SURVEY TO RELOCATE THE ELEMENTARY SCHOOL DUE TO AN ANTICIPATED INCREASE IN INTERMEDIATE AND HIGH SCHOOL STUDENTS.			
		PLANS		250	
		TOTAL FUNDING	AGS	250	B
99.		KAMILOIKI ELEMENTARY, OAHU			B
		DESIGN AND CONSTRUCTION FOR SOUNDPROOFING PARTITIONS FOR 3 ON 2 AND 6 ON 4 CLASSROOMS.			
		DESIGN		20	
		CONSTRUCTION		180	
		TOTAL FUNDING	AGS	200	B
100.		BALDWIN HIGH, MAUI			B
		CONSTRUCTION FOR REPAIRS TO THE AUDITORIUM AT BALDWIN HIGH SCHOOL, MAUI.			
		CONSTRUCTION		1,000	
		TOTAL FUNDING	AGS	1,000	B
101.		KONAWAENA HIGH, HAWAII			B
		PLANS, DESIGN AND CONSTRUCTION FOR A COMMUNITY-SCHOOL ALL-WEATHER TRACK FOR WEST HAWAII.			
		PLANS		50	
		DESIGN		100	
		CONSTRUCTION		1,350	
		TOTAL FUNDING	AGS	1,500	B
102.		MOANALUA HIGH, OAHU			B
		PLANS AND DESIGN FOR IMPROVEMENTS TO FIELD ADJACENT TO ADMINISTRATION BUILDING.			
		PLANS		5	
		DESIGN		10	
		TOTAL FUNDING	AGS	15	B
103.		WAIAKEA UKA ELEMENTARY, HAWAII			B
		PLANS FOR WAIAKEA UKA ELEMENTARY SCHOOL, HAWAII.			
		PLANS		100	
		TOTAL FUNDING	AGS	100	B
104.		KA'U HIGH, HAWAII			B
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR MUSIC BUILDING.			
		DESIGN		79	
		CONSTRUCTION		1,233	
		EQUIPMENT		10	

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	AGS	1,322 B	B

105. AUGUST AHRENS ELEMENTARY, OAHU

DESIGN FOR A NEW 8 CLASSROOM BUILDING.

DESIGN	AGS
TOTAL FUNDING	AGS

136	136 B
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B
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106. LAHAINALUNA HIGH, MAUI

PLANS, DESIGN, AND CONSTRUCTION FOR  
A SWIMMING POOL AND RELATED FACILITIES  
AT LAHAINALUNA HIGH SCHOOL WHICH SHALL  
BE AVAILABLE FOR USE BY THE COMMUNITY.

PLANS	25
DESIGN	25
CONSTRUCTION	200
TOTAL FUNDING	AGS

25	25
200	250 B

B
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**EDN107 - SPECIAL EDUCATION**

107. 005 LUMP SUM CIP, ARCHITECTURAL BARRIERS AND  
SPECIAL EDUCATION CLASSROOM IMPROVEMENTS

DESIGN AND CONSTRUCTION TO PROVIDE  
RAMPS, ELEVATORS AND OTHER CORRECTIVE  
MEASURES FOR ACCESSIBILITY OF SCHOOL  
FACILITIES TO HANDICAPPED PERSONS.

DESIGN	506	
CONSTRUCTION	11,600	1,782
TOTAL FUNDING	AGS	12,106 B

506	1,782
11,600	12,106 B

108. 013 LUMP SUM CIP, SPECIAL EDUCATION PROGRAM

DESIGN AND CONSTRUCTION FOR THE  
RENOVATION OR CONSTRUCTION OF CLASSROOMS  
FOR SPECIAL EDUCATION.

DESIGN	100	100
CONSTRUCTION	1,000	1,000
TOTAL FUNDING	AGS	1,100 B

100	100
1,000	1,100 B

**EDN203 - SCHOOL ADMINISTRATION**

109. 216002 MILILANI UKA ELEMENTARY, OAHU

DESIGN FOR AN ADMINISTRATION BUILDING  
AND RENOVATION OF TEMPORARY  
ADMINISTRATION BUILDING INTO CLASSROOMS.

DESIGN	60	
TOTAL FUNDING	AGS	B

60	
60	B

110. 330006 WAIPAHU HIGH, OAHU

DESIGN OF AN ADMINISTRATION BUILDING  
AND RENOVATION OF EXISTING  
ADMINISTRATION AREAS INTO CLASSROOMS.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO. TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
			FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
	DESIGN TOTAL FUNDING	AGS		106 106 B
111.	331006 WAIPAHU INTERMEDIATE, OAHU			
	DESIGN AND CONSTRUCTION FOR AN ADMINISTRATION BUILDING AND DEMOLITION OF THE EXISTING BUILDING.			
	DESIGN CONSTRUCTION TOTAL FUNDING	AGS AGS	B C	84 400 84 B 400 C
	<b>EDN204 - INSTRUCTIONAL MEDIA</b>			
112.	106001 FARRINGTON HIGH, OAHU			
	CONSTRUCTION AND EQUIPMENT FOR A LIBRARY AND RENOVATION OF THE EXISTING LIBRARY INTO CLASSROOMS.			
	CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS	2,900 28 2,928 B	B
113.	205001 HALE KULA ELEMENTARY, OAHU			
	DESIGN FOR THE RENOVATION AND EXPANSION OF EXISTING LIBRARY.			
	DESIGN TOTAL FUNDING	AGS	B	70 70 B
114.	413002 KAILUA INTERMEDIATE, OAHU			
	DESIGN, CONSTRUCTION AND EQUIPMENT FOR RENOVATION AND EXPANSION OF EXISTING LIBRARY.			
	DESIGN CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS	80 850 10 860 B	B
115.	612001 LAHAINALUNA HIGH, MAUI			
	DESIGN FOR A LIBRARY AND CONVERSION OF EXISTING TEMPORARY LIBRARY INTO CLASSROOMS.			
	DESIGN TOTAL FUNDING	AGS	B	190 190 B
116.	317002 NANAIKAPONO ELEMENTARY, OAHU			
	DESIGN, CONSTRUCTION AND EQUIPMENT FOR RENOVATION OF P.E. LOCKER/SHOWER INTO LIBRARY AND RENOVATION OF THE EXISTING LIBRARY INTO TWO CLASSROOMS.			
	DESIGN CONSTRUCTION		44	227

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		EQUIPMENT TOTAL FUNDING	AGS	44 B	20 247 B
117.	225008	PEARL RIDGE ELEMENTARY, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR RENOVATION OF BUILDING J INTO LIBRARY.			
		DESIGN		10	
		CONSTRUCTION		620	
		EQUIPMENT		15	
		TOTAL FUNDING	AGS	645 B	B
118.	AIEA HIGH,	OAHU			
		DESIGN AND CONSTRUCTION FOR EXPANSION AND RENOVATION OF EXISTING LIBRARY.			
		DESIGN		61	
		CONSTRUCTION		345	
		TOTAL FUNDING	AGS	406 B	B
119.	HIGHLANDS INTERMEDIATE,	OAHU			
		DESIGN AND CONSTRUCTION OF NEW LIBRARY, RENOVATION OF EXISTING LIBRARY TO CLASSROOMS, AND REMOVAL AND RELOCATION OF EXISTING PORTABLE CLASSROOMS.			
		DESIGN		167	
		CONSTRUCTION		2,542	
		TOTAL FUNDING	AGS	2,709 B	B
120.	KALANI HIGH,	OAHU			
		PLANS, DESIGN AND CONSTRUCTION FOR AIR CONDITIONING IN SCHOOL LIBRARY.			
		PLANS		5	
		DESIGN		15	
		CONSTRUCTION		130	
		TOTAL FUNDING	AGS	150 B	B
121.	LAHAINALUNA HIGH,	MAUI			
		CONSTRUCTION FOR IMPROVEMENTS TO LIBRARY.			
		CONSTRUCTION		750	
		TOTAL FUNDING	AGS	750 B	B
122.	LINCOLN ELEMENTARY,	OAHU			
		DESIGN AND CONSTRUCTION FOR AIR CONDITIONING IN SCHOOL LIBRARY.			
		DESIGN		20	
		CONSTRUCTION		180	
		TOTAL FUNDING	AGS	200 B	B

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
123.	015	STATE/DISTRICT RELOCATIONS AND IMPROVEMENTS			
DESIGN AND CONSTRUCTION FOR STATE AND DISTRICT OFFICE IMPROVEMENTS.					
		DESIGN		100	
		CONSTRUCTION		500	
		TOTAL FUNDING	AGS	600	B
<b>EDN305 - SCHOOL FOOD SERVICES</b>					
124.	715005	HANAMAULU/WAILUA ELEMENTARY, KAUAI			
DESIGN FOR A CAFETERIUM WITH PREPARATION KITCHEN.					
		DESIGN			100
		TOTAL FUNDING	AGS	B	100 B
125.	287003	HOAEAE ELEMENTARY, OAHU			
DESIGN, CONSTRUCTION AND EQUIPMENT FOR A CAFETERIUM WITH SERVING KITCHEN.					
		DESIGN		95	
		CONSTRUCTION			1,361
		EQUIPMENT		30	
		TOTAL FUNDING	AGS	95 B	1,391 B
126.	435003	KAHUKU ELEMENTARY, OAHU			
DESIGN, CONSTRUCTION AND EQUIPMENT FOR A CAFETERIUM WITH SERVING KITCHEN.					
		DESIGN		90	
		CONSTRUCTION			1,326
		EQUIPMENT		30	
		TOTAL FUNDING	AGS	90 B	1,356 B
127.	533003	KEALAKEHE INTERMEDIATE, HAWAII			
DESIGN, CONSTRUCTION AND EQUIPMENT FOR A CAFETERIUM; TO INCLUDE: PREPARATION KITCHEN, DRIVEWAY AND PARKING LOT.					
		DESIGN		194	
		CONSTRUCTION			3,995
		EQUIPMENT		30	
		TOTAL FUNDING	AGS	194 B	4,025 B
128.	420006	LAIE ELEMENTARY, OAHU			
DESIGN FOR RENOVATION AND EXPANSION OF CAFETERIUM.					
		DESIGN			45
		TOTAL FUNDING	AGS	B	45 B
129.	626006	MAUI WAENA INTERMEDIATE, MAUI			
DESIGN, CONSTRUCTION AND EQUIPMENT FOR A CAFETERIUM.					

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### CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		118	
		CONSTRUCTION			2,119
		EQUIPMENT			30
		TOTAL FUNDING	AGS	118 B	2,149 B
130.	409003	SUNSET BEACH ELEMENTARY, OAHU			
		DESIGN CAFETERIUM.			
		DESIGN			95
		TOTAL FUNDING	AGS	B	95 B
131.	235003	WAIALUA HIGH, OAHU			
		DESIGN FOR RENOVATION AND EXPANSION OF CAFETERIUM.			
		DESIGN			90
		TOTAL FUNDING	AGS	B	90 B
132.	342005	WAIANAE III ELEMENTARY, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A CAFETERIUM WITH SERVING KITCHEN.			
		DESIGN		95	
		CONSTRUCTION			1,361
		EQUIPMENT			30
		TOTAL FUNDING	AGS	95 B	1,391 B
133.		KAPAA HIGH AND INTERMEDIATE, KAUAI			
		PLANS, DESIGN AND CONSTRUCTION FOR EXPANSION OF DINING ROOM FACILITIES.			
		PLANS		15	
		DESIGN			30
		CONSTRUCTION			255
		TOTAL FUNDING	AGS	300 B	
134.		KAUMANA ELEMENTARY, HAWAII			
		CONSTRUCTION FOR SCHOOL CAFETERIUM.			
		CONSTRUCTION		1,100	
		TOTAL FUNDING	AGS	1,100 B	
					B
EDN407 - PUBLIC LIBRARIES					
135.	070-4	HILO LIBRARY EXPANSION, HAWAII			
		CONSTRUCTION AND EQUIPMENT FOR EXPANSION OF THE HILO PUBLIC LIBRARY.			
		CONSTRUCTION		2,124	
		EQUIPMENT			100
		TOTAL FUNDING	AGS	2,224 C	
136.	098-2	NORTH SHORE KAUAI LIBRARY, KAUAI			
		DESIGN FOR A NEW LIBRARY FACILITY.			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN TOTAL FUNDING	AGS	236 236 C	C
<b>137. 800-02 LUMP SUM CIP, MINOR IMPROVEMENTS</b>					
PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO BUILDINGS AND LIBRARY SITES.					
		PLANS DESIGN CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS	20 50 250 10 330 C	250 10 260 C
<b>138. 800-03 LUMP SUM CIP, ENVIRONMENTAL CONTROLS</b>					
DESIGN AND CONSTRUCTION TO PROVIDE ENVIRONMENTAL CONTROLS TO BUILDINGS AND LIBRARY SITES.					
		DESIGN CONSTRUCTION TOTAL FUNDING	AGS	150 465 615 C	100 360 460 C
<b>139. 800-06 LUMP SUM CIP, MODULAR LIBRARY FACILITIES</b>					
PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR ACQUISITION OR CONSTRUCTION OF MODULAR LIBRARY FACILITIES.					
		PLANS DESIGN CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS	20 50 500 50 620 C	C
<b>140. 800-07 LUMP SUM CIP, SITE SELECTION MASTER PLAN</b>					
PLANS, LAND ACQUISITION, SITE SELECTION MASTER PLANNING AND DADS ASSISTANCE FUNDS.					
		PLANS LAND TOTAL FUNDING	AGS	150 5 155 C	100 100 C
<b>141. 001-2 HAWAII STATE PUBLIC LIBRARY, OAHU</b>					
CONSTRUCTION AND EQUIPMENT FOR THE EXPANSION AND RENOVATION OF THE HAWAII STATE PUBLIC LIBRARY.					
		CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS	6,000 2,000 8,000 A	A
<b>142. MANOA LIBRARY, OAHU</b>					
ADD FUNDS TO UPDATE MASTER PLAN.					

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	<b>APPROPRIATIONS</b> (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANS TOTAL FUNDING	AGS	50 50 A	A
143. 043-1 SALT LAKE/MOANALUA PUBLIC LIBRARY, OAHU					
DESIGN AND CONSTRUCTION FOR A FACILITY WITH TEMPERATURE, HUMIDITY, AND ACOUSTICAL CONTROLS TO PROVIDE LIBRARY SERVICES TO THE COMMUNITY OF SALT LAKE/ MOANALUA AND ADJACENT COMMUNITIES.					
		DESIGN CONSTRUCTION TOTAL FUNDING	AGS	48 2,051 2,099 A	A
UOH101 - INSTRUCTION - UOH, MANOA					
144. 050 UHM, PHYSICAL EDUCATION FACILITIES, SECOND INCREMENT, OAHU					
DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE 2ND INCREMENT OF THE PHYSICAL EDUCATION FACILITIES. ALSO, FOR DEMOLITION OF EXISTING FACILITIES AND RELOCATION AND RENOVATION OF FACILITIES FOR PROGRAMS Affected BY THIS PROJECT.					
		DESIGN CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS	21 15,544 1 15,565 C	91 1 1 93 C
145. 092 UHM, PACIFIC OCEAN SCIENCE AND TECHNOLOGY CENTER, OAHU					
DESIGN, CONSTRUCTION AND EQUIPMENT FOR INSTRUCTIONAL AND RESEARCH FACILITIES FOR THE PACIFIC OCEAN SCIENCE AND TECHNOLOGY PROGRAMS. ALSO, FOR A PARKING STRUCTURE IN THE HOLMES HALL PARKING LOT.					
		DESIGN CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS	300 1 4,699 5,000 N	300 1 4,699 5,000 N
146. 097 UHM, WEBSTER AND SPALDING HALLS/SCHOOL OF NURSING RENOVATIONS, OAHU					
DESIGN AND CONSTRUCTION FOR THE RENOVATION OF EXISTING FACILITIES FOR THE SCHOOL OF NURSING AND OTHER ACADEMIC PROGRAMS.					
		PLANS DESIGN CONSTRUCTION TOTAL FUNDING	AGS	1 611 7,617 612 A	1 611 7,618 A
147. 088 UHM, WIST HALL RENOVATIONS					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF EXISTING FACILITIES FOR THE COLLEGE OF EDUCATION.			
		PLANS		1	
		DESIGN		314	1
		CONSTRUCTION			3,500
		TOTAL FUNDING	AGS	315 A	3,501 A
148.	078	UHM, SCHOOL OF ARCHITECTURE/PARKING FACILITIES, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR SCHOOL OF ARCHITECTURE AND PARKING FACILITIES.			
		PLANS		1	
		DESIGN		705	15
		CONSTRUCTION		13,161	1
		EQUIPMENT			202
		TOTAL FUNDING	AGS	13,867 A	219 A
149.	085	UHM, CENTER FOR HAWAIIAN STUDIES, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FACILITIES FOR THE HAWAIIAN STUDIES PROGRAM.			
		DESIGN		1	
		CONSTRUCTION		2,584	
		EQUIPMENT		1	
		TOTAL FUNDING	AGS	1,293 A	
			AGS	1,293 N	N
150.		UHM, KENNEDY THEATER ADDITION/PARKING, OAHU			
		DESIGN FOR KENNEDY THEATER ADDITION AND PARKING FACILITY.			
		DESIGN		1	
		TOTAL FUNDING	AGS	275	
			AGS	275 C	C
151.		UHM, COLLEGE OF EDUCATION COMPLEX, PHASE I.			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE COLLEGE OF EDUCATION COMPLEX, PHASE I, INCLUDING LABORATORY SCHOOL FACILITIES FOR THE PRE-SCHOOL AND THE ELEMENTARY AND SECONDARY SCHOOL. ALSO FOR DEMOLITION, RENOVATION, RELOCATION OF FACILITIES FOR PROGRAMS AFFECTED BY THIS PROJECT.			
		PLANS		1	
		DESIGN		745	
		TOTAL FUNDING	AGS	746 A	A
<b>UOH102 - ORGANIZED RESEARCH - UOH, MANOA</b>					
152.	155	UHM, MKO, MID-LEVEL FACILITIES, PHASE II, HAWAII			

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## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR ADDITIONAL HOUSING FACILITIES AT HALE POHAKU FOR OBSERVATORY PERSONNEL.			
		DESIGN		100	
		CONSTRUCTION		1,270	
		EQUIPMENT		120	
		TOTAL FUNDING	AGS	1,490	R
153.	169	UHM, CANCER RESEARCH CENTER RENOVATIONS, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT TO RENOVATE A PORTION OF THE FIFTH FLOOR OF THE CANCER RESEARCH CENTER TO CONVERT OFFICES INTO LABORATORY SPACES.			
		DESIGN		82	
		CONSTRUCTION		533	
		EQUIPMENT		100	
		TOTAL FUNDING	AGS	715	C
		<b>UOH104 - ACADEMIC SUPPORT - UOH, MANOA</b>			
154.		UHM, HAMILTON LIBRARY, PHASE III, OAHU			
		PLANS AND DESIGN FOR PHASE III OF HAMILTON LIBRARY.			
		PLANS		100	
		DESIGN		903	
		TOTAL FUNDING	AGS	1,003	A
		<b>UOH105 - STUDENT SERVICES - UOH, MANOA</b>			
155.	287	UHM, STUDENT SERVICES CENTER, OAHU			
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE STUDENT SERVICES CENTER TO ACCOMMODATE STUDENT SERVICES AND ADMINISTRATIVE PERSONNEL HOUSED IN TEMPORARY AND SEPARATE FACILITIES ON THE MANOA CAMPUS.			
		PLANS		1	
		DESIGN		1	
		CONSTRUCTION		15,534	1
		EQUIPMENT			1
		TOTAL FUNDING	AGS	15,536	C
		<b>UOH106 - INSTITUTIONAL SUPPORT - UOH, MANOA</b>			
156.	M60	UHM, FACULTY HOUSING FACILITIES, OAHU			
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FACULTY HOUSING FACILITIES.			
		DESIGN		1,243	
		TOTAL FUNDING	AGS	1,243	E
157.	M65	UHM, WATER SYSTEM IMPROVEMENTS, PHASE II, OAHU			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN AND CONSTRUCTION OF A HIGH PRESSURE WATER SYSTEM TO PROVIDE FIRE PROTECTION, TO ENSURE AN ADEQUATE AND RELIABLE WATER SUPPLY TO CAMPUS FACILITIES AND FOR EFFICIENT MANAGEMENT OF WATER RESOURCES.			
		DESIGN		48	
		CONSTRUCTION		533	
		TOTAL FUNDING	AGS	581	C
158.	M66 UHM,	INSTALLATION OF FIRE SPRINKLER AND/ OR SMOKE DETECTION SYSTEMS, VARIOUS BLDG			C
		DESIGN AND CONSTRUCTION TO INSTALL AND/OR UPGRADE FIRE SPRINKLER AND/OR SMOKE DETECTION SYSTEMS IN EXISTING FACILITIES TO MEET HOSHA AND OTHER CODE REQUIREMENTS.			
		DESIGN		168	
		CONSTRUCTION		1,723	
		TOTAL FUNDING	AGS	1,891	C
159.	M67 UHM,	MODIFICATION OF FUME HOOD EXHAUST SYSTEM, VARIOUS BUILDINGS, OAHU			C
		DESIGN AND CONSTRUCTION OF FUME HOOD EXHAUST SYSTEMS IN EXISTING FACILITIES TO MEET HOSHA AND OTHER CODE REQUIREMENTS.			
		DESIGN		45	
		CONSTRUCTION		495	
		TOTAL FUNDING	AGS	540	C
160.	M71 UHM,	UNIVERSITY CLUB, OAHU			C
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A FACILITY TO PROMOTE INTERACTION BETWEEN UNIVERSITY STAFF AND MEMBERS OF THE COMMUNITY.			
		DESIGN		144	
		TOTAL FUNDING	AGS	144	R
161.	M72 UHM,	FOOD SERVICE FACILITY, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE REPLACEMENT OF THE SNACK BAR TO MAKE WAY FOR THE CONSTRUCTION OF HAMILTON LIBRARY, PHASE III ON MAILE WAY.			
		DESIGN		288	
		CONSTRUCTION		5,281	
		TOTAL FUNDING	AGS	5,282	R
162.	233 UHM,	PARKING STRUCTURE, PHASE II, OAHU			
		PLANS AND DESIGN FOR THE SECOND PARKING STRUCTURE ON THE MAKAI CAMPUS			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		ALSO, FOR DEMOLITION OF EXISTING FACILITIES, AND RELOCATION AND RENOVATION OF FACILITIES FOR PROGRAMS AFFECTED BY THIS PROJECT. THIS STRUCTURE WILL ACCOMMODATE APPROXIMATELY 1,800 AUTOMOBILES AND THE MOTOR POOL OPERATIONS.			
		PLANS DESIGN TOTAL FUNDING	AGS		1 535 536 C
163.	268	UHM, ELECTRICAL POWER DISTRIBUTION SYSTEM, PHASE I, OAHU			
		PREPARE A MASTER PLAN OF THE ELECTRICAL POWER DISTRIBUTION SYSTEM FOR THE UH MANOA CAMPUS.			
		PLANS TOTAL FUNDING	UOH	500 500 C	
164.	277	UHM, REMOVAL, ENCAPSULATION AND ENCLOSURE OF ASBESTOS MATERIALS, OAHU			
		DESIGN AND CONSTRUCTION FOR THE RENOVATIONS TO UNIVERSITY BUILDINGS WITH IDENTIFIED ASBESTOS HAZARDS.			
		DESIGN CONSTRUCTION TOTAL FUNDING	AGS	66 850 916 C	85 895 980 C
165.	279	UHM, REPLACEMENT OF TRANSFORMERS WITH PCB, OAHU			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR THE REPLACEMENT OF TRANSFORMERS WITH PCB (A RECOGNIZED CARCINOGEN) TO MEET EPA REGULATIONS.			
		DESIGN CONSTRUCTION TOTAL FUNDING	AGS	45 480 525 C	45 480 525 C
166.	280	UHM, MODIFICATIONS TO EXISTING AND/OR ADDITION OF FACILITIES TO MEET HOSHA			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR MODIFICATIONS TO EXISTING FACILITIES AND/OR CONSTRUCTION OF NEW FACILITIES TO MEET HOSHA AND OTHER CODE REQUIREMENTS.			
		DESIGN CONSTRUCTION TOTAL FUNDING	AGS	99 863 962 C	45 270 315 C

**UOH215 - STUDENT SERVICES - UOH, HILO**

167. 412 UHH, STUDENT HOUSING FACILITIES, PHASE II, HAWAII

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN OF STUDENT HOUSING FACILITIES, PHASE II.			
		DESIGN			
		TOTAL FUNDING	AGS	C	700
					700 C
168.		UHH, BASEBALL STADIUM, HILO, HAWAII			
		CONSTRUCTION FOR LIGHTS AND BATHROOM FACILITIES FOR THE BASEBALL STADIUM AT THE UNIVERSITY OF HAWAII AT HILO.			
		CONSTRUCTION		500	
		TOTAL FUNDING	AGS	500 A	
					A
		<b>UOH216 - INSTITUTIONAL SUPPORT - UOH, HILO</b>			
169.		UHH, LEARNING RESOURCES CENTER ROOF MODIFICATIONS, HAWAII			
		DESIGN AND CONSTRUCTION TO MODIFY EXISTING ROOF AT THE LEARNING RESOURCES CENTER.			
		DESIGN		1	
		CONSTRUCTION		2,600	
		TOTAL FUNDING	AGS	2,601 A	
					A
		<b>UOH311 - INSTRUCTION -KAPIOLANI COMMUNITY COLLEGE</b>			
170.	B102 KAPIOLANI CC-DIAMOND HEAD, NEW CAMPUS, OAHU				
		DESIGN, CONSTRUCTION, FURNITURE AND EQUIPMENT FOR NEW FACILITIES INCLUDING SITE WORK, UTILITIES, ROADWAYS AND BUILDINGS AND OFF-SITE ROADWAY IMPROVEMENTS, CHILD CARE FACILITES AND COMMUNITY SERVICES FACILITES.			
		DESIGN		799	
		CONSTRUCTION		17,497	
		EQUIPMENT		1	4,072
		TOTAL FUNDING	AGS	18,297 A	1 4,073 A
		<b>UOH501 - INSTRUCTION-MAUI COMMUNITY COLLEGE</b>			
171.	M12 MAUI CC - RENOVATION OF FOOD SERVICES FACILITIES, MAUI				
		DESIGN, CONSTRUCTION, FURNITURE AND EQUIPMENT FOR THE CONVERSION OF THE SNACK BAR INTO A RESTAURANT; WALK-IN COOLER/FREEZER AREA TO EXPANDED KITCHEN SPACE; THE CAFETERIA AREA INTO INCREASED SPACE INTO THE RESTAURANT AND KITCHEN; AND EATING AREA TO CLASSROOMS AND MEETING ROOMS.			
		DESIGN		83	
		CONSTRUCTION		732	

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		EQUIPMENT TOTAL FUNDING	AGS	120 935 C	C
172.	M010	MCC, NEW GENERAL CLASSROOM AND AGRICULTURAL FACILITIES, MAUI			
		DESIGN, CONSTRUCTION, FURNITURE, AND EQUIPMENT TO PROVIDE LABORATORIES, CLASSROOMS, OFFICE AND SUPPORT SPACES FOR THE AGRICULTURAL PROGRAM.			
		DESIGN		26	
		CONSTRUCTION		1,217	
		EQUIPMENT		171	
		TOTAL FUNDING	AGS	1,414 A	A
		<b>UOH605 - INSTITUTIONAL SUPPORT - KAUAI CC</b>			
173.	K52	KAUAI COMMUNITY COLLEGE - COMMUNITY THEATRE, KAUAI			
		DESIGN, CONSTRUCTION, FURNITURE, AND EQUIPMENT FOR A PERFORMING ARTS THEATRE.			
		DESIGN		139	
		CONSTRUCTION		1,360	
		EQUIPMENT		1	
		TOTAL FUNDING	AGS	1,500 A	A
		<b>UOH706 - INSTITUTIONAL SUPPORT-WEST OAHU COLLEGE</b>			
174.		WEST OAHU COLLEGE MASTER PLAN.			
		FUNDS FOR A MASTER PLAN FOR WEST OAHU COLLEGE.			
		PLANS		200	
		TOTAL FUNDING	AGS	200 A	A
		<b>UOH906 - COMMUNITY COLLEGE SYSTEMWIDE SUPPORT</b>			
175.	C-01	COMMUNITY COLLEGES SYSTEM - REPLACEMENT OF PCB TRANSFORMERS			
		DESIGN AND CONSTRUCTION TO REMOVE AND DISPOSE OF ELECTRICAL TRANSFORMERS AND OTHER EQUIPMENT CONTAINING PCB AND REPLACING WITH NON-PCB EQUIPMENT.			
		DESIGN		36	
		CONSTRUCTION		374	
		TOTAL FUNDING	AGS	410 C	C
176.	C-03	COMM. COLL. SYS.-REMOVAL, ENCAPSULATION AND ENCLOSURE OF ASBESTOS MATERIALS			
		DESIGN AND CONSTRUCTION TO RENOVATE COMMUNITY COLLEGE BUILDING TO REMOVE, ENCAPSULATE AND/OR ENCLOSE ASBESTOS.			
		PLANS		100	
		DESIGN		117	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		CONSTRUCTION		1,053	
		TOTAL FUNDING	AGS	1,270 C	C

## H. CULTURE AND RECREATION

## CCA701 - HAWAII PUBLIC BROADCASTING

1. HPBA05 HPBA STATEWIDE INTERACTIVE, CLOSED CIRCUIT EDUCATIONAL TELEVISION SYSTEM

LAND ACQUISITION, DESIGN,  
CONSTRUCTION AND EQUIPMENT FOR AN  
HPBA STATEWIDE, INTERACTIVE, CLOSED  
CIRCUIT, EDUCATIONAL TELEVISION SYSTEM  
USING "INSTRUCTIONAL TELEVISION FIXED  
SERVICE" (ITFS) FREQUENCIES RESERVED FOR  
EDUCATIONAL USE BY THE FEDERAL  
COMMUNICATIONS COMMISSION.

LAND	10	
DESIGN	155	
CONSTRUCTION	1,135	
EQUIPMENT	100	
TOTAL FUNDING	AGS	1,400 C

## LNR804 - FOREST RECREATION

2. D-58 FOREST TRAIL AND CABIN KAHIKINUI, MAUI

PLANS, DESIGN AND CONSTRUCTION OF 7.0 MILES OF TRAIL AND ONE TRAIL CABIN WITHIN THE CENTRAL KAHIKINUI FOREST RESERVE.

PLANS	2	
DESIGN	4	
CONSTRUCTION	82	
TOTAL FUNDING	LNR	88 C

3. D02K FOREST TRAILS, KAUAI

PLANS, DESIGN AND CONSTRUCTION OF TRAILS ON AN INCREMENTAL BASIS. TRAILS ARE AT LEAST THREE FEET WIDE AND CLEARED FOR EASY ACCESS. TRAILS PROVIDE: REMOTE OUTDOOR RECREATION OPPORTUNITIES, ACCESS FOR CONTROL OF FIRE AND PESTS, ROUTE FOR RESCUE OPERATIONS, ETC.

PLANS	4	
DESIGN	14	
CONSTRUCTION	146	
TOTAL FUNDING	LNR	164 C

4. D-03K FOREST SHELTERS

DESIGN AND CONSTRUCTION TO DEVELOP SECLUDED SITES TO PROVIDE A PLACE FOR WILDERNESS PICNICKING, RESTING, AND

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## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		CAMPING. MAY INCLUDE ANY OF THE FOLLOWING: TRAIL SHELTER UNITS WITH TABLE OR COMFORT STATIONS, ETC.			
		DESIGN			4
		CONSTRUCTION			32
		TOTAL FUNDING	LNR	C	36 C
<b>LNR806 - HERITAGE &amp; RECREATION PARKS</b>					
5.	F11	IOLANI PALACE RESTORATION, OAHU			
		DESIGN AND CONSTRUCTION FOR MAJOR RECONSTRUCTION OF PALACE ROOF, REPLACEMENT OF AIR CONDITIONING COOLING TOWER AND CONTROL SYSTEM AND OTHER MAJOR REPAIR OF REPLACEMENT WORK.			
		DESIGN		60	60
		CONSTRUCTION		500	500
		TOTAL FUNDING	LNR	560 A	560 A
6.	F15	ROYAL MAUSOLEUM - NUUANU PETROGLYPHS, OAHU			
		PLANS AND DESIGN FOR RESEARCH OF SITE; TO INCLUDE: INTERPRETATIVE VALUES, RESTORATION OF CRYPT, LANDSCAPING, REPLACEMENT OF CARETAKERS HOUSE AND RESTROOMS, IMPROVEMENTS OF LANDSCAPING AND DRIVEWAY. TO BE FOLLOWED BY ADDITIONAL DEVELOPMENT ALONG NUUANU STREAM.			
		DESIGN			20
		TOTAL FUNDING	LNR	C	20 C
7.	F23	PUU O MAHUKA HEIAU, OAHU			
		LAND ACQUISITION TO INCLUDE ALL ARCHAEOLOGICAL FEATURES AND MAINTAIN THE INTEGRITY OF THE SITE. PLANNING, RESEARCH DEVELOPMENTS OF AN INTERPRETATIVE PROGRAM AND ASSOCIATED WALKWAYS AND LANDSCAPING.			
		LAND		300	
		TOTAL FUNDING	LNR	300 C	C
8.	F27	HEEIA STATE PARK, OAHU			
		DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF MATSON POINT, AS A MAJOR PARK AND EDUCATIONAL/CULTURAL CENTER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		25	
		CONSTRUCTION			200
		TOTAL FUNDING	LNR	25 C	200 C
9.	F46	KOKEE/WAIMEA CANYON COMPLEX, KAUAI			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		CONSTRUCTION OF CONTINUED PARK DEVELOPMENT AND REPLACEMENT OF OLDER FACILITIES, MASTER PLAN FOR THE IMPROVEMENT AND MANAGEMENT OF THE PARK, AND THE ADDITION OF INTERPRETIVE FACILITIES.					
		CONSTRUCTION			300		
		TOTAL FUNDING	LNR	300	C		C
10.	F57	KAHANA VALLEY STATE PARK, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE INCREMENTAL DEVELOPMENT OF THE PARK, INCLUDING THE DEVELOPMENT OF A "LIVING PARK" WITH VALLEY RESIDENTS. PLAN AND RESEARCH IN COOPERATION WITH THE KAHANA ADVISORY COUNCIL AND OTHERS.					
		PLANS		50			
		DESIGN		50		30	
		CONSTRUCTION				300	
		TOTAL FUNDING	LNR	100	C	330	C
11.	F67	POLI POLI SPRINGS STATE RECREATION AREA, MAUI					
		PLANS, DESIGN AND DEVELOPMENT TO ENLARGE THIS MOUNTAIN PARK AND RENOVATE SOME EXISTING FACILITIES.					
		PLANS		30			
		DESIGN				25	
		TOTAL FUNDING	LNR	30	C	25	C
12.	F69	MANUKA STATE WAYSIDE, HAWAII					
		CONSTRUCTION FOR THE IMPROVEMENT OF EXISTING PARK, PLANNING AND DEVELOPMENT OF AN INTERPRETIVE PLAN AND MANAGEMENT PLAN AND DEVELOPMENT OF ANY ASSOCIATED FACILITIES.					
		CONSTRUCTION				200	
		TOTAL FUNDING	LNR			200	C
13.	F70	SAND ISLAND STATE RECREATION AREA, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INCREMENTAL DEVELOPMENT OF BEACH PARK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		50			
		CONSTRUCTION		500			
		TOTAL FUNDING	LNR	550	C		C
14.	F73	MAKENA-LAPEROUSE STATE PARK, MAUI					
		PLANS AND CONSTRUCTION FOR THE INCREMENTAL ACQUISITION OF LAND AS PER					

**ACT 316****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		CONCEPTUAL PLAN AND INCREMENTAL DEVELOPMENT AS DETERMINED BY DEVELOPMENT PLAN. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		75	
		CONSTRUCTION		300	
		TOTAL FUNDING	LNR		375 C
15.	F82	WAIMEA PIER, KAUAI			
		LAND ACQUISITION FOR THE DEVELOPMENT OF ONSHORE PARK FACILITIES TO SERVICE VISITORS TO WAIMEA PIER WHICH HAS BEEN RECONSTRUCTED AS A FISHING PIER. THE PROJECT INCLUDES ACQUISITION OF AN ADJOINING PARCEL OF LAND.			
		LAND		200	
		TOTAL FUNDING	LNR	200	C
16.	F83	AIEA BAY, OAHU			
		DESIGN FOR THE INCREMENTAL ACQUISITION AND DEVELOPMENT OF AN AIEA BAY PARK INTO "RAINBOW BAY, A KOKUA CONCEPT" AS REQUESTED BY THE PEARL HARBOR TASK FORCE. MAXIMUM OF 40 ACRES AVAILABLE. THIS PROJECT DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		DESIGN		40	
		TOTAL FUNDING	LNR	40	C
17.	H80	HANALEI RECREATIONAL PIER, HANALEI, KAUAI			
		RECONSTRUCTION OF HANALEI RECREATIONAL PIER.			
		CONSTRUCTION		400	
		TOTAL FUNDING	LNR	400	C
18.		HAPUNA BEACH PARK, HAWAII			
		LAND ACQUISITION OF WAILEA BAY AREA, AS PER MASTER PLAN.			
		LAND		500	
		TOTAL FUNDING	LNR	500	A
19.		MALAMA BEACH PARK MASTER PLAN, KAUNAKAKAI, MOLOKAI			
		MASTER PLAN FOR A MULTI-PURPOSE STATE BEACH PARK WITH BOTH PASSIVE AND ACTIVE AREAS AT MALAMA BEACH PARK, MOLOKAI.			
		PLANS		200	
		TOTAL FUNDING	LNR	200	A
20.		KAIWI PARK, OAHU			

**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		MASTER PLANNING FOR A SHORELINE PARK FROM HANAUMA BAY TO MAKAPUU POINT, MAKAI OF KALANIANAOLE HIGHWAY.			
		PLANS TOTAL FUNDING	LNR	250 250 A	A

**TRN801 - OCEAN-BASED RECREATION****21. 01S STATEWIDE IMPROVEMENTS TO BOATING  
FACILITIES**

DESIGN AND CONSTRUCTION FOR  
IMPROVEMENTS TO EXISTING BOAT HARBORS  
AND BOAT REFUGE AREAS.

DESIGN		10	
CONSTRUCTION		100	
TOTAL FUNDING	TRN	110 D	D

**22. 02M MAALAEA BOAT HARBOR IMPROVEMENTS, MAUI**

DESIGN AND CONSTRUCTION FOR  
MODIFICATION AND IMPROVEMENTS TO  
MAALAEA BOAT HARBOR INCLUDING DREDGING  
NEW ENTRANTS CHANNEL, ACCESS CHANNEL,  
BERTHING AREA, CONSTRUCTION OF  
PROTECTIVE STRUCTURES, FILL, REVETMENT  
AND OTHER IMPROVEMENTS. THIS PROJECT IS  
DEEMED NECESSARY TO QUALIFY FOR FEDERAL  
AID FINANCING AND/OR REIMBURSEMENT.

DESIGN		50	
CONSTRUCTION		9,130	
TOTAL FUNDING	TRN	3,550 C	C
	TRN	5,630 N	N

**23. 03S STATEWIDE BOAT LAUNCHING FACILITY  
PROGRAM.**

DESIGN, PLAN, CONSTRUCT AND IMPROVE  
BOAT LAUNCHING FACILITIES THROUGHOUT THE  
STATE AT EXISTING AND NEW SITES. THIS  
PROJECT IS DEEMED NECESSARY TO QUALIFY  
FOR FEDERAL AID FINANCING AND/OR  
REIMBURSEMENT.

DESIGN		50	
TOTAL FUNDING	TRN	50 C	C

**24. 05S STATEWIDE PLANNING FOR BOATING  
FACILITIES**

PLANS FOR CONTINUING STUDIES,  
RESEARCH AND ADVANCED PLANNING OF BOAT  
HARBORS ON ALL ISLANDS.

PLANS		75	
TOTAL FUNDING	TRN	75 B	B

**25. 19H HONOKOHAU BOAT HARBOR IMPROVEMENTS,  
HAWAII**

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN CONSTRUCTION BERTHS, DEVELOP MARITIME INDUSTRIAL SUB-DIVISIONS, CONSTRUCT ADMINISTRATION BUILDING AND OTHER IMPROVEMENTS.			
		DESIGN		350	
		CONSTRUCTION		800	
		TOTAL FUNDING	TRN	1,150	A
26.	300 KEEHI LAGOON IMPROVEMENTS, OAHU				A
		PLANS, DESIGN, AND CONSTRUCTION TO INSTALL BOAT MOORING SYSTEM, PREPARATION OF PLANS AND ENVIRONMENTAL IMPACT STATEMENT, AND OTHER IMPROVEMENTS.			
		PLANS		200	
		DESIGN		75	
		CONSTRUCTION		500	
		TOTAL FUNDING	TRN	775	A
27.	02S STATEWIDE SEWAGE SYSTEM IMPROVEMENTS TO BOATING FACILITIES				A
		DESIGN AND CONSTRUCTION OF SEWAGE SYSTEM FOR HEEIA KEA BOAT HARBOR AND THE KIKIAOLA BOAT HARBOR COMFORT STATION.			
		DESIGN		90	
		CONSTRUCTION		90	
		TOTAL FUNDING	TRN	180	A
28.	010 KEEHI SMALL BOAT HARBOR GENERAL IMPROVEMENTS, OAHU				A
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF ELECTRICAL OUTLETS FOR BOATERS AND OTHER IMPROVEMENTS.			
		DESIGN		50	
		CONSTRUCTION		500	
		TOTAL FUNDING	TRN	550	A
29.	HEEIA KEA SMALL BOAT HARBOR IMPROVEMENTS, OAHU				A
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO HEEIA KEA SMALL BOAT HARBOR INCLUDING THE REPAIR OF EXISTING LAUNCHING RAMPS, CONSTRUCTION OF AN ADDITIONAL LAUNCHING RAMP INCLUDING A LOADING DOCK, RENOVATION OF COMFORT STATIONS INCLUDING A NEW SEWER LINE AND THE CONSTRUCTION OF A MARGINAL WHARF.			
		PLANS		1	
		DESIGN		35	
		CONSTRUCTION		464	
		TOTAL FUNDING	TRN	500	A
30.	MISCELLANEOUS IMPROVEMENTS AT KAHULUI BOAT RAMP, MAUI				

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		CONSTRUCTION FOR THE MISCELLANEOUS IMPROVEMENTS AT KAHULUI BOAT HARBOR.			
		CONSTRUCTION		50	
		TOTAL FUNDING	TRN	50	A
31.		WAIKAEA SMALL BOATING HARBOR, KAUAI			
		PLANS, DESIGN AND CONSTRUCTION FOR ADDITIONAL RAMP LANE, BOAT TRAILER PARKING AREA AND LIGHTING FACILITIES.			
		PLANS		10	
		DESIGN		25	
		CONSTRUCTION		215	
		TOTAL FUNDING	TRN	250	A
		AGS889 - SPECTATOR EVENTS & SHOWS - ALOHA STADIUM			
32.	C14	ALOHA STAD-RENOVATE OR REPLACE PARKING LIGHT FIXTURES; REPLACE TRANSFORMERS			
		DESIGN AND CONSTRUCTION TO REPLACE THE PARKING LOT LIGHT STANDARDS AND LUMINAIRES AND RETROFILL/REPLACE THE SEVEN ELECTRICAL TRANSFORMERS AND CAPACITORS AT THE STADIUM.			
		DESIGN		70	
		CONSTRUCTION		600	
		TOTAL FUNDING	AGS	670	C
33.	C18A	ALOHA STADIUM-CORROSION PROTECTION OF STRUCTURAL BRACINGS, PHASE I, OAHU			
		DESIGN AND CONSTRUCTION TO REFURBISH THE STRUCTURAL STEEL BRACINGS AND OTHER WEATHERING STEEL MEMBERS ABOVE THE LOWER CONCOURSE; THE WEATHERING STEEL WILL BE CLEANED, REPAIRED, AND PAINTED WITH A SPECIAL PROTECTIVE COATING. THIS PHASE WILL WORK ON THE MAUKA-SIDE OF THE STADIUM.			
		DESIGN		180	
		CONSTRUCTION			
		TOTAL FUNDING	AGS	180	C
	3,000				
34.	C69A	ALOHA STADIUM-RENOVATION OF UPPER CONCOURSE BLEACHERS, PHASE I, OAHU			
		DESIGN AND CONSTRUCTION TO REPAIR AND PROTECT THE UNDERSIDE OF THE UPPER CONCOURSE BLEACHERS AND CONNECTING AREAS. THIS IS THE FIRST PHASE OF THE REQUIRED WORK.			
		DESIGN		170	
		CONSTRUCTION		2,850	
		TOTAL FUNDING	AGS	3,020	C
35.	C69B	ALOHA STADIUM-RENOVATION OF UPPER CONCOURSE BLEACHERS, PHASE II, OAHU			

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### CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN AND CONSTRUCTION TO REPAIR AND PROTECT THE UNDERSIDE OF THE UPPER CONCOURSE BLEACHERS AND CONNECTING AREAS. THIS IS THE SECOND PHASE OF THE REQUIRED WORK.			
		DESIGN			80
		CONSTRUCTION			1,900
		TOTAL FUNDING	AGS		1,980 C
36.		IMPROVEMENTS TO ARTIFICIAL PLAYING SURFACE, ALOHA STADIUM, OAHU			
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OR REPAIRS TO ARTIFICIAL PLAYING SURFACE, PAD, WARNING TRACK, SUPPORTING FOUNDATION, AND OTHER RELATED IMPROVEMENTS.			
		DESIGN		200	
		CONSTRUCTION		1,800	
		TOTAL FUNDING	AGS	2,000	A
37.		LOCKER ROOM AND ADMINISTRATIVE LEVELS RENOVATIONS, ALOHA STADIUM, OAHU			
		DESIGN AND CONSTRUCTION FOR RENOVATION OF LOCKER, HOSPITALITY, ARCHIVES, AND VISITOR CENTER ROOMS AND OTHER RELATED IMPROVEMENTS.			
		DESIGN		150	
		CONSTRUCTION		850	
		TOTAL FUNDING	AGS	1,000	A
		LNR809 - GENERAL ADMIN FOR CULTURE & RECREATION			
38.	F04	HILO BASEYARD, HAWAII			
		DESIGN AND CONSTRUCTION FOR STATE PARK'S OFFICE AND STORAGE FACILITIES WITHIN A DEPARTMENT WAREHOUSE.			
		DESIGN		20	
		CONSTRUCTION			175
		TOTAL FUNDING	LNR	20	C
39.	F05	SCORP (STATE COMPREHENSIVE OUTDOOR RECREATION PLAN)			
		CONTINUOUS UPDATING OF THE STATE COMPREHENSIVE OUTDOOR RECREATION PLAN TO QUALIFY FOR FEDERAL GRANTS UNDER THE LAND AND WATER CONSERVATION FUND AND TO REFINE AND IMPLEMENT THE GOALS, OBJECTIVES AND POLICIES OF THE HAWAII PLAN AS PROVIDED IN CHAPTER 226, HAWAII REVISED STATUTES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING OR REIMBURSEMENT.			
		PLANS			100
		TOTAL FUNDING	LNR	50	C

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
			LNR	N	50 N

## 40. H09 STATEWIDE LANDSCAPING AND PARK IMPROVEMENTS

DESIGN AND CONSTRUCTION OF MINOR ADDITIONS, RENOVATIONS AND REPLACEMENTS TO PARK GROUNDS AND FACILITIES.

DESIGN	80	40
CONSTRUCTION	210	250
TOTAL FUNDING	40 A	40 A
	250 C	250 C

## 41. STATE LAW ENFORCEMENT FIREARMS TRAINING FACILITY, OAHU

PLANS, DESIGN, LAND ACQUISITION, CONSTRUCTION, AND EQUIPMENT TO BUILD A STATE FIREARMS TRAINING FACILITY INCLUDING A SHOOTING RANGE FOR STATE LAW ENFORCEMENT AGENCIES ON OAHU.

PLANS	1	
LAND	1	
DESIGN	47	
CONSTRUCTION	100	
EQUIPMENT	1	
TOTAL FUNDING	150 A	A

## I. PUBLIC SAFETY

## DOC406 - MAUI COMMUNITY CORRECTIONAL CENTER

## 1. MAUI COMMUNITY CORRECTIONAL CENTER, MAUI

DESIGN AND CONSTRUCTION FOR RENOVATION OF EXISTING COMPLEX FACILITIES AND CONSTRUCTION OF NEW STRUCTURES AND SITE IMPROVEMENTS.

DESIGN	15	
CONSTRUCTION	110	
TOTAL FUNDING	125 A	A

## DOC407 - OAHU COMMUNITY CORRECTIONAL CENTER

## 2. 407901 OAHU COMMUNITY CORRECTIONAL CENTER EXPANSION/RENOVATION PROJECT, OAHU

PLAN, DESIGN, CONSTRUCT AND EQUIP NEW STRUCTURES AND SITE IMPROVEMENTS & RENOVATE EXISTING ONES THROUGHOUT THE FACILITY COMPLEX AND ITS SATELLITE ADJUNCTS.

DESIGN	1,035	
CONSTRUCTION	42,000	
EQUIPMENT	1	
TOTAL FUNDING	43,036 A	A

## DOC403 - KULANI CORRECTIONAL FACILITY

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
3.		IMPROVEMENTS TO KULANI CORRECTIONAL FACILITY, HAWAII.			
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS, ALTERATIONS AND RENOVATIONS OF SUPPORT AND INFRASTRUCTURE FACILITIES THROUGHOUT THE FACILITY COMPLEX TO CONFORM TO CURRENT HEALTH, SAFETY, AND SANITATION REQUIREMENTS.			
		CONSTRUCTION TOTAL FUNDING	AGS	978 978 A	1,815 1,815 A

**DOC409 - WOMEN'S COMMUNITY CORRECTIONAL CENTER**

4. 409902 WOMEN'S COMMUNITY CORRECTIONAL CENTER  
EXPANSION/RENOVATION PROJECT, OAHU

PLAN, DESIGN, CONSTRUCT AND EQUIP  
NEW STRUCTURES & SITE IMPROVEMENTS &  
RENOVATE EXISTING ONES THROUGHOUT THE  
FACILITY COMPLEX AND ITS SATELLITE  
ADJUNCTS.

DESIGN	350
CONSTRUCTION	21,000
EQUIPMENT	1
TOTAL FUNDING	21,351 A

**DOC903 - GENERAL ADMINISTRATION**

5. 903904 DOC - STATEWIDE HEALTH & SAFETY  
RENOVATIONS PROJECT

PLAN, DESIGN, CONSTRUCT AND EQUIPMENT  
FOR IMPROVEMENTS, ADDITIONS &  
RENOVATIONS TO ALL CORRECTIONAL  
FACILITIES STATEWIDE TO CONFORM TO  
CURRENT HEALTH, SAFETY AND  
SANITATION REQUIREMENTS.

PLANS	65
DESIGN	95
CONSTRUCTION	1,300
EQUIPMENT	40
TOTAL FUNDING	1,500 A

**LNR810 - PREVENTION OF NATURAL DISASTERS**

6. G2752A DRAINAGEWAYS FLOOD HAZARD ASSESSMENT  
STUDY, STATEWIDE

STUDY AND ASSESS FLOOD HAZARD  
DRAINAGEWAYS AT VARIOUS LOCATIONS.

PLANS	50
TOTAL FUNDING	50 C

7. G8309M KAHAWAI STREAM IMPROVEMENTS, OAHU

## CAPITAL IMPROVEMENT PROJECTS

APPROPRIATIONS  
(IN 000's)

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
PLANS, LAND ACQUISITION AND DESIGN TO CONSTRUCT IMPROVEMENTS TO KAHAWAI STREAM.					
	PLANS			50	
	LAND			1	
	DESIGN			60	
	TOTAL FUNDING	LNR		111 C	C

## 8. G8309N KAUKONAHUA STREAM IMPROVEMENTS, OAHU

PLANS, LAND ACQUISITION AND DESIGN TO CONSTRUCT IMPROVEMENTS TO KAUKONAHUA STREAM.

PLANS	50	
LAND	1	
DESIGN	30	
TOTAL FUNDING	LNR	81 C

## DEF110 - AMELIORATION OF PHYSICAL DISASTERS

## 9. A25 WAHIAWA ARMY NATIONAL GUARD ARMORY ADDITION, OAHU

DESIGN AND CONSTRUCTION OF AN ADDITION TO AN UPGRADING OF THE EXISTING WAHIAWA ARMORY. ADDITION WILL BE OF PERMANENT MASONRY CONSTRUCTION, INCLUDING ALL UTILITIES, ACCESS ROAD, PARKING AREAS, FENCING, AND OTHER SUPPORTING FEATURES REQUIRED TO COMPLETE THE FACILITY FOR OCCUPANCY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN	50	
CONSTRUCTION		1,137
TOTAL FUNDING	AGS	377 C
	AGS	760 N

## 10. C12 UPGRADE OF DISASTER WARNING AND COMMUNICATION DEVICES, STATEWIDE

INCREMENTAL UPGRADE OF CIVIL DEFENSE DISASTER WARNING AND COMMUNICATIONS DEVICES STATEWIDE DUE TO INADEQUATE WARNING COVERAGE OF MANY EXISTING 20+ YEAR OLD DEVICES. THIS IS A CONTINUING PROGRAM FROM YEAR TO YEAR. RENOVATION AND/OR UPGRADE OF DAMAGED DEVICES FROM NATURAL AND/OR MAN-MADE DISASTERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS	1	
LAND	1	
DESIGN	38	
CONSTRUCTION		223

**ACT 316****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		EQUIPMENT		160	
		TOTAL FUNDING	AGS	323 C	C
			AGS	100 N	N
11.	C-23	INSTALLATION OF 300 KW STANDBY GENERATOR, STATE EOC, OAHU			
		A 300 KW STANDBY GENERATOR IS TO BE ADDED TO AUGMENT THE EXISTING KW GENERATOR WHICH IS APPROACHING CRISIS POINT OF EXCEEDING MAXIMUM POWER OUTPUT CAPABILITY. PROJECT INCLUDES TWO AUTOMATIC TRANSFER UNITS, CONCRETE PAD, AIR COOLED RADIATOR, ENCLOSURE, AND OTHER RETROFITTING COSTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			
		PLANS		1	
		LAND		1	
		DESIGN		23	
		CONSTRUCTION		275	
		TOTAL FUNDING	AGS	300 C	C

**J. INDIVIDUAL RIGHTS****AGR812 - MEASUREMENT STANDARDS**

1. A-027 MEASUREMENT STANDARDS-DEPARTMENT OF  
AGRICULTURE HEAVY VEHICLE PARKING AREA

CONSTRUCT PARKING AND STORAGE AREA  
ALONGSIDE EXISTING MEASUREMENT STANDARDS  
BLDG. PAVED AREA SIZE IS APPROXIMATELY  
35 FEET BY 141 FEET. PAVEMENT MUST BE  
ABLE TO SUPPORT 50,000 LB GVW TEST  
WEIGHT TRUCK. DRIVEWAY INTERFACE TO  
ILALO STREET TO BE INCLUDED. PAVED AREA  
TO BE COVERED WITH ROOF TO PROTECT  
VEHICLES AND EQUIPMENT FROM WEATHER.  
PROVIDE SECURITY FENCING AROUND COMPLEX.

CONSTRUCTION		400	
TOTAL FUNDING	AGS	400	A

2. A-042 MEASUREMENT STANDARDS ADDITION, OAHU

DESIGN AND CONSTRUCT ADDITION OF A  
SECOND STORY TO THE OFFICE BUILDING AT  
THE MEASUREMENT STANDARDS OFFICE/  
LABRATORY COMPLEX, LOCATED AT THE ALA  
MOANA SITE OF THE DEPARTMENT OF  
AGRICULTURE (725 ILALO STREET).

DESIGN		48	
CONSTRUCTION		535	
TOTAL FUNDING	AGS	583	A

**K. GOVERNMENT-WIDE SUPPORT**

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F

## GOV100 - OFFICE OF THE GOVERNOR

## 1. GO1 PROJECT ADJUSTMENT FUND

DESIGN TO ESTABLISH A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT. (TO BE EXPENDED BY THE OFFICE OF THE GOVERNOR)

DESIGN		6,000		
TOTAL FUNDING	GOV	3,000	A	
	GOV	3,000	C	A

## 2. GOVERNMENT HOUSE, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR RENOVATIONS OF HIMAG FOR DEVELOPMENT INTO A GOVERNMENT HOUSE.

PLANS		25		
DESIGN		75		
CONSTRUCTION		900		
TOTAL FUNDING	AGS	1,000	A	A

## GOV103 - STATEWIDE PLAN AND COORDINATION

## 3. G03 WATERFRONT IMPROVEMENT PROJECT, OAHU.

PLANS AND PRELIMINARY DESIGN FOR A VARIETY OF WATERFRONT PROJECTS INCLUDING BUT NOT LIMITED TO: ALA MOANA PARK EXPANSION, VARIOUS PIER REHABILITATION AND REDEVELOPMENT, SAND ISLAND SWIMMING BEACH, SAND ISLAND LANDING AND AQUATIC CENTER, KAKAAKO MAKAI ROADWAYS AND FT. ARMSTRONG/KAKAAKO-KAPALAMA RELOCATION.

PLANS		300		
DESIGN		300		
TOTAL FUNDING	GOV	600	A	A

## 4. G03A KAKAAKO WATERFRONT PARK, OAHU

PLANS, DESIGN, CONSTRUCTION, & EQUIP. FOR PHASE 1A, INCLUDING SCULPTING & REDISTRIBUTION OF LANDFILL MOUND, DEVELOPMENT OF NEW SEA WALL & PEDESTRIAN PROMENADE, PARKING, COMFORT STATIONS, & UTILITIES; PROVIDED THAT FUNDS SHALL FIRST BE USED TO REMOVE OR OTHERWISE MITIGATE ANY CONTAMINATED LANDS WITHIN THE BOUNDRIES OF THE PARK. FUNDS MAY BE SUPPLEMENTED BY SPECIAL & FEDERAL FUNDS.

PLANS		320		
DESIGN		960		
CONSTRUCTION		12,527		
EQUIPMENT		1		
TOTAL FUNDING	BED	13,808	A	A

## 5. G03B KEEHI LAGOON CANOE CENTER/KALIHI KAI PARK, OAHU

**ACT 316****CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A CANOE RACE COMPLEX AND 40 ACRE PARK AT KEEHI LAGOON INCLUDING RAMPS, CANOE STORAGE SHEDS, PEDESTRIAN BRIDGES, COMFORT STATIONS, PASSIVE AND ACTIVE RECREATIONAL FACILITIES, LANDSCAPING AND UTILITIES. FUNDS MAY BE SUPPLEMENTED BY SPECIAL AND FEDERAL FUNDS.			
		PLANS		281	
		DESIGN		604	
		CONSTRUCTION		2,999	
		EQUIPMENT		1	
		TOTAL FUNDING	GOV	3,885	A
6.	G03C	WATERFRONT HARBOR IMPROVEMENTS AND MAINTENANCE, OAHU			
		CONSTRUCTION FOR GENERAL IMPROVEMENTS, MAINTENANCE, AND REPAIRS TO STATE HARBOR FACILITIES.			
		CONSTRUCTION		1,000	
		TOTAL FUNDING	GOV	1,000	A

**BED104 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY**

7. HCDOO1 KAKA'AKO COMMUNITY DEVELOPMENT DISTRICT, OAHU

PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR PLANNING, DEVELOPMENT, AND PROJECT COSTS, AS DEFINED IN CHAPTER 206E, HAWAII REVISED STATUTES, FOR KAKA'AKO COMMUNITY DEVELOPMENT DISTRICT. FUNDS MAY BE USED TO MATCH FEDERAL AND NON-STATE FUNDS, AS MAY BE AVAILABLE.

PLANS	1,630	1,680
LAND	15,600	100
DESIGN	1	1
CONSTRUCTION	1,500	16,900
TOTAL FUNDING	BED	18,731 A
		18,681 A

**BUF161 - COMMUNICATION**

8. BUFO1 COMMUNICATION DUCTLINES, CABLES, AND CABLE DISTRIBUTION FACILITIES, OAHU

LAND ACQUISITION, DESIGN AND CONSTRUCTION TO ACCOMMODATE COMMUNICATION DUCTLINES, CABLES AND CABLE DISTRIBUTION FACILITIES TO OFFICE BUILDINGS WITHIN THE STATE CAPITOL COMPLEX AND ADJOINING AREAS.

LAND	5	
DESIGN	75	
CONSTRUCTION	390	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		TOTAL FUNDING	AGS	470 C	C

## 9. BUF02 TELECOMMUNICATIONS SITE, OAHU

PLANS, LAND ACQUISITION, AND DESIGN TO ACQUIRE A TELECOMMUNICATIONS SITE AND CONSTRUCT TELECOMMUNICATIONS FACILITIES TO SUPPLEMENT THE EXISTING TELECOMMUNICATIONS SITE AT ROUND TOP.

PLANS	50	20
LAND		60
DESIGN		
TOTAL FUNDING	50 C	80 C

## LNR101 - PUBLIC LANDS MANAGEMENT

## 10. E50 KONA MARSHALLING YARD IMPROVEMENTS, PHASE IV, HAWAII

PLANS, DESIGN AND CONSTRUCTING OF PHASE IV IMPROVEMENTS CONSISTING OF INCREMENTAL DEVELOPMENT OF FACILITIES TO INCLUDE PAVING OF BACK 1.9 ACRES, INSTALLING UTILITIES FOR EXISTING AND OTHER INCIDENTAL AND APPURTENANT WORK.

PLANS	20	20
DESIGN	50	
CONSTRUCTION	300	
TOTAL FUNDING	370 C	C

## 11. E58 SEAWALL IMPROVEMENT, WAIKIKI

PLANS, DESIGN AND INCREMENTAL CONSTRUCTION OF IMPROVEMENTS TO SEAWALL INCLUDING RAILINGS, REHABILITATION OF SEAWALL, FENCES AND OTHER IMPROVEMENTS NECESSARY FOR THE SAFE PASSAGE OF THE PUBLIC OVER EXISTING SEAWALLS.

PLANS	20	20
DESIGN	65	
CONSTRUCTION	400	
TOTAL FUNDING	485 C	200 C

## 12. E74 IMPROVEMENTS TO STATE-OWNED DRAINAGE DITCHES, KAUAI

PLANS, LAND ACQUISITION AND DESIGN FOR ENVIRONMENTAL IMPACT ASSESSMENT AND CONSTRUCTION OF IMPROVEMENTS TO THE FOLLOWING DITCHES: PEE KAUAI (MENEHUNE DITCH), FARMERS DITCH, KULA RICE LOTS DITCH, AND CHINA DITCH, TOGETHER WITH OTHER INCIDENTAL WORKS.

PLANS	130	100
LAND	1	1
DESIGN	65	50
TOTAL FUNDING	196 C	151 C

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## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
13.	E75	IMPROVEMENTS FOR MAUNALAHIA HEIGHTS SUBDIVISION, MAKIKI, OAHU			
		PLANS AND DESIGN FOR ENVIRONMENTAL IMPACT ASSESSMENT, AND CONSTRUCTION OF ROADWAY, DRAINAGE SEWER, AND WATER SYSTEMS; TO INCLUDE OTHER INCIDENTAL AND RELATED WORKS.			
		PLANS		115	
		DESIGN		165	
		TOTAL FUNDING	LNR	280	C
14.	E76	DEVELOPMENT OF UNENCUMBERED STATE-OWNED LANDS FOR SUBDIVISION			
		PLANS, DESIGN, AND CONSTRUCT IMPROVEMENTS TO SUBDIVIDE STATE-OWNED LANDS FOR HOUSELOTS INCLUDING APPROVAL IN ACCORDANCE WITH COUNTY STANDARDS. THE PARCELS ARE IDENTIFIED BY TAX MAP KEYS AS FOLLOWS: (KAUAI) 1-9-09:3;6-9, 21-22; 1-9-10:50; 4-11-16 AND 20; 4-5-15: 3,34, 47-48 AND (MAUI) 2-2-03:3.			
		PLANS		60	
		DESIGN		75	
		TOTAL FUNDING	LNR	135	C
15.		MAUNAWILI VALLEY ON-SITE IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION FOR ON-SITE IMPROVEMENTS, ACCESS ROAD STREAM CROSSINGS, AND THE INSTALLATION OF UTILITIES IN MAUNAWILI VALLEY FOR BANANA FARMERS RELOCATED AS A RESULT OF THE H-3 PROJECT.			
		DESIGN		25	
		CONSTRUCTION		225	
		TOTAL FUNDING	LNR	250	A
16.		RESOURCE LAND ACQUISITIONS			
		PLANS AND ACQUISITION, INCLUDING ACQUISITION OF EASEMENTS, OF LANDS HAVING VALUE AS A RESOURCE TO THE STATE, INCLUDING LANDS HAVING NATURAL, ENVIRONMENTAL, RECREATIONAL, SCENIC, OPEN SPACE, CULTURAL OR HISTORICAL VALUE.			
		PLANS		500	
		LAND		19,500	
		TOTAL FUNDING	LNR	20,000	A

## AGS221 - CONSTRUCTION

17. A53 MOLOKAI MULTI-AGENCY MAINTENANCE AND  
SERVICE FACILITY, MOLOKAI

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		ACQUIRE LAND, PLAN, DESIGN, CONSTRUCT AND EQUIP A MULTI-AGENCY MAINTENANCE AND SERVICE FACILITY FOR MOLOKAI STATE AND COUNTY AGENCY.			
		CONSTRUCTION EQUIPMENT		1,700 40	
		TOTAL FUNDING	AGS	C	1,740 C
18.	B27	ADVANCE PLANNING, STATEWIDE			
		PLANS TO PROVIDE ASSISTANCE TO THE PUBLIC, STATE AND COUNTIES IN MATTERS RELATING TO PUBLIC WORKS DIVISION. IT INCLUDES THE OPERATION OF REPORTS, STUDIES, INVENTORIES, REVIEWS AND PERFORMANCE OF ALL NECESSARY ACTIVITIES TO CARRY OUT DAGS FUNCTIONS.			
		PLANS		250	250
		TOTAL FUNDING	AGS	250 A	250 A
19.	B28	STATE OFFICE BUILDINGS REMODELING			
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR REMODELING AND UPGRADING STATE OFFICE BUILDINGS, STATEWIDE, TO PROVIDE ADEQUATE SPACE FOR AGENCIES TO ACCOMMODATE THEIR OPERATIONAL REQUIREMENTS. WORK INCLUDES REMODELING FOR REORGANIZATION, PROGRAM CHANGES, STAFFING CHANGES, CORRECTION ON INEFFICIENT OFFICE LAYOUT, OSHA REGULATIONS, PLUMBING, ELEVATORS, ETC.			
		DESIGN		203	60
		CONSTRUCTION		1,692	440
		EQUIPMENT		50	
		TOTAL FUNDING	AGS	1,045 A	A
			AGS	900 C	500 C
20.	C27	PROFESSIONAL BASEBALL TRAINING FACILITY, OAHU			
		LAND ACQUISITION, DESIGN AND CONSTRUCTION TO PROVIDE A PROFESSIONAL TRAINING FACILITY AS PART OF CENTRAL/EWA OAHU DEVELOPMENT FOR DUAL USE BY THE COMMUNITY.			
		LAND		2,700	
		DESIGN		999	
		CONSTRUCTION		1	
		TOTAL FUNDING	AGS	3,700 A	A
21.	C29	STATE CAPITOL POOL AND OTHER IMPROVEMENTS, OAHU			
		DESIGN AND CONSTRUCTION TO REMOVE AND REPLACE WATERPROOFING MEMBRANE, RENOVATE ELECTRICAL AND MECHANICAL			

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		CIRCULATION SYSTEMS, CONVERT TO FRESH WATER, CONSTRUCT LILY PONDS AND OTHER IMPROVEMENTS.			
		DESIGN		66	
		CONSTRUCTION			1,615
		TOTAL FUNDING	AGS	66 C	1,615 C
22.	C43 KAHULUI CIVIC CENTER, PHASE I, MAUI				
		LAND ACQUISITION AND DESIGN TO PROVIDE A STATE CIVIC CENTER IN KAHULUI, MAUI, IN PHASES.			
		LAND		75	
		DESIGN		380	
		TOTAL FUNDING	AGS	455 C	C
23.	A39B KAUNAKAKAI CIVIC CENTER, BUILDING I AND SITWORK, MOLOKAI				
		CONSTRUCTION TO PROVIDE A CIVIC CENTER IN KAUNAKAKAI.			
		CONSTRUCTION		3,500	
		TOTAL FUNDING	AGS	3,500 C	C
24.	C36A RICHARD ST. PARKING GARAGE, PHASE I, OAHU				
		CONSTRUCTION TO PROVIDE A MULTI-LEVEL PARKING STRUCTURE AT THE SITE OF THE EXISTING CITY PARKING STRUCTURE ON HOTEL ST. BETWEEN ALAKEA AND RICHARDS ST. THE EXISTING STRUCTURE IS TO BE ACQUIRED AND DEMOLISHED. THE WORK IS TO BE DONE IN TWO PHASES.			
		CONSTRUCTION		13,400	
		TOTAL FUNDING	AGS	8,400 A	A
			AGS	5,000 B	B
25.	C10409 STATE CAPITOL DISTRICT ASBESTOS MITIGATION, AIR CON. AND OTHER IMPR.				
		CONSTRUCT, REMOVE, ENCAPSULATE AND/OR ENCASE ASBESTOS-CONTAINING MATERIAL IN THE STATE CAPITOL. RENOVATE THE BUILDING AIR CONDITIONING SYSTEM AND REFURBISH THE OFFICE AND PUBLIC AREAS.			
		DESIGN		500	
		CONSTRUCTION		26,200	
		TOTAL FUNDING	AGS	26,700 A	A
26.	P00003 LAND ACQ RELATED TO ASBESTOS REMOVAL IN STATE DIST OFC BLDG (STATE OFFICE TOWER)				
		EQUIPMENT FUNDS FOR LAND ACQUISITION RELATED TO ASBESTOS MITIGATION IN THE STATE CAPITOL DISTRICT. INCLUDES DESIGN FOR RENOVATION AND CONSTRUCTION.			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		EQUIPMENT TOTAL FUNDING	AGS	500 500 A	A
27. P00007 MAUI DISTRICT OFFICE - RELOCATION TO KAHULUI AIRPORT AREA, PHASE I, MAUI					
DESIGN, CONSTRUCTION AND EQUIPMENT TO RELOCATE MAUI DISTRICT OFFICE.					
		DESIGN		158	
		CONSTRUCTION		1,800	3,016
		EQUIPMENT		50	50
		TOTAL FUNDING	AGS	2,008 C	3,066 C
28. LIHUE SHOPPING CENTER, KAUAI					
DESIGN AND CONSTRUCTION FOR KAUAI COUNTY BUILDING - LIHUE SHOPPING CENTER COMPLEX, LIHUE, KAUAI.					
		DESIGN		600	
		CONSTRUCTION		4,400	
		TOTAL FUNDING	AGS	5,000 A	A
29. CULTURAL CENTER, PEARL CITY, OAHU					
CONSTRUCTION FOR A PEARL CITY CULTURAL CENTER TO INCLUDE AN AUDITORIUM, SEATING, EQUIPMENT, SITE WORK, AND PARKING.					
		CONSTRUCTION		3,400	
		TOTAL FUNDING	AGS	3,400 A	A
30. KAUAI VETERANS' CENTER, KAUAI					
LAND ACQUISITION, DESIGN, CONSTRUCTION, FURNITURE, AND EQUIPMENT FOR A KAUAI VETERANS' CENTER.					
		LAND		100	
		DESIGN		50	
		CONSTRUCTION		400	
		EQUIPMENT		50	
		TOTAL FUNDING	AGS	600 A	A
31. MILILANI PERFORMING ARTS CENTER, OAHU					
PLANS AND DESIGN FOR A PERFORMING ARTS CENTER IN MILILANI, OAHU.					
		PLANS		40	
		DESIGN		362	
		TOTAL FUNDING	AGS	402 A	A
<b>SUB201 - CITY AND COUNTY OF HONOLULU</b>					
32. NIHI STREET IMPROVEMENTS, OAHU					
DESIGN AND CONSTRUCTION FOR THE IMPROVEMENTS TO NIHI STREET.					

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**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		200	
		CONSTRUCTION		1,800	
		TOTAL FUNDING	CCH	2,000 A	A
33.		MAKIKI DISTRICT PARK, OAHU			
		CONSTRUCTION FOR SWIMMING POOL.			
		CONSTRUCTION		300	
		TOTAL FUNDING	CCH	300 A	A
34.		MOANALUA ROAD, OAHU			
		CONSTRUCTION TO COMPLETE IMPROVEMENTS TO MOANALUA ROAD.			
		CONSTRUCTION		1,771	
		TOTAL FUNDING	CCH	1,771 A	A
35.		KAHUKU SEWAGE TREATMENT PLANT, OAHU			
		CONSTRUCTION FOR THE MODIFICATIONS FOR THE EXPANSION OF THE KAHUKU SEWAGE TREATMENT PLANT.			
		CONSTRUCTION		1,000	
		TOTAL FUNDING	CCH	1,000 A	A
<b>SUB301 - COUNTY OF HAWAII</b>					
36.		PUAINAKO STREET EXTENSION, HAWAII			
		PLANS, DESIGN AND CONSTRUCTION FOR EXTENSION TO PUAINAKO STREET, HAWAII.			
		PLANS		104	
		DESIGN		208	
		CONSTRUCTION		4,888	
		TOTAL FUNDING	COH	5,200 A	A
37.		KAILUA VILLAGE ACCESS ROAD, KONA, HAWAII			
		PLANS, DESIGN AND CONSTRUCTION FOR AN ACCESS ROAD TO KAILUA VILLAGE, KONA, HAWAII.			
		PLANS		5	
		DESIGN		10	
		CONSTRUCTION		1,820	
		TOTAL FUNDING	COH	1,835 A	A
38.		PALANI ROAD RESURFACING, HAWAII			
		DESIGN AND CONSTRUCTION TO RESURFACE PALANI ROAD.			
		DESIGN		100	
		CONSTRUCTION		400	
		TOTAL FUNDING	COH	500 A	A
39.		HILO CIVIC AUDITORIUM, HAWAII			
		DESIGN FOR A CIVIC AUDITORIUM IN HILO, HAWAII.			

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ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
		DESIGN		600	
		TOTAL FUNDING	COH	600 A	A
<b>SUB401 - COUNTY OF MAUI</b>					
40.		MAKENA-ULUPALAKUA ROAD, MAUI			
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR MAKENA-ULUPALAKUA ROAD. FUNDS TO BE MATCHED BY COUNTY AND PRIVATE FUNDS.			
		PLANS		100	
		LAND		100	
		DESIGN		100	
		CONSTRUCTION		1,700	
		TOTAL FUNDING	COM	2,000 A	A
41.		CENTRAL MAUI SANITARY LANDFILL, PHASE II, MAUI			
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR PHASE II OF THE CENTRAL MAUI SANITARY LANDFILL.			
		PLANS		49	
		LAND		1	
		DESIGN		100	
		CONSTRUCTION		850	
		TOTAL FUNDING	COM	1,000 A	A
42.		KIHEI DRAINAGE AND FLOOD CONTROL, MAUI			
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR DRAINAGE AND FLOOD CONTROL IN KIHEI, MAUI.			
		PLANS		49	
		LAND		1	
		DESIGN		100	
		CONSTRUCTION		850	
		TOTAL FUNDING	COM	1,000 A	A
43.		UPCOUNTRY COMMUNITY CENTER, MAUI			
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE UPCOUNTRY COMMUNITY CENTER.			
		PLANS		10	
		LAND		1	
		DESIGN		39	
		CONSTRUCTION		340	
		TOTAL FUNDING	COM	390 A	A
<b>SUB501 - COUNTY OF KAUAI</b>					
44.		KOLOA-POIPU BY-PASS ROAD, KAUAI			
		PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR RIGHT-OF-WAY			

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### CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)	
				FISCAL M YEAR O 1989-90 F	FISCAL M YEAR O 1990-91 F
ACQUISITION AND A BY-PASS ROADWAY BETWEEN KOLOA AND POIPU.					
		PLANS		50	
		LAND		175	
		DESIGN		100	
		CONSTRUCTION		700	
		TOTAL FUNDING	COK	1,025	A
45.	RADIO COMMUNICATIONS NETWORK, KAUAI				
	PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW COMMUNICATIONS NETWORK SYSTEM FOR USE BY VARIOUS COUNTY AND STATE AGENCIES.				
		PLANS		100	
		DESIGN		200	
		CONSTRUCTION		700	
		EQUIPMENT		1,000	
		TOTAL FUNDING	COK	2,000	A
46.	KILAUEA LIGHTHOUSE ROAD, KAUAI				
	PLANS, LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR RIGHT-OF-WAY ACQUISITION AND A ROADWAY TO THE KILAUEA LIGHTHOUSE AND THE FEDERAL LIGHTHOUSE INSTALLATION.				
		PLANS		10	
		LAND		45	
		DESIGN		30	
		CONSTRUCTION		290	
		TOTAL FUNDING	COK	375	A

### PART V. CAPITAL IMPROVEMENT PROVISIONS

SECTION 223. Provided that revenue bonds may be issued by the housing finance and development corporation pursuant to part II, chapter 39, Hawaii Revised Statutes, in an aggregate principal amount not to exceed \$100,000,000 at such times and in such amounts as it deems advisable for the purpose of financing and refinancing any rental housing projects developed or acquired by the housing finance and development corporation under chapter 201E, Hawaii Revised Statutes.

SECTION 224. Provided that of the revenue bond fund and other federal fund appropriations for Keahole airfield improvements (TRN 114), no funds shall be expended to extend the runway until appropriate county action and approvals have been granted.

SECTION 225. Provided that of the revenue bond fund and other federal fund appropriations for Kahului airport improvements (TRN 131), no funds shall be expended to extend the runway until appropriate county action and approvals have been granted.

SECTION 226. Provided that of the revenue bond fund appropriations for Molokai airport improvements (TRN 141), the department of transportation shall

conduct two public hearings on the island regarding the runway extension proposal; provided further that no funds shall be expended to extend the runway until appropriate county action and approvals have been granted.

SECTION 227. Provided that of the revenue bond fund and other federal fund appropriations for Lanai airport improvements (TRN 151), no funds shall be expended until the hearings regarding the runway extension proposal are conducted; provided further that there shall be no funds expended to extend the runway until appropriate county action and approvals have been granted.

SECTION 228. Provided that of the revenue bond fund and other federal fund appropriations for Lihue airport complex (TRN 161), no funds shall be expended for the construction or improvements of helicopter facilities at Lihue airport; provided further that should the State build the Kauai inland heliport (TRN 161), then all helicopters companies operating at Lihue airport shall be relocated to the inland heliport.

SECTION 229. Provided that of the revenue bond fund and other federal fund appropriations for Lihue airfield improvements (TRN 161), no funds shall be expended to extend the runway until appropriate county action and approval have been granted.

SECTION 230. Provided that in order to obtain the best use of appropriated revenue bond funds and special funds appropriated to airport improvements, statewide (TRN 195), no funds shall be expended until all previous appropriations for revenue bond funds and special funds for airport improvements, statewide (TRN 195) have been expended; provided further that no statewide airport improvements (TRN 195) funds shall be used for any improvements to Port Allen airport (TRN 163).

SECTION 231. Provided that of the special fund appropriation to Oahu highways and services (TRN 501), no funds for the Pali highway contra-flow lane and/or the Likelike highway contra-flow lane shall be expended until the department of transportation prepares an environmental impact statement.

SECTION 232. Provided that of the general obligation reimbursable bond appropriation for Saddle Road (TRN 511), any expenditure for its improvement shall occur only with the concomitant expenditure for plans, design, and construction of Puainako extension roadway.

SECTION 233. Provided that of the special fund appropriation for miscellaneous improvements to existing intersection and highway facilities statewide (TRN 595), the sum of \$100,000 in fiscal year 1989-90 shall be expended to design and construct sidewalks along Kamehameha highway from Pipilani place to Hauula homestead road.

SECTION 234. Provided that of the general fund capital improvement appropriation for the Kahuku sewage treatment plant (SUB 201), fiscal year 1989-90 the funds shall be matched by the city and county of Honolulu in the sum of \$750,000, the Kahuku Village Association in the sum of \$650,000, and the Campbell Estates in the sum of \$650,000.

SECTION 235. Provided that in the implementation of capital investment projects funded by the state educational facilities improvement special fund, the

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department of accounting and general services, with the concurrence of the department of education and with the approval of the governor, may make expenditures from the state educational facilities improvement special fund to satisfy the objectives of the state educational facilities improvement special fund appropriations.

SECTION 236. Unrequired balances after the objectives of appropriations made in this Act for capital investment purposes from the state educational facilities improvement special fund have been met shall be transferred to the special funded project adjustment fund for state educational facilities appropriated in Part II and described in Part IV of this Act and shall be considered a supplementary appropriation thereto.

SECTION 237. In the event that currently authorized appropriations specified for capital investment purposes listed in this Act or in any other Act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the state educational facilities improvement special fund, the governor may make supplemental allotments from the special funded project adjustment fund for state educational facilities appropriated in Part II and described in Part IV of this Act; provided that such supplemental allotments from the special funded project adjustment fund for state educational facilities shall not be used to increase the scope of the project; provided further that a report of such supplemental allotments and transfers for the period ending December 31 of each calendar year shall be made to the legislature by February 1 of the following calendar year.

SECTION 238. Provided that of the capital improvement appropriation for the department of accounting and general services (AGS 221), for fiscal biennium 1989-91, for Richards street parking garage, the sum of \$5,115,000 appropriated for land acquisition by Act 216, Session Laws of Hawaii 1987, Item K-23, and \$13,400,000 in this Act for construction may be expended to acquire parking stalls and offices in a new facility to be developed by the city and county of Honolulu on the site.

SECTION 239. Provided that of the capital improvement appropriation for the department of accounting and general services (AGS 221), for State Capitol district asbestos mitigation, air conditioning and other improvements, the department of accounting and general services may expend funds for a shuttle service between the State Office Tower and remote parking facilities.

SECTION 240. Section 280 of Act 216, Session Laws of Hawaii 1987, as amended and renumbered by Act 390, Session Laws of Hawaii 1988, Section 6, is amended:

(1) By amending Item BED 120-21A to read:

"21A. GEOTHERMAL RESOURCE DEVELOPMENT, HAWAII AND MAUI

PLANS, DESIGN AND CONSTRUCTION FOR THE  
DEVELOPMENT OF GEOTHERMAL ENERGY AND TO  
DETERMINE THE SIZE OF HAWAII'S GEOTHERMAL  
RESERVOIRS BY CONDUCTING EXPLORATORY  
DRILLING[.] AT APPROVED GEOTHERMAL RESOURCE  
SUBZONES IN HAWAII AND MAUI COUNTIES.

	FY 1987-88	FY 1988-89
PLANS		200
DESIGN		300
CONSTRUCTION	[3,000]	2,500

TOTAL FUNDING	BED	C	3,000 C"
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- (2) By amending Item TRN 361-33 to read:

"33. KO8 NAWILIWILI HARBOR PIER

DESIGN AND CONSTRUCTION OF [RO/RO PIER, PIER EXTENSION] PIERS, STORAGE YARDS, ROAD AND FENCING AND OTHER IMPROVEMENTS.

	FY 1987-88	FY 1988-89
DESIGN	250	
CONSTRUCTION		3,000
TOTAL FUNDING	TRN	250 B
	TRN	E 3,000 E"

- (3) By amending Item TRN 531-73A to read:

"73A. HONOPOU BRIDGE AT HAMAKUALOA, MAKAWAO, MAUI

DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF HONOPOU BRIDGE AT HAMAKUALOA TO MEET SAFETY AND LOADING STANDARDS.

	FY 1987-88	FY 1988-89
DESIGN		17
CONSTRUCTION		[95] 78
TOTAL FUNDING	[TRN] LNR	D 95[D] C"

- (4) By amending Item HTH 221-7 to read:

"7. 221001 MAUI MEMORIAL HOSPITAL 2ND INCREMENT RENOVATION OF HOSPITAL BUILDING

PLANS, DESIGN, CONSTRUCTION, EQUIPMENT, RENOVATION AND MODIFICATION OF EXISTING HOSPITAL FACILITIES TO UPGRADE MEDICAL, SURGICAL, PSYCHIATRIC NURSING UNITS AND TO UPGRADE ANCILLARY SERVICES. MASTER PLAN COMPLETED (1974) CERTIFICATION OF NEED APPROVED. PROJECT TO INCLUDE REMOVAL OF ASBESTOS.

	FY 1987-88	FY 1988-89
DESIGN	454	
CONSTRUCTION		11,292
EQUIPMENT		500
TOTAL FUNDING	AGS	454 C 11,792 C"

- (5) By amending Item UOH 101-64 to read:

"64. 092 UHM, PACIFIC OCEAN SCIENCE AND TECHNOLOGY CENTER

[FUNDING INCLUDES] PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT [OF] FOR INSTRUCTIONAL AND RESEARCH FACILITIES TO INCLUDE CLASSROOMS, LABORATORIES, SEMINAR AND CONFERENCE ROOMS, OFFICES, RESOURCE MATERIALS AND EXHIBITION SPACES AND OTHER RELATED AREAS. ALSO, RENOVATION OF FACILITIES FOR PROGRAMS AFFECTED BY DEMOLITION AND SITE PREPARATION[.] AND FOR A PARKING STRUCTURE IN THE HOLMES HALL PARKING LOT.

	FY 1987-88	FY 1988-89
PLANS	1	

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<u>DESIGN</u>	[1,659]	<u>1,658</u>	1
<u>CONSTRUCTION</u>			<u>34,999</u>
<u>EQUIPMENT</u>			1
<u>TOTAL FUNDING</u>	AGS	A	20,001 A
	AGS	C	C
	AGS	N	15,000 N"

- (6) By amending Item UOH 101-65 to read:

"65. P00080 AGRICULTURAL SCIENCE FACILITIES, PHASE III

PLANS AND DESIGN OF NEW REPLACEMENT FACILITY FOR COLLEGE TROPICAL AGRICULTURE AND HUMAN RESOURCES.

		FY 1987-88	FY 1988-89
<u>PLANS</u>		1	
<u>DESIGN</u>		[743] 742	46
<u>TOTAL FUNDING</u>	AGS	743 C	46 C"

- (7) By amending Item UOH 101-67 to read:

"67. 066 UHM, KENNEDY THEATER ADDITION/PARKING STRUCTURE

PLANS, DESIGN, CONSTRUCTION AND [EQUIPPING] EQUIPMENT FOR AN ADDITION TO KENNEDY THEATER AND A PARKING STRUCTURE WITHIN THE ADJACENT PARKING LOT.

		FY 1987-88	FY 1988-89
<u>PLANS</u>		1	
<u>DESIGN</u>		[684] 683	249
<u>TOTAL FUNDING</u>	AGS	684 C	249 C"

- (8) By amending Item UOH 101-68 to read:

"68. 023 UHM, CRAWFORD HALL RENOVATIONS

PLANS AND DESIGN FOR THE RENOVATIONS TO MODERNIZE OLD, DILAPIDATED AND OBSOLETE FACILITIES.

		FY 1987-88	FY 1988-89
<u>PLANS</u>		1	
<u>DESIGN</u>		[265] 264	265
<u>TOTAL FUNDING</u>	AGS	C	C"

- (9) By amending Item UOH 102-69 to read:

"69. 149 UHM, MAUNA KEA OBSERVATORY, POWER LINE AND COMMUNICATIONS SYSTEMS, ADDL. WORK

DESIGN, [AND] CONSTRUCTION AND EQUIPMENT OF A PERMANENT ELECTRICAL TRANSMISSION AND DISTRIBUTION SYSTEM FROM THE SADDLE ROAD TO THE SUMMIT AT MAUNA KEA. INCLUDING SUBSTATIONS AND SWITCHGEAR. ALSO, DESIGN, [AND] CONSTRUCTION AND EQUIPMENT OF COMMUNICATIONS SYSTEMS FROM HALE POHAKU TO THE SUMMIT.

		FY 1987-88	FY 1988-89
<u>DESIGN</u>		55	1
<u>CONSTRUCTION</u>		616	[250] 249
<u>EQUIPMENT</u>			1
<u>TOTAL FUNDING</u>	AGS	671 C	251 C"

- (10) By amending Item UOH 105-74A to read:

"74A. 288 UHM, FIRE SAFETY SYSTEMS, STUDENT HOUSING FACILITIES

DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF SPRINKLER SYSTEM, [AND] SMOKE DETECTORS[.] AND EMERGENCY LIGHTING SYSTEM.

FY 1987-88

<u>DESIGN</u>		FY 1988-89
<u>CONSTRUCTION</u>	126	
<u>TOTAL FUNDING</u>	2,021	
	A	2,147 A"

- (11) By amending Item UOH 106-78 to read:

"78. 233 UHM, PARKING STRUCTURE, PHASE II

PLANS, DESIGN AND CONSTRUCTION OF THE SECOND PARKING STRUCTURE ON THE MAKAI-MANOA CAMPUS TO ACCOMMODATE APPROXIMATELY 1,800 CARS.

FY 1987-88

FY 1988-89

<u>PLANS</u>		<u>1</u>
<u>DESIGN</u>	[1,052]	<u>1,051</u>
<u>TOTAL FUNDING</u>		<u>1,052 C"</u>
	C	

- (12) By amending Item UOH 211-83 to read:

"83. GENERAL INSTRUCTION FACILITIES WEST HAWAII

PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR NEW INSTRUCTIONAL FACILITIES AT WEST HAWAII CAMPUS, [KAILUA, KONA.] INCLUDING SITE SELECTION STUDIES.

FY 1987-88

FY 1988-89

<u>PLANS</u>		<u>1</u>
<u>DESIGN</u>	[133]	<u>132</u>
<u>TOTAL FUNDING</u>		<u>133 C"</u>
	C	

- (13) By amending Item UOH 215-85A to read:

"85A. UHH, STUDENT HOUSING FACILITIES[, PHASE II, UHH]

DESIGN, CONSTRUCTION AND EQUIPMENT FOR [OF] STUDENT HOUSING FACILITIES AT UNIVERSITY OF HAWAII AT HILO[, PHASE II]. ALSO, FOR INFRASTRUCTURE TO PROVIDE ACCESS TO STUDENT HOUSING FACILITIES, PHASE II SITE.

FY 1987-88

FY 1988-89

<u>DESIGN</u>		<u>1,500</u>
<u>CONSTRUCTION</u>		<u>1,000</u>
<u>EQUIPMENT</u>		<u>490</u>
<u>TOTAL FUNDING</u>		<u>1,500 C"</u>
	C	

- (14) By amending Item DOC 402-3 to read:

"3. CD8702 [HIGH SECURITY FACILITY-ADDITIONAL RESIDENCY UNIT & SUPPORTING FACILITIES] HALAWA HIGH AND MEDIUM CORRECTIONAL FACILITIES COMPLEX - IMPROVEMENTS, ADDITIONS & RENOVATIONS PROJECT

DESIGN, CONSTRUCTION AND EQUIPMENT [AN ADDITIONAL RESIDENCY MODULE & SUPPORTING FACILITIES AT THE HALAWA HIGH SECURITY FACILITY BRANCH.] OF NEW STRUCTURES AND SITE IMPROVEMENTS & RENOVATE EXISTING ONES THROUGHOUT THE FACILITIES COMPLEX AND ANY SATELLITE ADJUNCTS.

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	FY 1987-88	FY 1988-89
CONSTRUCTION	4,000	
EQUIPMENT	100	
TOTAL FUNDING	3,853 A	A
AGS	247 C	C"

SECTION 241. Any law to the contrary notwithstanding, the appropriation under Act 216, Session Laws of Hawaii 1987, Section 280, part IV, item K-27, as amended by Act 390, Session Laws of Hawaii 1988 is hereby lapsed.

SECTION 242. Provided that the county of kauai shall convey the following properties to the State:

1. Wilcox School - 9.952 acres by quitclaim deed.
2. Kauai War Memorial Auditorium - 30,000 square feet by quitclaim deed.
3. County Building Lot - 31,622 square feet by deed.
4. Lihue Public Park - 26,400 square feet of E.O. 818 to be returned to the State.
5. Police Building and Land - 0.964 acre of E.O. 1435 to be cancelled and the building transferred to the State.
6. Lot 152 of Puu Lani Subdivision Phase IV-B, Increment 1 - 84,031 square feet by deed.

The exact size and boundries and the timing of the conveyance of the properties shall be determined by the County and the Department of Accounting and General Services

SECTION 243. Any law to the contrary notwithstanding, the appropriations under Act 217, Session Laws of Hawaii 1987, Section 2, authorizing general obligation bond funding in the amounts indicated or balances thereof, are hereby amended to read as follows:

Item No.	Amount (MOF)
TRN 501-5	119 [C] D
TRN 501-6	25 [C] D
TRN 501-7	72 [C] D
TRN 501-8	145 [C] D
TRN 501-10	90 [C] D
TRN 501-11	15 [C] D
TRN 501-12	45 [C] D
TRN 501-13	52 [C] D
TRN 501-14	90 [C] D
TRN 501-15	26 [C] D
TRN 501-16	55 [C] D
TRN 501-18	54 [C] D
TRN 501-19	90 [C] D
TRN 501-20	35 [C] D
TRN 501-22	50 [C] D
TRN 511-25	50 [C] D
TRN 511-26	30 [C] D
TRN 511-27	85 [C] D
TRN 511-29	50 [C] D
TRN 511-30	275 [C] D
TRN 511-31	30 [C] D
TRN 531-32	100 [C] D
TRN 531-33	50 [C] D
TRN 531-34	95 [C] D

TRN 531-37	15 [C] D
TRN 531-38	30 [C] D
TRN 561-40	195 [C] D

SECTION 244. Any law to the contrary notwithstanding, the appropriations under Act 216, Session Laws of Hawaii 1987, Section 280, as amended and renumbered by Act 390, Session Laws of Hawaii 1988, Section 6, in the amounts indicated or balance thereof, are hereby lapsed:

<u>Item Number</u>	<u>Amount (MOF)</u>
AGS 221-19	\$ 69,000 C
AGS 221-25	100,000 C
EDN 105-45A	60,000 C
EDN 105-45G	60,000 C
EDN 204-48	400,000 C
EDN 407-55	30,000 C
LNR 806-10	200,000 C
TRN 501-57B	25,000 D
TRN 501-57C	400,000 D

SECTION 245. Any law to the contrary notwithstanding, the appropriations under Act 217, Session Laws of Hawaii 1987, Section 2, in the amounts indicated or balance thereof, are hereby lapsed:

<u>Item Number</u>	<u>Amount (MOF)</u>
AGS 221-4	\$ 5,000 C
EDN 105-2	14,000 C
EDN 105-3	28,000 C
EDN 105-6	100,000 C
EDN 105-7	50,000 C
EDN 105-9	75,000 C
EDN 105-60	77,000 C
EDN 105-76	5,000 C
EDN 105-95	10,000 C
EDN 105-98	35,000 C
EDN 105-99	25,000 C
EDN 105-100	40,000 C
EDN 105-104	75,000 C
EDN 105-107	20,000 C
EDN 105-118	25,000 C
EDN 105-136	7,000 C
EDN 105-146	66,000 C
EDN 105-150	55,000 C
EDN 105-152	20,000 C
EDN 105-154	50,000 C
EDN 105-155	40,000 C
EDN 105-156	60,000 C
EDN 105-158	25,000 C
EDN 105-163	58,000 C
EDN 105-166	35,000 C
EDN 105-189	4,000 C
EDN 105-191	26,000 C
EDN 204-224	11,000 C
EDN 305-247	25,000 C
EDN 407-250	10,000 C

LNR 402-1	5,000 C
LNR 806-10	5,000 C
SOC 220-5	2,000 C
TRN 501-3	110,000 C
TRN 501-4	20,000 C
TRN 501-9	100,000 C
TRN 501-17	50,000 C
TRN 501-21	195,000 C
TRN 501-23	110,000 C
TRN 501-24	5,000 C
TRN 511-28	45,000 C
TRN 531-35	5,000 C
TRN 531-36	125,000 C
TRN 541-39	5,000 C
TRN 801-20	2,000 C
TRN 801-22	5,000 C
TRN 801-23	7,000 C

**PART VI. ISSUANCE OF BONDS**

**SECTION 246. GOVERNOR'S DISCRETIONARY POWERS.** When it is deemed in the public interest of the State, the governor, in the governor's discretion, is authorized to use general fund savings or balances determined to be available from authorized general fund program appropriations to finance capital improvement projects authorized in this Act or any other act currently authorized by the legislature, where the method of financing is designated to be the general obligation bond fund. Any law or provision to the contrary notwithstanding, the governor may replace general obligation bond funds appropriated for capital improvement projects with general obligation reimbursable bond funds, when the expenditure of such general obligation reimbursable bond funds is deemed appropriate for the project.

**SECTION 247. AIRPORT REVENUE BONDS.** The department of transportation is authorized to issue airport revenue bonds for airport capital investment projects authorized in Part II and listed in Part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital investments, plus, if so determined by the department and approved by the governor, such additional amounts as may be deemed necessary by the department to increase reserves for the airport revenue bonds and to pay the expenses of issuance of such bonds. The aforementioned airport revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal and interest of airport revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues from airports and related facilities under the ownership of the State or operated and managed by the department and the aviation fuel taxes levied and paid pursuant to sections 243-4(a)(2) and 248-8, Hawaii Revised Statutes, or such parts of either thereof as the department may determine, including rents, landing fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of airports and related facilities and the furnishing and supplying of the services thereof. The expenses of the issuance and reserves of such airport revenue bonds to the extent not paid from the proceeds of such bonds shall be paid from the airport revenue fund.

The governor, in the governor's discretion, is authorized to use the airport revenue fund to finance those projects authorized in Part II and listed in Part IV of this Act where the method of financing is designated to be by airport revenue bond funds.

**SECTION 248. HARBOR REVENUE BONDS.** The department of transportation is authorized to issue harbor revenue bonds for harbor capital investment projects authorized in Part II and listed in Part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital investments, plus, if so determined by the department and approved by the governor, such additional amounts as may be deemed necessary by the department to pay interest on such revenue bonds during the construction period and for six months thereafter, to establish, maintain, or increase reserves for the harbor revenue bonds and to pay the expenses of issuance of such bonds. The aforementioned harbor revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal and interest of harbor revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues from harbors and related facilities under the ownership of the State or operated and managed by the department, including rents, mooring, wharfage, dockage, and pilotage fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of harbor and related facilities and the furnishing and supplying of the services thereof. The expenses of the issuance and reserves of such harbor revenue bonds to the extent not paid from the proceeds of such bonds shall be paid on the harbor special fund.

The governor, in the governor's discretion, is authorized to use the harbor revenue fund to finance those projects authorized in Part II and listed in Part IV of this Act where the method of financing is designated to be by harbor revenue bond funds.

**SECTION 249. HAWAIIAN HOME LANDS REVENUE BONDS.** The department of Hawaiian home lands is authorized to issue Hawaiian home lands revenue bonds for Hawaiian home lands capital investment projects authorized in Part II and listed in Part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital investments, plus, if so determined by the department and approved by the governor, such additional amounts as may be deemed necessary by the department to increase reserves for the Hawaiian home lands revenue bonds and to pay the expenses of issuance of such bonds. The aforementioned Hawaiian home lands revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal and interest of Hawaiian home lands revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and received solely by the revenues from Hawaiian home lands and related facilities under the ownership of the State or operated and managed by the department or such parts of either thereof as the department may determine, including rents and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of Hawaiian home lands and related facilities. The expenses of the issuance of such Hawaiian home lands revenue bonds to the extent not paid from the proceeds of such bonds shall be paid from the Hawaiian home lands special fund.

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The governor, in the governor's discretion, is authorized to use the Hawaiian home lands special fund to finance those projects authorized in Part II and listed in Part IV of this Act where the method of financing is designated to be by the Hawaiian home lands revenue bond funds.

### **PART VII. SPECIAL PROVISIONS**

**SECTION 250.** Provided that to the extent that the sums appropriated for the payment of principal and interest on general obligation bonds are insufficient to meet and pay all such obligation when due in accordance with the terms of such bonds, the governor shall direct the utilization of any or all appropriations available or unexpended from any other state program, as the first charge for the payment of principal and interest of the bonds when due; and provided further that the legislature, under procedures established in section 10 of article III of the Hawaii State Constitution, shall meet in special session to comply with the provisions of section 12 of article VII of the Hawaii State Constitution, which pledge the full faith and credit of the State for the payment of principal and interest on all general obligation and reimbursable general obligation bonds.

**SECTION 251.** Provided that notwithstanding any position ceiling, the governor may transfer positions and funds between existing programs of the state executive branch for the purpose of establishing and maintaining integrated statewide data processing and communications systems.

**SECTION 252.** Provided that no income from Sand Island lands and facilities, other than those set aside for harbors or foreign trade zone purposes, shall be expended except pursuant to the provisions of section 5 of article VII of the Hawaii State Constitution; provided further that such income shall first be deposited into the general fund.

**SECTION 253.** Provided that if federal funds in the amounts designated under the Morill-Nelson Bankhead-Jones Act, Hatch Act, and Smith-Lever Act are received in excess of the amounts authorized by this Act, then the general fund appropriations for instruction-UOH, Manoa (UOH 101), organized research-UOH, Manoa (UOH 102), and public service-UOH, Manoa (UOH 103), respectively, shall be reduced by the amounts such receipts exceed the federal funds authorized in each year of the fiscal biennium 1989-91.

**SECTION 254.** There is hereby appropriated out of the public trust fund created by section 5(f) of the Admissions Act (Public Law No. 86-3) the total amount of the proceeds from the sale or other disposition of any lands, and the income therefrom granted to the State by section 5(b) or later conveyed to the State by section 5(e), with the exception of such proceeds covered under section 171-19, Hawaii Revised Statutes, to be disposed of by the board of land and natural resources, and with the exception of such proceeds to be expended by the office of Hawaiian affairs under chapter 10, Hawaii Revised Statutes, in order to reimburse the general fund for the appropriation made in Part II of this Act to the department of education for the support of public schools, to the extent such proceeds are realized for the period beginning July 1, 1989 to June 30, 1991. The above proceeds shall be exclusive of the amount disposed of under the provisions of the Hawaiian Homes Commission Act of 1920, as amended.

**SECTION 255.** Whenever the expending agency to which an appropriation is made is changed due to legislation enacted during any session of the legislature

which affects the appropriations made by this Act, the governor, or the director of finance, if so delegated by the governor, shall transfer the necessary funds and positions to the proper expending agency.

SECTION 256. All grants to private organizations in this Act are made in accordance with the standard that the private programs so funded yield direct benefits to the public and accomplish public purposes.

SECTION 257. No appropriation authorized in this Act shall be considered to be a mandate, under section 5 of article VIII of the Hawaii State Constitution, for a political subdivision to undertake new programs to increase the level of services under existing programs of that political subdivision. If any appropriation authorized in this Act falls within the provisions of section 5 of article VIII of the Hawaii State Constitution, such authorization shall be void and, in the case of capital improvement appropriations designated to be financed from the general obligation bond fund, the total general obligation bonds authorized for such projects shall be correspondingly decreased.

SECTION 258. Any law or provision to the contrary notwithstanding, in allotting funds for social welfare programs, education programs, and other programs and agencies having appropriations which are based on population and workload data as specified in the executive budget documents, only so much as is necessary to provide the level of services intended by the legislature shall be allotted by the department of budget and finance. For this purpose, agencies concerned shall reduce expenditures below appropriations under procedures prescribed by the department of budget and finance in the event actual population and workload trends are less than the figures so specified. In the event that the caseload trend is higher than the specified figure or the reasonable average daily cost of medical care for the needy and medically needy exceeds the anticipated average sum per patient day, or the caseload trend or average payments for money assistance payments is higher than the specified figure, the governor is authorized to utilize savings as may be available from any other state program for the purpose of meeting the additional expenses of the social welfare program of the department of human services.

SECTION 259. With the approval of the director of finance, the department of health may transfer to the department of human services funds appropriated to the department of health for the care and treatment of patients whenever the department of human services can utilize such funds to match federal funds which may be available to help finance the cost of outpatient, hospital, or skilled nursing home care of indigents or medical indigents.

The department of human services is authorized to enter into agreements with the department of health to furnish outpatient, hospital, and skilled nursing home care and to pay the department of health for such care. With the approval of the director of finance, the department of health may deposit part of such receipts into the appropriations from which transfers were made.

SECTION 260. Unless otherwise provided in this Act, the governor is authorized to transfer funds between appropriations within an expending agency for operating purposes.

SECTION 261. Except as otherwise provided in this Act, each department or agency is authorized to transfer positions within its respective authorized position ceiling, for the purpose of maximizing the utilization of personnel resources and staff productivity; provided further that all such actions shall be with the prior approval of the governor or the director of finance if so delegated by the governor.

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**SECTION 262.** Where a program is financed by the general fund as well as by a source of funding other than the general fund, the general fund appropriation shall be decreased to the extent that the amount received from the non-general fund source exceeds the amount approved in this Act from such source; provided that such decrease of the general fund appropriation shall not jeopardize the receipt of the increased amount from the non-general fund source; provided further that the preceding requirements shall not apply if the excess receipts are to be expended for a purpose or purposes of the program approved by the governor or the director of finance if so delegated by the governor.

**SECTION 263.** For the fiscal biennium 1989-91, where a program is authorized under Part II of this Act to expend from a revolving, special, or trust fund, agencies responsible for such funds are authorized to expend so much as may be necessary to carry out the purpose of each such fund; provided that such expenditures in excess of the amount indicated in Part II are approved by the governor or by the director of finance if so delegated by the governor; and provided further that such expenditure shall not exceed the amounts available in such funds.

**SECTION 264.** In the event that essential, federally-funded state programs are significantly diminished or curtailed by unanticipated federal funding cutbacks, the governor may utilize savings as determined to be available from other state programs for the purpose of maintaining such programs until the next legislative session.

**SECTION 265.** Provided that, of the respective appropriation for each principal state department as defined by section 26-4, Hawaii Revised Statutes, the sum of \$10,000 in each year of the fiscal biennium 1989-91 shall be made available in each department or agency to be established as a separate account for a protocol fund to be expended at the discretion of the executive heads of such departments or agencies which are respectively known as its directors, chairmen, chairpersons, comptroller, adjutant-general, superintendent and attorney general; and provided further that the provisions of this section shall not include the president of the university of Hawaii.

**SECTION 266.** The governor is hereby authorized to establish fifteen permanent positions during each year of the fiscal biennium 1989-91 to be allocated by the governor to any of the program areas included in this Act as the governor shall deem proper.

**SECTION 267.** The governor is hereby authorized to establish fifteen positions in each year of the fiscal biennium 1989-91 to be allocated by the governor to any program areas included in this Act and to be funded by savings as determined to be available from any program included in this Act. These positions shall be exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes.

**SECTION 268.** Any provision of law to the contrary notwithstanding, the governor is authorized to utilize an appropriate portion of such sums included in the respective program appropriation in Part II of this Act for personal services, for salary increases for public officers and employees excluded from collective bargaining under chapter 89, Hawaii Revised Statutes; provided that said increases shall be in conformance with chapter 89C, Hawaii Revised Statutes.

**SECTION 269.** Where any agency is able to secure funds or other property from private organizations or individuals, to be expended or utilized in connection

with any program authorized by this Act, the governor or agency with the governor's approval shall have the power to enter into each undertaking.

SECTION 270. In the event the State should assume the direct operation of any non-governmental agency receiving state funds under the provisions of this Act, all such funds shall constitute a credit to the State against the costs of acquiring all or any portion of the property, real, personal, or mixed, of such non-governmental agency. This credit shall be applicable regardless of when such acquisition takes place.

SECTION 271. Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital investment projects authorized in this Act shall not lapse at the end of the fiscal biennium for which the appropriation is made; provided that all appropriations made to be expended in fiscal biennium 1989-91 which are unencumbered as of June 30, 1992, shall lapse as of that date; provided further that this lapsing date shall not apply to appropriations in section 222 which are denoted as necessary to qualify for federal aid financing and reimbursement and which appropriations in their entirety the legislature hereby determines are necessary to qualify for federal aid financing and reimbursement.

SECTION 272. With the approval of the governor, designated expending agencies for capital investments authorized in this Act may delegate to other state or county agencies the implementation of such projects when it is determined by such agencies that it is advantageous to do so.

SECTION 273. All general obligation bond funds used for highway, harbor, boating, airport, parking facilities, land development capital investment purposes, or economic development projects, designated by the letter (D), shall have the bond principal and interest reimbursed from the state highway fund, the harbor special fund, the boating special fund, the airport revenue fund, the parking special fund, the special land and development fund, or the economic development special fund, respectively. Bonds issued for irrigation projects shall be reimbursed, as provided by section 174-21, Hawaii Revised Statutes.

The governor is authorized to use, at the governor's discretion, the state highway fund, the harbor special fund, the boating special fund, the airport revenue fund, the special land and development fund, or the economic development special fund to finance the respective highway, harbor, boating, airport, land development, or economic development projects authorized in this Act, where the method of financing is designated to be general obligation bond fund with debt service cost to be paid from special funds.

SECTION 274. Where county capital improvement projects are partially or totally funded by state grants-in-aid as authorized in this Act or any other act of the Legislature, this fact should be appropriately acknowledged during construction and upon completion of these projects.

SECTION 275. Notwithstanding any other law to the contrary, negotiations for the purchase of land by state agencies shall be subject to the approval of the governor. Private lands may be acquired for the purpose of exchange for federal lands when the governor determines that such acquisition and exchange are necessary for the completion of any projects authorized by this Act.

SECTION 276. If general obligation bond proceeds have been allocated to an appropriation which may be satisfied from general obligation bond proceeds and

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the amount of such proceeds so allocated is in excess of the amount needed to satisfy such appropriation, the amount of such excess proceeds shall be transferred to a separate account and allocated to the satisfaction of other appropriations which may be satisfied from general obligation bond proceeds made in the same or any other Act of the legislature.

**SECTION 277.** After the objectives of appropriations made in this Act from the general obligation bond fund or the general fund for capital investment purposes have been met, unrequired balances shall be transferred to the project adjustment fund appropriated in Part II and described in Part IV of this Act and shall be considered a supplementary appropriation thereto; provided that all other unrequired allotment balances, unrequired appropriation balances, and unrequired encumbrance balances shall lapse as of June 30, 1992, as provided in Section 271 of this Act.

**SECTION 278.** In the event that currently authorized appropriations specified for capital investment projects listed in this Act or in any other Act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the general obligation bond fund or the general fund, the governor may make supplemental allotments from the project adjustment fund appropriated in Part II and described in Part IV of this Act; provided that such supplemental allotments from the project adjustment fund shall not be used to increase the scope of the project.

Any provision in this Act to the contrary notwithstanding, allotments from the project adjustment fund may be made to supplement any currently authorized capital investment cost elements.

**SECTION 279.** Any law or any provision to the contrary notwithstanding, the governor may supplement funds for any early-phased cost element for a capital improvement project authorized under this Act by transferring such sums as may be needed from the funds appropriated for later-phased cost elements for the same project authorized by the legislature in this Act or in a prior year or which may be authorized by the legislature in the future, provided that the total expenditure of funds for all cost elements for the project shall not exceed the total appropriations for that project.

**SECTION 280.** In the event that the amount specified for a capital investment project listed in this Act is insufficient and where the source of funding is designated as special funds, general obligation bond fund with debt service cost to be paid from special funds, or revenue bond funds, the governor may make supplemental allotments from the special fund responsible for cash or debt service payments for the projects or transfer unrequired balances from other unlapsed projects in this or prior appropriation acts which authorized the use of special funds, general obligation bond fund with debt service costs to be paid from special funds, or revenue bond funds; provided that such supplemental allotments shall not be used to increase the scope of the project; provided further that such supplemental allotments shall not impair the ability of the fund to meet the purposes for which it was established.

**SECTION 281.** The governor may authorize the expenditure of funds for capital investment projects not previously authorized in this Act to cope with unemployment, unforeseen emergencies arising from elements such as fires and natural disasters and for any federal aid portion of any capital investment project described in this Act where application for such aid has been made and approval has been denied; provided that the unemployment, or such emergencies, or denial of federal aid create an urgent need to pursue a course of action which is in the best interest

of the State; provided further that the governor shall use the project adjustment fund authorized in Part II and described in Part IV to accomplish the purposes of this section.

**SECTION 282.** General revenues of the State of Hawaii as provided by this section may be expended by the governor to cope with unemployment and unforeseen emergencies arising from elements such as fires and natural disasters; provided that the unemployment, or such emergencies create an urgent need to pursue a course of action which is in the best interest of the State; provided further that the governor may authorize an increase in repairs and maintenance activities on state grounds and facilities to alleviate the unemployment and cope with such emergencies. To accomplish the purpose of this section, the governor is authorized to transfer to the building, repair and alterations (AGS 233), the physical plant operations and maintenance (AGS 807), and to any other appropriate programs up to \$5,000,000 in savings as may be available from the appropriated funds of any program in this Act.

**SECTION 283.** Where it has been determined that changed conditions, such as reduction in the particular population being served, permit the reduction in the scope of a capital investment project described in this Act, the governor may authorize such reduction of project scope; provided that the scope of a project shall not be reduced merely because the appropriation for a project is insufficient.

**SECTION 284.** In releasing funds for capital projects, the governor shall consider the legislative intent and the objective of the user agency and its programs, the scope and level of the user agency's intended service, and the means, efficiency, and economics by which the project will meet the objectives of the user agency and the State. Agencies responsible for construction shall take into consideration the objectives of the user agency, its programs, the scope and level of the user agency's intended service and construct the improvement to meet the objectives of the user agency in the most efficient and economical manner possible.

**SECTION 285.** Proved that in the event requirements for rental, renovation, and moving costs due to renovations for removal of asbestos, exceed the appropriations made for such purposes, the comptroller with the approval of the governor or the director of finance, if so delegated, is authorized to utilize savings, as determined to be available, from appropriations in this Act to meet such purposes.

**SECTION 286.** Provided that programs of the state executive branch which receive appropriations from purchases of service through the chapter 42, Hawaii Revised Statutes, process, shall monitor and evaluate each purchase of service agreement; provided further the governor shall expend funds for such evaluation and monitoring from purchase of service appropriations made to programs, but such expenditures shall not exceed five percent of the purchase of service appropriations; provided further the governor shall submit a report which shall contain the expenditure amount and the related programs and purchase of service involved; provided further that the report shall be submitted to the legislature twenty days prior to the convening of the 1990 and 1991 regular sessions.

## **PART VIII. MISCELLANEOUS AND EFFECTIVE DATE**

**SECTION 287. MISCELLANEOUS.** If any portion of this Act or its application to any person, entity or circumstance is held to be invalid for any reason, then the legislature hereby declares that the remainder of the Act and each and

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every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, of the invalid portion and the remaining portion shall be independent the remaining portion shall be expended to fulfill the objective of such appropriation to the extent possible.

**SECTION 288.** In the event manifest clerical, typographical, or other mechanical errors are found in this Act, the governor is hereby authorized to correct such errors.

**SECTION 289.** Statutory material to be repealed is bracketed. New material is underscored.

**SECTION 290. EFFECTIVE DATE.** This Act shall take effect on July 1, 1989.

(Approved June 13, 1989.)

## **ACT 317**

H.B. NO. 958

A Bill for an Act Relating to Farm Loans.

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

**SECTION 1.** The legislature finds that the sugar industry is the largest agricultural industry in Hawaii and is a vital component of the State's economic base. This industry occupies approximately 184,000 acres of land and employs nearly 6,500 employees with an annual payroll that was \$130 million in 1988.

It is evident that the adverse effects of losing this industry would be catastrophic to the State. In particular, the collapse of the sugar industry and its growers on the island of Hawaii would have severe adverse effects along the Hamakua Coast of Hawaii county.

The legislature finds that it is in the public interest to continue assisting the sugar industry as it struggles through economic difficulties.

The legislature finds that the Hilo-Hamakua Coast has been declared an emergency area by the governor and has provided for low-interest loans to be made through the department of agriculture's emergency loan fund. The legislature further finds that emergency conditions continue to exist in the sugar industry with respect to growing, producing, processing, and related activities.

The purpose of this Act is to assist those farmers adversely affected by these economic difficulties by authorizing the department of agriculture to issue them low-interest loans.

**SECTION 2.** Section 155-8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Loans made under this section shall bear simple interest on the unpaid principal balance, charged on the actual amount disbursed to the borrower. The interest rate on class "A" and class "B" loans shall be the rate charged for similar type loans by the Federal Land Bank Association of Hawaii; the interest rate on class "C" loans shall be the interest rate charged for similar type loans by the Hawaii Production Credit Association of Hawaii; the interest rate charged on class "E" loans shall be two per cent less than the rate charged for similar type loans by the Sacramento Bank for Cooperatives; and the interest rate on class "F" loans shall be [two per cent less than the rate charged by the appropriate farm credit bank for

similar type loans;] six per cent a year; provided if the money loaned is borrowed by the department, then the interest on loans of such classes shall be the rate charged by the appropriate farm credit bank for similar type loans or one per cent over the cost to the State of borrowing the money, whichever is greater. Interest on class "D" loans shall not [exceed] be less than three per cent a year."

**SECTION 3.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$8,500,000, or 0.36 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 4.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$8,500,000, or so much thereof as may be necessary for fiscal year 1989-1990, to be paid into the agricultural loan revolving fund created under section 155-14, Hawaii Revised Statutes. The moneys shall be used as class "D" loans, as defined by section 155-9(4), Hawaii Revised Statutes, and shall be loaned by the department of agriculture to qualified farmers.

**SECTION 5.** The sum appropriated shall be expended by the department of agriculture.

**SECTION 6.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 7.** This Act shall take effect on July 1, 1989.

(Approved June 13, 1989.)

**ACT 318**

H.B. NO. 1231

A Bill for an Act Relating to Case Management Coordination Program.

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

**SECTION 1.** The legislature finds that the case management coordination program for Maui, Kauai, and rural Oahu is presently staffed by two permanent public health nurses positions and ten limited-term appointment positions. The continued employment of limited-term appointment positions is negating the full effectiveness of the intent of the program. Because these employees naturally prefer secure, permanent assignments outside of the case management coordination program, the current situation is not conducive to retaining staff members. The elderly population requires a stable case management staff since relationships and trusts can best be established and fostered on a long-term basis.

The legislature finds that in keeping with the dramatic increase in the proportion of the elderly in the general population and the steady rise in longevity rates among these individuals, there is a growing need for a comprehensive array of community-based long term care services adequate to sustain the seniors in their communities and in their homes. The case management coordination program is a unique community-based case management team model, which focuses on a developmental, interdisciplinary, case management system coordinated by public health nurses. The goal of the case management coordination program is to help the frail

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elderly get the support needed to achieve the highest possible level of health and functional independence.

**SECTION 2.** The ten department of health employees, currently not in civil service and occupying limited-term appointed public health nursing positions, which includes five registered professional nurses, four paramedical assistants, and one clerk typist, in the case management coordination program for Maui, Kauai, and rural Oahu shall be converted to permanent civil service status within the meaning of chapters 76 and 77, Hawaii Revised Statutes, without the necessity of examination, and shall be accorded all of the rights, benefits, and privileges of other civil service employees, including seniority, prior service credit, and vacation and sick leave credits. Positions held by employees converted to civil service status shall be assigned by the director of personnel services to appropriate classes in the position classification plan, and the employees shall be paid in accordance with the salary ranges to which the classes are assigned; provided that employees receiving a salary above the minimum rate may be paid at the rate higher than the minimum rate but not exceeding the highest pay rate in the appropriate salary range.

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

(Approved June 13, 1989.)

## **ACT 319**

H.B. NO. 1420

A Bill for an Act Relating to Export of Aquarium Fish.

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

**SECTION 1.** Chapter 188, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§188- Aquarium fish for export; monthly count.** The department of land and natural resources shall adopt rules in accordance with chapter 91 to monitor the aquarium fish catch report and fish dealer’s report for export of aquarium fish taken from the waters of the State for aquarium purposes pursuant to section 188-31. A monthly count of the quantities taken of each individual species of aquarium fish exported shall be reported to the board.”

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

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

(Approved June 13, 1989.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 320**

H.B. NO. 1838

A Bill for an Act Relating to Highway Safety.

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

**SECTION 1.** Chapter 286, Hawaii Revised Statutes, is amended by adding a new section to part XI to be appropriately designated and to read as follows:

**“§286- Driver improvement program.** (a) Every employer who employs a commercial motor vehicle driver as categorized in section 286- , or a category 4 driver in section 286-102, shall provide for every such driver a driver improvement program. This program shall provide a system for continuous driver evaluation and annual driver safety courses approved by the director. For drivers with five years of continuous employment with one employer, this requirement shall be at least once every two years. Every job placement center through which a commercial motor vehicle driver is employed on a casual or sporadic basis, and not as a regularly employed driver for any one employer, shall be responsible for providing the driver improvement program for all its commercial motor vehicle drivers. For purposes of this subsection only “job placement center” means any place where persons may register for purposes of employment, and the dispatching of those persons to various jobs as they become available. Any employer or job placement center that violates this subsection shall be fined not more than \$500.

(b) Every regularly or casually employed driver of a category 4 vehicle or a commercial motor vehicle shall attend the driver improvement program provided by the driver’s employer or job placement center. The director shall adopt rules pursuant to chapter 91 necessary for the purposes of this subsection, including but not limited to rules governing attendance. Any driver who does not fulfill the appropriate driver improvement attendance requirement shall be fined not more than \$100.

(c) The counties may furnish real property, facilities on such property, and other equipment in furtherance of this section. A county may allow the use of such property or other county property to a certificated fleet safety examiner on terms that it deems proper and reasonable.”

SECTION 2. Chapter 286, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

#### **“PART . COMMERCIAL DRIVER LICENSING**

**§286- Definitions.** As used in this part unless the context otherwise requires:

“Disqualification” means a prohibition against driving a commercial motor vehicle.

“Employer” means any person, including the United States, a state or a political subdivision of a state, who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle.

“Nonresident commercial driver’s license” means a commercial driver’s license issued by a state or foreign jurisdiction to an individual who resides in a foreign jurisdiction or a state other than the one that issued the license.

“Out-of-service order” means a twenty-four hour prohibition against driving a commercial motor vehicle.

“Serious traffic violation” means:

- (1) Excessive speeding, as defined by the United States Secretary of Transportation by regulation;
- (2) Driving a commercial motor vehicle in disregard of the safety of persons or property (reckless driving); or
- (3) A violation of any state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal traffic accident.

**§286- Limitation on number of commercial driver’s licenses.** No person who drives a commercial motor vehicle may have more than one commercial driver’s license.

**§286- Notification requirements.** (a) Any driver of a commercial motor vehicle holding a commercial driver's license issued by this State, who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control, in any other state or federal, provincial, territorial, or municipal laws of Canada, other than parking violations, shall notify the examiner of drivers in the manner specified by the director within thirty days of the date of conviction. Any driver of a commercial motor vehicle holding a commercial driver's license issued by this State, who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in this or any other state, or federal, provincial, territorial, or municipal laws of Canada, other than parking violations, must notify the person's employer in writing of the conviction within thirty days of the date of conviction.

(b) Each commercial driver whose driver's license or permit is suspended, revoked, or canceled by any state, who loses the privilege to drive a commercial motor vehicle in any state for any period, or who is disqualified from driving a commercial motor vehicle for any period, must notify the person's employer of the suspension, revocation, or cancellation before the end of the business day following the day the driver received notice of the suspension, revocation, or cancellation.

(c) Each person who drives a commercial motor vehicle and applies for employment as a commercial motor vehicle driver shall provide the employer, at the time of the application, with the following information for the ten years preceding the date of application:

- (1) A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;
- (2) The dates between which the applicant drove for each employer; and
- (3) The reason for leaving each employer.

The applicant must certify that all information furnished is true and complete. An employer may require an applicant to provide additional information.

**§286- Employer responsibilities.** (a) Each employer must require the applicant to provide the information specified in section 286-

(b) No employer shall knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period:

- (1) In which the driver has a driver's license or permit suspended, revoked, or canceled by a state, has lost the privilege to drive a commercial motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle; or
- (2) In which the driver has more than one driver's license.

**§286- Commercial driver's license required.** (a) No person shall drive a commercial motor vehicle unless the person holds a commercial driver's license and valid applicable endorsements for the vehicle the person is driving, except when driving under a commercial driver's instruction permit and accompanied by the holder of a valid commercial driver's license for the vehicle being driven.

(b) No person shall drive a commercial motor vehicle while the person's driver's license or permit is suspended, revoked, or canceled, or while subject to a disqualification, or in violation of an out-of-service order.

**§286- Commercial driver's license qualification standards.** (a) No person shall be issued a commercial driver's license unless that person meets the qualification standards of 49 C.F.R., Part 391, Subparts B and E, has passed a knowledge and driving skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulation enumerated in 49 C.F.R., Part 383, Subparts G and H, and has satisfied all other

requirements of the Commercial Motor Vehicle Safety Act (CMVSA) of 1986 (Title XII, P.L. 99-570) in addition to other requirements imposed by state law or federal regulation. The tests must be prescribed by the director and administered by the respective county examiner of drivers.

(b) Pursuant to chapter 91, the director may authorize a person, including an agency of this or another state, an employer, a private driver training facility, or other private institution, or a department, agency, or instrumentality of local government, to administer the driving skills test specified in this section, provided:

- (1) The test is the same as that which would otherwise be administered by the State; and
- (2) The third party has entered into an agreement with the State which complies with requirements of 49 C.F.R., §383.75.

(c) The examiner of drivers may waive the driving skills test specified in this section for a commercial driver's license applicant who meets the requirements of 49 C.F.R., §383.77.

(d) A commercial driver's license or commercial driver's instruction permit, shall not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked, or canceled in any state; or while the person holds a driver's license issued by any other state unless the person first surrenders that license.

(e) A commercial driver's instruction permit may be issued to an individual who holds a valid driver's license, meets the qualification standards of 49 C.F.R., Part 391, Subparts B and E, and has passed the written tests required for the desired class of commercial driver's license.

(f) The commercial driver's instruction permit shall not be valid for a period in excess of six months. Only one renewal or reissuance may be granted within a two-year period. When driving a commercial motor vehicle, the holder of a commercial driver's instruction permit shall be accompanied by a person licensed to operate that category of commercial motor vehicle. The licensed person shall occupy the seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle.

**§286- Nonresident commercial driver's license.** The examiners of drivers may issue a nonresident commercial driver's license to a resident of a foreign jurisdiction if the United States Secretary of Transportation has determined that the commercial motor vehicle testing and licensing standards in the foreign jurisdiction do not meet the testing standards established in 49 C.F.R., Part 383. The word "nonresident" must appear on the face of the nonresident commercial driver's license. An applicant must surrender any nonresident commercial driver's license issued by another state or foreign country. Prior to issuing a nonresident commercial driver's license, the examiner of drivers must establish the practical capability of revoking, suspending, and canceling the nonresident commercial driver's license and disqualifying that person with the same conditions applicable to the commercial driver's license issued to a resident of this State.

**§286- Application for commercial driver's license.** (a) The application for a commercial driver's license or commercial driver's instruction permit, must include the following with respect to the applicant:

- (1) The full name and current mailing, residential, and business addresses;
- (2) A physical description including sex and height;
- (3) Date of birth;
- (4) Social security number;

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- (5) Signature;
- (6) Color photograph;
- (7) Certifications including those required by 49 C.F.R., §383.71(a); and
- (8) Any other information required by section 286-111.

(b) When a licensee's name, mailing, business, or residence address is changed, a notification of the change shall be given as provided in section 286-116.5.

(c) No person who has been domiciled in this State for thirty days or more may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

**§286- Commercial driver's license.** (a) The commercial driver's license must be marked "CDL" and must, to the maximum extent practicable, be tamper proof and include, but not be limited to, the following with respect to the licensee:

- (1) The name and residence address;
- (2) A color photograph;
- (3) A physical description including sex and height;
- (4) Date of birth;
- (5) Social security number;
- (6) Signature;
- (7) The class or type of commercial motor vehicle or vehicles which may be driven together with any endorsements or restrictions;
- (8) The name of this State; and
- (9) The issuance and expiration dates of the license.

(b) Commercial driver's licenses may be issued with the following categories:

- (1) Category A - Any combination of vehicles with a gross vehicle weight rating (GVWR) of 26,001 pounds or more; provided that the GVWR of the vehicles being towed is in excess of 10,000 pounds;
- (2) Category B - Any single vehicle with a GVWR of 26,001 pounds or more, or if the GVWR of the vehicle being towed by the single vehicle is not in excess of 10,000 pounds; and
- (3) Category C - Any single vehicle with a GVWR of less than 26,001 pounds or if the GVWR of the vehicle being towed by the single vehicle is not in excess of 10,000 pounds comprising:
  - (A) Vehicles designed to transport sixteen or more passengers, including the driver; or
  - (B) Vehicles used in the transportation of hazardous materials which requires the vehicle to comply with 49 C.F.R., Part 172, Subpart F.

(c) Commercial driver's licenses may be issued with the following endorsements and restriction:

- (1) "H" - Authorizes the driver to drive a vehicle transporting hazardous materials;
- (2) "K" - Restricts the driver to vehicles not equipped with air brakes;
- (3) "T" - Authorizes driving double and triple trailers;
- (4) "P" - Authorizes driving vehicles carrying passengers;
- (5) "N" - Authorizes driving tank vehicles; and
- (6) "X" - Represents a combination of hazardous materials and tank vehicle endorsements.

(d) The holder of a valid commercial driver's license may drive all vehicles in the category for which the license is issued, and all lesser categories of vehicles except motorcycles and except vehicles which require an endorsement, unless the proper endorsement appears on the license.

(e) Before issuing a commercial driver's license, the examiner of drivers shall obtain the applicant's driving record information through the commercial driver's license information system, the National Driver Register, and from the last state which issued the applicant a commercial driver's license.

(f) Within ten days after issuing a commercial driver's license, the examiner of drivers must notify the commercial driver's license information system of that fact, providing all information required to ensure identification of the licensee.

(g) The commercial driver's license shall expire on the next birthday of the licensee occurring four years after the date of issuance of the license unless sooner revoked, suspended, or canceled; provided that the license shall expire on the second birthday of the licensee following the issuance of the license if at that time the licensee:

- (1) Is sixty-five years of age or older; or
- (2) Is twenty-four years of age or younger.

(h) When applying for renewal of a commercial driver's license, the applicant must complete the application form required by section 286- , providing updated information and required certifications and pass a knowledge test approved by the director. If the applicant desires to retain a hazardous materials endorsement, the knowledge test for a hazardous materials endorsement must also be taken and passed.

**§286- Disqualification and cancellation.** (a) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of:

- (1) Driving a commercial motor vehicle under the influence of alcohol, a controlled substance, or any drug which impairs driving ability;
- (2) Driving a commercial motor vehicle while the alcohol concentration of the driver's blood is 0.04 per cent or more by weight;
- (3) Refusal to submit to a test to determine the driver's alcohol concentration while driving a commercial motor vehicle;
- (4) Using a commercial motor vehicle in the commission of any felony;
- (5) Leaving the scene of an accident involving a commercial motor vehicle driven by the person; or
- (6) Falsifying information or failing to report or disclose required information either before or after issuance of a commercial driver's license.

(b) A person is disqualified for a period of not less than three years for any violation of subsection (a) while a hazardous material required to be placarded is being transported.

(c) A person is disqualified from driving a commercial motor vehicle for life if convicted two or more times for any violations of subsection (a) or subsection (b), or both. Only offenses committed after the effective date of this Act may be considered in applying this subsection.

(d) A person is disqualified from driving a commercial motor vehicle for life if the person uses a commercial motor vehicle in the commission of any felony involving the manufacturing, distributing, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(e) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations, or one hundred twenty days if convicted of three serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

**§286- Notification of suspension, revocation, or cancellation of commercial driver's licenses or permits.** After suspending, revoking, or canceling a

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commercial driver's license or permit, the records of the examiner of drivers shall be updated to reflect that action within ten days. After suspending, revoking, or canceling a nonresident commercial driver's license or permit, the examiner of drivers must notify the licensing authority of the state which issued the commercial driver's license within ten days.

**§286- Commercial drivers prohibited from operating with any alcohol in their body.** (a) Notwithstanding any other provision of this chapter, a person may not drive a commercial motor vehicle while having any alcohol in that person's body.

(b) A person who drives a commercial motor vehicle while having an alcohol concentration of 0.01 per cent through 0.03 per cent by weight or who refuses to take a test as provided by section 286- shall be issued an out-of-service order.

**§286- Implied consent requirements for commercial motor vehicle drivers.** (a) A person who drives a commercial motor vehicle within this State is deemed to have given consent to submit to a test or tests, approved by the director of health, of that person's blood, breath, or urine for the purpose of determining that person's alcohol concentration, or the presence of other drugs.

(b) A test or tests may be administered at the direction of a law enforcement officer, who, after lawfully stopping or detaining the commercial motor vehicle driver, has reasonable grounds to believe that the driver was driving a commercial motor vehicle while having in the person's body alcohol, a controlled substance, or any drug which impairs driving.

(c) A person requested to submit to a test as provided in subsection (a) must be warned by the law enforcement officer requesting the test, that a refusal to submit to the test will result in that person being disqualified from operating a commercial motor vehicle under section 286-

(d) If the person refuses testing, or submits to a test which discloses an alcohol concentration of 0.04 per cent or more by weight, the law enforcement officer must submit an affidavit to a district judge of the circuit in which the arrest was made, stating that the test was authorized pursuant to subsection (a) and that the person refused to submit to testing, or submitted to a test which disclosed an alcohol concentration of 0.04 per cent or more by weight.

(e) Upon receipt of the affidavit of a law enforcement officer submitted under subsection (d), the district judge shall hold a hearing as provided in section 286-156 and shall determine whether the statements in the affidavit are true and correct. If the judge finds the statements contained in the affidavit are true, the judge shall disqualify the driver from driving a commercial motor vehicle under section 286-

**§286- Notification of traffic convictions.** Within ten days after receiving a report of the conviction of any nonresident holder of a commercial driver's license for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle, the State shall notify the driver's licensing authority in the licensing state of the conviction.

**§286- Driving record information to be furnished.** Notwithstanding any other provision of law to the contrary, the State shall furnish full information regarding the driving record of any person:

- (1) To the driver's license administrator of any other state, or province or territory of Canada, requesting that information; and

(2) To the person's employer or prospective employer.

**§286- Authority to make rules.** The director may adopt rules under chapter 91 necessary to carry out this part.

**§286- Authority to enter agreements.** The director may enter into or make agreements, arrangements, or declarations to carry out the purposes of this part.

**§286- Reciprocity.** Notwithstanding any law to the contrary, a person may drive a commercial motor vehicle if the person has a commercial driver's license issued by any state or province or territory of Canada that issues licenses in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver's licenses, if the person's driver's license is not suspended, revoked, or canceled; and if the person is not disqualified from driving a commercial motor vehicle, or subject to an out-of-service order."

SECTION 3. Section 286-2, Hawaii Revised Statutes, is amended as follows:

1. By adding fifteen new definitions to be appropriately inserted and to read as follows:

"Alcohol" means the product of distillation of any fermented liquid, whether rectified or not, whatever may be the origin thereof, and includes ethyl alcohol as well as synthetic ethyl alcohol, but not denatured or other alcohol which is considered not potable under the customs laws of the United States.

"Alcohol concentration" means the concentration of alcohol in a person's blood or breath. When expressed as a percentage, it means: (1) the number of grams of alcohol per 100 milliliters of blood; or (2) the number of grams of alcohol per 210 liters of breath.

"Commercial driver's license" (CDL) means a license issued in accordance with the requirements of this chapter to an individual which authorizes the individual to drive a class of commercial motor vehicle.

"Commercial driver's license information system" (CDLIS) means the information system established pursuant to the Federal Commercial Motor Vehicle Safety Act of 1986 (Title XII, P.L. 99-570) to serve as a clearinghouse and depository of information pertaining to the licensing and identification of commercial motor vehicle drivers and the disqualification of such drivers from driving commercial motor vehicles.

"Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:

- (1) If the vehicle has a gross vehicle weight rating of 26,001 or more pounds;
- (2) If the vehicle is designed to transport sixteen or more occupants, including the driver; or
- (3) If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R., Part 172, Subpart F.

"Controlled substance" means any substance so classified under section 102(6) of the Controlled Substance Act (21 U.S.C. §802(6)), and includes all substances listed on schedules I through V of 21 C.F.R., Part 1308, as they may be revised from time to time.

"Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an administrative proceeding, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or

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nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated.

“Director” means the state director of transportation.

“Drive” means to drive, operate, or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic.

“Felony” means any offense under state or federal law that is punishable by death or imprisonment for a term exceeding one year.

“Foreign jurisdiction” means any jurisdiction other than a state of the United States.

“Gross vehicle weight rating” (GVWR) means the value specified by the manufacturers as the maximum loaded weight of a single or a combination (articulated) vehicle, or registered gross weight, whichever is greater. The GVWR of a combination (articulated) vehicle (commonly referred to as the “gross combination weight rating” or GCWR) is the GVWR of the power unit plus the GVWR of the towed unit.

“Hazardous materials” has the meaning as that found in section 103 of the Hazardous Materials Transportation Act (49 App. U.S.C. §1801).

“Intoxicating liquor” includes alcohol, brandy, whiskey, rum, gin, okolehao, sake, beer, ale, porter, and wine; and also includes, in addition to the foregoing, any spirituous, vinous, malt or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, in whatever form and of whatever constituency and by whatever name called, containing one-half of one per cent or more of alcohol by volume, which are fit for use or may be used or readily converted for use for beverage purposes.

“United States” means the fifty states and the District of Columbia.”

2. By amending the definition of “driver” to read as follows:

“Driver” means every person who drives, operates, or is in actual physical control of a motor vehicle [upon a highway] in any place open to the general public for purposes of vehicular traffic or who is exercising control over or steering a vehicle being towed or pushed by any motor vehicle.”

SECTION 4. Section 286-102, Hawaii Revised Statutes, is amended to read as follows:

**“§286-102 Licensing.** (a) No person, except one exempted under section 286-105 [or], one who holds an instruction permit under section 286-110, one who holds a commercial driver’s license issued under section 286-, or a commercial driver’s license instruction permit issued under section 286-, shall operate any category of motor vehicles listed in this section without first being appropriately examined and duly licensed as a qualified driver of that category of motor vehicles.

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

- (1) Motor scooters;
- (2) Motorcycles and motor scooters;
- (3) Passenger cars of any gross vehicle weight rating, buses designed to transport fifteen or fewer occupants; [and trucks and buses] having a gross vehicle weight rating of [ten] twenty-six thousand pounds or less;
- [4) All of the motor vehicles in category (3) and buses with a gross vehicle weight rating of more than ten thousand pounds;

- (5) All of the motor vehicles in category (3) and trucks having a gross vehicle weight rating of more than ten thousand pounds, other than tractor-semitrailer combinations and truck-trailer combinations;
- (6) All of the motor vehicles in category (5) and tractor-semitrailer combinations;
- (7) All of the motor vehicles in category (6) and truck-trailer combinations;
- (8) All of the motor vehicles in categories (4) and (5);
- (9) All of the motor vehicles in categories (4) and (6);
- (10) All of the motor vehicles in categories (4) and (7).]
- (4) All of the motor vehicles in category (3) and trucks having a gross vehicle weight rating of ten thousand one through twenty-six thousand pounds.

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

[c] (c) A person operating the following motor vehicles shall not only be examined and duly licensed pursuant to subsection (b) to operate the particular category of motor vehicles but in addition shall be examined and certificated as provided in section 286-108.5 by a certificated fleet safety examiner:

- (1) Buses having a gross vehicle weight rating of more than 10,000 pounds;
- (2) Trucks having a gross vehicle weight rating of more than 10,000 pounds;
- (3) Tractor-semitrailers;
- (4) Truck-trailers.

(d) No person, even if the person is licensed to operate a motor vehicle in any of the categories provided in subsection (b) shall operate the motor vehicle for compensation, unless the person is examined as provided in section 286-108, satisfies additional requirements as established by the examiner of drivers under section 286-103, and:

- (1) For vehicles having a gross vehicle weight rating of 10,000 pounds or less, is eighteen years of age or older; and
- (2) For vehicles having a gross vehicle weight rating of more than 10,000 pounds, is twenty-one years of age or older or is between eighteen and twenty-one years of age and is enrolled in a driver training program approved by the director.

(e)] (c) No person shall receive a driver's license unless the person surrenders to the examiner of drivers all valid driver's licenses in the person's possession. All such surrendered licenses shall be returned to the issuing authority, together with information that the person is licensed in this State. No such person shall be permitted to hold more than one valid driver's license at any time."

SECTION 5. Section 286-105, Hawaii Revised Statutes, is amended to read as follows:

**"§286-105 What persons are exempt from license.** The following persons are exempt from license:

- (1) Any person while driving or operating a motor vehicle in the service or employ of any branch or agency of the federal government; provided that the person has received a license or permit from the branch or agency to operate and drive the motor vehicle; provided further that the branch or agency has been duly authorized by the federal government to issue the license or permit;

- (2) Any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway; provided that no person under the age of thirteen years shall be permitted to drive or operate any such road machine, farm tractor, or implement of husbandry on a highway;
- (3) Any person who is at least eighteen years of age and who has in the person's possession a valid driver's license to drive the categories of motor vehicles listed in section 286-102(b) that is equivalent to a driver's license issued in this State but was issued to the person in any other state of the United States, [the District of Columbia,] the Commonwealth of Puerto Rico, U.S. Virgin Islands, American Samoa, Guam, a province of the Dominion of Canada, or the Commonwealth of the Northern Mariana Islands for that category of motor vehicle which the person is operating[, except, that such persons operating vehicles in categories 4 through 10 must meet the requirements of section 286-102(c) and be tested as required in section 286-108.5]."

SECTION 6. Section 286-202, Hawaii Revised Statutes, is amended to read as follows:

**"§286-202 General duties and powers of the director.** The general duties and powers of the director shall be:

- (1) To establish rules [and regulations] promoting the safety of operations, motor vehicle and equipment of motor carriers; provided that the maximum hours of service to be performed by an operator of a motor carrier vehicle shall be determined by the director based on conditions existing in the State or in particular sections of the State and shall be compatible with those prescribed by the Federal Motor Carrier Safety [Regulations] regulations of the U.S. Department of Transportation.
- (2) To coordinate the various motor carrier safety programs in the State including the formulation of statewide standards as necessary.
- (3) To develop and implement, on a priority basis, a recordkeeping and information system for the motor carrier safety program.
- (4) To develop standards relating to the qualification of motor carrier vehicle drivers.
- (5) To establish standards for continuous driver training and periodic evaluation of the driver performance of motor carrier vehicle drivers [pursuant to section 286-108.5].
- (6) To establish standards for motor carrier vehicle safety inspection, motor carrier vehicle inspection stations, and motor carrier vehicle inspection personnel.
- (7) To revise and update the standards relating to motor carrier vehicle maintenance and establish a system for the enforcement of such standards.
- (8) To develop the standards for size and weight of vehicles, including motor carrier vehicles, pursuant to chapter 291.
- (9) To establish standards for the issuance of special permits to carry oversized and overweight loads on the highway.
- (10) To establish standards for the transportation of hazardous materials on the highways.
- (11) To develop comprehensive [regulations] rules governing the modification of motor carrier vehicles which will at any time be operated upon the highway.

- (12) To review and approve all plans and specifications for construction in the State or modification of motor carrier vehicles which will at any time be operated upon the highway.
- (13) To adopt rules pursuant to chapter 91 necessary for the purposes of this part.
- (14) To investigate all motor carrier vehicle accidents under this part resulting in death of a human being or other accidents as the director determines necessary to advance the motor carrier safety program."

SECTION 7. Section 286-108.5, Hawaii Revised Statutes, is repealed.

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

SECTION 9. This Act shall take effect on January 1, 1991.

(Approved June 13, 1989.)

**Note**

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

**ACT 321**

H.B. NO. 1917

A Bill for an Act Relating to Income Taxation.

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

SECTION 1. Chapter 235, Hawaii Revised Statutes, is amended by adding new sections<sup>1</sup> to be appropriately designated and to read as follows:

**“§235. Medical services excise tax credit.** (a) Each resident individual taxpayer, who files an individual income tax return for a taxable year, and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for Hawaii state individual income tax purposes, may claim a medical services excise tax credit against the resident taxpayer's individual income tax liability for the taxable year for which the individual income tax return is being filed; provided that a resident individual who has no income or no income taxable under this chapter and who is not claimed or is not otherwise eligible to be claimed as a dependent by a taxpayer for Hawaii state individual income tax purposes may claim this credit.

(b) The medical services excise tax credit shall be four per cent of qualified medical expenses paid by the resident individual during the taxable year. The amount of the tax credit claimed on each individual income tax return shall not exceed:

- (1) \$200;
- (2) \$400 for a resident individual sixty-five years of age or over; or
- (3) \$600 for a resident individual and spouse both sixty-five years of age or over;

provided that a husband and wife filing separate returns for a taxable year for which a joint return could have been filed by them shall claim only the tax credit to which they would have been entitled had a joint return been filed.

(c) For the purposes of this section, the term “qualified medical expenses” is defined to include those medical expenses allowable as deductions for income tax purposes under section 213 (with respect to medical, dental, etc., expenses) of the Internal Revenue Code; provided that the medical expense was subject to the imposition and payment of the general excise tax under chapter 237.

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Qualified medical expenses shall not include the following:

- (1) Capital improvements; or
- (2) Prescription drugs or prosthetic devices exempt under section 237-24(23).

The amount of medical expenses paid during the taxable year shall not be reduced by any insurance reimbursement.

(d) The tax credits claimed by a resident taxpayer pursuant to this section shall be deductible from the resident taxpayer's individual income tax liability, if any, for the tax year in which they are properly claimed. If the tax credits claimed by a resident taxpayer exceed the amount of income tax payment due from the resident taxpayer, the excess of credits over payments due shall be refunded to the resident taxpayer; provided that tax credits properly claimed by a resident individual who has no income tax liability shall be paid to the resident individual; and provided further that no refunds or payment on account of the tax credits allowed by this section shall be made for amounts less than \$1.

(e) The director of taxation shall prepare such forms as may be necessary to claim a credit under this section. The director may also require the taxpayer to furnish reasonable information in order that the director may ascertain the validity of the claim for credit made under this section and the director may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

(f) All claims for tax credits under this section, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(g) This section shall not be effective after December 31, 1991."

**SECTION 2.** Section 235-2.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the standard deduction amount in section 63(c) of the Internal Revenue Code shall instead mean:

- (1) [\$1,700] \$1,900 in the case of:
  - (A) A joint return as provided by section 235-93, or
  - (B) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code),
- (2) [\$1,500] \$1,650 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code),
- (3) [\$1,000] \$1,500 in the case of an individual who is not married and who is not a surviving spouse or head of household, or
- (4) [\$850] \$950 in the case of a married individual filing a separate return.

Section 63(c)(4) shall not be operative in this State. Section 63(c)(5) shall be operative, except that the limitation on standard deduction in the case of certain dependents shall be the greater of \$500 or such individual's earned income. Section 63(f) shall not be operative in this State."

**SECTION 3.** Section 235-51, Hawaii Revised Statutes, is amended to read as follows:

**"§235-51 Tax imposed on individuals; rates.** (a) There is hereby imposed on the taxable income of (1) every taxpayer who files a joint return under section 235-93; and (2) every surviving spouse a tax determined in accordance with the following table:

[In the case of any taxable year beginning after December 31, 1986, and ending before January 1, 1988:

If the taxable income is:	The tax shall be:
Not over \$2,000	2.25% of taxable income
Over \$2,000 but not over \$4,000	\$45.00 plus 4.25% of excess over \$2,000
Over \$4,000 but not over \$6,000	\$130.00 plus 6.25% of excess over \$4,000
Over \$6,000 but not over \$10,000	\$255.00 plus 7.25% of excess over \$6,000
Over \$10,000 but not over \$20,000	\$545.00 plus 8.25% of excess over \$10,000
Over \$20,000 but not over \$28,000	\$1,370.00 plus 9.25% of excess over \$20,000
Over \$28,000 but not over \$40,000	\$2,110.00 plus 9.75% of excess over \$28,000
Over \$40,000	\$3,280.00 plus 10% of excess over \$40,000

In the case of any taxable year beginning after December 31, 1987, and ending before January 1, 1989:

If the taxable income is:	The tax shall be:
Not over \$2,400	2.25% of taxable income
Over \$2,400 but not over \$4,400	\$54.00 plus 4.25% of excess over \$2,400
Over \$4,400 but not over \$6,400	\$139.00 plus 6.25% of excess over \$4,400
Over \$6,400 but not over \$10,400	\$264.00 plus 7.25% of excess over \$6,400
Over \$10,400 but not over \$20,400	\$554.00 plus 8.25% of excess over \$10,400
Over \$20,400 but not over \$28,400	\$1,379.00 plus 9.25% of excess over \$20,400
Over \$28,400 but not over \$40,400	\$2,119.00 plus 9.75% of excess over \$28,400
Over \$40,400	\$3,289.00 plus 10% of excess over \$40,400]

In the case of any taxable year beginning after December 31, 1988:

If the taxable income is:	The tax shall be:
Not over \$3,000	[2.25%] <u>2%</u> of taxable income
Over \$3,000 but not over \$5,000	[\$67.50] <u>\$60.00</u> plus [4.25%] <u>4%</u> of excess over \$3,000
Over \$5,000 but not over \$7,000	[\$152.50] <u>\$140.00</u> plus [6.25%] <u>6%</u> of excess over \$5,000
Over \$7,000 but not over \$11,000	[\$277.50] <u>\$260.00</u> plus 7.25% of excess over \$7,000
Over \$11,000 but not over \$21,000	[\$567.50] <u>\$550.00</u> plus [8.25%] <u>8%</u> of excess over \$11,000
Over \$21,000 but not over [\$29,000] <u>\$31,000</u>	[\$1,392.50] <u>\$1,350.00</u> plus [9.25%] <u>8.75%</u> of excess over \$21,000

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Over [\$29,000] \$31,000 but not over \$41,000	[\$2,132.50] \$2,225.00 plus [9.75%] 9.5% of excess over [\$29,000] \$31,000
Over \$41,000	[\$3,302.50] \$3,175.00 plus 10% of excess over \$41,000

(b) There is hereby imposed on the taxable income of every head of a household a tax determined in accordance with the following table:

[In the case of any taxable year beginning after December 31, 1986, and ending before January 1, 1988:

If the taxable income is:	The tax shall be:
Not over \$1,000	2.25% of taxable income
Over \$1,000 but not over \$2,000	\$22.50 plus 3.25% of excess over \$1,000
Over \$2,000 but not over \$3,000	\$55.00 plus 5.25% of excess over \$2,000
Over \$3,000 but not over \$5,000	\$107.50 plus 6.25% of excess over \$3,000
Over \$5,000 but not over \$10,000	\$232.50 plus 7.25% of excess over \$5,000
Over \$10,000 but not over \$20,000	\$595.00 plus 8.9% of excess over \$10,000
Over \$20,000 but not over \$40,000	\$1,485.00 plus 9.8% of excess over \$20,000
Over \$40,000	\$3,445.00 plus 10% of excess over \$40,000

In the case of any taxable year beginning after December 31, 1987, and ending before January 1, 1989:

If the taxable income is:	The tax shall be:
Not over \$1,200	2.25% of taxable income
Over \$1,200 but not over \$2,200	\$27.00 plus 3.25% of excess over \$1,200
Over \$2,200 but not over \$3,200	\$59.50 plus 5.25% of excess over \$2,200
Over \$3,200 but not over \$5,200	\$112.00 plus 6.25% of excess over \$3,200
Over \$5,200 but not over \$10,400	\$237.00 plus 7.25% of excess over \$5,200
Over \$10,400 but not over \$20,400	\$614.00 plus 8.9% of excess over \$10,400
Over \$20,400 but not over \$40,400	\$1,504.00 plus 9.8% of excess over \$20,400
Over \$40,400	\$3,464.00 plus 10% of excess over \$40,400]

In the case of any taxable year beginning after December 31, 1988:

If the taxable income is:	The tax shall be:
Not over \$1,500	[2.25%] 2% of taxable income
Over \$1,500 but not over \$2,500	[\$33.75] \$30.00 plus [3.25%] 3% of excess over \$1,500
Over \$2,500 but not over \$3,500	[\$66.25] \$60.00 plus [5.25%] 4.5% of excess over \$2,500
Over \$3,500 but	[\$118.75] \$105.00 plus [6.25%] 5.9%

not over \$5,500	of excess over \$3,500
Over \$5,500 but not over \$11,000	[\$243.75] <u>\$223.00</u> plus 7.25% of excess over \$5,500
Over \$11,000 but not over \$21,000	[\$642.50] <u>\$621.75</u> plus [8.9%] <u>8.6%</u> of excess over \$11,000
Over \$21,000 but not over \$41,000	[\$1,532.50] <u>\$1,481.75</u> plus [9.8%] 9.6% of excess over \$21,000
Over \$41,000	[\$3,492.50] <u>\$3,401.75</u> plus 10% of excess over \$41,000

(c) There is hereby imposed on the taxable income of (1) every unmarried individual (other than a surviving spouse, or the head of a household) and (2) on the taxable income of every married individual who does not make a single return jointly with the individual's spouse under section 235-93 a tax determined in accordance with the following table:

[In the case of any taxable year beginning after December 31, 1986, and ending before January 1, 1988:

If the taxable income is:	
Not over \$1,000	
Over \$1,000 but not over \$2,000	\$22.50 plus 4.25% of excess over \$1,000
Over \$2,000 but not over \$3,000	\$65.00 plus 6.25% of excess over \$2,000
Over \$3,000 but not over \$5,000	\$127.50 plus 7.25% of excess over \$3,000
Over \$5,000 but not over \$10,000	\$272.50 plus 8.25% of excess over \$5,000
Over \$10,000 but not over \$14,000	\$685.00 plus 9.25% of excess over \$10,000
Over \$14,000 but not over \$20,000	\$1,055.00 plus 9.75% of excess over \$14,000
Over \$20,000	\$1,640.00 plus 10% of excess over \$20,000

The tax shall be:	
2.25% of taxable income	
\$22.50 plus 4.25% of excess over \$1,000	
\$65.00 plus 6.25% of excess over \$2,000	
\$127.50 plus 7.25% of excess over \$3,000	
\$272.50 plus 8.25% of excess over \$5,000	
\$685.00 plus 9.25% of excess over \$10,000	
\$1,055.00 plus 9.75% of excess over \$14,000	
\$1,640.00 plus 10% of excess over \$20,000	

In the case of any taxable year beginning after December 31, 1987, and ending before January 1, 1989:

If the taxable income is:	
Not over \$1,200	
Over \$1,200 but not over \$2,200	\$27.00 plus 4.25% of excess over \$1,200
Over \$2,200 but not over \$3,200	\$69.50 plus 6.25% of excess over \$2,200
Over \$3,200 but not over \$5,200	\$132.00 plus 7.25% of excess over \$3,200
Over \$5,200 but not over \$10,200	\$277.00 plus 8.25% of excess over \$5,200
Over \$10,200 but not over \$14,200	\$689.50 plus 9.25% of excess over \$10,200
Over \$14,200 but not over \$20,200	\$1,059.50 plus 9.75% of excess over \$14,200
Over \$20,200	\$1,644.50 plus 10% of excess over \$20,200]

The tax shall be:	
2.25% of taxable income	
\$27.00 plus 4.25% of excess over \$1,200	
\$69.50 plus 6.25% of excess over \$2,200	
\$132.00 plus 7.25% of excess over \$3,200	
\$277.00 plus 8.25% of excess over \$5,200	
\$689.50 plus 9.25% of excess over \$10,200	
\$1,059.50 plus 9.75% of excess over \$14,200	
\$1,644.50 plus 10% of excess over \$20,200]	

In the case of any taxable year beginning after December 31, 1988:

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If the taxable income is:

Not over \$1,500	
Over \$1,500 but not over \$2,500	
Over \$2,500 but not over \$3,500	
Over \$3,500 but not over \$5,500	
Over \$5,500 but not over \$10,500	
Over \$10,500 but not over [\$14,500]	
<u>\$15,500</u>	
Over [\$14,500] \$15,500 but not over \$20,500	
Over \$20,500	

The tax shall be:

[2.25%] <u>2%</u> of taxable income
[\$33.75] <u>\$30.00</u> plus [4.25%] <u>4%</u> of excess over \$1,500
[\$76.25] <u>\$70.00</u> plus [6.25%] <u>6%</u> of excess over \$2,500
[\$138.75] <u>\$130.00</u> plus 7.25% of excess over \$3,500
[\$283.75] <u>\$275.00</u> plus [8.25%] <u>8%</u> of excess over \$5,500
[\$696.25] <u>\$675.00</u> plus [9.25%] <u>8.75%</u> of excess over \$10,500
[\$1,066.25] <u>\$1,112.50</u> plus [9.75%] <u>9.5%</u> of excess over [\$14,500] <u>\$15,500</u>
[\$1,651.25] <u>\$1,587.50</u> plus 10% of excess over \$20,500

(d) The tax imposed by section 235-2.4 on estates and trusts shall be determined in accordance with the following table:

[In the case of any taxable year beginning after December 31, 1986, and ending before January 1, 1988:

If the taxable income is:

Not over \$1,000	
Over \$1,000 but not over \$2,000	
Over \$2,000 but not over \$3,000	
Over \$3,000 but not over \$5,000	
Over \$5,000 but not over \$10,000	
Over \$10,000 but not over \$14,000	
Over \$14,000 but not over \$20,000	
Over \$20,000	

The tax shall be:

2.25% of taxable income
\$22.50 plus 4.25% of excess over \$1,000
\$65.00 plus 6.25% of excess over \$2,000
\$127.50 plus 7.25% of excess over \$3,000
\$272.50 plus 8.25% of excess over \$5,000
\$685.00 plus 9.25% of excess over \$10,000
\$1,055.00 plus 9.75% of excess over \$14,000
\$1,640.00 plus 10% of excess over \$20,000

In the case of any taxable year beginning after December 31, 1987, and ending before January 1, 1989:

If the taxable income is:

Not over \$1,200	
Over \$1,200 but not over \$2,200	
Over \$2,200 but not over \$3,200	
Over \$3,200 but not over \$5,200	
Over \$5,200 but not over \$10,200	
Over \$10,200 but not over \$14,200	

The tax shall be:

2.25% of taxable income
\$27.00 plus 4.25% of excess over \$1,200
\$69.50 plus 6.25% of excess over \$2,200
\$132.00 plus 7.25% of excess over \$3,200
\$277.00 plus 8.25% of excess over \$5,200
\$689.50 plus 9.25% of excess over \$10,200

Over \$14,200 but not over \$20,200	\$1,059.50 plus 9.75% of excess over \$14,200
Over \$20,200	\$1,644.50 plus 10% of excess over \$20,200]

In the case of any taxable year beginning after December 31, 1988:

If the taxable income is:

Not over \$1,500	The tax shall be: [2.25%] <u>2%</u> of taxable income
Over \$1,500 but not over \$2,500	[\$33.75] <u>\$30.00</u> plus [4.25%] <u>4%</u> of excess over \$1,500
Over \$2,500 but not over \$3,500	[\$76.25] <u>\$70.00</u> plus [6.25%] <u>6%</u> of excess over \$2,500
Over \$3,500 but not over \$5,500	[\$138.75] <u>\$130.00</u> plus 7.25% of excess over \$3,500
Over \$5,500 but not over \$10,500	[\$283.75] <u>\$275.00</u> plus [8.25%] <u>8%</u> of excess over \$5,500
Over \$10,500 but not over [\$14,500] <u>\$15,500</u>	[\$696.25] <u>\$675.00</u> plus [9.25%] <u>8.75%</u> of excess over \$10,500
Over [\$14,500] <u>\$15,500</u> but not over \$20,500	[\$1,066.25] <u>\$1,112.50</u> plus [9.75%] 9.5% of excess over [\$14,500] <u>\$15,500</u>
Over \$20,500	[\$1,651.25] <u>\$1,587.50</u> plus 10% of excess over \$20,500

(e) Any taxpayer, other than a corporation, acting as a business entity in more than one state who is required by this chapter to file a return may elect to report and pay a tax of .5 per cent of its annual gross sales (1) where the taxpayer's only activities in this State consist of sales; and (2) who does not own or rent real estate or tangible personal property; and (3) whose annual gross sales in or into this State during the tax year is not in excess of \$100,000.

(f) If a taxpayer has a net capital gain for any taxable year to which this subsection applies, then the tax imposed by this section shall not exceed the sum of:

- (1) The tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of:
  - (A) The taxable income reduced by the amount of net capital gain, or
  - (B) The amount of taxable income taxed at a rate below 7.25 per cent, plus
- (2) A tax of 7.25 per cent of the amount of taxable income in excess of the amount determined under paragraph (1).

This subsection shall apply to individuals, estates, and trusts for taxable years beginning after December 31, 1986.

[g) This section shall not be effective after December 31, 1990.]"

SECTION 4. Section 235-55.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Allowance of credit.

- (1) In general. For each resident taxpayer, who files an individual income tax return for a taxable year, and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Hawaii state individual income tax purposes, who maintains a household which includes as a member one or more qualifying individuals

## ACT 322

- (as defined in subsection (b)(1)), there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable percentage of the employment-related expenses (as defined in subsection(b)(2)) paid by such individual during the taxable year. If the tax credit claimed by a resident taxpayer exceeds the amount of income tax payment due from the resident taxpayer, the excess of the credit over payments due shall be refunded to the resident taxpayer; provided that tax credit properly claimed by a resident individual who has no income tax liability shall be paid to the resident individual; and provided further that no refunds or payment on account of the tax credit allowed by this section shall be made for amounts less than \$1.
- (2) Applicable percentage defined. For purposes of paragraph (1), the term "applicable percentage" means fifteen per cent reduced (but not below ten per cent) by one percentage point of each \$2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds [\$10,000.] \$22,000."

SECTION 5. Section 235-55.7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Each taxpayer with an adjusted gross income of less than [\$20,000] \$30,000 who has paid more than \$1,000 in rent during the taxable year for which the credit is claimed may claim a tax credit of \$50 multiplied by the number of qualified exemptions to which the taxpayer is entitled; provided each taxpayer sixty-five years of age or over may claim double the tax credit."

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

SECTION 7. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1988.

(Approved June 14, 1989.)

### Notes

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

## ACT 322

S.B. NO. 42

A Bill for an Act Relating to Income Tax.

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

SECTION 1. Section 235-55.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) Allowance of credit.
- (1) In general. For each resident taxpayer, who files an individual income tax return for a taxable year, and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Hawaii state individual income tax purposes, who maintains a household which includes as a member one or more qualifying individuals

(as defined in subsection (b)(1)), there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable percentage of the employment-related expenses (as defined in subsection (b)(2)) paid by such individual during the taxable year.

- (2) Applicable percentage defined. For purposes of paragraph (1), the term "applicable percentage" means [fifteen] twenty-five per cent reduced (but not below [ten] fifteen per cent) by one percentage point of each \$2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds \$10,000."

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

**SECTION 3.** This Act shall take effect upon its approval and shall apply to taxable years beginning after December 31, 1989.

(Approved June 14, 1989.)

## ACT 323

S.B. NO. 245

A Bill for an Act Relating to Tax Credits.

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

**SECTION 1.** The legislature finds that Article VII, section 6, of the Constitution of the State of Hawaii requires the legislature to provide a tax refund or tax credit when certain factors are met. The legislature finds that these factors have been met for the eighth year in a row and that the legislature is constitutionally required to give a tax credit or a tax refund.

The purpose of this Act is to provide for an income tax credit of \$125 to the people of the State to satisfy constitutionally mandated requirements.

**SECTION 2.** (a) In addition to the excise tax credit allowed under section 235-55.5, Hawaii Revised Statutes, and in addition to any other credit allowed under chapter 235, Hawaii Revised Statutes, there shall be allowed each resident individual taxpayer who qualifies under section 235-55.5(a), Hawaii Revised Statutes, a general income tax credit of \$125 which shall be deducted from income tax liability computed under chapter 235, Hawaii Revised Statutes. The general income tax credit of \$125 shall be multiplied by the number of qualified exemptions as defined in section 235-55.5(c), Hawaii Revised Statutes, to which the taxpayer is entitled, regardless of adjusted gross income. Section 235-55.5(c), Hawaii Revised Statutes, to the contrary notwithstanding, such qualified exemption shall have been a resident of the State as defined in section 235-1, Hawaii Revised Statutes, for at least nine months whether or not such qualified resident was physically in the State for nine months. For the purposes of this section, multiple exemptions shall not be granted for this credit because of age, or deficiencies in vision, hearing, or other disability. The general income tax credit allowed under this section shall be deducted from income tax liability for the taxable year 1989. Section 235-55.5(d) and (e), Hawaii Revised Statutes, is applicable to this section and incorporated herein to the extent not in conflict with this section. The amount of the tax credit shall be reasonably calculated to return a total of \$112,500,000 to the people of the State.

(b) The credit under this section shall not be available to (1) any person who has been convicted of a felony and who has been committed to prison and has

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been physically confined for the full taxable year; (2) any person who would otherwise be eligible to be claimed as a dependent but who has been committed to a youth correctional facility and has resided at the facility for the full taxable year; or (3) any misdemeanant who has been committed to jail and has been physically confined for the full taxable year.

(c) This section implements the provisions of Article VII, section 6, of the State of Hawaii Constitution enacted by the 1978 Constitutional Convention, which states as follows:

### **"DISPOSITION OF EXCESS REVENUES**

Section 6. Whenever the state general fund balance at the close of each of two successive fiscal years exceeds five percent of general fund revenues for each of the two fiscal years, the legislature in the next regular session shall provide for a tax refund or tax credit to the taxpayers of the State, as provided by law."

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

(Approved June 14, 1989.)

## ACT 324

H.B. NO. 32

A Bill for an Act Relating to Historic Preservation.

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

SECTION 1. The legislature finds that the State of Hawaii is richly endowed with historically significant archaeological, religious, and cultural sites, artifacts, and architecture. Consequently, it is a major objective of the state historic preservation plan to protect the historic treasures of Hawaii's past through the maintenance of a sound program of regulation and oversight on the state level. The responsibility of historic preservation in Hawaii currently rests with the historic preservation program located within the department of land and natural resources.

The importance of protecting Hawaii's ancient artifacts and historic sites cannot be understated, and the responsibilities of the state historic preservation program in this regard are equally critical. At its foundation, the historic preservation program is a land management program devoted to the preservation of land or properties exhibiting historic or cultural significance. While this responsibility may appear to conflict with the department's role as a land developer, the idea of establishing a separate department does not appear to be feasible from either a budgetary or personnel perspective. The legislature finds that the elevation of the program's status to that of a departmental division will facilitate the development of a more aggressive posture on the part of the program within the department. The purpose of this Act is to establish a division of historic preservation within the department of land and natural resources and to provide the funds and personnel necessary to carry out this reorganization.

SECTION 2. Section 6E-3, Hawaii Revised Statutes, is amended to read as follows:

**"§6E-3 Historic preservation program.** [The department shall establish] There is established within the department a division to administer a comprehensive historic preservation program which shall include, but not be limited to the following:

- (1) Development of an ongoing program of historical, architectural, and archaeological research and development, including surveys, excavations, scientific recording, interpretation, and publications on the State's historical and cultural resources;
- (2) Acquisition of historic or cultural properties, real or personal, in fee or in any lesser interest, by gift, purchase, condemnation, devise, or bequest; preservation, restoration, administration, or transference of such property; and the charging of reasonable admissions to such property;
- (3) Development of a statewide survey to identify and document historic properties, including all those owned by the State and its political subdivisions;
- (4) Preparation of information for the Hawaii register of historic places and for listing on the national register of historic places;
- (5) Preparation, review, and revisions of a state historic preservation plan, including budget requirements and land use recommendations;
- (6) Application for and receipt of gifts, grants, technical assistance, and other funding from public and private sources for the purposes of this chapter;
- (7) Provision of technical and financial assistance to the political subdivisions of the State and public and private agencies involved in historic preservation activities;
- (8) Coordination of activities of the political subdivisions of the State in accordance with the state plan for historic preservation;
- (9) Stimulation of public interest in historic preservation, including the development and implementation of interpretive programs for historic properties listed on the Hawaii register of historic places;
- (10) Coordination of the evaluation and management of burial sites as provided in section 6E-43;
- [(10)] (11) Submittal of an annual report to the governor and the legislature detailing the accomplishments of the year and the recommendations for changes in the state plan or future programs relating to historic preservation;
- [(11)] (12) Regulation of archaeological activities throughout the State;
- [(12)] (13) Employment of sufficient professional and technical staff for the purposes of this chapter without regard to chapters 76 and 77; and
- [(13)] (14) Adoption of rules in accordance with chapter 91, necessary to carry out the purposes of this chapter."

**SECTION 3.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$100,000, or 0.0043 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the needs provided for by this Act.

**SECTION 4.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 1989-1990, to establish a division of historic preservation within the department of land and natural resources and to hire the personnel necessary to carry out this reorganization.

**SECTION 5.** The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

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SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 1989.

(Approved June 15, 1989.)

## **ACT 325**

H.B. NO. 239

A Bill for an Act Relating to Criminal Data.

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

SECTION 1. Chapter 846, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§846- Employees of cooperative housing corporations and condominiums; background check.** The board of directors of a cooperative housing corporation or of an association of apartment owners, or the manager of a cooperative housing project or a condominium project, upon the written authorization of an applicant for employment as security guard or manager or for a position that would allow the employee access to the keys of or entry into the units in the project or access to corporation or association funds, may conduct a background check on the applicant or direct another responsible party to conduct the check. Before initiating or requesting a check, the board of directors or the manager first shall certify that the signature on the authorization is authentic and that the person is an applicant for employment. The background check, at a minimum, shall require the applicant to disclose whether:

- (1) The applicant has been convicted in any jurisdiction of a crime that would tend to indicate the applicant may be unsuited for employment as an employee with access to corporation funds or association funds or the keys of or entry into the units in the project; and

- (2) The judgment of conviction has not been vacated.

For the purpose of this section, the criminal history disclosure made by the applicant may be verified by the board of directors, manager, or other responsible party, if so directed by the board or the manager, by means of information obtained through the data center. The board or manager may conduct a criminal history record check directly through the Hawaii criminal justice data center. The applicant shall provide the Hawaii criminal justice data center with personal identifying information which shall include, at a minimum, the applicant's name, social security number, date of birth, and sex. This information shall be secured only for the purpose of conducting the criminal history record check authorized by this section. Failure of a cooperative housing corporation or the manager or an association of apartment owners or the manager, to conduct or verify or cause to have conducted or verified a background check shall not alone give rise to any private cause of action against the corporation, association, or manager for acts and omissions of the employee hired.”

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

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

(Approved June 15, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 326**

H.B. NO. 737

A Bill for an Act Relating to Motor Vehicle Safety Inspections.

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

SECTION 1. Section 286-26, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(i) As part of the inspection required by this section, the owner of the vehicle to be inspected shall produce and display the no-fault insurance identification card for the inspected motor vehicle required by section [294-8.5] 431:10C-107 or the proof of insurance card required by section [294-12.6.] 431:10C-502. If no card is displayed, then the sticker authorized by the director of transportation shall not be affixed to the vehicle and the certificate of inspection shall not be issued.”

SECTION 2. Section 286-27, Hawaii Revised Statutes, is amended to read as follows:

**“§286-27 Permits to operate official inspection stations.** (a) The department of transportation, referred to in this section and sections 286-28 and 286-29 as “the department”, shall be responsible for issuing permits for and furnishing instructions and all forms to official inspection stations. The stations shall operate in the manner directed by the department pursuant to standards established by the director of transportation.

(b) Application for an official inspection permit shall be made upon an official form and shall be granted only when the department is satisfied that the station is [properly] equipped properly and has competent personnel to make the required inspections. Before issuing a permit, the department shall require the applicant to file proof that the applicant has, in effect, a liability insurance policy, issued to the applicant by an insurance company authorized to do business in the State, insuring against the liability of the applicant and any of the applicant’s employees in minimum amounts as follows: comprehensive public liability insurance in the amount of \$10,000 for one person and \$20,000 for one accident and comprehensive property damage insurance of \$5,000; provided that the director of transportation by rules may establish higher limits; provided that the proof of insurance need not be filed by an applicant who shall inspect only vehicles owned by the applicant; and provided further that the proof of insurance need not be filed by instrumentalities of the United States.

(c) A permit for an official station shall not be assigned or transferred or used at any location other than that designated by the department and every permit shall be posted in a conspicuous place at the location designated.

(d) The [department of transportation may contract with the] counties shall provide for the necessary administrative and enforcement services.

(e) The counties shall be reimbursed the costs incurred in providing the services under subsection (d).”

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

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

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(Approved June 15, 1989.)

## ACT 327

H.B. NO. 1845

A Bill for an Act Relating to Division of Community Hospitals.

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

SECTION 1. Section 37-34, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) [No] Any other law to the contrary notwithstanding, general fund [appropriation] appropriations for the operating expenses of [county/state hospitals] public health facilities shall be made available to the [county/state hospitals] public health facilities for expenditure during any allotment period [unless the director of finance finds that the moneys in the special funds established under section 27-23 are insufficient to meet the required lawful operating expenditures of the county/ state hospitals. The finding and decision of the director of finance on the sufficiency of special funds shall be communicated to the president of the senate and the speaker of the house of representatives at the end of each allotment period].”

SECTION 2. Chapter 323, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### **“PART . DIVISION OF COMMUNITY HOSPITALS ADMINISTRATION**

**§323- Definitions.** The following terms, whenever used or referred to in this part, shall have the following meanings, unless the context clearly requires a different meaning:

“Administrator” means the administrator of a public health facility.

“Department” means the department of health.

“Division” means the division of community hospitals of the department of health.

“Public health facility” means any of the following health care facilities and all other health care facilities that may hereafter be placed within the jurisdiction of the division:

- (1) Hana Medical Center, Hana, Maui;
- (2) Hilo Hospital, Hilo, Hawaii;
- (3) Honokaa Hospital, Honokaa, Hawaii;
- (4) Kau Hospital, Pahala, Hawaii;
- (5) Kauai Veterans Memorial Hospital, Waimea, Kauai;
- (6) Kohala Hospital, Kohala, Hawaii;
- (7) Kona Hospital, Kealakekua, Hawaii;
- (8) Kula Hospital, Keokea, Maui;
- (9) Lanai Community Hospital, Lanai City, Lanai;
- (10) Leahi Hospital, Honolulu, Oahu;
- (11) Maluhia, Honolulu, Oahu;
- (12) Maui Memorial Hospital, Wailuku, Maui; and
- (13) Samuel Mahelona Memorial Hospital, Kapaa, Kauai.

**§323- Division of community hospitals; establishment.** The department shall establish a division of community hospitals under this part to plan, construct,

improve, manage, control, and operate public health facilities and perform all acts necessary or convenient to carry out the purposes of this part.

**§323- Powers.** The department shall have the power to:

- (1) Operate, manage, and control the system of public health facilities;
- (2) Establish new public health facilities;
- (3) Adopt, amend, and repeal bylaws and rules, governing the conduct of its affairs and the performance of the powers and duties granted to or imposed upon it by law;
- (4) With the governor's approval, enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the performance of its duties and responsibilities, including, but not limited to, entering into contracts for the management or lease, or both, of any component of a public health facility, and on such terms as it may deem appropriate, with any agency or instrumentality of the United States, or with any state, territory, or possession, or with any subdivision thereof, or with any person, firm, association, or corporation; provided that the transaction furthers the public interest;
- (5) With the governor's approval, enter into business relationships, including but not limited to:
  - (A) Creating nonprofit corporations;
  - (B) Establishing, subscribing to, and owning stock in for-profit corporations individually or jointly with others; and
  - (C) Entering into partnerships and other joint venture arrangements; provided that the relationship furthers the public interest;
- (6) Participate in prepaid health care service and insurance programs, and other alternative health care delivery programs;
- (7) Execute, in accordance with all applicable bylaws, rules and laws, all instruments necessary or appropriate in the exercise of any of its powers;
- (8) Hire and dismiss, in accordance with section 323- , the administrator or assistant administrator, or both, for each public health facility;
- (9) Prepare and recommend all division-wide and facility-specific budgets, policies, and procedures;
- (10) Set rates and charges for all services provided in each public health facility;
- (11) Recommend capital improvement projects and repair and maintenance projects for each public health facility;
- (12) Conduct an annual audit through an independent certified public accountant covering all financial operations of the public health facilities and the division;
- (13) Approve medical staff bylaws, rules, and medical staff appointments and reappointments for all public health facilities;
- (14) Develop division-wide capital and strategic plans; and
- (15) Perform all other acts necessary or appropriate to carry out the purposes of this part.

**§323- Division of community hospitals; personnel recruitment and retention.** The director shall have the following powers relating to personnel recruitment and retention for the division, including the filling of existing vacancies and the retention of incumbent personnel:

- (1) To provide perquisites, which may include but shall not be limited to quarters and utilities for shortage categories;

- (2) To provide monetary incentives; provided that:
  - (A) The monetary incentive may be paid in monthly installments over an agreed period of time;
  - (B) In the event the employment is terminated prior to an agreed upon period, the unpaid balance of the amount in subparagraph (A) shall be forfeited; and
  - (C) The monetary incentive shall not be used in the computation of payment for overtime work; and
- (3) To pay one-way travel and moving expenses to fill shortage categories.

**§323- Administration of public health facilities.** (a) The appointment of hospital administrators and assistant administrators shall be made on an exempt basis by the director. Hospital administrators and assistant administrators appointed before July 1, 1983, shall maintain their permanent civil service status as provided in chapters 76 and 77. A hospital administrator or assistant administrator with civil service status may be granted leave without pay by the director for employment in an exempt hospital administrator or assistant administrator position in a public health facility of the department; provided that the leave is for a period not to exceed four years from the date of the exempt appointment that may be extended, by the director, for an additional four years. Upon reinstatement in the former position, the employee shall be compensated as though the employee had remained continuously in the position in which the employee last held a permanent appointment.

(b) Notwithstanding any other law to the contrary, the director, with the approval of the governor, may contract with private individuals or corporations for the administration or lease of the public health facilities of the division in the county of Hawaii. This subsection shall not supersede collective bargaining agreements, civil service rules, and existing statutes protecting employee rights; nor shall any employee be adversely affected by this subsection.

**§323- County public health facility management advisory committees.**

(a) There is established within the department for each county, a public health facility management advisory committee to consist of nine members to be appointed by the governor. The members shall serve for a term of four years; provided that upon the initial appointment of the members, two shall be appointed for a term of one year, two for a term of two years, two for a term of three years, and three for a term of four years.

The committee shall select its own chairperson and vice chairperson and may adopt such rules as it may consider necessary for the conduct of its business.

The members of the committee shall serve without compensation, but shall be reimbursed for traveling expenses incurred in the performance of their duties. The department shall provide for the necessary expenses of the committees; provided that no expenses may be incurred without prior authorization by the director.

(b) Each committee shall sit in an advisory capacity to the director on matters concerning the planning, construction, improvement, maintenance, and operation of public health facilities within their respective jurisdictions; but nothing in this section shall be construed as precluding or preventing the committees from co-ordinating their efforts and activities with the facility administrators within their counties.

**§323- Contracts with territories and possessions of the United States.**

The governor is authorized to enter into and execute contracts in the name of the State with territories, possessions, and other areas in the Pacific Ocean region, regarding the use of public health facilities of the State on a space available basis; provided that any such contract shall provide for the payment of costs to the State.

**§323- Admittance to Leahi Hospital.** Leahi Hospital may admit as patients medically indigent persons who are suffering from chronic disease and such other patients as the director determines can be accommodated by the facility; provided that sufficient beds are at all times available to persons with tuberculosis eligible for admission to the hospital. The department may adopt rules under chapter 91 concerning the admission of these chronic disease and other patients and the reimbursement for their care and treatment.

Money appropriated to Leahi Hospital for the care and treatment of tuberculosis patients may be used to care for patients suffering from chronic and other diseases who are admitted to the hospital.

**§323- Gifts.** (a) The department or the public health facilities, or both, may receive, manage, and invest moneys or other property, real, personal, or mixed which may be given, bequeathed, devised, or in any manner received from sources other than the legislature or any federal appropriation for the benefit of the division, facilities improvement or equipment, or the aid or advantage of patients or employees, and in general act as trustee on behalf of the division for any of these purposes or objectives.

(b) The department or public health facility, or both, shall keep suitable books of accounts to record each gift, the management of each gift, and the expenditure of the income. A statement of all trust funds shall be included in the regular reports required to be made by the department or public health facility.

**§323- Revenues.** Pursuant to chapter 91, the division shall impose and collect rates, rents, fees, and charges for the use of its public health facilities and their derived services, and shall revise such rates, rents, fees, and charges from time to time whenever necessary so that all public health facilities, services, and projects of the division may provide appropriate care to the community.

Nothing in this chapter shall preclude the making of appropriations to the division, or the use of funds derived from the sale of stocks, bonds, or other assets in the possession of the division, to pay all or part of the costs of construction, maintenance, or both, of any or all facilities, services, and projects of the division.

**§323- Use of credit cards for public health facilities charges.** Except as provided in this section and notwithstanding any other law to the contrary, all charges due and owing to any public health facility operated by the State may be paid by means of credit cards as may be deemed acceptable by the comptroller. The use of credit cards shall be exempt from section 40-35. A service fee may be required by the department for this use.

**§323- Patient trust fund.** Patient funds received by the public health facilities may be deposited outside the state treasury in an individual trust account to the credit of the patient. The facility shall maintain individual ledger accounts for, and issue quarterly statements showing credits and debits to, each patient having such funds.

**§323- Establishment of special funds.** (a) Any other law to the contrary notwithstanding, each public health facility shall place its revenues and all other moneys collected or acquired or made available for the use of that facility into a special fund to be used for the payment of its lawful operating expenditures. At the beginning of each quarterly allotment period, the director shall assess from each hospital special fund an amount equal to two per cent of the moneys in the hospital special fund and shall deposit those amounts into the facility administration fund established in subsection (b). At the end of each quarterly allotment period, the

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director shall transfer all moneys remaining in a hospital special fund not required for lawful operating expenditures of the hospital for that quarterly allotment period into the facility administration fund established in subsection (b); provided that those public health facilities which do not receive general fund augmentation may retain up to twenty-five per cent of their unrequired special fund revenues in their respective hospital special funds for payment of their lawful operating expenditures. The director shall determine the percentage which a public health facility not supported by general funds may retain in its hospital special fund. The amounts the director is authorized to transfer shall include all unrequired special fund balances from prior years.

(b) There is established within the department of health a special fund to be known as the facility administration fund which shall be used to defray the general administrative costs of the division and to provide supplemental funds to those public health facilities which do not have sufficient moneys in their special funds to cover their required lawful operating expenditures, including contingencies for correcting hospital deficiencies cited by agencies which monitor and evaluate the division. In the event the balance in the fund at the end of any fiscal year exceeds ten per cent of the expenditures of all the public health facilities for that fiscal year, the funds in excess of ten per cent of the expenditures shall be transferred by the director to the general fund. The director may also transfer funds from this fund to the general fund at any time pursuant to section 37-53.

(c) The director shall submit an annual report to the legislature, twenty days prior to the convening of each regular session, which identifies all fund balances and ceiling increases in the various hospital and facility funds, the transfers and expenditures made from the funds, and the purposes of the expenditures."

SECTION 3. Section 27-21, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 27-21.1, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 27-22, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 27-22.5, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 27-22.7, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 27-23, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 27-24, Hawaii Revised Statutes, is repealed.

SECTION 10. Chapter 323, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

### **“§323- Contracts with territories and possessions of the United States.”**

The governor is authorized to enter into and execute contracts in the name of the State with territories, possessions, and other areas in the Pacific Ocean region which are under the jurisdiction of the United States, regarding the use of health and correctional facilities of the State on a space available basis; provided that any such contract shall provide for the payment of costs to the State.”

SECTION 11. Chapter 323, part I, Hawaii Revised Statutes, is repealed.

SECTION 12. Sections 41D-2 and 103-22, Hawaii Revised Statutes, are amended by replacing all references to the “county/state hospitals division” or like

terms with the "division of community hospitals" or like terms, and by replacing all references to "county/state hospitals" or like terms with "public health facilities" or like terms.

SECTION 13. All acts passed by the legislature during this Regular Session of 1989, whether enacted before or after the effective date of this Act, shall be amended to conform with this Act unless such acts specifically provide that this Act is being amended.

SECTION 14. Severability. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 15. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 16. This Act shall take effect upon its approval.

(Approved June 15, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 328**

H.B. NO. 1853

A Bill for an Act Relating to Shortage Category Classes for Public Employees.

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

SECTION 1. Section 77-9, Hawaii Revised Statutes, is amended to read as follows:

**"§77-9 Initial appointments; shortage categories and differentials.** (a) All initial appointments shall be made at the first step of the appropriate salary range.

(b) In the event that recruitment of an employee is not practicable at the first step, the director, after appropriate notice and advertising, may recruit at any step within the appropriate salary range at which a suitable employee can be recruited.

[(b)] (c) Whenever a labor shortage exists in a class or group of positions in a class, the director, with the prior approval of the chief executive, may declare [it] the class or group of positions to be a shortage category [and adjust the entry salary in accordance with subsection (c) to an amount which is fair and reasonable and at which employees can be recruited from the labor market]. The director may review the impact of making such [an adjustment] a declaration on other classes or groups of positions in classes within the same series. If the director finds that it is necessary [to adjust the entry salary of another class or group of positions in a class] to preserve internal relationships within the series, the director may [make such an adjustment in accordance with subsection (c); provided that the adjustment shall be not more than five per cent for each succeeding higher level class or group of positions in a class.] declare those other classes or groups of positions as related shortage categories. The director shall review each shortage category periodically,

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but at least once each year, to determine whether the labor shortage exists to the same degree as previously determined [and adjust the entry salaries accordingly. If the director determines that a shortage no longer exists, the director shall reestablish the first step of the appropriate salary ranges as the entry salaries].

- (1) The director shall set the new entry salary of a shortage category at an amount which is fair and reasonable and at which employees can be recruited from the labor market.
- (2) The director shall set the new entry salary of a related shortage category in consideration of appropriate internal pay relationships. The new entry salary of the related shortage category shall not exceed the minimum step of the applicable salary range by a per cent greater than that between the new entry salary and the minimum step of the highest level shortage category.
- [((c)] (3) An adjustment to an entry salary under [subsection (b)] paragraphs (1) and (2) shall be made by adding to the first step of the appropriate salary range a temporary shortage differential, which shall not be considered an adjustment to base pay. The amount of the differential shall be the dollar difference between the [adjusted] new entry salary and the first step of the appropriate salary range, which shall be recomputed whenever there is a change in the respective pay schedule.
- [(d)] (4) Whenever [the] a new entry salary is [being adjusted] determined for a class or group of positions in a class[,] under paragraphs (1) and (2), incumbents thereof who are being paid less than the [adjusted] new entry salary shall have their pay adjusted [to an equivalent amount. The adjustment shall be made] by adding to their respective steps, a temporary shortage differential, which is not to be considered as an adjustment to base pay. The amount of the differential shall be the dollar difference between the [adjusted] new entry salary and their respective steps, which shall be recomputed whenever there is a change in the respective pay schedule.
- (5) In addition to establishing a new entry rate, the director, if necessary to promote retention of existing incumbents, may provide alternative adjustments to the salaries of incumbents in a shortage category and related shortage category. The adjustments shall maintain pay relationships within a class or group of positions within a class and shall be apply' to all employees including those who are paid the same as or more than the new entry salary. Any adjustment under this subsection shall replace the adjustments provided under paragraph (4) and no adjustment under this subsection shall result in a salary which exceeds the maximum step of the pay range.
- (6) An adjustment to a salary under paragraph (5) shall be made by adding to the appropriate step of the appropriate salary range a temporary shortage retention differential, which shall not be considered an adjustment to base pay. The amount of the differential shall replace any shortage differential provided under paragraph (4) and shall be a diminishing amount, to be computed as follows:
  - (A) The differential for incumbents at the first step shall be the dollar difference between the new entry salary and the first step;
  - (B) For the next step above the first step, the differential shall be equal to the first step differential less the quotient of the first step differential divided by the number of remaining steps in the salary range; and

- (C) The differential for each succeeding step shall be determined in the same manner, by using the differential for the preceding step minus the quotient, until the differential nets out to zero at the maximum step. All differentials shall be recomputed whenever there is a change in the respective pay schedule.
- (7) The director is authorized to provide similar differentials for positions and employees in the excluded managerial compensation plan.
- (8) As a result of the periodic review of each shortage category, the director may adjust salaries in accordance with subsection (b) and paragraphs (1) and (2). If the director determines that a shortage no longer exists, the director shall reestablish the first step of the appropriate salary range as the entry salary rate for the class or group of positions.
- [e] (9) In the event that the new entry salary for a [class or group of positions in a class] shortage category or related shortage category is subsequently lowered, incumbents [thereof] who are receiving a temporary shortage or retention differential shall continue to receive so much of the differential as is necessary to maintain their then existing pay until the rates for their respective steps equal or exceed [such amount.] those amounts.
- (10) If employees move from their respective positions in which they were granted a temporary shortage or retention differential, the differential shall terminate and their pay shall be adjusted without the differential.
- [f] (d) The director shall maintain a list of all recruitment above the first step and shortage category determinations under this section and the justifications therefor."

**SECTION 2.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$1,473,513, or 0.063 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 3.** There is hereby appropriated or authorized from the sources of funding indicated below to the Program Planning, Analysis, and Budgeting program (BUF 101), the following sums, or so much thereof as may be necessary, to fund adjustments to be made pursuant to the provisions of this Act for fiscal year 1989-1990.

General Funds	\$1,473,513
Special Funds	205,116
Federal Funds	184,518

Funds appropriated or authorized by this section shall be allotted by the Director of Finance in fiscal year 1989-1990 for the purposes of this Act.

**SECTION 4.** Cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from any federal, special, or other funds, shall be paid wholly or proportionately, as the case may be, from the respective funds.

**SECTION 5.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 6.** This Act shall take effect on July 1, 1989.

## ACT 329

(Approved June 15, 1989.)

### Note

1. So in original.

## ACT 329

H.B. NO. 1854

A Bill for an Act Relating to the Compensation of Public Officers and Employees.

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

### PART I

SECTION 1. Chapter 26, Hawaii Revised Statutes, is amended as follows:

1. Section 26-51 is amended to read:

**“§26-51 Governor; lieutenant governor.** Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the governor of the State shall be [\$80,000] \$90,699 and \$94,780 a year[.], respectively. Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the lieutenant governor shall be [\$76,000] \$86,164 and \$90,041 a year[.], respectively.

2. Section 26-52 is amended to read:

**“§26-52 Department heads and executive officers.** The salaries of the following state officers shall be as follows:

- (1) Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the superintendent of education shall be [\$76,000] \$86,164 and \$90,041 a year[.], respectively.
- (2) The salary of the president of the University of Hawaii shall be set by the board of regents, but shall not exceed \$95,000 a year.
- (3) Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salaries of all department heads or executive officers of the departments of accounting and general services, agriculture, attorney general, budget and finance, business and economic development, commerce and consumer affairs, corrections, Hawaiian home lands, health, human services, labor and industrial relations, land and natural resources, personnel services, [business and economic development,] taxation, and transportation shall be [\$68,400] \$81,629 and \$85,302 a year[.], respectively.
- (4) Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the adjutant general shall be [\$68,400] \$81,629 and \$85,302 a year[.], respectively. If the salary is in conflict with the pay and allowance fixed by the tables of the regular army or air force of the United States, the latter shall prevail.”

3. Section 26-53 is amended to read:

**“§26-53 Deputies or assistants to department heads.** (a) Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salaries of [first] deputies or [first] assistants to the head of any department of the State, other than the department of education, shall be [\$61,560 a year, and the salaries of second deputies or second assistants shall be \$55,404 a year.] set by the governor within the range from [\$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively.]

(b) Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the deputy to the superintendent of education shall be [\$68,400] \$81,629 and \$85,302 a year[.], respectively."

4. Section 26-54 is amended to read:

"**§26-54 Administrative director of the State.** Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the administrative director of the State shall be [\$68,400] \$86,164 and \$90,041 a year[.], respectively."

SECTION 2. Section 89-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is created a Hawaii labor relations board composed of three members of which (1) one member shall be representative of management, (2) one member shall be representative of labor, and (3) the third member, the chairperson, shall be representative of the public. All members shall be appointed by the governor for terms of six years each. Public employers and employee organizations representing public employees may submit to the governor for consideration names of persons representing their interests to serve as members of the board and the governor shall first consider these persons in selecting the members of the board to represent management and labor. Each member shall hold office until the member's successor is appointed and qualified. Because cumulative experience and continuity in office are essential to the proper administration of this chapter, it is declared to be in the public interest to continue board members in office as long as efficiency is demonstrated, notwithstanding the provision of section 26-34, which limits the appointment of a member of a board or commission to two terms.

The members shall devote [full-time] full time to their duties as members of the board. Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the chairperson of the board shall be [\$61,560] set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively, and the salary of each of the other members shall be [\$55,404] \$62,854 and \$65,683<sup>1</sup> year[.], respectively. No member shall hold any other public office or be in the employment of the State or a county, or any department or agency thereof, or any employee organization during the member's term.

Any action taken by the board shall be by a simple majority of the members of the board. All decisions of the board shall be reduced to writing and shall state separately its finding of fact and conclusions. Any vacancy in the board shall not impair the authority of the remaining members to exercise all the powers of the board. The governor may appoint an acting member of the board during the temporary absence from the State or the illness of any regular member. An acting member, during the acting member's term of service, shall have the same powers and duties as the regular member.

The chairperson of the board shall be responsible for the administrative functions of the board. The board may appoint an executive officer, mediators, members of fact-finding boards, arbitrators, and hearing officers, and employ other assistants as it may deem necessary in the performance of its functions, prescribe their duties, and fix their compensation and provide for reimbursement of actual and necessary expenses incurred by them in the performance of their duties within the amounts made available by appropriations therefor. The provisions of section 103-3 notwithstanding, an attorney employed by the board as a full-time staff member may represent the board in litigation, draft legal documents for the board, and provide other necessary legal services to the board and shall not be deemed to be a deputy attorney general.

The board shall be within the department of labor and industrial relations for budgetary and administrative purposes only. The members of the board and employees other than clerical and stenographic employees shall be exempt from chapters 76, 77, and 89. Clerical and stenographic employees shall be appointed in accordance with chapters 76 and 77.

At the close of each fiscal year, the board shall make a written report to the governor of such facts as it may deem essential to describe its activities, including the cases and their dispositions, and the names, duties, and salaries of its officers and employees. Copies of the report shall be transmitted to the legislative bodies."

SECTION 3. Section 89A-1, Hawaii Revised Statutes, is amended to read as follows:

**"§89A-1 Office of collective bargaining in the state government established.** There shall be established an office of collective bargaining in the office of the governor to assist the governor in negotiating with and entering into written agreements between the public employers and the exclusive representatives on matters of wages, hours, and other negotiable terms and conditions of employment.

The position of chief negotiator for the State is hereby established to head the office. The chief negotiator shall be experienced in labor relations. The governor shall appoint and remove the chief negotiator and the deputy negotiators, who shall not be subject to chapters 76, 77, and 89. Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the chief negotiator shall be [\$61,560] set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year[.], respectively. The chief negotiator and deputy negotiators shall be included in any benefit program generally applicable to the officers and employees of the State. All other employees shall be appointed in accordance with chapters 76 and 77. The chief negotiator shall serve as one of the governor's designated representatives as set forth in section 89-6(b)."

SECTION 4. Section 109-2, Hawaii Revised Statutes, is amended to read as follows:

**"§109-2 Stadium authority; powers and duties.** The powers and duties of the stadium authority shall be as follows:

- (1) To maintain, operate, and manage the stadium and related facilities.
- (2) To prescribe and collect rents, fees, and charges for the use or enjoyment of the stadium or any of its facilities.
- (3) To make and execute contracts and other instruments necessary or convenient to exercise its powers under this chapter and subject to any limitations in this chapter, to exercise all powers necessary, incidental, or convenient to carry out and effectuate the purposes and provisions of this chapter.
- (4) To make, amend, and repeal in accordance with chapter 91 such rules as it may deem necessary.
- (5) To appoint a manager and a deputy manager who shall have such qualifications as the authority deems necessary and who shall hold their respective offices at the pleasure of the authority. The manager and deputy manager shall be exempt from the requirements of chapters 76, 77, and 89. Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the manager shall be [\$61,560] set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year[.], respectively. Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the deputy manager shall

be [\$55,404] \$62,854 and \$65,683 a year[.], respectively. The manager shall have full power to administer the affairs of the stadium and related facilities, subject to the direction and approval of the authority. The manager shall, subject to the approval of the authority, have power to appoint, suspend, and discharge such other employees, subordinates, and assistants as may be necessary for the proper conduct of the business of the authority. Except for persons hired on contract or otherwise as provided in section 109-3 and except for the manager and deputy manager, all appointments, suspensions, or discharges shall be made in conformity with the applicable provision<sup>1</sup> of chapters 76 and 77."

SECTION 5. Section 269-2, Hawaii Revised Statutes, is amended to read as follows:

**"§269-2 Public utilities commission; number, appointment of commissioners, qualifications; compensation; persons having interest in public utilities.** There shall be a public utilities commission of three members, to be called commissioners, and who shall be appointed in the manner prescribed in section 26-34, except as otherwise provided in this section. All members shall be appointed for terms of six years each, except that the terms of the members first appointed shall be for two, four, and six years, respectively, as designated by the governor at the time of appointment. The governor shall designate a member to be chairperson of the commission. Each member shall hold office until the member's successor is appointed and qualified. Section 26-34 shall not be applicable insofar as it relates to the number of terms and consecutive number of years a member can serve on the commission; provided that no member shall serve more than twelve consecutive years.

In appointing commissioners, the governor shall select persons who have had experience in accounting, business, engineering, government, finance, law, or other similar fields. The commissioners shall devote full time to their duties as members of the commission and no commissioner shall hold any other public office or other employment during the commissioner's term of office. No person owning any stock or bonds of any public utility corporation, or having any interest in, or deriving any remuneration from, any public utility shall be appointed a commissioner.

Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the chairperson of the commission shall be paid a salary [of \$61,560] set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively, and each of the other commissioners shall be paid a salary [of \$55,404] \$62,854 and \$65,683 a year[.], respectively. The commissioners shall be exempt from chapters 76, 77, and 89 but shall be members of the state employees retirement system and shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State, including those under chapter 87.

The commission is placed within the department of budget and finance for administrative purposes."

SECTION 6. Section 297-31.5, Hawaii Revised Statutes, is amended to read as follows:

**"§297-31.5 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 [January 1, 1986,] January 1, 1989, and January 1, 1990, the salaries of

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assistant superintendents and district superintendents shall be not more than [\$61,560] \$74,608 and \$77,966 a year, respectively, and the salaries of deputy district superintendents shall be not more than [\$55,404] \$62,854 and \$65,683 a year[.], respectively.”

SECTION 7. Section 312-2.1, Hawaii Revised Statutes, is amended to read as follows:

**“§312-2.1 Appointment of state librarian; duties; salary.** The state librarian shall be appointed by the board of education, without regard to chapters 76 and 77, shall serve at the pleasure of the board, shall be under the direction of the board, and shall be responsible for the operation, planning, programming, and budgeting of all community/school and public libraries within the State. The salary of the state librarian shall be set by the board of education. Effective [July 1, 1987,] January 1, 1989, and January 1, 1990, the salary shall be not more than [\$68,400] \$81,629 and \$85,302 a year[.], respectively.”

SECTION 8. Section 314-10, Hawaii Revised Statutes, is amended to read as follows:

**“§314-10 Executive director and staff.** The board shall appoint an executive director subject to the approval of the governor who shall not be subject to chapters 76, 77, and 89. Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the executive director shall be [\$55,404] \$62,854 and \$65,683 a year[.], respectively.”

SECTION 9. Section 349-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The head of this office shall be known as the director of the executive office on aging, hereinafter referred to as director. The director shall have professional training in the field of social work, education, public health, and other related fields; extensive direct experience in programs or services related to the elderly; and recent experience in a supervisory, consultative, or administrative position. The director shall be nominated and appointed by the governor without regard to chapters 76, 77, and 89. Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the director shall be [\$49,864] \$56,505 and \$59,048 a year[.], respectively. The director shall be included in any benefit program generally applicable to the officers and employees of the State.”

SECTION 10. Section 353-63, Hawaii Revised Statutes, is amended to read as follows:

**“§353-63 Service of Hawaii paroling authority members compensation; expenses.** The chairperson of the Hawaii paroling authority shall serve on a full-time basis. The other two members shall serve on a part-time basis. Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the annual salary of the chairperson shall be [\$55,404.] \$62,854 and \$65,683, respectively. The compensation of each of the part-time members shall be eighty per cent of the hourly wage paid the chairperson. For each hour engaged in the official duties of the authority from [January 1, 1986,] January 1, 1989, each member of the authority other than the chairperson shall be paid an hourly wage at the percentage rate specified in this section based on the hourly wage paid the chairperson effective [January 1, 1986,] January 1, 1989. All paroling authority members shall receive their necessary

expenses for travel and incidentals which shall be paid from appropriations provided the authority for such purposes, on vouchers approved by the director of corrections."

SECTION 11. Section 356-5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The authority shall employ, not subject to chapters 76, 77, and 89 and section 26-35(4), an executive director. Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the executive director shall be [\$61,560] set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year[.], respectively. The authority may employ, subject to chapters 76 and 77, technical experts and officers, agents, and employees, permanent and temporary, as required. When, in the determination of the authority, services to be performed are unique and essential to the execution of the functions of the authority, it may hire persons on a contractual basis not subject to chapters 76, 77, and 78; provided that no individual contract shall be for a period longer than two years per term. The authority may call upon the attorney general for such legal services as it may require or may employ its own counsel and legal staff. The authority may delegate to one or more of its agents or employees such powers or duties as it deems proper."

SECTION 12. Section 371-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is created a labor and industrial relations appeals board composed of three members nominated and, by and with the advice and consent of the senate, appointed by the governor for terms of ten years each, except that the terms of members first appointed shall be for six, eight, and ten years respectively as designated by the governor at the time of appointments. The governor shall designate the chairperson of the board who shall be an attorney at law licensed to practice in all of the courts of this State. Each member shall hold office until the member's successor is appointed and qualified. Because cumulative experience and continuity in office are essential to the proper handling of appeals under workers' compensation law and other labor laws, it is hereby declared to be in the public interest to continue board members in office as long as efficiency is demonstrated. The members shall devote full time to their duties as members of the board. Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the chairperson of the board shall be [\$61,560] set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively, and the salary of each of the other members shall be [\$55,404] \$62,854 and \$65,683 a year[.], respectively."

SECTION 13. Section 410-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The powers and duties of the commissioner shall include but are not limited to:

- (1) Enforcing the provisions of this chapter and other laws relating to credit unions;
- (2) Conferring with the credit union review board on matters affecting credit unions incorporated under this chapter on a regular basis and shall be determined by the chairperson and the commissioner; provided that the commissioner shall confer with the review board at least once every six months;

## ACT 329

- (3) Make files available for inspection by the review board relating to decisions of the commissioner regarding credit unions;
- (4) Appointing a deputy not subject to chapters 76, 77, and 89 who shall receive a salary, effective [January 1, 1986,] January 1, 1989, and January 1, 1990, of [\$49,864] \$56,505 and \$59,048 a year[.], respectively. The deputy shall possess all powers and perform all duties attached to the office of the commissioner of credit unions during a vacancy or during the absence or inability of the commissioner; and
- (5) Employing examiners and clerks pursuant to chapters 76 and 77 to assist the commissioner and the commissioner's deputy in the discharge of the duties of the office."

SECTION 14. Section 581-1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The director of the office shall be known as the director of the office of children and youth, hereinafter referred to as director. The director shall have training or experience, or both, in the field of social work, education, public health, or other related fields; direct experience in programs and services related to children and youth; and experience in a supervisory, consultative, or administrative position. The director shall be appointed by the governor without regard to chapters 76, 77, and 89. Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the director shall be [\$49,864.] \$56,505 and \$59,048 a year, respectively. The director shall be included in any benefit program generally applicable to the officers and employees of the State."

SECTION 15. Section 802-11, Hawaii Revised Statutes, is amended to read as follows:

**"§802-11 Appointment of state public defender.** The state public defender shall be appointed by the defender council without regard to chapters 76, 77, and 89. The state public defender's appointment shall be for a term of four years except as otherwise provided herein, and until the state public defender's successor is appointed and qualified. The state public defender shall be qualified to practice law before the supreme court of this State. Effective [January 1, 1987,] January 1, 1989, and January 1, 1990, the salary of the state public defender shall be [\$61,560] set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year[.], respectively. The state public defender shall devote full time to the performance of the state public defender's duties and shall not engage in the general practice of law."

SECTION 16. There is appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund salary increases for executive branch officers of the State whose salaries are increased under this Act:

	<u>FY 1989-90</u>	<u>FY 1990-91</u>
General Funds	\$1,604,708	\$1,242,705
Special Funds	\$ 339,548	\$ 261,665
Federal Funds	\$ 7,863	\$ 6,429

Salary increases provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal or special funds, shall be paid wholly or proportionately, as the case may be, from the respective funds. Fund requirements for fiscal year 1990 include \$491,678 (general funds), \$104,358 (spe-

cial funds), and \$2,324 (federal funds) for retroactive salary increases effective January 1, 1989. Funds appropriated or authorized by this Act which are not expended or encumbered by June 30th of the respective fiscal years shall lapse as of those dates.

The sums appropriated shall be expended by the department of budget and finance for the purposes of this Act.

## PART II

SECTION 17. Chapter 23, Hawaii Revised Statutes, is amended as follows:

1. Section 23-3 is amended to read:

**“§23-3 Salary of the auditor and appropriations.** The salary of the auditor shall be fixed by the legislature and shall not be diminished during the auditor's term of office. Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the auditor shall be [\$68,400] \$81,629 and \$85,302 a year[.], respectively.

The funds for the support of the auditor's office shall be provided for in the act providing for the expenses of the legislature.”

2. Section 23-8 is amended to read:

**“§23-8 Assistance and staff.** In the performance of the auditor's duties, the auditor may employ the services of one or more certified public accountants or accounting firms, and such other assistants and clerical workers as may be necessary, provided the cost thereof shall not exceed such sums as may be available out of the appropriation provided by law for the conduct of the auditor's office and provided further that such accountants, firms, and assistants are entirely independent of the departments, offices, and agencies of the State and its political subdivisions whose affairs are subject to audit by the auditor. All employees shall be hired by the auditor subject to the approval of the president of the senate and the speaker of the house of representatives and shall serve at the auditor's pleasure; provided that in the establishment of the salary of each employee the auditor shall consult with the department of personnel services and shall follow as closely as possible the recommendations of the department; and provided further that effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the first assistant or first deputy shall be [\$61,560] \$69,748 and \$72,886 a year[.], respectively. The auditor and the auditor's full-time staff shall be entitled to participate in any employee benefit program privileges.”

SECTION 18. Chapter 23G, Hawaii Revised Statutes, is amended as follows:

1. Section 23G-1 is amended to read:

**“§23G-1 Legislative reference bureau; director, appointment, tenure, removal, compensation, vacancy.** The office of the legislative reference bureau is established. The legislature, by a majority vote of each house in joint session, shall appoint a director for the bureau who shall serve for a period of six years and thereafter until a successor shall have been appointed. The legislature, by two-thirds vote of the members in joint session, may remove or suspend the director from office, but only for neglect of duty, misconduct, or disability.

If the director dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the first assistant to the director shall become the acting director until a new director is appointed.

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Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the director shall be [\$68,400] \$81,629 and \$85,302 a year[.], respectively. The salary of the director shall not be diminished during the director's term of office, unless by general law applying to all salaried officers of the State."

2. Section 23G-2 is amended to read:

**"§23G-2 Assistant; staff.** The director shall appoint a first assistant and such other officers and employees as may be necessary to carry out the functions of the bureau. All employees, including the first assistant, shall be hired by the director and shall serve at the director's pleasure. In determining the salary of the employees of the bureau, the director shall consult with the department of personnel services; provided that, effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the first assistant shall be [\$61,560] \$69,748 and \$72,886 a year[.], respectively. The director and the director's full-time staff shall be entitled to participate in any employee benefit program plan or privilege."

SECTION 19. Section 84-35, Hawaii Revised Statutes, is amended to read as follows:

**"§84-35 Staff.** The ethics commission may employ and at pleasure remove such persons, including an executive director, as it may deem necessary for the performance of its functions. Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the executive director shall be [\$42,384] \$50,528 and \$52,802 a year[.], respectively. The commission shall fix the compensations of other employees within the amounts made available by appropriation therefor. The employees of the commission shall be exempt from chapters 76 and 77."

SECTION 20. Chapter 96, Hawaii Revised Statutes, is amended as follows:

1. Section 96-2 is amended to read:

**"§96-2 Ombudsman; office established, appointment, tenure, removal, qualifications, salary, vacancy.** The office of ombudsman is established. The legislature, by a majority vote of each house in joint session, shall appoint an ombudsman who shall serve for a period of six years and thereafter until a successor shall have been appointed. An ombudsman may be reappointed but may not serve for more than three terms. The legislature, by two-thirds vote of the members in joint session, may remove or suspend the ombudsman from office, but only for neglect of duty, misconduct, or disability.

No person may serve as ombudsman within two years of the last day on which the person served as a member of the legislature, or while the person is a candidate for or holds any other state office, or while the person is engaged in any other occupation for reward or profit. Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the salary of the ombudsman shall be [\$68,400] \$81,629 and \$85,302 a year[.], respectively. The salary of the ombudsman shall not be diminished during the ombudsman's term of office, unless by general law applying to all salaried officers of the State.

If the ombudsman dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the first assistant to the ombudsman becomes the acting ombudsman until a new ombudsman is appointed for a full term."

2. Section 96-3 is amended to read:

**"§96-3 Assistance, staff, delegation, funding.** The ombudsman shall appoint a first assistant and such other officers and employees as may be necessary

to carry out this chapter. All employees, including the first assistant, shall be hired by the ombudsman and shall serve at the ombudsman's pleasure. In determining the salary of each such employee, the ombudsman shall consult with the department of personnel services and shall follow as closely as possible the recommendations of the department. Effective [January 1, 1986,] January 1, 1989, and January 1, 1990, the first assistant's salary shall be [\$61,560] \$69,748 and \$72,886 a year[.], respectively. The ombudsman and the ombudsman's full-time staff shall be entitled to participate in any employee benefit plan.

The ombudsman may delegate to the ombudsman's appointees any of the ombudsman's duties except those specified in sections 96-12 and 96-13; provided that during the absence of the ombudsman from the island of Oahu, or the ombudsman's temporary inability to exercise and discharge the powers and duties of the ombudsman's office, such powers and duties as contained in sections 96-12 and 96-13 shall devolve upon the first assistant during such absence or inability.

The funds for the support of the office of the ombudsman shall be provided for in the act providing for the expenses of the legislature."

**SECTION 21.** There is appropriated out of the general revenues of the State of Hawaii to the legislative agencies indicated below the following sums, or so much thereof as may be necessary for the fiscal year 1989-1990, to provide salary increases and retroactive salary payments for the legislative auditor and the auditor's assistants, the director of the legislative reference bureau and the director's assistants, the executive director of the ethics commission, and the ombudsman and the ombudsman's first assistant:

#### FY 1989-1990

Office of the	
Legislative Auditor	\$35,531
Ethics Commission	\$13,354
Office of the	
Legislative Reference Bureau	\$90,935
Ombudsman	\$35,531

The sums appropriated shall be expended by the office of the legislative auditor, office of the legislative reference bureau, or office of the ombudsman, as applicable, for the purposes of this part.

### PART III

**SECTION 22.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$1,780,059, or 0.075 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

**SECTION 23.** If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**SECTION 24.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 25.** This Act shall take effect on July 1, 1989.

## ACT 330

(Approved June 15, 1989.)

### Note

1. So in original.

## ACT 330

S.B. NO. 1382

A Bill for an Act Relating to School Air Conditioning.

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

SECTION 1. Section 296-37, Hawaii Revised Statutes, is amended to read as follows:

**"[§296-37] Noise and climate control at school facilities.** The department of education shall plan for and request appropriations necessary to implement acoustic noise control and air conditioning of existing and new school facilities in areas which are susceptible to extremes of temperature or affected by aircraft, traffic, and other noise. The department shall develop [criteria] 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.

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.

For the purposes of this section, "air conditioning" means any mechanical device which cools or heats air."

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

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

(Approved June 15, 1989.)

## ACT 331

S.B. NO. 832

A Bill for an Act Relating to Appropriations.

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

SECTION 1. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$2,800,000 or 0.12 per cent. The reasons for exceeding the general fund ex-

penditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

## PART I

SECTION 2. The legislature finds that an informed and active citizenry is the most dynamic force of democracy. Good government is impossible unless people are allowed the greatest opportunities to voice their concerns and participate in the decision-making process.

Of the three branches of government, the legislature relies most heavily on direct public input. With the growth in complexity and volume of legislation and the hectic pace of the brief legislative session, it is imperative that the legislature provide timely information to the public and make every effort to encourage citizen participation.

As the legislature prepares to temporarily relocate to less centralized quarters while the state capitol is closed for asbestos abatement, an urgent need has been created for immediate action on issues of public access and participation.

In spite of the State's excellent technological infrastructure, recent criticism indicates that full public participation in the legislative process is being precluded because information about bills, resolutions, hearing dates, and other relevant data, is not readily accessible to the general public. The legislature is concerned because government agencies exist to aid the people in the formation and conduct of public policy. Opening up government processes to public scrutiny and participation is the most viable and reasonable method of protecting democracy and the public interest.

Technology and telecommunications are the means by which improved public access and participation in the legislative process will become a reality. Now is the time for the state legislature to act: to forge ahead as a pioneer in the Age of Information.

The purpose of this part is to appropriate funds for an interim legislative access project to increase public access by 1990.

SECTION 3. The committees on legislative management for both houses of the legislature and any other committees designated by the respective leaderships of the house of representatives or the senate, shall participate in an interim legislative access project to:

- (1) Conduct a study of the ways in which legislatures in the other forty-nine states provide public access to the legislative process and legislative data by electronic means, including but not limited to: dial-in telephone access to legislative bill status systems; automated data bases for bills, resolutions, committee reports, public hearings, and session laws; as well as the extent to which these states utilize electronic mail, voice communications systems, facsimile and image processing systems, local area networks, teleconferencing, and other means of communication;
- (2) Conduct a study of the means by which legislatures in the other forty-nine states administer automated systems in the legislative process, including but not limited to internal computerized legislative information services;
- (3) Make recommendations for methods of increasing and enhancing public access to the legislative process, incorporating ideas generated through the initial study of other states' systems, and including further evaluations and studies of their automated systems.

The committees shall report their findings and recommendations to the legislature at least twenty days prior to the convening of the regular session of 1990.

## **ACT 331**

**SECTION 4.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,500,000, or so much thereof as may be necessary for fiscal year 1989-1990, to be allocated as follows:

House of Representatives	\$750,000
Senate	\$750,000

The moneys shall be used to provide funding for the legislature to provide public access to bills, committee reports, and public hearing notices, and any other features deemed appropriate to enhance public access and participation in the 1990 legislative session.

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

## **PART II**

**SECTION 5.** The legislature finds that advances in telecommunications and information technology present significant opportunities for the State, especially for the legislative branch of government, to increase the overall efficiency of the legislature and to develop and promote better public access to this data. The present telecommunication infrastructure of the State provides an exciting array of services among state governmental agencies, including video conference centers, voice communication systems, facsimile and image processing systems, local area networks, microwave communication, satellite uplink, and fiber optic technology.

The legislature finds that through its actions in 1988, the infrastructure for positioning Hawaii in the ages of information and the Pacific has been established. The infrastructure of local information providers has been developed and international telecommunications linkages will be established between Hawaii and countries in the Pacific Rim.

Although the infrastructure has been established, the legislature finds that its continued leadership and guidance is needed in 1989 to:

- (1) Encourage public and consumer education and awareness of telecommunications and information services and their importance to the social and economic future of the State of Hawaii;
- (2) Promote the development of information services by the public sector; and
- (3) Begin to establish the "critical mass" of users to access public and private information services.

The legislature finds that resources must be committed to enable the development of public access terminals, especially in the schools and libraries and that there are many government information services that should be made accessible to the public in order to provide the basis of "magnet" services that will foster the development of private information providers. The legislature further anticipates that it will focus in 1990 on the development of private information providers.

**SECTION 6.** The department of budget and finance shall initiate and develop pilot projects using videotex and other information technology. The department of budget and finance shall solicit proposals from state agencies for information services. A minimum of three projects shall be selected based on the following:

- (1) Potential public demand for access to the information;
- (2) Potential of the project to increase understanding of the importance of telecommunications to the economic and social development of Hawaii; and

- (3) Potential to demonstrate the impact of telecommunications and information services on a broad cross-section of residents.

The department of budget and finance shall provide assistance in implementing the selected projects and shall report its findings and recommendations at least twenty days prior to the convening of the regular session of 1990.

**SECTION 7.** The department of budget and finance shall develop a plan to establish state information services that are accessible to the general public through the State's information network and gateway service. The plan shall include but not be limited to the following:

- (1) Identification of existing and potential opportunities for agencies to provide information services to the public through the information network;
- (2) Analysis of the potential users and demand for the service;
- (3) Estimation of the one-time and recurring costs required to develop and support the information service;
- (4) Educational program to inform government agencies about the potential uses and benefits of the information network; and
- (5) Implementation plan and timetable for the service to be developed.

In developing the plan, the department of budget and finance shall consult with representatives from various state agencies, including the department of education and the public libraries.

The department of budget and finance shall report its findings and recommendations with regard to its plan to the legislature at least twenty days prior to the convening of the regular session of 1990.

**SECTION 8.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$160,000, or so much thereof as may be necessary for fiscal year 1990-1991, for the state library system to offer library information and to purchase and operate public terminals, and provide services to enable the public access to public information through the state information network.

**SECTION 9.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000, or so much thereof as may be necessary for fiscal year 1989-1990, for the pilot videotex information service projects and the preparation of the plan to establish greater public access to state government information.

**SECTION 10.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000, or so much thereof as may be necessary for fiscal biennium 1989-1991, for the high technology development corporation of the department of business and economic development to hold a conference involving interested members of the community and information industries, public agencies, the University of Hawaii, and experts in the field.

**SECTION 11.** The sums appropriated shall be expended by the department of budget and finance for the purposes of this part.

**SECTION 12.** This Act shall take effect on July 1, 1989.

(Approved June 15, 1989.)

## ACT 332

S.B. NO. 1800

A Bill for an Act Relating to the Department of the Attorney General.

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

SECTION 1. Chapter 28, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**“§28- Crime research, prevention, and education; administrator and staff.** (a) The department of the attorney general shall initiate, develop, and perform or coordinate programs, projects, and activities, as determined by the attorney general, on the subject of crime, including but not limited to crime research, prevention, and education. The attorney general may:

- (1) Research, evaluate, and make recommendations regarding crime, crime prevention, and the criminal justice system to the governor, the legislature, the judiciary, criminal justice agencies, or the general public, as appropriate;
- (2) Develop and implement or coordinate statewide crime prevention programs and activities including:
  - (A) Providing crime prevention training programs for law enforcement agencies, citizens, businesses, and civic groups; and
  - (B) Assisting in the organization of crime prevention teams in communities to encourage the development of community crime prevention programs;
- (3) Develop public education programs through various broadcast or print media to provide to the general public information that will assist citizens in developing the knowledge and confidence to prevent crime and to avoid becoming victims of crime;
- (4) Establish, as deemed by the attorney general to be necessary or appropriate, citizen and government agency representative study teams to study specific crime subjects or criminal justice system problems, in order to obtain input or advice from a more specialized segment of the criminal justice or public community on those specific matters; and
- (5) Establish trust funds or accounts and receive and expend financial grants and donations for crime research, prevention, or education.

(b) The attorney general may employ, without regard to chapters 76 and 77, and at the attorney general's pleasure dismiss, an administrator and other support staff necessary for the performance or coordination of the programs, projects, and activities on the subject of crime.

**§28- Criminal justice commission; establishment; composition; functions; staff.** (a) There is established within the department of the attorney general, for administrative purposes only, the Hawaii criminal justice commission, consisting of seven members who shall include, to the extent practicable, representative residents of the city and county of Honolulu and the counties of Hawaii, Maui, and Kauai. The governor shall appoint the members pursuant to section 26-34 and shall designate one of the members to be the chairperson of the commission. The chairperson shall be compensated at the rate of \$75 a day for each day's actual attendance at a meeting and each day during which the chairperson spends four or more hours on commission business. The members shall serve without compensation, but shall be reimbursed for reasonable expenses necessary for the performance of their duties, including travel expenses.

(b) The commission shall provide a mechanism for citizen and community input into governmental activities with regard to crime prevention and reduction.

The commission shall initiate, develop, and implement programs, projects, and activities on the subject of crime prevention and education. The commission also shall perform research on matters directed by the attorney general and advise the attorney general on matters referred to the commission for review or on matters of interest and concern to the residents of the members' communities.

(c) The attorney general shall assign the staff necessary for the performance of the commission's functions.

**§28- Rules.** The department of the attorney general may adopt, amend, or repeal rules, pursuant to chapter 91, that may be necessary or convenient for the performance of its functions. The department's rules may include general rules of practice and procedure that apply to all administrative offices, boards, and commissions placed or established within the department without the necessity of individual adoption by the administrative offices, boards, or commissions within the department."

SECTION 2. Chapter 843, Hawaii Revised Statutes, is repealed.

SECTION 3. All employees of the Hawaii criminal justice commission, as provided for under chapter 843, Hawaii Revised Statutes, prior to the effective date of this Act, are transferred to the department of the attorney general and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No employee of the State whose functions are transferred by this Act shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act.

SECTION 4. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the Hawaii criminal justice commission shall be transferred to the department of the attorney general.

SECTION 5. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on July 1, 1989.

(Approved June 15, 1989.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 333

H.B. NO. 1549

A Bill for an Act Relating to the Waikiki Convention Center Authority.

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

SECTION 1. Section 206X-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The authority shall review for approval the convention center development plan of a private developer which plan shall include a convention center and other improvements proposed for development within the Waikiki convention center district. In its review of any proposed convention center development plan

## ACT 334

pursuant to this chapter, the authority shall apply the criteria of the convention center district rules and the following criteria:

- (1) The height of any building shall not exceed 400 feet;
- (2) The aggregate floor area of condominium[s] and hotel[s] dwelling units as described in subsection (3) below shall not exceed two million square feet;
- (3) The aggregate number of dwelling units: (i) shall not be more than 2,500 but not less than 2,000 hotel units, with not more than 550 but not less than 450 condominium units; or (ii) in the alternative, shall not be less than 2,800 hotel units, with no condominium units; or (iii), in the alternative, shall not [exceed] be more than 1,200 condominium units, with no hotel units; or (iv), in the alternative, shall not be more than 1,200 but not less than 800 hotel units, with not more than [and] 950 but not less than 800 condominium units. Provided, however, the minimum number of condominium units and hotel units described in (i), (ii), (iii) and (iv) above may be decreased by mutual agreement between the authority and the private developer;
- (4) The aggregate floor area for commercial, retail, and office use shall not exceed 450,000 square feet;
- (5) The convention center facility, including the exhibition halls, meeting rooms, a plenary session hall, and support space, shall have not less than 625,000 square feet;
- (6) The aggregate number of parking spaces for vehicles shall not be less than 2,000 of which not less than fifty per cent of such spaces shall be located within the convention center district; and
- (7) Groundbreaking for the commencement of the development within the convention center district shall not occur before July 1, 1989."

SECTION 2. Subsection 206X-3(b), Hawaii Revised Statutes, is amended to read as follows:

"**§206X-3<sup>1</sup>(b)** The authority shall consist of seven members, who [shall not] may be public officers or employees, appointed by the governor in accordance with this section. The members shall be from the general public and selected on the basis of their knowledge, interest<sup>1</sup> and proven expertise in, but not limited to, one or more of the following fields: finance, law, architecture, commerce and trade, corporate management, marketing, economics and visitor industry."

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

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

(Approved June 15, 1989.)

### Note

1. So in original.

## ACT 334

H.B. NO. 1358

A Bill for an Act Relating to the Public Employees Health Fund.

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

SECTION 1. Chapter 87, Hawaii Revised Statutes, is amended to read as follows:

## 1. By amending section 87-1 (8) to read:

**“Health benefits plan”<sup>1</sup>** means (A) a group insurance contract or medical, hospital, surgical, prescribed drugs, vision, or dental service agreement in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of health,<sup>1</sup> prescribed drugs, vision, [or] dental services, or long-term care services as determined by the board; or (B) a similar schedule of benefits established by the board and provided through the fund on a noninsured basis;”

## 2. By amending section 87-3 to read:

**“§87-3 Purpose of the fund.** The fund shall be used for the purpose of providing employee-beneficiaries and dependent-beneficiaries with a health benefits plan, provided that the fund may be used for other expenses necessary to effectuate the purpose and provided further that any rate credit or reimbursement from any carrier or any earning or interest derived therefrom shall be used in addition to such purposes to (1) finance state and county contributions for the dental benefits plan for children under the age of nineteen, as described in section 87-4; and (2) finance the employee’s portion of the monthly contribution of a health benefits plan for a retired employee, as described in section 87-1(5)(A)(ix), or upon the retired employee’s death the retired employee’s beneficiary as described in section 87-1(6).

To the extent that contributions are provided for group life insurance benefits in section 87-4, the fund shall also be used for the purpose of providing group life insurance benefits to employees.

To the extent that contributions are received from employee-beneficiaries for long-term care insurance benefits under section 87-22, the fund shall also be used for the purpose of providing long-term care insurance benefits to eligible participants.”

## 3. By amending section 87-6 (a) and (b) to read:

“(a) Each employee-beneficiary shall make a monthly contribution to the fund amounting to the difference between the monthly charge of the health benefits plan selected by the employee-beneficiary and the State’s and county’s contribution to the fund[.] and including the monthly charge of the long-term care insurance plan if selected by the employee-beneficiary.

(b) During the period the health benefits plan and, if applicable, the long-term care plan selected by an employee-beneficiary [is] are in effect, the employee-beneficiary shall authorize, if allowed under present laws, that [his] the employee-beneficiary’s contribution be withheld and transmitted to the fund monthly by the comptroller or finance officer from whom [he] the employee-beneficiary receives [his] compensation, pension, or retirement pay. If, however, an employee-beneficiary’s contribution to the fund is not withheld and transmitted to the fund, the employee-beneficiary shall pay [his] the monthly contribution (1) directly to the fund by the tenth day of each month, in the case of an employee-beneficiary who normally receives [his] the compensation from the comptroller of the State, or (2) in the case of all other employee-beneficiaries, to the respective finance officer from whom [he] the employee-beneficiary normally receives [his] compensation for transmittal to the fund by the tenth day of each month.”

## 4. By amending section 87-22 to read:

**“§87-22 Determine health benefits plan; contract with carriers.** The board of trustees shall determine the health benefits plan, which shall be excepted

from the minimum group requirements of chapter 431. The health benefits plan shall provide, pay for, arrange for, or reimburse the cost of hospitalization, surgery, medical, dental treatment, and care, and may include prescribed drugs, medicines, prosthetic appliances, hospital in-patient and out-patient service benefits, vision treatment and care, medical, [and] dental indemnity benefits[.], and long-term care benefits.

The board may contract for the following health benefits plans; provided that benefits provided under any respective plan shall be equally available to all employee-beneficiaries and dependent-beneficiaries selecting the plan regardless of age, as provided for below:

- (1) A statewide indemnity benefit plan under which a carrier agrees to pay certain sums of money not in excess of the actual expenses incurred for health services.
- (2) A statewide service benefit plan under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services, or, under certain conditions, payment is made by a carrier to an employee-beneficiary.
- (3) Health maintenance organization plans, which provide or arrange health services for members on a prepaid basis, with professional services provided by physicians practicing individually or as a group in a common center or centers.
- (4) A plan to offer dental benefits through either a statewide indemnity plan, a statewide service benefit plan, or health maintenance organization plans.
- (5) A plan to offer prescription drug benefits through either a statewide indemnity plan, a statewide service benefit plan, health maintenance organization plans, or a combination thereof.
- (6) A plan to offer vision care benefits through either a statewide indemnity plan, a statewide service benefit plan, health maintenance organization plans, or a combination thereof.
- (7) A not for profit plan to offer reasonably priced long-term care benefits at affordable premium rates through either a group long-term care plan, a franchise long-term care plan, individual long-term care plan, including home care services or a combination thereof. Salient features of the plan shall include:
  - (A) The plan shall be a self-funded, not for profit plan developed or contracted by the board;
  - (B) The plan shall meet the minimum requirements established by the insurance commissioner for long-term care insurance;
  - (C) The plan shall be voluntary and shall be funded by the contributions made by enrollees;
  - (D) The spouses of employee-beneficiaries shall be allowed to enroll in the long-term care insurance plan during the enrollment period open to employee-beneficiaries;
  - (E) During the first three months of the initial enrollment period for the plan, all retirees who are receiving benefits under chapter 88 as of the effective date of this section, shall be automatically eligible to enroll in the plan for a flat annual premium rate to be developed by the board, which shall be uniformly applicable to all such retirees regardless of age;
  - (F) The plan shall provide that eligibility to receive benefits under it shall require prior certification of need by the board or its designated representative;

- (G) The plan shall provide for an annual review of its operations and adequacy of the premium structure. Since the plan is established as a not-for-profit plan, excess revenues over operating costs shall be returned to enrollees for the covered period by either a premium adjustment or improvement of benefits. Likewise, a deficit that cannot be covered by a reserve to be established by the board may require an adjustment in the premium for the following fiscal period; and
- (H) The plan shall provide that pending actual operating expenditure requirements, the board shall invest the funds available in safe, liquid investments to provide continuing growth of the funds for the operation.
- [(7)]<sup>1</sup> (8) A noninsured schedule of benefits similar to any of the schedule of benefits set forth in health benefit plans authorized in paragraphs (1) to [(6).] (7).

For the purposes of this section, "long-term care insurance" means any insurance policy or rider advertised, marketed, offered, or specialty designed to provide coverage for not less than twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. The term includes group and individual policies or riders whether issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plan, health maintenance organizations or any similar organization. Long-term care insurance shall not include any insurance policy, which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage."

SECTION 2. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$72,700, or .003190 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act are necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$72,700, or so much thereof as may be necessary for fiscal year 1989-1990, to implement the long-term insurance benefits plan.

SECTION 4. The sum appropriated shall be expended by the Hawaii public employees health fund for the purposes of this Act.

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

SECTION 6. This Act shall take effect upon July 1, 1989.

(Approved June 15, 1989.)

**Note**

1. So in original.

**ACT 335**

S.B. NO. 55

A Bill for an Act Relating to Long-term Care Insurance.

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

**SECTION 1.** The purpose of this Act is to promote the availability of long-term care insurance, protect applicants from unfair or deceptive sales or enrollment practices, establish standards for long-term care insurance, facilitate public understanding and comparison of long-term care insurance policies, and facilitate flexibility and innovation in the development of long-term care insurance coverage.

**SECTION 2.** Section 1 to Section 6, inclusive, as set forth in Act 253, Session Laws of Hawaii, 1987, relating to long-term care insurance, are repealed, and Chapter 431, Hawaii Revised Statutes, is amended by adding a new part to Article 10A to be appropriately designated and to read as follows:

**"PART . LONG-TERM CARE INSURANCE**

**§431:10A- Definitions.** As used in this part, unless the context requires otherwise:

"Applicant" means:

- (1) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and
- (2) In the case of a group long-term care insurance policy, the proposed certificate holder.

"Certificate" means any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this State.

"Commissioner" means the insurance commissioner of this State.

"Group long-term care insurance" means a long-term care insurance policy:

- (1) Delivered or issued for delivery in this State and issued to:
  - (A) One or more employers or labor organizations, or a trust or the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organizations; or
  - (B) Any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:
    - (i) Is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and
    - (ii) Has been maintained in good faith for purposes other than obtaining insurance; or
  - (C) A group other than as described in subparagraphs (A) and (B), subject to a finding by the commissioner that:
    - (i) The issuance of the group policy is not contrary to the best interest of the public;

- (ii) The issuance of the group policy would result in economies of acquisition or administration; and
  - (iii) The benefits are reasonable in relation to the premiums charged.
- (2) Affording coverage to a resident of this State under a group policy issued in another state to a group described in paragraph (1)(C), if this State or another state having statutory and regulatory requirements substantially similar to those adopted in this State has made a determination that the requirements have been met.

**"Long-term care insurance"** means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. The term includes group and individual policies or riders whether issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, health maintenance organizations, or any similar organization. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

**"Policy"** means any policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this State by an insurer, fraternal benefit society, nonprofit health, hospital, or medical service corporation, prepaid health plan, health maintenance organization, or any similar organization.

**§431:10A- Prohibition.** No insurance policy may be advertised, marketed, or offered as long-term care or nursing home insurance unless it complies with this part. A policy which is expressly or implicitly advertised, marketed, or offered as long-term care insurance shall meet the requirements of this chapter. A policy which is not expressly or implicitly advertised, marketed, or offered as long-term care insurance need not meet the requirements of this chapter.

**§431:10A- Disclosure standards.** The commissioner may adopt rules under chapter 91 that include standards for full and fair disclosure setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms.

**§431:10A- Preexisting condition.** (a) No long-term care insurance policy may:

- (1) Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder; or
- (2) Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder.

## ACT 335

(b) No long-term care insurance policy or certificate shall use a definition of preexisting condition which is more restrictive than the following: "preexisting condition" means the existence of symptoms which were treated by a provider of health care services within the periods specified below:

- (1) Six months preceding the effective date of coverage of an insured person who is sixty-five years of age or older on the effective date of coverage; or
- (2) Twenty-four months preceding the effective date of coverage of an insured person who is under sixty-five years of age on the effective date of coverage.

(c) No long-term care insurance policy may exclude coverage for a loss or confinement which is the result of a preexisting condition unless the loss or confinement begins within the periods specified below:

- (1) Six months following the effective date of coverage of an insured person who is sixty-five years of age or older on the effective date of coverage; or
- (2) Twenty-four months following the effective date of coverage of an insured person who is under sixty-five years of age on the effective date of coverage.

(d) The commissioner may extend the limitation periods in subsections (b) and (c) as to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.

(e) The definition of "preexisting condition" does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards.

**§431:10A- Prior institutionalization.** No long-term care insurance policy which provides benefits only following institutionalization shall condition such benefits for long-term care service upon admission to a facility for the same or related conditions within a period of less than thirty days after discharge from the institution. Policies for long-term care insurance may, but need not, predicate provisions of benefits upon prior institutionalization.

**§431:10A- Loss ratio standards.** The commissioner may adopt rules establishing loss ratio standards for long-term care insurance policies provided that a specific reference to long-term care insurance policies is contained in the rules.

**§431:10A- Outline of coverage required.** An outline of coverage shall be delivered to an applicant for an individual long-term care insurance policy at the time of application for an individual policy. In the case of direct response solicitations, the insurer shall deliver the outline of coverage upon the applicant's request, but regardless of request shall make the delivery not later than at the time of policy delivery. The outline of coverage shall include:

- (1) A description of the principal benefits and coverage provided in the policy;
- (2) A statement of the principal exclusions, reductions, and limitations contained in the policy;
- (3) A statement of the renewal provisions, including any reservation in the policy of a right to change premiums; and
- (4) A statement that the outline of coverage is a summary of the policy issued or applied for, and that the policy should be consulted to determine governing contractual provisions.

**§431:10A- Right to return; free look provision.** (a) Individual long-term care insurance policies shall have the right to return the policy within thirty

days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. Individual long-term care insurance policies shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder shall have the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

(b) A person insured under a long-term care insurance policy issued pursuant to a direct response shall have the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies issued pursuant to a direct response solicitation shall have a notice prominently printed on the first page or attached thereto stating in substance that the insured person shall have the right to return the policy within thirty days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

**§431:10A- Group policy certificate requirements.** A certificate issued pursuant to a group long-term care insurance policy which is delivered or issued for delivery in this State shall include:

- (1) A description of the principal benefits and coverage provided in the policy;
- (2) A statement of the principal exclusions, reductions, and limitations contained in the policy; and
- (3) A statement that the group master policy determines governing contractual provisions.

**§431:10A- Exceptions.** Nothing in this part shall limit or restrict the sale or offering for sale in this State of insurance which provides long-term care benefits in noninstitutional settings, including a private residence.

**§431:10A- Rules.** The commissioner shall adopt necessary rules under chapter 91 to implement this part."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. This Act is not intended to supersede the obligations of entities subject to this Act to comply with the substance of other applicable insurance laws insofar as they do not conflict with this Act, except that laws and rules designed and intended to apply to medicare supplement insurance policies shall not be applied to long-term care insurance.

SECTION 5. This Act shall, upon its approval, take effect on July 1, 1989 only if H.B. No. 1894<sup>1</sup> (which makes Act 253, Session Laws of Hawaii 1987, as part of the insurance code) in any form passed by the legislature, Regular Session of 1989, becomes an Act.

(Approved June 16, 1989.)

**Note**

1. Act 276, this volume.

A Bill for an Act Relating to Insurance.

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

**SECTION 1.** §431- , Hawaii Revised Statutes, being the section entitled "Premium waiver provisions; restrictions" as set forth in section 1 of Act 250, Session Laws of Hawaii 1987, is repealed, and Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§431: Premium waiver provisions; restrictions.** (a) Whenever an insurance policy contains a provision or a rider for the waiver of premiums in the event of the total disability of the named insured, the waiver of premiums shall be applicable throughout the period of total disability or for the balance of the waiver period specified in the policy or the rider, whichever is shorter. To qualify for the premium waiver, the insured shall submit a certificate from a physician who is selected by the insured which attests to the insured's medical condition and states the period that the condition will last. If the period that the condition will last cannot be established with reasonable medical certainty, the physician shall state an opinion of the period during which the condition is likely to persist. If the insurer does not accept the insured's physician's diagnosis or estimate of the period that the condition will last, the insured will be examined by a second physician selected by the insurer at the insurer's expense. The insurer will accept the second physician's diagnosis and estimate of the period that the condition will last in order to determine total disability and waiver of premium benefits to be provided. The insured will be furnished with copies of all physicians' reports.

The insurer will also furnish the insured with an explanation of the insurer's decision regarding the total disability under the terms of the contract and the expected period it will last.

If the insured does not agree with the insurer's decision, the insured may appeal to the insurance commissioner within thirty days following receipt of the written notice of insurer's decision.

(b) When the insurer has determined there is total disability and the probable period that it will last, the insurer shall require further certification during the stated period of disability or probable disability only at its expense and not more often than once in any three calendar years, unless there is evidence of a change of circumstances that indicate a change in the medical condition of the insured.

(c) If a claim for premium waiver has been filed after expiration of the grace period specified in the insurance policy, and the qualifying disability has been proved, and the policy owner has demonstrated good faith and honest error justifying the late filing for premium waiver; the insurer shall refund premiums paid after the date the premium waiver would have been effective if the claim had been filed within the period specified in the policy for filing claims."

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

**SECTION 3.** This Act shall upon its approval, take effect on July 1, 1989 only if H.B. No. 1894<sup>2</sup> in any form passed by the Legislature, Regular Session of 1989, becomes an Act.

(Approved June 16, 1989.)

**Notes**

1. Edited pursuant to HRS §23G-16.5.
2. Act 276, this volume.

**ACT 337**

S.B. NO. 83

A Bill for an Act Relating to Health.

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

SECTION 1. The legislature finds that it is natural for Hawaii's abundance of resources to be expressed in Aloha with its Pacific neighbors. The sharing of this abundance and attitude has been characteristic of Hawaii's Aloha for many years. Countless organizations and individuals from the State have entered into economic-, social-, and cultural-related activities with Pacific neighbors over the years. This is an integral part of Hawaii's history.

In an international health conference on leadership and child survival held at the University of Hawaii in 1987, the governor proposed that Hawaii come together to work with Pacific island nations for the general improvement of health conditions, services, and the quality of life in the Pacific. The Pacific health promotion and development center was created as a partnership of Hawaii's private and public institutions with the governments of the Pacific. Some of the direct benefits to Hawaii include: (1) the long-range development of a health promotion industry for Hawaii; (2) a reduction of tertiary care costs presently absorbed by local hospitals in relation to medical referrals; and (3) the strengthening of public and private relationships that assist in meeting Pacific island health needs through the health professions industry of Hawaii.

Initial priority areas of cooperation were identified, and they included: health manpower development; health data production and analysis; administration and management; preventive maintenance; and alcohol abuse, drug abuse, and mental health programs. More specifically these have been translated into a set of first-year initiatives that include:

- (1) Prevention and management of otitis media in children;
- (2) Prevention and control of hypertension and diabetes;
- (3) Improvement of health data systems for the development of preventive health services;
- (4) Provision of short-term technical training in facilities maintenance, laboratory services, and radiology;
- (5) Nursing and medical manpower training and development;
- (6) Preventive mental health and substance abuse prevention and control;
- (7) Community health center development;
- (8) Primary care to remote areas;
- (9) Pacific center management;
- (10) Pacific health reassessment; and
- (11) Resource acquisition from private and public sources of funding.

The legislature further finds that Hawaii's relations with the Pacific, while progressing well at policy levels, has yet to be translated into a grass roots involvement, which services the day-to-day needs of the most remote areas of the Pacific.

More specifically, while occasionally highly, highly-trained teams of professionals are sent for very short visits to deliver a limited number of services, few programs place people in living environments with our Pacific neighbors for extended periods of time. Living and working side by side with our Pacific brothers and sisters is a completely different context, which generates special insights,

respect, and appropriate responses to everyday problems while avoiding the common resentments. It is an arrangement which breeds understanding, mutual respect, and Aloha. It is the kind of experience yet to be developed by Hawaii's health-related international efforts.

The legislature believes that volunteerism, especially among those who already have valuable training and skills, is of benefit to the volunteer, the volunteer's community, and, if done well, to the host community in which the volunteer works. Volunteerism excites the idealism in young and old alike, and creates a community which asks unselfish questions and which accepts responsibility for cooperative problem-solving.

The purpose of this bill is to create an Aloha health corps whose mission is to coordinate grass roots health volunteers and programs in Hawaii and the Pacific; to recruit and train health professionals for special assignments in Hawaii and the Pacific that complement existing programs and that provide an extended grass roots partnership between Hawaii and our Pacific neighbors; to create idealistic opportunities for Hawaii's people at home and abroad; and to learn, contribute, and benefit from international and domestic service.

The objectives of the office of the Aloha health corps include:

- (1) To share Hawaii's Aloha Spirit with other nations of the Pacific Basin through the efforts of volunteers, living and working in the Pacific;
- (2) To enrich Hawaii's multi-cultural climate with the knowledge and understanding gained in other countries by Aloha health corps volunteers;
- (3) To provide health education, training, and services at the grass roots level in Hawaii and the Pacific;
- (4) To provide a positive outlet for the energy of the youth, health professionals, students, and the elderly of the State;
- (5) To promote a spirit of goodwill and a positive image of Hawaii in the minds and hearts of our South Pacific neighbors; and
- (6) To forge personal links and contacts between citizens of our State and other nations that will in the future establish Hawaii as the repository of knowledge, understanding, and contacts that would resound to our social, economic, educational, and cultural benefit.

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

## **"CHAPTER OFFICE OF THE ALOHA HEALTH CORPS**

**§ -1 Office of the Aloha health corps; appointments.** (a) There is established the office of the Aloha health corps within the department of health.

(b) The director of the office of the Aloha health corps shall have experience in domestic and international health programs; and recent experience in a supervisory, consultative, or administrative position. The director shall be appointed by the director of the department of health without regard to chapters 76 and 77. The director shall be included in any benefit program generally applicable to the officers and employees of the State.

**§ -2 General functions, duties, and powers of the director.** The director shall have the following principal functions, duties, and powers:

- (1) Establish an advisory committee consisting of leaders in Hawaii's health or education community, including hospital administrators, health professionals, leaders of other volunteer groups, members of the Uni-

- versity of Hawaii, and others with domestic and international experience and expertise;
- (2) Serve as a liaison between the State and foreign nations to determine needed health-related services;
  - (3) Work cooperatively with the Pacific health and development center, the U.S. public health services, the peace corps, VISTA, and other domestic and international health efforts;
  - (4) Recruit volunteers in Hawaii who can satisfy identified needs in Hawaii and in Pacific Basin nations;
  - (5) Develop training programs designed to facilitate the transition of volunteers to and from foreign cultures to enhance their effectiveness in those cultures;
  - (6) Provide opportunities to incorporate Aloha health corps volunteers and trainees in ongoing health programs to serve the State of Hawaii; opportunities for returning volunteers to continue volunteer service in Hawaii; and opportunities for other volunteer efforts to support Hawaii's public health programs;
  - (7) Develop arrangements with the University of Hawaii and other institutions designed to assist in the selection, training, placement, and readjustment of returning volunteers; and their continuing education and professional development in Hawaii;
  - (8) Oversee, supervise, and direct the director's subordinates;
  - (9) Administer funds allocated for the office of the Aloha health corps; and apply for, receive, and disburse grants and donations from all sources for the office of the Aloha health corps;
  - (10) Adopt, amend, and repeal rules pursuant to chapter 91 for the purposes of this chapter;
  - (11) Employ and retain staff as may be necessary for the purposes of this chapter in conformity with chapters 76 and 77; and
  - (12) Contract for such services as may be necessary for the purposes of this chapter.

**§ -3 Aloha health corps volunteers.** (a) The office of the Aloha health corps shall recruit volunteers who are:

- (1) Over the age of eighteen; and
- (2) Possess appropriate knowledge or skills related to domestic and international programs as determined by the director;

Volunteers shall be compensated, provided with appropriate health information and benefits, and participate in orientation and training. Foreign-bound volunteers also shall be provided with in-depth information on the language, religion, economy, politics, and culture of the nations in which they serve. Transportation to and from respective host nations shall be provided.

(b) The director and a representative from each local organization or host nation shall draft a work description summary, including specific goals, for each volunteer prior to the commencement of a volunteer's service. The work description summary shall become part of the volunteer's contract with the office of the Aloha health corps. At the conclusion of a volunteer's period of service, an analysis of the work performed by the volunteer shall be made by the host nation or local organization and the corps director.

**§ -4 Host nation responsibilities.** Host nations desiring to sponsor a volunteer shall provide adequate housing and subsistence for each volunteer accepted, as well as any other assistance and personnel they may have available to aid each volunteer."

## ACT 338

SECTION 3. This Act shall take effect on July 1, 1989.

(Approved June 16, 1989.)

## ACT 338

S.B. NO. 161

A Bill for an Act Relating to Counties.

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

SECTION 1. Section 46-1.5, Hawaii Revised Statutes, is amended to read as follows:

**"[§46-1.5] General powers and limitation of the counties.** Subject to general law, each county shall have the following powers and shall be subject to the following liabilities and limitations:

- (1) Each county shall have the power to frame and adopt a charter for its own self-government, which shall establish the county executive, administrative, and legislative structure and organization, including, but not limited to, the method of appointment or election of officials, their duties, responsibilities, and compensation, and the terms of their office.
- (2) Each county shall have the power to provide for and regulate the marking and lighting of all buildings and other structures which may be obstructions or hazards to aerial navigation, so far as may be necessary or proper for the protection and safeguarding of life, health, and property.
- (3) Each county shall have the power to enforce all claims on behalf of the county and approve all lawful claims against the county, but shall be prohibited from entering into, granting, or making in any manner any contract, authorization, allowance payment, or liability contrary to the provisions of any county charter or general law.
- (4) Each county shall have the power to make contracts and to do all things necessary and proper to carry into execution all powers vested in the county or any county officer.
- (5) Each county shall have the power to maintain channels, whether natural or artificial, including their exits to the ocean, in suitable condition to carry off storm waters; and to remove from the channels, and from the shores and beaches, any debris which is likely to create an unsanitary condition or to otherwise become a public nuisance; provided that to the extent any of the foregoing work is a private responsibility the responsibility may be enforced by the county in lieu of the work being done at public expense. Counties shall also have the power to construct, acquire by gift, purchase, or by the exercise of eminent domain, reconstruct, improve, better, extend, and maintain projects or undertakings for the control of and protection against floods and flood waters, including the power to drain and rehabilitate lands already flooded, and to enact zoning ordinances providing that lands deemed subject to seasonal [or], periodic, or occasional flooding shall not be used for residence or other purposes in such a manner as to endanger the health or safety of the occupants thereof, as required by the Federal Flood Insurance Act of 1956 (chapter 1025, Public Law 1016).
- (6) Each county shall have the power to exercise the power of condemnation by eminent domain when it is in the public interest to do so.

- (7) Each county shall have the power to exercise such regulatory powers over business activity as are assigned to them by chapter 445, or other general law.
- (8) Each county shall have the power to fix the fees and charges for all official services not otherwise provided for.
- (9) Each county shall have the power to provide by ordinance for the improvement or maintenance assessments of districts within the county.
- (10) Except as otherwise provided, each county shall have the power to, in any manner, give or loan credit to, or in aid of, any person or corporation, and any indebtedness or liability incurred contrary to this paragraph shall be void.
- (11) Where not within the jurisdiction of the public utilities commission, each county shall have the power to regulate by ordinance the operation of motor vehicle common carriers transporting passengers within the county and adopt and amend such rules as the county deems necessary for the public convenience and necessity.
- (12) Each county shall have the power to enact and enforce ordinances necessary to prevent or summarily remove nuisances, and compel the clearing of refuse and uncultivated undergrowth from unoccupied lots, and in these connections impose and enforce liens upon the property for the cost to the county of completing the necessary work where the owners fail after reasonable notice to comply with the ordinances.
- (13) Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and preserve the order and security of the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute, provided also that the statute does not disclose or express an implied intent that the statute shall be exclusive or uniform throughout the State.
- (14) Each county shall have the power to make and enforce within the limits of the county all necessary ordinances covering all local police matters and all matters of sanitation, inspection of buildings, condemnation of unsafe structures, plumbing, sewers, dairies, milk, fish, and morgues, and the collection and disposition of rubbish and garbage, to appoint county physicians and such sanitary and other inspectors as may be necessary to carry into effect ordinances made under this paragraph, who shall have the same power as given by law to agents of the department of health, subject only to such limitations as may be placed on them by the terms and conditions of their appointments, and to fix a penalty for the violations of any ordinance, which penalty may be a misdemeanor, petty misdemeanor, or violation as defined by general law.
- (15) Each county shall have the power to provide public pounds, to regulate the impounding of stray animals and fowl, and their disposition, and to provide for the appointment, powers, duties, and fees of animal control officers.
- (16) Each county shall have the power to purchase and otherwise acquire, lease, and hold real and personal property within the defined boundaries of the county and to dispose of the real and personal property as the interests of the inhabitants of the county may require, except that any property held for school purposes may not be disposed of without the consent of the superintendent of education, that no property bordering the ocean shall be sold or otherwise disposed of, and that all proceeds from the sale of park lands shall be expended only for the acquisition of property for park or recreational purposes.

- (17) Each county shall have the power to provide by charter for the prosecution of all offenses and to prosecute for offenses against the laws of the State under the authority of the attorney general of the State.
- (18) Each county shall have the power to make appropriations in amounts deemed appropriate from any moneys in the treasury, for the purpose of community promotion and public celebrations, the entertainment of such distinguished persons as may from time to time visit the county, for the entertainment of other distinguished persons as well as public officials when deemed to be in the best interest of the community, and the rendering of civic tribute to individuals who, by virtue of their accomplishments and community service, merit civic commendations, recognition, or remembrance.
- (19) Each county shall have the power to:
  - (A) Construct, purchase, take on lease, lease, sublease, or in any other manner acquire, manage, maintain, or dispose of buildings for county purposes, sewers, sewer systems, pumping stations, water works, including reservoirs, wells, pipelines, and other conduits for distributing water to the public, lighting plants, and apparatus and appliances for lighting streets and public buildings and manage, regulate, and control the same;
  - (B) Regulate and control the location and quality of all appliances necessary to the furnishing of water, heat, light, power, telephonic, and telegraphic service to the county; [and]
  - (C) Acquire, regulate, and control any and all appliances for the sprinkling and cleaning of the streets and the public ways and for flushing the sewers[.]; and
  - (D) Open, close, construct, or maintain county highways or charge toll on county highways; provided that all revenues received from a toll charge shall be used for the construction or maintenance of county highways.
- (20) Each county shall have the power to regulate the renting, subletting, and rental conditions of property for places of abode by ordinance.
- (21) Unless otherwise provided by law, each county shall have the power to establish by ordinance the order of succession of county officials in the event of a military civil disaster.
- (22) Each county shall have the power to sue and be sued in its corporate name.
- (23) Each county shall have the power to establish and maintain water works and sewer works; to collect rates for water supplied to consumers and for the use of sewers; to install water meters whenever deemed expedient; provided that owners of premises having vested water rights under existing laws appurtenant to the premises shall not be charged for the installation or use of the water meters on the premises; to take over from the State existing water works systems, including water rights, pipelines, and other appurtenances belonging thereto, and sewer systems, and to enlarge, develop, and improve the same.
- (24) Each county may impose civil fines, in addition to criminal penalties, for any building or zoning code violation after reasonable notice and requests to correct the violation have been made upon the violator."

SECTION 2. Section 248-6, Hawaii Revised Statutes, is repealed.

SECTION 3. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State, the city and county of Honolulu,

or the counties of Kauai, Maui, or Hawaii, or by any agency thereof, to the holder of any bond issued by the State, the city and county of Honolulu, or the counties of Kauai, Maui, or Hawaii, or by any agency thereof, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 4. This Act shall be liberally construed in order to accomplish the purposes set forth in this Act. Any portion of this Act judicially declared to be invalid shall not affect the remaining portions.

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

SECTION 6. This Act, upon its approval, shall take effect on July 1, 1989, except that Section 1 of this Act shall take effect on June 1, 1990.

(Approved June 16, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 339**

S.B. NO. 840

A Bill for an Act Relating to Public Officer and Employees.

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

SECTION 1. Section 88-21, Hawaii Revised Statutes, is amended by amending the definition of "judge" to read as follows:

" "Judge": a justice of the supreme court, a judge of the intermediate appellate court, [or] a judge of the circuit court, a judge of the district court, or a district family court judge of this State."

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

SECTION 3. This Act shall take effect on July 1, 1989.

(Approved June 16, 1989.)

**ACT 340**

S.B. NO. 976

A Bill for an Act Relating to Hours of Work.

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

SECTION 1. Section 80-1, Hawaii Revised Statutes, is amended to read as follows:

**“§80-1 Office hours.** Offices of the State and counties, and independent boards and commissions thereof, shall be open for the transaction of public business

## ACT 341

between the hours of 7:45 a.m. and 4:30 p.m., Monday to Friday, inclusive. By executive order[,] or directive, the [governor] chief executive of the State or of any county may modify the hours [of business offices, other agencies, and schools]<sup>1</sup> and days for the transaction of public business in their respective jurisdictions [in order] to meet a demonstrated need for public services, [to] provide for the efficient operation of business, [to] encourage energy conservation, and [to] reduce traffic congestion. [Offices shall be closed on Saturday, except those which public convenience require shall remain open from 8 a.m. to noon on Saturday. Offices open on Saturday may be staffed with a skeleton force.] A lunch period of forty-five minutes will be allowed all governmental personnel, which shall not constitute working time under this section."

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

SECTION 3. This Act shall take effect July 1, 1989.

(Approved June 16, 1989.)

### Note

1. So in original.

## ACT 341

S.B. NO. 1052

A Bill for an Act Relating to California-Hawaii Cooperation.

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

**SECTION 1. Findings and Purpose.** The legislature finds that new industry development in the Pacific is vital to the overall growth of California, Hawaii, and our Asian and Pacific neighbors. The legislature further finds that California, Hawaii, and the Pacific nations can benefit from effective cooperation in such areas as: health promotion and health care systems; health research and development; environmental protection industries; and related information systems and technologies.

The legislature further finds that states and nations may benefit from the sharing of resources and the development of other coordinated responses to present obstacles in order to enhance participation in international trade and development. Cooperation will increase our financial resources for programs and projects of benefit to California, Hawaii, and our Asian and Pacific neighbors.

It is the intent of the legislatures to achieve the following goals:

- (1) Promote heightened cooperation between residents of Asia and the Pacific nations, with a special working relationship between California, Hawaii, Asia and Pacific nations;
- (2) Promote activities to provide continuing professional education and health personnel training;
- (3) Assist in the research and development of cost-efficient means to resolve major environmental and administrative health problems;
- (4) Provide assistance in the planning of long-range health systems; and
- (5) Extend technical outreach and health promotion efforts which fit the needs and cultural contexts of Asian and Pacific nations.

SECTION 2. Commission established; composition. There shall be established within the department of health, for administrative purposes only, the Cal-

ifornia-Hawaii cooperative commission which shall be incorporated as a nonprofit, public benefit corporation. The commission shall have the powers and duties of a nonprofit corporation under applicable California and Hawaii statutory law.

The governing body of the commission shall be composed of eight leading representatives of government and private industry from each state who can have the opportunity to share their knowledge and expertise and to jointly pursue policies and programs that can be utilized to promote the above goals.

The Hawaii commissioners shall be appointed in the following manner:

- (1) Four members shall be appointed by the governor of Hawaii;
- (2) Two members shall be appointed by the governor of Hawaii from a list of four nominees submitted by the president of the Hawaii state senate; and
- (3) Two members shall be appointed by the governor of Hawaii from a list of four nominees submitted by the speaker of the Hawaii state house of representatives.

The eight members from California shall be appointed in a manner consistent with California law.

The members shall be appointed before January 18, 1990. The commission shall elect one of its members to be the chairperson. The term of each member shall be four years. Each member shall hold office until a successor is appointed. Vacancies shall be filled for the remainder of any unexpired term in the same manner as the original appointments.

All members shall serve without compensation but shall be reimbursed for travel and other necessary expenses.

All commission meetings shall be open to the public to the extent required by the laws of Hawaii and California; provided that where the state statutes impose different requirements, the stricter provision shall apply.

### **SECTION 3. Powers and duties of the commission.** (a) The commission shall:

- (1) Survey and evaluate the status of health and environmental conditions and industries in Asia and the Pacific nations, through existing data and ongoing studies with the goal of identifying areas of economic opportunity which are of mutual benefit to Hawaii, California, Asia, and the Pacific nations;
- (2) Identify areas of cooperation where California and Hawaii can develop reciprocal relationships for joint projects which are likely to enhance the competitiveness of California's and Hawaii's industries in the Pacific in the fields of: health promotion and health care systems; health research and development; environmental protection industries; and related information systems and technologies;
- (3) If feasible, develop joint projects of benefit to Hawaii, California, Asia, and the Pacific nations in the above areas;
- (4) Identify private industry, industry associations, foundations and agencies of the federal government capable of providing financial support for commission projects;
- (5) Perform such other functions as may be requested or required by either Hawaii or California law;
- (6) Adopt a seal, bylaws, and rules for its management and control;
- (7) Establish and maintain an office for the transaction of its business and meet at least once a year. The chair may, on the chair's initiative, or upon the request of a majority of the members, schedule additional meetings;

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- (8) Submit a budget to the governors of Hawaii and California at such time and for such period as may be required by the laws of the respective states; and
  - (9) Keep accurate books of account, showing in full its receipts and disbursements. The books of account shall be open at any reasonable time for inspection by the governors of Hawaii and California or the respective governor's designated representative. The commission shall provide for an independent annual financial audit.
- (b) The commission may:
- (1) Accept grants, gifts, fees, and allocations from the states of California and Hawaii or their political subdivisions, the federal government, foreign governments, and any other private sources;
  - (2) Hire an executive officer, other staff, and any consultants deemed appropriate; and
  - (3) Enter into service contracts as necessary to carry out the purposes of this Act.

**SECTION 4. Commission plan.** The commission shall develop a plan identifying:

- (1) A process by which Asian and Pacific nations can participate in development of projects which meet their needs;
- (2) Potential benefits to participating California, Hawaii, Asia, and Pacific nation residents in the development and implementation of health-related programs, including, but not limited to, economic benefits and benefits to academic institutions, health care industries, health care professionals, and the overall health status of their residents; and
- (3) Projects which are important to the implementation of the commission's goals and objectives.

The commission shall not initiate projects without first receiving approval of the commission plan from each legislature by concurrent resolution.

**SECTION 5. Annual report.** On or before March 1 of each year, the commission shall provide to the governors and legislatures of both states a report of its activities for the past year and its proposed activities for each upcoming year.

**SECTION 6.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 1989-1990, to provide Hawaii's share of the funding for the commission created by this Act.

**SECTION 7.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$100,000, or 0.0043 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the needs provided for by this Act.

**SECTION 8.** The sum appropriated under section 8<sup>1</sup> shall be expended by the Department of Health to carry out the purposes of this Act.

**SECTION 9.** This Act shall take effect on July 1, 1989.

(Approved June 16, 1989.)

**Note**

1. So in original.

**ACT 342**

S.B. NO. 1165

A Bill for an Act Relating to Thrill Craft.

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

SECTION 1. Section 267-4, Hawaii Revised Statutes, is amended to read as follows:

**“§267-4 Rules.** The department [of transportation shall from time to time make, alter, amend, and repeal rules not inconsistent with the law as may be reasonably necessary] shall adopt rules pursuant to chapter 91 to implement the policy and purpose of this chapter, and [in such adoption the department may] to classify vessels into appropriate categories and classes.

[Without limiting the generality of the department's power to adopt other rules pursuant to this section, it] The department shall adopt rules pursuant to chapter 91 with respect to the following:

- (1) The registration and numbering of vessels;
- (2) The operation, use, and equipment of vessels on or in the waters of the State;
- (3) The conduct of persons involved in boating accidents and in the reporting of the accidents and other casualties and losses to the department; and
- (4) The designation of areas of the waters of the State [on] and time periods during which thrill crafts may be operated, and waters on or above which, and time periods during which persons may engage in parasailing.

[Rules made pursuant to the powers granted under this section shall be adopted pursuant to chapter 91 and shall, upon being duly adopted, have the force and effect of law.]”

SECTION 2. Section 267-16, Hawaii Revised Statutes, is amended to read as follows:

**“§267-16 Operation of thrill craft; parasailing.** (a) No person shall operate a thrill craft unless the person is fifteen years of age or older.

(b) The department shall adopt rules to designate areas where, and time periods during which, thrill craft may be operated and parasailing may be engaged in.

(c) From October 1, 1988, no person shall operate a thrill craft in the waters of the State, except:

- (1) In areas and during time periods designated by the department; and
- (2) Through areas designated by the department to serve as avenues for the ingress and egress of thrill crafts between the areas designated under paragraph (1) and the shore.

(d) From October 1, 1988, no person shall:

- (1) Engage in parasailing; or

(2) Operate a motorized vessel towing a person engaged in parasailing; on or above the waters of the State, except on or above areas and during time periods designated by the department.

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(e) From [June 13, 1988] January 1, 1989 until [September 30, 1988,] January 1, 1990, the department shall not issue an original certificate of number under title 19, subtitle 3, chapter 72, Hawaii Administrative Rules, for any thrill craft for commercial use or vessel used for parasailing activity.

The prohibition of this subsection shall not apply to (1) the issuance of a certificate of number for a new thrill craft or vessel used as a direct replacement for thrill craft engaged in commercial use or a vessel engaged in parasailing, or (2) the renewal, by the owner, of a certificate of number issued for a thrill craft used for commercial purposes or a vessel engaged in parasailing activities prior to [June 13, 1988.] the effective date of this Act.

This subsection shall be repealed and shall have no force or effect after [September 30, 1988.] January 1, 1990.

(f) All commercial use and operator permits issued by the department for commercial thrill craft and parasailing activities shall be nontransferable and shall expire upon the dissolution or sale or transfer of any or all interests in the corporation or business entity to which the permits were originally issued."

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

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

(Approved June 16, 1989.)

## ACT 343

S.B. NO. 1975

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

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

SECTION 1. Section 88-21, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Narcotics enforcement investigators": those officers or employees with police powers as defined by chapter 329 who actively enforce narcotics or related statutory provisions on a full-time basis."

SECTION 2. Section 88-45, Hawaii Revised Statutes, is amended to read as follows:

**“§88-45 Employee contributions.** After June 30, 1988, each class A and class B member shall contribute seven and eight-tenths per cent of the member's compensation to the annuity savings fund; provided that after June 30, [1988,] 1989 all firefighters, police officers, corrections officers, [and] investigators of the departments of the prosecuting attorney and of the attorney general, and narcotics enforcement investigators shall contribute twelve and two-tenths per cent of their compensation to the annuity savings fund."

SECTION 3. Section 88-47, Hawaii Revised Statutes, is amended to read as follows:

**“§88-47 Membership.** There shall be three classes of members in the system to be known as class A members, class B members, and class C members, defined as follows:

- (1) Class A members shall consist of members covered by section 88-74(3), those members whose salaries are set forth in sections 26-52[,] and 26-53, investigators of the department of the attorney general, narcotics enforcement investigators, and those members in service prior to July 1, 1984, including those who are on approved leave of absence, who are covered by Title II of the Social Security Act on account of service creditable under this part. These members shall consist of:
  - (A) All employees who enter the membership of the system after June 30, 1957, except employees in positions to which coverage under Title II of the Social Security Act is not extended;
  - (B) All employees who were members of the system on July 1, 1957, who elected to be covered by the Social Security Act; and
  - (C) All former class A retirants who return to employment after June 30, 1984, requiring the retirant's active membership.
- (2) Class B members shall consist of all members in the system who are not class A or class C members.
- (3) Except for members covered by section 88-74(3), [and] those members whose salaries are set forth in sections 26-52[,] and 26-53, investigators of the department of the attorney general, and narcotics enforcement investigators, class C members shall consist of all employees in positions covered by Title II of the Social Security Act who:
  - (A) First enter service after June 30, 1984;
  - (B) Reenter service after June 30, 1984, without vested benefit status as provided in section 88-96(b);
  - (C) Make the election to become a class C member as provided in part VII; or
  - (D) Are former class C retirants who return to service requiring the retirant's active membership.
- (4) None of the provisions of this part shall apply to class C members except as specifically provided in part VII."

SECTION 4. Section 88-74, Hawaii Revised Statutes, is amended to read as follows:

**"§88-74 Allowance on service retirement.** Upon retirement from service, a member shall receive a retirement allowance as follows:

- (1) If the member has attained the age of fifty-five, a retirement allowance of two per cent of the member's average final compensation multiplied by the total number of years of the member's credited service as a class A and B member, plus a retirement allowance of one and one-fourth per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class C member; provided that after June 30, 1968, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a firefighter [or a], police officer, or an investigator of the department of the prosecuting attorney, and provided that after June 30, 1977, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a corrections officer, and provided that after June 16, 1981, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited as an investigator of the department of the attorney general, and provided that after June 30, 1989, if the member has at least ten years of credited service of which the last five or more years prior to retirement is

credited as a narcotics enforcement investigator, then for each year of service as a firefighter, a police officer, [or] a corrections officer, an investigator of the department of the prosecuting attorney, an investigator of the department of the attorney general, or a narcotics enforcement investigator, the retirement allowance shall be two and one-half per cent of the member's average final compensation; provided further that the maximum retirement allowance for such a member shall not exceed eighty per cent of the member's average final compensation. If the member has not attained the age of fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; provided that no such reduction shall be made if the member has at least twenty-five years of credited service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, or sewer worker, of which the last five or more years prior to retirement is credited service in such capacities.

- (2) If the member has made voluntary additional contributions for the purchase of an additional annuity and has not applied for the refund thereof as permitted by section 88-72, the member may accept such refund at the time of retirement or, in lieu thereof, receive in addition to the retirement allowance provided in paragraph (1), an annuity which is the actuarial equivalent of such additional contributions with regular interest.
- (3) If the member has credited service as a judge, an elective officer, or the chief clerk or the sergeant at arms of either house of the legislature, the member's retirement allowance shall be computed on the following basis:
  - (A) Irrespective of age, for each year of credited service as a judge, an elective officer, or the chief clerk or the sergeant at arms of either house of the legislature, three and one-half per cent of the member's average final compensation in addition to an annuity which is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and
  - (B) For all other credited service as provided in paragraphs (1) and (2). No allowance shall exceed seventy-five per cent of such member's average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in subparagraph (A), and the portion of the accumulated contributions specified in that subparagraph as may be in excess of the requirements of the reduced annuity shall be returned to the member.

The allowance for judges under this section, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of such member's average final compensation."

SECTION 5. All narcotics enforcement investigators and investigators of the department of the attorney general shall be class A members of the employees' retirement system. They shall file a statement with and arrange for additional deductions or lump sum payments to the board of trustees of the employees' retirement system pursuant to sections 88-45 and 88-59.

SECTION 6. Those narcotics enforcement investigators and investigators of the department of the attorney general who were class A members and narcotics enforcement investigators prior to July 1, 1984, and elected to become class C members of the employees' retirement system, shall file a statement by July 1, 1990 with and arrange for additional deductions or lump sum payments to the board of trustees of the employees' retirement system pursuant to sections 88-45 and 88-59, Hawaii Revised Statutes.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 1989.

(Approved June 16, 1989.)

## ACT 344

S.B. NO. 2022

A Bill for an Act Relating to University of Hawaii Child Care Centers.

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

SECTION 1. The legislature finds that making affordable quality child care available to college students can increase accessibility to postsecondary education for the growing number of parents of young children who seek higher education, as well as to benefit the faculty and staff. In 1986, the legislature created a child care center revolving fund, thereby providing statutory authority for the University of Hawaii to operate child care centers.

However, the requirement that these centers be self-supporting precludes the legislature and others from providing any needed financial assistance. This assistance would, in all probability, reduce the costs of child care and enhance accessibility to postsecondary education for a significant segment of the population.

The purpose of this Act is to remove the requirement of self-sufficiency for University child care programs and to enable the legislature and others to provide supplementary funding.

SECTION 2. Section 304-8.91, Hawaii Revised Statutes, is amended to read as follows:

**"[§304-8.91] Child care [center] programs revolving fund.** There is established a child care programs [center] revolving fund for the operation[,] of child care programs and the construction[,] and renovation of child care centers established by the University of Hawaii. Fees charged for child care at child care [centers,] programs, proceeds from donations to the university for child care [centers,] programs, and proceeds from loans or other instruments of indebtedness for the construction or renovation of child care centers, shall be deposited into the revolving fund. Expenditures from the revolving fund shall be made for the operation of child care [centers] programs and payment of principal and interest on obligations incurred for the construction or renovation of child care centers."

SECTION 3. Act 233, Session Laws of Hawaii 1986, is amended by amending sections 2 and 3 to read as follows:

"SECTION 2. The University of Hawaii may establish [a] child care [pilot project] programs through which one or more child care [centers] programs for

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each campus of the university system may be established. The University of Hawaii may operate each child care [center] program with appointed personnel, who are not subject to chapters 76 and 77, or by contract with private persons or agencies.

SECTION 3. The provision of child care services [shall] may be [self-supporting,] supported with proceeds from the revolving fund, public funds, and private grant and gifts [being sufficient] to pay for the expenses of operation, including payment of principal and interest on any obligations incurred."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 16, 1989.)

## ACT 345

H.B. NO. 20

A Bill for an Act Relating to Nets.

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

SECTION 1. The legislature finds that fishermen are increasingly using drift gill nets to capture all kinds of marine life in international waters. Because these nets oftentimes measure miles in length and capture not only the desired species but virtually everything in their path, the use of drift gill nets is having a disastrous effect on our oceans. To compound matters, when these nets are lost, they can float on the currents for years, causing a tremendous hazard to navigation as well as to marine life. Each year, hundreds of miles of lost drift gill nets uselessly trap and kill countless marine life that become entangled in them.

Although local fishermen do not currently use drift gill nets, the legislature finds that its potential use could have a disastrous effect on the marine life in Hawaiian waters. Accordingly, the purpose of this Act is to prevent any use of drift gill nets by prohibiting their use.

SECTION 2. Chapter 188, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§188- Fishing with drift gill net; prohibited.** It is unlawful for any person to possess or use any drift gill net in the waters of the State.”

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

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

(Approved June 16, 1989.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 346

H.B. NO. 43

A Bill for an Act Relating to Alternative Dispute Resolution.

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

SECTION 1. One of the fundamental obligations of a just society is the equitable resolution of complex disputes that affect the general public interest. Above and beyond their impact on the determinations of government and the day-to-day work of government agencies, public conflicts have diverse characteristics. Some affect large numbers of people and the allocation of public resources such as land, water, and energy. Still others involve decisions about the use of public facilities and the resources, both human and financial, of state and local government.

In Hawaii, many public disputes remain unresolved, are resolved only after much divisiveness, or result in expensive and protracted litigation. Were appropriate settlement processes more readily available, however, many contested matters affecting the public interest could be resolved more efficiently and with less divisiveness. In the past decade, both in Hawaii and across the United States, mediation, neutral fact-finding, and negotiated consensus-building have been shown to be valuable settlement processes that can facilitate the equitable resolution of such disputes.

The legislature thus finds a persistent and growing need for less costly, faster, more inventive, and more satisfying methods of dispute resolution that do not sacrifice fairness and justice. The legislature further desires to broaden the use of these methods and to make them more readily available.

The purpose of this Act is to provide government agencies with additional technical resources in the area of alternative dispute resolution and to assist the people of the State in voluntarily resolving their disputes with greater efficiency and satisfaction.

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

## **“CHAPTER CENTER FOR ALTERNATIVE DISPUTE RESOLUTION”**

**§ -1 Definitions.** As used in this chapter, unless the context otherwise requires:

“Alternative dispute resolution” or “ADR” means methods, procedures, or techniques that are used to resolve differences voluntarily and that do not require a traditional and formal adjudicatory trial or contested hearing. These methods include, but are not limited to, mediation, contractual arbitration, fact-finding, consensus-building, and neutral-expert evaluation.

“Board” means the board of advisors of the center for alternative dispute resolution.

“Center” means the center for alternative dispute resolution.

“Government agencies” means the offices, departments, branches, and other subdivisions of state and county governments.

**§ -2 Establishment of the center for alternative dispute resolution.** (a) There is established within the judiciary the center for alternative dispute resolution. The center shall facilitate the effective, timely, and voluntary resolution of disputes. Through these resolutions, it shall help reduce public and private costs of litigation and increase satisfaction with the justice system. The center shall accomplish its purposes by:

- (1) Providing, where feasible and agreed to by the parties, the consultative resources and technical assistance needed to achieve voluntary resolutions for cases that affect the public interest or the work of state and county agencies. These cases shall include but not be limited to:
    - (A) Public disputes involving actual or threatened court actions over the allocation or management of public resources or the siting of public facilities;
    - (B) Complex litigation cases in which a court or a regulatory or administrative agency has determined that the dispute involves multiple parties or formidable technical, procedural, or factual issues, or both;
    - (C) Policy roundtables in which the center, at the request of an executive, legislative, or judicial decision-maker, convenes and chairs advisory discussions on matters pertaining to standards or rules; and
    - (D) Other cases directly referred by judges, legislators, agency heads, or appointed government officials.
  - (2) Promoting in a systematic manner the appropriate use of ADR; and
  - (3) Disseminating to government agencies and to the community at large up-to-date information on the methods and applications of ADR.
- (b) The center shall be organized, guided, and administratively maintained by the chief justice or the chief justice's designee. The chief justice shall appoint a director of the center. The director may hire staff necessary to accomplish the purposes of this chapter, including but not limited to an assistant director and a program specialist. The director, assistant director, and program specialist shall have substantial experience, training, and education in the methodologies of ADR. Employees of the center shall be exempt from chapters 76 and 77, shall not be considered civil service employees, but shall be entitled to any employee benefit plan normally inuring to civil service employees.

**§ -3 Board of advisors.** (a) A board of advisors of the center for alternative dispute resolution, consisting of nine members, shall be appointed by the chief justice. The board shall:

- (1) Foster greater understanding of the center and its purpose by government agencies and by the general public;
- (2) Assist the center in disseminating information about the uses, applications, and advantages of ADR; and
- (3) Strengthen the acceptance and utilization of ADR by government agencies and the public.

(b) The board of advisors shall include two representatives from the executive branch, two from the legal community, two from the Hawaii state association of counties, and three from the public at large. The board shall meet from time to time to review the center's work and to advise the chief justice and staff of the center regarding the use of ADR methods for matters involving or affecting government agencies and the general public. The board of advisors may add ex officio members as they deem beneficial or desirable to help achieve the center's purposes. All members of the board shall serve without pay.

**§ -4 Annual report.** The center shall submit a report on its activities to the legislature at least twenty days prior to the convening of each regular legislative session."

SECTION 3. This Act shall not be construed to affect the extent of the State's sovereign immunity.

SECTION 4. This Act shall take effect on July 1, 1989; provided that this Act shall be repealed on June 30, 1991.

(Approved June 16, 1989.)

## ACT 347

H.B. NO. 692

A Bill for an Act Relating to Agriculture.

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

SECTION 1. Section 153-3, Hawaii Revised Statutes, is amended to read as follows:

**“§153-3 Hawaii agricultural products revolving fund.** There is hereby established the Hawaii agricultural products revolving fund into which shall be deposited all moneys received as repayment of allowances and proceeds payments as provided for in this chapter. The revolving fund may be expended by the board of agriculture for the purposes of this chapter. The department, by its board of agriculture, may transfer moneys from the agricultural products revolving fund to the agriculture loan revolving fund or the aquaculture loan revolving fund, from which moneys shall be disbursed by the department pursuant to chapters 155 and 219, respectively, and may transfer moneys from those revolving funds to the agricultural products revolving fund for disbursement pursuant to this chapter; provided that:

- (1) The amount of moneys transferred shall not exceed \$1,000,000 for each revolving fund within the calendar year;
- (2) Twenty days prior to the convening of each regular session of the legislature, the department shall report to the legislature all transfers that were made among the agricultural products revolving fund, the agriculture loan revolving fund, and the aquaculture loan revolving fund during the preceding calendar year and the balance of each revolving fund as of December 31 of each year; and
- (3) This authority to transfer moneys shall expire three years after the approval date of this Act.”

SECTION 2. Section 155-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created a special fund to be known as the agriculture loan revolving fund, from which moneys shall be loaned by the department of agriculture under this chapter. The department, by its board of agriculture, may transfer [funds] moneys from the agriculture loan revolving fund to the agricultural products revolving fund or the aquaculture loan revolving fund, from which moneys shall be [loaned] disbursed by the department pursuant to [chapter] chapters 153 and 219[.], respectively, and may transfer moneys from those revolving funds to the agriculture loan revolving fund for disbursement pursuant to this chapter; provided that:

- (1) The amount of moneys transferred shall not exceed \$1,000,000 for each revolving fund within the calendar year [provided that twenty];
- (2) Twenty days prior to the convening of each regular session of the legislature, the department shall report to the legislature all transfers that were made [from] among the agriculture loan revolving fund [to], the agricultural products revolving fund, and the aquaculture loan revolving fund during the preceding calendar year and the balance of each [loan] revolving fund as of December 31 of each year; and

## **ACT 348**

- (3) This authority to transfer moneys shall expire three years after the approval date of this Act."

SECTION 3. Section 219-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established a special fund to be known as the aquaculture loan revolving fund from which moneys shall be loaned by the department of agriculture under this chapter. The department, by its board of agriculture, may transfer [funds] moneys from the aquaculture loan revolving fund to the agricultural products revolving fund or the agriculture loan revolving fund, from which moneys shall be [loaned] disbursed by the department pursuant to [chapter] chapters 153 and 155[;], respectively, and may transfer moneys from those revolving funds to the aquaculture loan revolving fund for disbursement pursuant to this chapter; provided that:

- (1) The amount of moneys transferred shall not exceed \$1,000,000 for each revolving fund within the calendar year[;], provided that twenty]
- (2) Twenty days prior to the convening of each regular session of the legislature, the department shall report to the legislature all transfers that were made [from] among the aquaculture loan revolving fund [to], the agricultural products revolving fund, and the agriculture loan revolving fund during the preceding calendar year and the balance of [the aquaculture loan] each revolving fund as of December 31 of each year[.]; and
- (3) This authority to transfer moneys shall expire three years after the approval date of this Act."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 16, 1989.)

## **ACT 348**

H.B. NO. 796

A Bill for an Act Relating to Motor Vehicle Insurance.

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

SECTION 1. Section 431:10C-117, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- (a) (1) Any person subject to this article in the capacity of the operator, owner, or registrant of a motor vehicle in this State, or registered in this State, who violates any applicable provision of this article, shall be subject to citation for the violation by any county police department in a form and manner approved by the violations bureau of the district court of the first circuit.
- (2) Notwithstanding any provision of the Hawaii Penal Code, each violation shall be deemed a separate offense and shall be subject to a fine of not less than \$100 nor more than [\$1,000] \$5,000 which shall not be suspended; provided that if the person is convicted of not having had a no-fault policy in effect at the time the citation was issued, the fine shall be [\$100] \$1,000 for the first offense and a minimum of

[~~\$400~~] \$3,000 for each subsequent offense. In addition to the fine in this paragraph, if any person operates a motor vehicle without a valid no-fault policy in effect insuring the driver or registered owner, or both, either the driver's license of the driver and of the registered owner shall be suspended for six months or they shall be required to maintain proof of financial responsibility pursuant to section 287-21(2), (3), or (4) and keep a nonrefundable no-fault insurance policy in force for six months; provided that if the violation is a subsequent offense of driving without a valid no-fault policy, the driver's licenses of the driver and the registered owner shall be suspended for one year; and provided further that any person cited under this section shall have an opportunity to present a good faith defense, including but not limited to lack of knowledge or proof of insurance. The general penalty provision of this section shall not apply to:

- (A) Any operator of a motor vehicle owned by another person if the operator's own insurance covers such driving; [nor] or
  - (B) Any operator of a motor vehicle owned by that person's employer during the normal scope of that person's employment.
- (3) In the case of multiple violations, the court shall in addition to any other penalty impose the following penalties:
- (A) Imprisonment of not more than thirty days;
  - (B) Suspension or revocation of the motor vehicle registration plates of the vehicle involved;
  - (C) Impoundment, or impoundment and sale, of the motor vehicle for the costs of storage and other charges incident to seizure of the vehicle, or any other cost involved pursuant to section 431: 10C-301; or
  - (D) Any combination of such penalties."

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

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

(Approved June 16, 1989.)

**ACT 349**

H.B. NO. 902

A Bill for an Act Relating to Tourism.

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

SECTION 1. In response to the management and financial audit of the state tourism office by the legislative auditor, the legislature finds that the development of a two-year rather than a one-year marketing plan provides greater flexibility for both the state tourism office and the tourism industry. A two-year marketing plan affords the industry the flexibility to react and to plan activities in order to maximize the investments of both the State and the industry in tourism promotion by minimizing duplication of resources and effort.

SECTION 2. Chapter 203, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§203- Biennial tourism marketing plan; procedures for submission and evaluation of proposals; measures of effectiveness; report.** (a) The depart-

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ment of business and economic development shall develop a biennial tourism marketing plan to be submitted with the executive budget request that includes the following:

- (1) Identification and evaluation of current and future tourism needs for the different regions of the State;
- (2) Goals and objectives in accordance with identified needs;
- (3) Statewide promotional efforts and programs including those which may exceed the duration of the biennium;
- (4) Target markets; and
- (5) Measures of effectiveness for its promotional programs.

(b) The department shall establish procedures for the selection and evaluation of statewide tourism promotion projects. The procedures shall include submission of proposals to the department prior to disbursement of any tourism promotion funds, and a final report at the completion of the project to be submitted by the funded entity to the department. All statewide tourism promotion contracts, including the Hawaii visitors bureau, shall be subject to this subsection.

(c) In accordance with subsection (a), the department shall develop measures of effectiveness to assess the overall benefits and effectiveness of the marketing plan and include documentation of the directly attributable benefits of the plan to the following:

- (1) Hawaii's tourism industry;
- (2) Employment in Hawaii;
- (3) State taxes; and
- (4) The State's lesser known and underutilized destinations.

(d) The department shall submit annual reports regarding the status and execution of the marketing plan and the effectiveness of the promotions to the legislature twenty days prior to the convening of the regular session in each year."

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

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

(Approved June 16, 1989.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 350**

H.B. NO. 911

A Bill for an Act Making an Appropriation for the Treatment of Incarcerated Sex Offenders.

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

**SECTION 1.** Section 353-6, Hawaii Revised Statutes, is amended to read as follows:

**"§353-6 Establishment of community correctional centers.** There shall be a community correctional center for each county under the direction and administration of the director. Any community correctional center may be integrated and operated concurrently with any other correctional facility or facilities. Each center shall:

- (1) Provide residential detention for persons awaiting judicial disposition who have not been conditionally released;
- (2) Provide residential custody and correctional care for committed misdemeanants and for felons committed to indeterminate sentences;
- (3) Provide for committed persons, correctional services, including but not limited to, social and psychiatric-psychological evaluation, employment, counseling, social inventory, correctional programming, [and] medical and dental services[;], and sex abuse education and treatment programs for persons convicted of sexual offenses or who are otherwise in need of these programs;
- (4) Provide recreational, educational, and occupational training, and social adjustment programs for committed persons;
- (5) Provide referrals to community educational, vocational training, employment, and work study programs; and aftercare, supervisory, and counseling services for persons released from centers.”

**SECTION 2.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$323,000, or 0.014 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

**SECTION 3.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$323,000, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$311,000, or so much thereof as may be necessary for fiscal year 1990-1991, for treatment of incarcerated sex offenders. The funds shall cover program expenses in the following facilities:

- (1) Hawaii community correctional center, \$12,500 in fiscal year 1989-1990, and \$12,500 in fiscal year 1990-1991;
- (2) Kulani correctional facility, \$45,000 in fiscal year 1989-1990, and \$36,000 in fiscal year 1990-1991;
- (3) Maui community correctional center, \$12,500 in fiscal year 1989-1990, and \$12,500 in fiscal year 1990-1991;
- (4) Oahu community correctional center, \$150,000 in fiscal year 1989-1990, and \$147,000 in fiscal year 1990-1991;
- (5) Kauai community correctional center, \$12,500 in fiscal year 1989-1990, and \$12,500 in fiscal year 1990-1991;
- (6) Halawa correctional facility, \$45,000 in fiscal year 1989-1990, and \$45,000 in fiscal year 1990-1991;
- (7) For a statewide clinical director, \$36,000 in fiscal year 1989-1990, and \$36,000 in fiscal year 1990-1991; and
- (8) For a statewide assessment, \$9,500 in fiscal year 1989-1990, and \$9,500 in fiscal year 1990-1991.

**SECTION 4.** The sums appropriated shall be expended by the department of corrections for the purpose of this Act.

**SECTION 5.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 6.** This Act shall take effect on July 1, 1989.

(Approved June 16, 1989.)

## ACT 351

### ACT 351

H.B. NO. 977

A Bill for an Act Relating to the General Excise Tax.

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

SECTION 1. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§237- Additional amounts not taxable.** In addition to the amounts not taxable under section 237-24, this chapter shall not apply to amounts received by the operator of a hotel from the owner of the hotel in amounts equal to and which are disbursed by the operator for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick pay, and health benefits. As used in this section:

“Employee” means employees directly engaged in the day to day operation of the hotel and employed by the operator.

“Hotel” means an operation licensed under section 445-92.

“Owner” means the fee owner or lessee under a recorded lease of a hotel.

“Operator” means any person who, pursuant to a written contract with the owner of a hotel, operates or manages the hotel for the owner.”

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

SECTION 3. This Act shall take effect on July 1, 1989.

(Approved June 16, 1989.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 352

H.B. NO. 1195

A Bill for an Act Relating to the Discoveries and Inventions Revolving Fund.

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

SECTION 1. Section 304-8.92, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“[[]](a)[[]] There is created a discoveries and inventions revolving fund. [The moneys appropriated for fiscal year 1988-89 to the university] Appropriations by the state legislature subject to the approval of the governor, proceeds from the commercial exploitation of inventions and intellectual property developed at the university, gifts, donations, fees collected, and grants from public agencies and private persons may be deposited into the fund for the purposes of supporting innovation and research commercialization and the patenting, copyrighting, licensing, and marketing of discoveries, inventions, and technologies developed at the university[, and all proceeds from commercial exploitation of inventions and intellectual property developed at the university shall be deposited into the revolving fund]. The fund shall be used to develop technologies which have potential commercial value<sub>1</sub>, [and to] support the administration of technology transfer activities and facilitate economic development through education and research undertaken at the university.”

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

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

(Approved June 16, 1989.)

**ACT 353**

H.B. NO. 1217

A Bill for an Act Relating to Aquaculture.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Congress has appropriated \$6,375,000 to the oceanic institute for the planning, design, and construction of a facility for a center for applied aquaculture. Congress also required that the federal contribution be matched by \$5,000,000 in state funds. As a result, the legislature appropriated \$1,000,000 during the 1988 regular session to plan, design, and construct a center for applied aquaculture in Hawaii.

The purpose of this Act is to appropriate the final matching funds for the center for applied aquaculture.

SECTION 2. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$2,000,000, or 0.085 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,000,000, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$2,000,000, or so much thereof as may be necessary for fiscal year 1990-1991, for the design and construction of the center for applied aquaculture; provided that the funds also may be used for facilities elsewhere in the State.

SECTION 4. The sums appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 5. This Act shall take effect on July 1, 1989.

(Approved June 16, 1989.)

**ACT 354**

H.B. NO. 1382

A Bill for an Act Relating to Peer Review.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to expressly declare that Hawaii elects to opt out of Part A of the Federal Health Care Quality Improvement Act of 1986, and to enact a parallel state health care quality provision. There is also a

## **ACT 354**

need in Hawaii to provide protection for physicians and other individuals who attend the proceedings of hospital or clinic quality assurance committees and for staff and witnesses who assist or participate in peer review committees or hospital or clinic quality assurance committees. Accordingly, section 663-1.7, Hawaii Revised Statutes, is amended to expand quality review immunity.

**SECTION 2.** The State of Hawaii by this enactment formally elects to opt out of Part A of the federal Health Care Quality Improvement Act of 1986, pursuant to section 411(c)(2)(B) of that Act (42 U.S.C. §11111(c)(2)(B)).

**SECTION 3.** The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### **“CHAPTER HEALTH CARE PEER REVIEW”**

#### **PART I. GENERAL PROVISIONS**

**§ -1 Short title.** This chapter may be cited as the “Hawaii Health Care Quality Improvement Act of 1989.”

**§ -2 Purpose.** The purpose of this chapter is to provide incentives and protection for physicians engaging in effective professional peer review.

**§ -3 Findings.** The legislature finds the following:

- (1) There is an overriding need to provide incentive and protection for physicians engaging in effective professional peer review;
- (2) The occurrence of medical malpractice actions has become a problem in Hawaii which can be addressed in part by promoting more effective peer review; and
- (3) The threat of private money damage liability under state laws unreasonably discourages physicians from participating in effective professional peer review.

**§ -4 Definitions.** For purposes of this chapter the following words have the following meanings:

“Adversely affecting” includes reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges or membership in a health care entity.

“Clinical privileges” includes privileges, membership on the medical staff, and the other circumstances pertaining to the furnishing of medical care under which a physician or other licensed health care practitioner is permitted to furnish such care by a health care entity.

“Director” means the director of the department of commerce and consumer affairs.

“Health care entity” means:

- (1) A hospital that is licensed by the State to provide health care services;
- (2) An entity, including a health maintenance organization or group medical practice, that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care as may be determined under rules or guidelines which may be adopted under section -13 of this chapter;

- (3) A professional society or committee thereof of physicians or other licensed health care practitioners that follows a formal peer review process for the purpose of furthering quality health care as may be determined under rules or guidelines which may be adopted under section -13 of this chapter; provided that "health care entity" shall not include a professional society or committee thereof if, within the previous five years, the society has been found by the Federal Trade Commission or any court to have engaged in any anti-competitive practice which had the effect of restricting the practice of licensed health care practitioners.

"Hospital" means an entity described in paragraphs (1) and (7) of section 1861(e) of the Social Security Act.

"Licensed health care practitioner" and "practitioner" mean an individual, other than a physician, who is licensed or otherwise authorized by the State to provide health care services.

"Physician" means an individual licensed under chapter 453 or 460, or both, to practice medicine or surgery or osteopathy; an individual licensed under chapter 448 to practice dentistry or dental surgery; or any individual who, without authority, holds oneself out to be so authorized.

"Professional review action" means an action or recommendation of a professional review body which is taken or made in the conduct of professional review activity, which is based on the competence or professional conduct of an individual physician which conduct affects or could affect adversely the health or welfare of a patient or patients, and adversely affects the clinical privileges, or membership in a professional society, of the physician. Such term includes a formal decision of a professional review body not to take an action or make a recommendation described in the previous sentence and also includes professional review activities relating to a professional review action. For purposes of this chapter an action shall not be considered to be based on the competence or professional conduct of a physician if the action is primarily based on any of the following:

- (1) The physician's association, or lack of association, with a professional society or association;
- (2) The physician's fees or the physician's advertising or engaging in other competitive acts intended to solicit or retain business;
- (3) The physician's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis;
- (4) A physician's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional; or
- (5) Any other matter that does not relate to the competence or professional conduct of a physician.

"Professional review activity" means an activity of a health care entity with respect to an individual physician to do any of the following:

- (1) To determine whether the physician may have clinical privileges with respect to, or membership in, the entity;
- (2) To determine the scope or conditions of such privileges or membership; or
- (3) To change or modify such privileges or membership.

"Professional review body" means a health care entity and the governing body or any committee of a health care entity which conducts professional review activity, and includes any committee of the medical staff of such an entity when assisting the governing body in a professional review activity.

## PART II. PROMOTION OF PROFESSIONAL REVIEW ACTIVITIES

**§ -10 Limitation of damages for professional review actions.** (a) If a professional review action of a professional review body meets all the standards specified in section -11(a) except as provided in section -11(b):

- (1) The professional review body;
- (2) Any person acting as a member or staff to the body;
- (3) Any person under a contract or other formal agreement with the body; and
- (4) Any person who participates with or assists the body with respect to the action;

shall not be liable in damages under any law of the state with respect to the action except laws relating to the civil rights of any person or persons, including chapter 378, part I. Nothing in this subsection shall prevent the State from bringing an action, including an anti-trust action under chapter 480, where such an action is otherwise authorized.

(b) Notwithstanding any other provision of law to the contrary, no person, whether as a witness or otherwise, providing information to a professional review body regarding the competence or professional conduct of a physician shall be held, by reason of having provided such information, to be liable in damages under any law of the state unless such information is false and the person providing it knew that such information was false.

**§ -11 Standards for professional review actions.** (a) For purposes of the protection set forth in section -10, a professional review action must be taken:

- (1) In the reasonable belief that the action was in the furtherance of quality health care;
- (2) After a reasonable effort to obtain the facts of the matter;
- (3) After adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances; and
- (4) In the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3).

A professional review action shall be presumed to have met the standards necessary for the protection set out in section -10 unless the presumption is rebutted by a preponderance of the evidence.

(b) A health care entity shall be deemed to have met the adequate notice and hearing requirement of subsection (a)(3) with respect to a physician if the following conditions are met or are waived voluntarily by the physician:

- (1) The physician has been given notice stating:
  - (A) That a professional review action has been proposed to be taken against the physician and the reasons for the proposed action;
  - (B) That the physician has the right to request timely hearings on the proposed action, and any time limit of not less than thirty days within which to request such a hearing; and
  - (C) A summary of the hearing procedures as set forth in paragraph (3) of this subsection.
- (2) If a hearing is requested on a timely basis under subsection (b)(1)(B), the physician involved must be given notice stating:
  - (A) The place, time, and date of the hearing, which date shall not be less than thirty days after the date of the notice; and

- (B) A list of the witnesses, if any, expected to testify at the hearing on behalf of the professional review body.
- (3) If a hearing is requested on a timely basis under subsection (b)(1)(B), the health care entity shall determine that the peer review hearing shall be held according to one of the following options, and the hearing shall be so held, subject to the provisions of subsection (b)(4), before:
  - (A) An arbitrator mutually acceptable to the physician and the health care entity; or
  - (B) A hearing officer who is appointed by the entity and who is not in direct economic competition with the physician involved; or
  - (C) A panel of individuals who are appointed by the entity and are not in direct economic competition with the physician involved.
- (4) The right to the peer review hearing may be forfeited if the physician has failed, without good cause to appear.
- (5) In any peer review hearing held under this chapter, the physician involved has the right to:
  - (A) Be represented by an attorney or other person of the physician's choice;
  - (B) Have a record made of the proceedings, copies of which may be obtained by the physician upon payment of any reasonable charges associated with their preparation;
  - (C) Call, examine, and cross-examine witnesses;
  - (D) Present evidence determined to be relevant by the hearing officer, arbitrator, or panel, regardless of its admissibility in a court of law; and
  - (E) Submit a written statement at the close of the hearing.
- (6) Upon completion of any peer review hearing held under this chapter, the physician involved has the right to receive:
  - (A) The written recommendation of the arbitrator, officer, or panel, including a statement of the basis for the recommendations; and
  - (B) A written decision of the health care entity, including a statement of the basis for the decision.

A professional review body's failure to meet the conditions described in this subsection shall not, in itself, constitute failure to meet the standards of subsection (a)(3).

(c) For purposes of section -10, nothing in this section shall be construed as:

- (1) Requiring the procedures referred to in subsection (a)(3):
  - (A) Where there is no adverse professional review action taken;
  - (B) In the case of a suspension or restriction of clinical privileges, for a period of not longer than fourteen days, during which an investigation is being conducted to determine the need for a professional review action; or
- (2) Precluding an immediate suspension or restriction of clinical privileges, subject to subsequent notice and hearing or other adequate procedures, where the failure to take such an action may result in an imminent danger to the health of any individual.

**§ -12 Attorney's fees.** (a) In any suit brought against a defendant, to the extent that a defendant has met the standards set forth under section -11(a) and the defendant substantially prevails, the court, at the conclusion of the action, shall award to a substantially prevailing party defending against any such claim the cost of the suit attributable to such claim, including a reasonable attorney's fee, if the

claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith.

(b) For the purposes of this section, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains an award for damages, or permanent injunctive or declaratory relief.

**§ -13 Guidelines of the director.** The director, in consultation with the director of the department of health, may adopt pursuant to chapter 91, such rules and voluntary guidelines as may assist the professional review bodies in meeting the standards described in section -11(a).

**§ -14 Construction.** (a) Except as specifically provided in this part, nothing in this part shall be construed as changing the liabilities or immunities under law.

(b) Nothing in this part shall be construed as requiring health care entities to provide clinical privileges to any or all classes or types of physicians or other licensed health care practitioners.

(c) Nothing in this part shall be construed as affecting or modifying any provision of state law with respect to activities of professional review bodies regarding nurses, other licensed health care practitioners, or other health professionals who are not physicians.

(d) Nothing in this chapter shall be construed as affecting in any manner the rights and remedies afforded patients under any provision of state law to seek redress for any harm or injury suffered as a result of negligent treatment or care by any physician, health care practitioner, or health care entity, or as limiting any defenses or immunities available to any physician, health care practitioner, or health care entity."

SECTION 4. Section 663-1.7, Hawaii Revised Statutes, is amended to read as follows:

**"§663-1.7 Professional society; peer review committee; hospital or clinic quality assurance committee; no liability; exceptions.** (a) As used in this section, "professional society" or "society" means any association or other organization of persons engaged in the same profession or occupation, or a specialty within a profession or occupation, a primary purpose of which is to maintain the professional standards of the persons engaged in its profession or occupation or specialty practice; "peer review committee" means a committee created by a professional society, or by the medical or administrative staff of a licensed hospital or clinic, whose function is to maintain the professional standards established by the bylaws of the society, hospital, or clinic of the persons engaged in its profession or occupation, or area of specialty practice, or in its hospital or clinic; and "hospital or clinic quality assurance committee" means an interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital or clinic, whose function is to monitor and evaluate patient care, and to identify, study, and correct deficiencies and seek improvements in the patient care delivery process.

(b) There shall be no civil liability for any member of a peer review committee or hospital or clinic quality assurance committee, or for any person who files a complaint with or appears as a witness before such committees, for any acts done in the furtherance of the purpose for which the peer review committee or hospital or clinic quality assurance committee was established; provided that:

(1) The member, witness, or complainant acted without malice; and

(2) In the case of a member, the member was authorized to perform in the manner in which the member did.

(c) There shall be no civil liability for any person who participates with or assists a peer review committee or hospital or clinic quality assurance committee, or for any person providing information to a peer review committee or hospital or clinic quality assurance committee for any acts done in furtherance of the purpose for which the peer review committee or hospital or clinic quality assurance committee was established, unless such information is false and the person providing it knew such information was false.

[(c)] (d) This section shall not be construed to confer immunity from liability upon any professional society, hospital, or clinic, nor shall it affect the immunity of any shareholder or officer of a professional corporation; provided there shall be no civil liability for any professional society or hospital or clinic in communicating any conclusions reached by one of its peer review committees or hospital or clinic quality assurance committees relating to the conformance with professional standards of any person engaged in the profession or occupation of which the membership of the communicating professional society consists, to a peer review committee or hospital or clinic quality assurance committee of another professional society or hospital or clinic whose membership is comprised of persons engaged in the same profession or occupation, or to a duly constituted governmental board or commission or authority having as one of its duties the licensing of persons engaged in that same profession or to a government agency charged with the responsibility for administering a program of medical assistance in which services are provided by private practitioners.

[(d)] (e) The final peer review committee of a medical society, hospital, or clinic, or other health care facility shall report in writing every adverse decision made by it to the department of commerce and consumer affairs; provided that final peer review committee means that body whose actions are final with respect to a particular case; and provided further that in any case where there are levels of review nationally or internationally, the final peer review committee for the purposes of this subsection shall be the final committee in this State. The hospital or clinic quality assurance committee shall report in writing to the department of commerce and consumer affairs any information which identifies patient care by any person engaged in a profession or occupation which does not meet hospital or clinic standards and which results in disciplinary action unless such information is immediately transmitted to an established peer review committee. The report shall be filed within thirty business days following an adverse decision. The report shall contain information on the nature of the action, its date, the reasons for, and the circumstances surrounding the action; provided that specific patient identifiers shall be expunged. If a potential adverse decision was superseded by resignation or other voluntary action that was requested or bargained for in lieu of medical disciplinary action, the report shall so state. The department shall prescribe forms for the submission of reports required by this section. Failure to comply with this subsection shall be a violation punishable by a fine of not less than \$100 for each member of the committee.

[(e)] (f) In any civil action arising under this section where a party seeks money damages or injunctive relief, or both, against another party, and the case is subsequently decided, the court may, as it deems just, assess against either party, and enter as part of its order, for which execution may issue, a reasonable sum for attorneys' fees, in an amount to be determined by the court upon a specific finding that the party's claim or defense was frivolous; provided the amount shall not exceed twenty-five per cent of any amount originally prayed for by the party assessed.

[(f)] (g) In determining the award of attorneys' fees and the amounts to be awarded under subsection [(e)], (f), the court must find in writing that all claims

or defenses made by the party are frivolous and are not reasonably supported by the facts and the law in the civil action."

SECTION 5. Section 624-25.5, Hawaii Revised Statutes, is amended to read as follows:

**"§624-25.5 Proceedings and records of [medical, dental and optometric] peer review committees and [hospitals.] quality assurance committees. (a) As used in this section:**

- (1) "Professional society" or "society" means any association or other organization of persons engaged in the same profession or occupation, or a specialty within a profession or occupation, a primary purpose of which is to maintain the professional standards of the persons engaged in its profession or occupation or specialty practice;
- (2) "Peer review committee" means a committee created by a professional society, or by the medical, dental, optometric, or administrative staff of a licensed hospital or clinic whose function is to maintain the professional standards established by the bylaws of the society, hospital, or clinic of the persons engaged in its profession or occupation, or area of specialty practice, or in its hospital or clinic; and
- (3) "Hospital or clinic quality assurance committee" means an interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital or clinic providing medical, dental, or optometric care, whose function is to monitor and evaluate patient care, and to identify, study, and correct deficiencies and seek improvements in the patient care delivery process.

[(a)] (b) Neither the proceedings nor the records of peer review committees [of medical, dental or optometric staffs in hospitals having the responsibility of evaluation and improvement of the quality of care rendered in the hospital or peer review committees of local medical, dental, or optometric societies], or hospital or clinic quality assurance committees shall be subject to discovery. For the purposes of this section, "records of hospital or clinic quality assurance committees" are limited to recordings, transcripts, minutes, summaries and reports of committee meetings and conclusions contained therein. Information protected shall not include incident reports, occurrence reports, or similar reports which state facts concerning a specific situation, or records made in the regular course of business by a hospital or other provider of health care. Original sources of information, documents or records shall not be construed as being immune from discovery or use in any civil proceeding merely because they were presented to, or prepared at the direction of, such committees. Except as hereinafter provided, no person in attendance at a meeting of the committee shall be required to testify as to what transpired at the meeting. The prohibition relating to discovery or testimony shall not apply to the statements made by any person in attendance at the meeting who is a party to an action or proceeding the subject matter of which was reviewed at the meeting, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits.

[(b)] (c) The prohibitions contained in this section shall not apply to medical, dental, or optometric society committees that exceed ten per cent of the membership of the society, nor to any committee if any person serves upon the committee when the person's own conduct or practice is being reviewed.

[(c)] (d) The prohibitions contained in this section shall apply to investigations and discovery conducted by the board of medical examiners, except as required by sections 92-17, 453-8.7, or 663-1.7(d)."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval; provided that this Act shall not affect any rights or duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.

(Approved June 16, 1989.)

**ACT 355**

H.B. NO. 1756

A Bill for an Act Relating to Exemptions for New Vehicles and Official Vehicles.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 249-4, Hawaii Revised Statutes, is amended as follows:

**"§249-4 Exemptions for new vehicles and official vehicles.** All new vehicles, otherwise taxable under sections 249-1 to 249-13, in stock for purposes of sale, [and all publicly owned vehicles and all motor vehicles and motorcycles owned by police officers of the State or any county and actually used by them in their travel on official business,] shall be exempt from the tax herein provided [for], and number plates for all [such] these vehicles [or such motorcycles] may be issued as now and hereafter provided by ordinance of the county. All motor vehicles owned or leased for twelve months or longer by the State or any county and all motor vehicles and motorcycles owned or leased for twelve months or longer by police officers of the State or any county that actually are used by them in their travel on official business shall be exempt from the tax herein provided, and number plates for all these vehicles may be issued as provided by ordinance of the county."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 16, 1989.)

**ACT 356**

H.B. NO. 1902

A Bill for an Act Relating to Coastal Zone Management.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 205A, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**"§205A- Powers and duties of the authority.** (a) Prior to action on a variance application, the authority shall hold a public hearing under chapter 91. By

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adoption of rules under chapter 91, the authority may delegate responsibility to the department. Public and private notice, including reasonable notice to abutting property owners and persons who have requested this notice, shall be provided, but a public hearing may be waived prior to action on a variance application for:

- (1) Stabilization of shoreline erosion by the moving of sand entirely on public lands;
  - (2) Protection of a legal structure costing more than \$20,000; provided the structure is at risk of immediate damage from shoreline erosion;
  - (3) Other structures or activities; provided that no person or agency has requested a public hearing within twenty-five calendar days after public notice of the application; or
  - (4) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or watersports recreational facilities, which result in little or no interference with natural shoreline processes.
- (b) The authority shall either act on variance applications or, by adoption of rules under chapter 91, delegate the responsibility to the department.

**§205A- Enforcement of shoreline setbacks.** (a) The department or an agency designated by department rules shall enforce this part and rules adopted pursuant to this part. Any structure or activity prohibited by section 205A-44, that has not received a variance pursuant to this part or complied with conditions on a variance, shall be removed or corrected. No other State or county permit or approval shall be construed as a variance pursuant to this part.

(b) Where the shoreline is affected by a man-made structure that has not been authorized with government agency permits required by law, if any part of the structure is on private property, then for purposes of enforcement of this part, the structure shall be construed to be entirely within the shoreline area.

(c) The authority of the board of land and natural resources to determine the shoreline and enforce rules established under section 183-41 shall not be diminished by a man-made structure in violation of this part."

**SECTION 2.** Section 205A-41, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"“Board approval” means approval by the board of land and natural resources pursuant to section 183-41.

“Structure” includes, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment.”

**SECTION 3.** Section 171-58.5, Hawaii Revised Statutes, is amended to read as follows:

**“[[§171-58.5]] Prohibitions.** The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other marine deposits seaward from the shoreline is prohibited with the following exceptions:

- (1) The taking from seaward of the shoreline of such materials, not in excess of one gallon per person per day for reasonable, personal, noncommercial use;
- (2) For the replenishment or protection of public shoreline areas and adjacent public lands seaward of the shoreline [area], or construction or maintenance of State approved lagoons, harbors, launching ramps or navigational channels with a permit authorized under section 183-41[, provided that such permit shall not be issued for Hakipu'u sandbar, which is offshore of Molii fishpond, Oahu];

- (3) The clearing of such materials from existing drainage pipes and canals and from the mouths of streams[; including clearing for the purposes under section 46-11.5; provided that the sand removed shall be placed on adjacent areas unless this placement would result in significant turbidity; or
- (4) The cleaning of areas seaward of the shoreline for state or county maintenance purposes including the purposes under [section 46-11.5 and] section 46-12; provided that the [materials] sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity.”

SECTION 4. Section 205A-1, Hawaii Revised Statutes, is amended by amending the definitions of “coastal zone management area” and “shoreline” to read as follows:

“ “Coastal zone management area” means [the special management area after compliance pursuant to section 205A-23, and] the waters from the shoreline to the seaward limit of the State’s jurisdiction and [any other area which the lead agency may designate for the purpose of administering the coastal zone management program;] all land areas excluding those lands designated as state forest reserves;

“Shoreline” means the upper reaches of the wash of the waves, other than storm and [tidal] seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.”

SECTION 5. Section 205A-3, Hawaii Revised Statutes, is amended to read as follows:

**“§205A-3 Lead agency.** The lead agency shall:

- (1) Receive, disburse, use, expend, and account for all funds that are made available by the United States and the State for the coastal zone management program;
- (2) Provide support and assistance in the administration of the coastal zone management program;
- (3) Review federal programs, permits, licenses, and development proposals for consistency with the coastal zone management program;
- (4) In consultation with the counties and the general public prepare guidelines as necessary to further specify and clarify the objectives and policies of the chapter to be submitted twenty days prior to the convening of any regular session of the legislature for review, modification, or enactment by the legislature;
- (5) Conduct a continuing review of the administration of the coastal zone management program and of the compliance of state and county agencies[; with the objectives and policies of this chapter;
- (6) Facilitate public participation in the coastal zone management program; and
- [7) Review state programs within the coastal zone management area from the shoreline to the seaward limit of the State’s jurisdiction for consistency with the coastal zone management program; and
- (8) Prepare an annual report to the governor and the legislature which shall include recommendations for enactment of any legislation necessary to require any agency to comply with the objectives and policies of this chapter and any guidelines enacted by the legislature.”

SECTION 6. Section 205A-4, Hawaii Revised Statutes, is amended to read as follows:

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**“§205A-4 Implementation of objectives, policies, and guidelines.** (a) In implementing the objectives of the coastal zone management program, the agencies shall give full consideration [shall be given] to ecological, cultural, historic, [and] esthetic, recreational, scenic, and open space values, and coastal hazards, as well as to needs for economic development.

(b) The objectives and policies of this chapter and any guidelines enacted by the legislature shall be binding upon actions within the coastal zone management area by all agencies[.], within the scope of their authority.”

SECTION 7. Section 205A-5, Hawaii Revised Statutes, is amended to read as follows:

**“§205A-5 Compliance.** All agencies shall [amend] ensure that their [regulations, as may be necessary, to] rules comply with the objectives and policies of this chapter and any guidelines enacted by the legislature.”

SECTION 8. Section 205A-29, Hawaii Revised Statutes, is amended to read as follows:

**“§205A-29 Special management area use permit procedure.** (a) The authority in each county, upon consultation with the central coordinating agency, shall [establish and may amend pursuant to chapter 91, by rule or regulation] adopt rules under chapter 91 setting the special management area use permit application procedures, conditions under which hearings must be held, and the time periods within which the hearing and action for special management area use permits shall occur. The authority shall provide for adequate notice to individuals whose property rights may be adversely affected and to persons who have requested in writing to be notified of special management area use permit hearings or applications. The authority shall also provide written public notice once in a newspaper of general circulation in the State at least twenty days in advance of the hearing. The authority may require a reasonable filing fee which shall be used for the purposes set forth herein.

Any rule [or regulation] adopted by the authority shall be consistent with the objectives, policies, and special management area guidelines provided in this chapter. Action on the special management permit shall be final unless otherwise mandated by court order.

(b) No agency authorized to issue permits pertaining to any development within the special management area shall authorize any development unless approval is first received in accordance with the procedures adopted pursuant to this part. For the purposes of this subsection, county general plan, state land use district boundary amendments, and zoning changes are not permits.”

SECTION 9. Section 205A-32, Hawaii Revised Statutes, is amended to read as follows:

**“[§205A-32]** Penalties. (a) Any person who violates any provision of [this] part II or part III shall be [subject to] liable for a civil fine not to exceed \$10,000.

(b) In addition to any other penalties, any person who [performs any development in violation of this part] is violating any provision of part II or part III shall be [subject to] liable for a civil fine not to exceed [\$500] \$1,000 a day for each day in which such violation persists.

(c) Any civil fine provided under this section may be imposed by the circuit court or may be imposed by the department after an opportunity for a hearing under

chapter 91. Imposition of a civil fine shall not be a prerequisite to any civil fine or other injunctive relief ordered by the circuit court.”

SECTION 10. Section 205A-41, Hawaii Revised Statutes, is amended by amending the definition of “shoreline area” to read:

“ Shoreline area” [means] shall include all of the land area between the shoreline and the shoreline setback line[.] and may include the area between mean sea level and the shoreline.”

SECTION 11. Section 205A-43, Hawaii Revised Statutes, is amended to read as follows:

**“§205A-43 Establishment of shoreline setbacks and duties and powers of the department.** (a) Setbacks along shorelines are established of not less than twenty feet and not more than forty feet inland from the shoreline. The department shall adopt rules [within a period of one year after June 22, 1970,] pursuant to chapter 91, and shall enforce the shoreline setbacks and rules pertaining thereto.

(b) The powers and duties of the department shall include, but not be limited to:

- (1) The department shall adopt rules under chapter 91 prescribing procedures for determining the shoreline setback line; and
- (2) The department shall review the plans of all applicants who propose any structure, activity, or facility that would be prohibited without a variance pursuant to this part. The department may require that the plans be supplemented by accurately mapped data and photographs showing natural conditions and topography relating to all existing and proposed structures and activities.”

SECTION 12. Section 205A-44, Hawaii Revised Statutes, is amended to read as follows:

**“§205A-44 Prohibitions.** (a) The mining or taking of sand, dead coral or coral rubble, rocks, soil, or other beach or marine deposits from the shoreline area is prohibited with the following exceptions:

- (1) The taking from the shoreline area of [such] the materials, not in excess of one gallon per person per day, for reasonable, personal, noncommercial use, provided that stricter provisions may be established by the counties;
  - (2) Where the mining or taking [of sand by the State or county is for the replenishment of sand in the shoreline area, provided that for the purpose of this paragraph an environmental assessment for the proposed project shall be prepared pursuant to chapter 343, a finding shall be made by the proposing state or county agency that the proposed project is in the public interest and will not have any adverse significant social, economic<sup>1</sup> or environmental impact, and both a public informational meeting and public hearing shall be held by the proposing state or county agency in the affected community. The public hearing shall be preceded by public notice of the proposed project not less than thirty days before the hearing and published on three separate days in a newspaper of general circulation in the State or county affected by the proposed project. The proposing state or county agency shall also notify in writing the owners or lessees of adjoining, overlapping, or affected property of the proposed project;]
- is authorized by a variance pursuant to this part;

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- (3) The clearing of [sand] the materials from existing drainage pipes and canals and from the mouths of streams[; including clearing for the purposes under section 46-11.5; provided that the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity; or
- (4) The cleaning of the shoreline area for State or county maintenance purposes, including the clearing for purposes under [section 46-11.5 and] section 46-12; provided that the sand removed shall be placed on adjacent areas unless [such] the placement would result in significant turbidity.
- (b) [Except as otherwise provided in this part no structure or any portion thereof, including but not limited to seawalls, groins, and revetments, shall be permitted within the shoreline area; provided that any lawful nonconforming structure existing on June 22, 1970, shall be permitted; provided further that any structure which is necessary for safety reasons or to protect the property from erosion or wave damages shall be permitted. A structure not conforming to this section but for which a building permit application has been filed on or before June 22, 1970, shall also be permitted as a nonconforming structure, subject to the ordinances and regulations of the particular county.] Except as provided in this section, structures are prohibited in the shoreline area without a variance pursuant to this part. Structures in the shoreline area shall not need a variance if:
- (1) They were completed prior to June 22, 1970;
  - (2) They received either a building permit, board approval, or shoreline setback variance prior to the effective date of this Act;
  - (3) They are outside the shoreline area when they receive either a building permit or board approval;
  - (4) They are necessary for or ancillary to continuation of existing agriculture or aquaculture in the shoreline area on the effective date of this section;
  - (5) They are minor structures permitted under rules adopted by the department which do not affect beach processes or artificially fix the shoreline and do not interfere with public access or public views to and along the shoreline; or
  - (6) Work being done consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or watersports recreational facilities, which are publicly owned, and which result in little or no interference with natural shoreline processes;
- provided that permitted structures may be repaired, but shall not be enlarged within the shoreline area without a variance.
- [c) Any nonconforming structure, including but not limited to residential dwellings, agricultural structures, seawalls, groins, and revetments may be replaced or reconstructed within the shoreline area; provided that no nonconforming structure shall be substantially enlarged or changed to another nonconforming use within the shoreline area. If the use of any nonconforming structure is discontinued or held in abeyance for a period of one year, the further continuation of such use shall be prohibited.]”

SECTION 13. Section 205A-45, Hawaii Revised Statutes, is amended to read as follows:

**“§205A-45 Shoreline setback lines established by county.** (a) The several counties through rules adopted pursuant to chapter 91 or ordinance[s] may require that shoreline setback lines be established at [a distance] distances<sup>1</sup> greater than that established in this part.

(b) The several counties through rules adopted pursuant to chapter 91 or ordinance may expand the shoreline area to include the area between mean sea level and the shoreline."

SECTION 14. Section 205A-46, Hawaii Revised Statutes, is amended to read as follows:

**"§205A-46 [Functions of department.** (a) The department shall administer the provisions of this part. It shall review the plans of all applicants who propose any structure, activity, or facility which otherwise would be prohibited by this part.

The department may require that the plans be supplemented by accurately mapped data showing natural conditions and topography relating to all existing and proposed structures, buildings, and facilities.

The department may also require reasonable changes in the submitted plans in order to obtain optimum compliance practicable with this part.

(b) After reviewing the plans, the department shall transmit the plans with its recommendations to the authority. The authority shall grant a variance for such structure, activity, or facility if, after a hearing pursuant to chapter 91, it finds in writing, based on the record presented either: (1) that such structure, activity, or facility is in the public interest; or (2) that hardship will be caused to the applicant if the proposed structure, activity, or facility is not allowed on that portion of the land within the shoreline area. Any variance granted to the maximum extent practicable shall be subject to such conditions as will cause the structure, activity, or facility to result in a minimum interference with natural shoreline processes and as will provide for safe public shoreline access. The authority shall render written approval or disapproval within forty-five days after the hearing on the applicant's plans, unless such period is extended by written agreement between the authority and the applicant.] **Variances.** (a) A variance may be granted for a structure or activity otherwise prohibited by this part if the authority finds in writing, based on the record presented, that the proposed structure or activity is necessary for or ancillary to:

- (1) Cultivation of crops;
- (2) Aquaculture;
- (3) Landscaping; provided that the authority finds that the proposed structure or activity will not adversely affect beach processes and will not artificially fix the shoreline;
- (4) Drainage;
- (5) Boating, maritime, or water sports recreational facilities;
- (6) Facilities or improvements by public agencies or public utilities regulated under section 269;<sup>1</sup>
- (7) Private facilities or improvements that are clearly in the public interest;
- (8) Private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; provided that the authority also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline area;
- (9) Private facilities or improvements that may artificially fix the shoreline; provided that the authority also finds that shoreline erosion is likely to cause hardship to the applicant if the facilities or improvements are not allowed within the shoreline area; provided further that the authority imposes conditions to prohibit any structure seaward of the existing shoreline unless it is clearly in the public interest; or
- (10) Moving of sand from one location seaward of the shoreline to another location seaward of the shoreline; provided that the authority also finds that moving of sand will not adversely affect beach processes, will not

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diminish the size of a public beach, and will be necessary to stabilize an eroding shoreline.

(b) Hardship shall be defined in rules adopted by the authority under chapter 91. Hardship shall not be determined as a result of county zoning changes, planned development permits, cluster permits, or subdivision approvals after the effective date of this Act, or as a result of any other permit or approval listed in rules adopted by the authority.

- (c) No variance shall be granted unless appropriate conditions are imposed:
- (1) To maintain safe lateral access to and along the shoreline or adequately compensate for its loss;
  - (2) To minimize risk of adverse impacts on beach processes;
  - (3) To minimize risk of structures failing and becoming loose rocks or rubble on public property; and
  - (4) To minimize adverse impacts on public views to, from, and along the shoreline.”

SECTION 15. Section 205A-49, Hawaii Revised Statutes, is amended to read as follows:

**“§205A-49 Adoption of rules.** Each agency charged with carrying out this part shall adopt rules [under chapter 91, as necessary, to implement or comply with this part by June 30, 1987.] necessary to implement or comply with this part by July 1, 1990. All rules shall be adopted under chapter 91.”

SECTION 16. Section 205A-47, Hawaii Revised Statutes, is repealed.

SECTION 17. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 18. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 19. This Act shall take effect upon its approval.

(Approved June 16, 1989.)

### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

## ACT 357

H.B. NO. 79

A Bill for an Act Relating to Tourism.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the State's visitor count is expected to increase at an annual rate of 2.5 per cent through the year 2010 and that 11.6 million tourists are expected to visit Hawaii in that year alone. At the same time, the State's resident population is projected to increase at an annual rate of 1.2 per cent to reach a total resident population of 1.4 million by the year 2010. Because of the increases in both the visitor and resident populations, the State's infrastructure and social and economic systems will be subject to great strain in a state where

very large numbers of people will compete for scarce resources. The State's utilities, land use, zoning, and other systems as well as the cultural, environmental, safety, and other aspects of life in Hawaii may be endangered. The legislature further finds that, in the absence of any plan to deal with this projected growth, it is necessary to take immediate action to determine if the State's carrying capacity can absorb this growth.

The purpose of this Act is to initiate a study of the carrying capacity of the State to the year 2010 in light of visitor and resident population projections.

**SECTION 2.** The office of state planning shall develop general methodology and conduct a limited site-specific study to test the methodology, which may be contracted to a private entity, to determine the State's carrying capacity to the year 2010 in light of the projections of increases in both visitor and resident populations with particular attention to the capacities and growth on the neighbor islands. The study may include, but not be limited to:

- (1) Infrastructure demand, including utilities, land use, and zoning;
- (2) Social issues;
- (3) Economic issues;
- (4) Cultural issues;
- (5) Environmental issues; and
- (6) Safety issues.

**SECTION 3.** The office of state planning shall submit its findings and recommendations to the legislature at least twenty days prior to the convening of the regular session of 1990.

**SECTION 4.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$75,000, or 0.0032 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act are necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 5.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$75,000, or so much thereof as may be necessary for fiscal year 1989-90, to carry out the purposes of this Act. The sum appropriated shall be expended by the office of state planning.

**SECTION 6.** This Act shall take effect on July 1, 1989.

(Approved June 19, 1989.)

**ACT 358**

H.B. NO. 81

A Bill for an Act Relating to the Development of Tourism.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that the growing economic and strategic importance of the Pacific region and Hawaii's potential role as a leader in the Pacific have emphasized the need for increased interaction between Hawaii and the countries of the Pacific Basin and Asia. The State's efforts to expand its regional leadership and to diversify and strengthen its economic base have included initiatives such as

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the promotion of Hawaii as an international consulting, training, and research center to market Hawaii's expertise in such areas as natural resource-based industries, business, and tourism.

The 1988 governor's congress on Hawaii's international role emphasized Hawaii's expertise in tourism, based on the State's well-developed visitor industry and the existence of institutions of higher education which provide tourism-related education, training, and research services. The increasing importance of tourism to the Asia-Pacific region is indicated by visitor arrival totals which show that East Asia and the Pacific have emerged as the second largest region in the world receiving international tourists. Worldwide, tourism is an important source of income, foreign exchange, and employment for nearly all countries, accounting for one-fourth of the world trade in services and over five per cent of the total value of world exports. Tourism is the largest of the service industries and is expected to become even more important in the future. The legislature believes Hawaii should take advantage of these trends in order to diversify its own economic base as a business center to the region.

The purpose of this Act is to establish an international tourism consulting center and clearinghouse within the department of business and economic development for administrative purposes to promote, assist, plan, and coordinate the provision of tourism-related consulting, training, and research services by private consultants, nonprofit organizations, and educational institutions in Hawaii throughout the Pacific and Asian region.

**SECTION 2.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$135,000, or 0.0058 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 3.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$135,000, or so much thereof as may be necessary for fiscal year 1989-90, and \$98,600, or so much thereof as may be necessary for fiscal year 1990-91, to establish an international tourism consulting center and clearinghouse, including the hiring of necessary staff. The center's responsibilities shall include, but not be limited to, providing assistance in the marketing and promotion of Hawaii's professional skills and expertise in tourism, coordinating the resources of Hawaii's educational institutions in providing tourism-related research and training services to the Pacific and Asian region, and developing long-range plans to preserve and maintain the State's expertise and leadership role in international tourism development. The sum appropriated shall be expended by the department of business and economic development for the purposes of this Act.

**SECTION 4.** This Act shall take effect on July 1, 1989.

(Approved June 19, 1989.)

## **ACT 359**

H.B. NO. 1299

A Bill for an Act Making an Appropriation for Fostering International Activities.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that there is a need to develop alternative industries apart from tourism in order to advance the growth of Hawaii's economy

and people. In 1986, film and video production in Hawaii contributed over \$35 million to the State's economy. Expanding Hawaii's involvement in the film and video industries is desirable because these film industry activities have become an important source of income for the State and have contributed immeasurably toward the promotion of Hawaii as a tourist destination area, especially with the popularity of television program series such as "Hawaii Five-O" and "Magnum P.I.". These activities now make up a small but potent industry utilizing the talents of local artists and skilled technicians. A strong commitment to local filmmakers and film-making activities is needed.

The legislature further finds that support of activities related to international and intercultural understanding will provide future opportunities for Hawaii and its citizens. Similarly, recommendations forwarded by the recent governor's Congress on Hawaii's International Role affirmed the appropriateness and desirability of an expanded international role for the State, and urged that both the public and private sectors proceed immediately with initiatives focusing on Hawaii's potential to become recognized as a center for East-West interchange.

**SECTION 2.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$125,000, or 0.0053 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 3.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$125,000, or so much thereof as may be necessary for fiscal year 1989-1990, to develop a series of 30 minute educational and informational video productions that promote Hawaii's international role.

The sums appropriated in this section shall be expended by the department of business and economic development for the purposes of this Act.

**SECTION 4.** This Act shall take effect on July 1, 1989.

(Approved June 19, 1989.)

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S.B. NO. 408

A Bill for an Act Relating to State Bonds.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in Article VII, section 13, of the State Constitution which states: "Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance", the legislature finds and declares as follows:

- (1) Limitation on general obligation debt. The debt limit of the State is set forth in Article VII, section 13, of the State Constitution, which states in part: "General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the

total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty per cent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half per cent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance." Article VII, section 13, also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including "reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year."

- (2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 1988-1989 and estimated for each fiscal year from 1989-1990 to 1991-1992, is as follows:

Fiscal Year	Net General Fund Revenues	Debt Limit
1985-86	\$1,569,777,922	\$
1986-87	\$1,759,104,963	\$
1987-88	\$2,135,842,312	\$
1988-89	\$2,284,006,000	\$336,991,387
1989-90	\$2,506,024,000	\$381,035,452
1990-91	\$2,711,913,000	\$426,848,793
1991-92	\$2,896,684,000	\$462,373,152
1992-93 (not applicable)		\$500,154,962

For fiscal years 1988-89, 1989-90, 1990-91, 1991-92, and 1992-93, respectively, the debt limit is derived by multiplying the average of the net general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 1985-86, 1986-87, and 1987-88 are actual, as certified by the director of finance in the Statement of the Debt Limit of the State of Hawaii as of July 1, 1988, dated November 16, 1988. The net general fund revenues for fiscal years 1988-89 to 1991-92 are estimates, based on general fund revenue estimates made as of March 15, 1989, by the council on revenues, the body assigned by Article VII, section 7, of the State Constitution to make such estimates, and based on estimates made by the department of budget and finance of those receipts which cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

- (3) Principal and interest on outstanding bonds applicable to the debt limit. According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds for determining the power of the State to issue general obligation bonds

within the debt limit, as of March 1, 1989, is as follows for fiscal year 1989-90 to fiscal year 1995-96:

Fiscal Year	Principal and Interest
1989-90	\$226,675,960
1990-91	\$224,642,651
1991-92	\$214,148,100
1992-93	\$201,466,964
1993-94	\$199,219,568
1994-95	\$185,616,247
1995-96	\$174,779,498

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit continues to decline each year from fiscal year 1996-97 to fiscal year 2011-12 when the final installment of \$15,347 shall be due and payable.

- (4) Amount of authorized and unissued general obligation bonds and bonds authorized by this Act. As calculated from the state comptroller's bond fund report as of February 28, 1989, as adjusted for \$90,000,000 general obligation bonds authorized in House Bill No. 462, S.D. 1, passed by this Regular Session of 1989,<sup>1</sup> and further adjusted for the lapsing of prior appropriations totalling \$3,216,000 as provided in House Bill No. 205, H.D. 1, S.D. 1, C.D. 2 (the General Appropriations Act of 1989),<sup>2</sup> the total amount of authorized but unissued general obligation bonds is \$549,378,602. The total amount of general obligation bonds authorized by this Act is \$247,555,000. The total amount of general obligation bonds previously authorized and unissued and the general obligation bonds authorized by this Act is \$796,933,602.
- (5) Proposed general obligation bond issuance. As reported by the department of budget and finance for fiscal years 1988-89, 1989-90, 1990-91, 1991-92, and 1992-93, the State proposes to issue two series of \$80,000,000 each during the remainder of fiscal year 1988-89 and \$80,000,000 semiannually in each of fiscal years 1989-90, 1990-91, 1991-92, and 1992-93. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the third year, the bonds maturing in substantially equal installments of principal, and interest payments commencing six months from the date of issuance and being paid semiannually thereafter. It is assumed that this practice will continue to be applied to the bonds which are proposed to be issued.
- (6) Sufficiency of proposed general obligation bonds issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. From the schedule reported in paragraph (5), the total amount of general obligation bonds which the State proposes to issue during the remainder of fiscal year 1988-89 and during the fiscal years 1989-90, 1990-91, and 1991-92 is \$640,000,000. An additional \$160,000,000 is proposed to be issued in fiscal year 1992-93. The total amount of \$640,000,000 which is proposed to be issued through fiscal year 1991-92 is sufficient to meet the requirements of

the authorized and unissued bonds, as adjusted, and the bonds authorized by this Act, the total amount of which is \$796,933,602, as reported in paragraph (4), except for \$156,933,602. It is assumed that the appropriations to which an additional \$156,933,602 in bond issuance needs to be applied will have been encumbered as of June 30, 1992. The \$160,000,000 which is proposed to be issued in fiscal year 1992-93 will be sufficient to meet the requirements of the June 30, 1992, encumbrances in the amount of \$156,933,602. The amount of assumed encumbrances as of June 30, 1992, is reasonable and conservative, based upon an inspection of June 30 encumbrances of the general obligation bond fund as reported by the state comptroller. Thus, taking into account the amount of authorized and unissued bonds, as adjusted, and the bonds authorized by this Act versus the amount of bonds which is proposed to be issued by June 30, 1992, and the amount of June 30, 1992, encumbrances versus the amount of bonds which is proposed to be issued in fiscal year 1992-93, the legislature finds that in the aggregate, the amount of bonds which is proposed to be issued is sufficient to meet the requirements of all authorized and unissued bonds and the bonds authorized by this Act.

- (7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds. General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds which are excludable from the amount of each proposed bond issued because:
- (A) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in this Act will be implemented and will require the application of proceeds from a particular bond issue; and
  - (B) While at the present time, all of the special funds which are required to make reimbursements to the general fund on bonds issued are in a condition to qualify all of the reimbursable bonds for exclusion, it cannot be stated with certainty that such a condition will continue.

However, the legislature notes that with respect to the principal and interest on outstanding general obligation bonds, according to the department of budget and finance, the average proportion of principal and interest which is excludable each year from calculation against the debt limit is 11.69 per cent for the ten years from fiscal year 1988-89 to fiscal year 1997-98. For the purpose of this declaration, the assumption is made that ten per cent of each bond issue will be excludable from the debt limit, an assumption which the legislature finds to be reasonable and conservative.

- (8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at an interest rate of 8.0 per cent through June 30, 1989, and 8.5 per cent for the fiscal years following thereafter, the maximum allowable by law, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, and the bonds authorized by this Act, will not cause the debt limit to be exceeded at the time of each bond issuance:

Time of Issuance and Amount to be Counted Against Debt Limit	Debt Limit at Time of Issuance	Greatest Amount and Year of Highest Principal and Interest
2nd half FY 1988-89	\$336,991,387	\$232,435,961 (FY 1989-90)
1st issue \$72,000,000		
2nd half FY 1988-89	\$336,991,387	\$238,195,961 (FY 1989-90)
2nd issue \$72,000,000		
1st half FY 1989-90 \$72,000,000	\$381,035,452	\$242,282,651 (FY 1990-91)
2nd half FY 1989-90 \$72,000,000	\$381,035,452	\$248,402,651 (FY 1990-91)
1st half FY 1990-91 \$72,000,000	\$426,848,793	\$252,029,100 (FY 1991-92)
2nd half FY 1990-91 \$72,000,000	\$426,848,793	\$258,149,100 (FY 1991-92)
1st half FY 1991-92 \$72,000,000	\$462,373,152	\$263,042,280 (FY 1993-94) <sup>3</sup>
2nd half FY 1991-92 \$72,000,000	\$462,373,152	\$269,162,280 (FY 1993-94) <sup>3</sup>
1st half FY 1992-93 \$72,000,000	\$500,154,962	\$275,282,280 (FY 1993-94)
2nd half FY 1992-93 \$72,000,000	\$500,154,962	\$281,402,280 (FY 1993-94)

- (9) Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance.

SECTION 2. The legislature finds the basis for the declaration of findings set forth in this Act are reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 3. Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized in House Bill No. 205, H.D. 1, S.D. 1, C.D. 2 (the General Appropriations Act of 1989),<sup>2</sup> House Bill No. 189, H.D. 2, S.D. 2, C.D. 1 (the Judiciary Appropriations Act of 1989),<sup>4</sup> and Senate Bill No. 1734, S.D. 1, H.D. 1, C.D. 2 (Relating to Capital Improvement Projects),<sup>5</sup> passed by this Regular Session of 1989, and designated to be financed from the general obligation bond fund and from the general obligation bond fund with debt service cost to be paid from special funds; provided that the sum total of the general obligation bonds so issued shall not exceed \$247,555,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with section 39-13, Hawaii Revised Statutes, in such principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

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**SECTION 4.** The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

**SECTION 5.** In printing this Act, the revisor of statutes shall substitute in sections 1 and 3 the corresponding act numbers for bills identified therein.

**SECTION 6.** This Act shall take effect upon its approval.

(Approved June 19, 1989.)

### **Notes**

1. Act 73, this volume.
2. Act 316, this volume.
3. So in original.
4. Act 315, this volume.
5. Act 314, this volume.

## **ACT 361**

S.B. NO. 1321

A Bill for an Act Relating to Violent Behavior.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that there is an alarming increase in the amount of violent acts committed against citizens in the State. The purpose of this bill is to require the office of state planning to develop a statewide plan to control violent behavior, which shall include a review of existing statutes and the proposal of new legislation as well as the creation of new programs and research.

**SECTION 2.** (a) The office of state planning shall plan, develop, and coordinate a program for the provision of services to control violent behavior. The areas of concern shall include:

- (1) Victims of sexual abuse, child abuse, and family violence;
  - (2) Battering spouses, sex-offenders, child abusers; and
  - (3) Elderly victims.
- (b) The office shall:
- (1) Review existing criminal statutes, formulate policies to substantiate statutory revisions, and draft proposed legislation;
  - (2) Conduct research and develop programs for implementation;
  - (3) Develop, evaluate, and provide technical assistance for a coordinated statewide plan to control violent behavior; and
  - (4) Assist the county police departments by developing and providing access to training and resources to deal with domestic violence, sex abuse, and child abuse.
- (c) The office, to the extent possible, shall coordinate its statewide plan with existing services.

**SECTION 3.** The office of state planning shall submit its findings, including a status report on the statewide plan and recommendations, to the legislature at least twenty days prior to the convening of the regular session of 1990. A final report on the statewide plan shall be submitted to the legislature at least twenty days prior to the convening of the regular session of 1991.

**SECTION 4.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the

legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$100,000, or 0.0043 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 1989-1990, to carry out the purposes of this Act, including the creation of two staff positions.

SECTION 6. The sum appropriated shall be expended by the office of state planning for the purposes of this Act.

SECTION 7. This Act shall take effect on July 1, 1989.

(Approved June 19, 1989.)

**ACT 362**

S.B. NO. 1374

A Bill for an Act Relating to Multiple Unit Dwellings.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§514A- Duty of directors.** Each director shall owe the association of apartment owners a fiduciary duty in the performance of the director’s responsibilities.”

SECTION 2. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§514A- Restatement of declaration and bylaws.** (a) Notwithstanding any other provision of this chapter or of any other statute or instrument, an association of apartment owners may at any time restate the declaration of condominium property regime of the project or the bylaws of the association to set forth all amendments thereof by a resolution adopted by the board of directors.

(b) An association of apartment owners may at any time restate the declaration of condominium property regime of the project or the bylaws of the association to amend the declaration or bylaws as may be required in order to conform with the provisions of this chapter or of any other statute, ordinance, rule or regulation enacted by any governmental authority, by a resolution adopted by the board of directors, and the restated declaration or bylaws shall be as fully effective for all purposes as if adopted by the vote or written consent of the apartment owners; provided that any declaration of condominium property regime or bylaws restated pursuant to this subsection shall identify each portion so restated and shall contain a statement that those portions have been restated solely for purposes of information and convenience, identifying the statute, ordinance, rule, or regulation implemented by the amendment, and that in the event of any conflict, the restated declaration or bylaws shall be subordinate to the cited statute, ordinance, rule, or regulation.

(c) Upon the adoption of a resolution pursuant to subsections (a) or (b), the restated declaration of condominium property regime or bylaws shall set forth all

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of the operative provisions of the declaration of condominium property regime or bylaws, as amended, together with a statement that the restated declaration of condominium property regime or bylaws correctly sets forth without change the corresponding provisions of the declaration of condominium property regime or bylaws, as amended, and that the restated declaration of condominium property regime or bylaws supersede the original declaration of condominium property regime or bylaws and all prior amendments thereto.

(d) The restated declaration of condominium property regime or bylaws shall be recorded in the manner provided in sections 514A-11 or 514A-82 or both and upon recordation shall supersede the original declaration of condominium property regime or bylaws and all prior amendments thereto; provided that in the event of any conflict, the restated declaration of condominium property regime or bylaws shall be subordinate to the original declaration of condominium property regime or bylaws and all prior amendments thereto.”

SECTION 3. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§514A- Disposition of unclaimed possessions.** (a) When personality in or on the common elements of a project has been abandoned, the board of directors may sell the personality in a commercially reasonable manner, store such personality at the expense of its owner, donate such personality to a charitable organization, or otherwise dispose of such personality in its sole discretion; provided that no such sale, storage, or donation shall occur until sixty days after the board complies with the following:

- (1) The board notifies the owner in writing of:
    - (A) The identity and location of the personality, and
    - (B) The board of directors' intent to so sell, store, donate, or dispose of the personality. Notification shall be by certified mail, return receipt requested to the owner's address as shown by the records of the association or to an address designated by the owner for the purpose of notification or, if neither of these is available, to the owner's last known address, if any; or
  - (2) If the identity or address of the owner is unknown, the board of directors shall first advertise the sale, donation, or disposition at least once in a daily paper of general circulation within the circuit in which the personality is located.
- (b) The proceeds of any sale or disposition of personality under subsection (a) shall, after deduction of any accrued costs of mailing, advertising, storage, and sale, be held for the owner for thirty days. Any proceeds not claimed within this period shall become the property of the association of apartment owners.”

SECTION 4. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§514A- Documents of the association of apartment owners.** (a) The association's most current financial statement and minutes of the board of directors' meetings, once approved, shall be available to any owner at no cost or on twenty-four hour loan, at a convenient location designated by the board of directors.

(b) Minutes of meetings of the board of directors and the association for the current and prior year shall be available for examination by apartment owners at convenient hours at a place designated by the board. Minutes of meetings shall include the recorded vote of each board member on all motions except motions voted on in executive session. Copies of meeting minutes shall be provided to any

owner upon the owner's request provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(c) Financial statements, general ledgers, the accounts receivable ledger, accounts payable ledgers, check ledgers, insurance policies, contracts, and invoices of the association of apartment owners for the current and prior year and delinquencies of ninety days or more shall be available for examination by apartment owners at convenient hours at a place designated by the board; provided:

- (1) That the board may require owners to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interests of the association or its members or both; and
- (2) That owners pay for administrative costs in excess of eight hours per year.

Copies of these items shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(d) Owners shall also be permitted to view proxies, tally sheets, ballots, owners' check-in lists, and the certificate of election for a period of thirty days following any association meeting; provided:

- (1) That the board may require owners to furnish to the association a duly executed and acknowledged affidavit stating that the information is requested in good faith for the protection of the interest of the association or its members or both; and
- (2) That owners pay for administrative costs in excess of eight hours per year.

Proxies and ballots may be destroyed following the thirty day period. Copies of tally sheets, owners' check-in lists, and the certificates of election from the most recent association meeting shall be provided to any owner upon the owner's request, provided that the owner pay a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(e) Owners may file a written request with the board to examine other documents. The board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of the request."

SECTION 5. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§514A- Borrowing of money.** Subject to any approval requirements and spending limits contained in the declaration or bylaws of the association of apartment owners, the board of directors may authorize the borrowing of money to be used by the association for the repair, replacement, maintenance, operation, or administration of the common elements of the project, or the making of any additions, alterations, and improvements thereto.

The cost of such borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to such borrowing, shall be a common expense of the project; provided that owners representing fifty per cent of the common interest and owners give written consent to such borrowing, having been first notified of the purpose and use of the funds."

SECTION 6. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§514A- Pets, replacement of subsequent to prohibition.** (a) Any apartment owner who keeps a pet in the owner's apartment pursuant to a provision in

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the bylaws which allows owners to keep pets or in the absence of any provision in the bylaws to the contrary may, upon the death of the animal, replace the animal with another and continue to do so for as long as the owner continues to reside in the owner's apartment or another apartment subject to the same bylaws.

(b) Any apartment owner who is keeping a pet pursuant to subsection (a) as of the effective date of an amendment to the bylaws which prohibits owners from keeping pets in their apartments shall not be subject to the prohibition but shall be entitled to keep the pet and acquire new pets as provided in subsection (a)."

SECTION 7. Section 514A-13.5, Hawaii Revised Statutes, is amended to read as follows:

**"[§]§514A-13.5[§] Remuneration to allow ingress and egress prohibited.** Ingress and egress through lobby areas or walkways, whether common elements, limited common elements, or individually owned, shall not be denied to apartment owners seeking access to the apartments. No payment of any fee or other type of remuneration by individual owners[,] singly, or collectively[,] as part of an owners' association, shall be allowed. This section shall apply to condominium property regimes in existence on May 18, 1984 and those formed thereafter, except as to lobby areas or walkways which are limited to common elements, or individually owned."

SECTION 8. Section 514A-82, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to the requirements of subsection (a), the bylaws shall provide for:

- (1) The method of removal from office of directors; that at any regular or special meeting of the apartment owners, any one or more members of the board of directors may be removed by the apartment owners and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created. Such removal and replacement shall be in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors, including, but not limited to, any provisions relating to cumulative voting. If such removal and replacement is to occur at a special association meeting, the call for such meeting shall be by the president or by a petition to the secretary or managing agent signed by not less than twenty-five per cent of the apartment owners as shown in the association's record of ownership; and provided further that if the secretary or managing agent shall fail to send out the notices for the special meeting within fourteen days of receipt of the petition, then the petitioners shall have the authority to set the time, date and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of the bylaws. Except as otherwise provided herein, such meeting for the removal and replacement from office of directors shall be scheduled, noticed, and conducted in accordance with the bylaws of the association.
- (2) The bylaws may be amended at any time by the vote or written consent of sixty-five per cent of all apartment owners; provided that each one of the particulars set forth in this section shall be embodied in the bylaws always; and provided further that any proposed bylaws with the rationale for the proposal may be submitted by the board of directors

- or by a volunteer apartment owners' committee. If submitted by that committee, it shall be accompanied by a petition signed by not less than twenty-five per cent of the apartment owners as shown in the association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board of directors to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board of directors. The vote or written consent required to adopt the proposed bylaw shall not be less than<sup>1</sup> sixty-five per cent of all apartment owners; provided that the vote or written consent must be obtained within one hundred twenty days after mailing. In the event that the bylaw is duly adopted, then the board shall cause the bylaw amendment to be recorded in the bureau of conveyances or filed in the land court, as the case may be. The volunteer apartment owners' committee shall be precluded from submitting a petition for a proposed bylaw which is substantially similar to that which has been previously mailed to the owners within one year after the original petition was submitted to the board. This subsection shall not preclude any apartment owner or voluntary apartment owners' committee from proposing any bylaw amendment at any annual association meeting.
- (3) Notices of association meetings, whether annual or special, shall be sent to each member of the association of apartment owners at least fourteen days prior to the meeting, and shall contain at least: the date, time, and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the association, if any[; and].
- (4) No resident manager, or managing agent shall solicit, for use by the manager or managing agent, any proxies from any apartment owner of the association of owners which employs the resident manager or managing agent, nor shall the resident manager or managing agent cast any proxy vote at any association meeting except for the purpose of establishing a quorum. No member of a board of directors who uses association funds to solicit proxies shall cast any of these proxy votes for the election or reelection of board members at any association meeting unless the proxy form specifically authorizes the board member to vote for the election or reelection of board directors and the board first posts notice of its intent to solicit proxies in prominent locations within the project at least thirty days prior to its solicitation of proxies; provided that if the board receives within seven days of the posted notice a request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall:
- (A) Mail to all owners a proxy form containing either the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or
- (B) Mail to all owners a proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements.
- The statement shall not exceed one hundred words, indicating the owner's qualifications to serve on the board and reasons for wanting to receive proxies.
- (5) A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

- (6) The apartment owners shall have the irrevocable right, to be exercised by the board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments.
- (7) An owner shall not act as an officer of an association and an employee of the managing agent employed by the association.
- (8) An association's employees shall not engage in selling or renting apartments in the condominium in which they are employed except association-owned units, unless such activity is approved by an affirmative vote of sixty-five per cent of the membership.
- (9) The board of directors shall meet at least once a year. Whenever practicable, notice of all board meetings shall be posted by the resident manager or a member of the board in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board of directors.
- (10) Directors shall not expend association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority approve of these expenses.
- (11) Associations at their own expense shall provide all board members with a current copy of the association's declaration, bylaws, house rules, and, annually, a copy of this chapter with amendments.

The provisions of this subsection shall be deemed incorporated into the bylaws of all condominium projects existing as of January 1, 1988, and all condominium projects created after that date."

SECTION 9. Section 514A-83.2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Proxies may be given to the board of directors [as an entity.]; provided that the proxy form shall contain a box wherein the owner may indicate that the owner wishes the vote to be shared with each board member receiving an equal percentage. Proxy forms which are not marked shall be considered a choice by the owner that the vote be made on the basis of the preference of the majority of the board."

SECTION 10. Section 514A-83.4, Hawaii Revised Statutes is amended to read as follows:

**“§514A-83.4 Meeting minutes.** Minutes of meetings of the board of directors and association of apartment owners [and the association's financial statements shall be available for examination by apartment owners at convenient hours at a place designated by the board, shall be mailed to any owner upon the owner's request at the owner's cost and] shall include the recorded vote of each board member on all motions except motions voted on in executive session.”

SECTION 11. Section 514A-85, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-85 Books of receipts and expenditures; unpaid assessments; availability for examination.** The manager or board of directors shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred.

The manager or board of directors shall also keep monthly statements indicating the total current delinquent dollar amount of any unpaid assessments for common expenses.

All records and the vouchers authorizing the payments, and statements shall be kept and maintained at the address of the project, or elsewhere within the State as determined by the board of directors[, and shall be available for examination by the apartment owners at owners' at convenient hours of week days].

The manager or board of directors shall not transfer by telephone association funds between accounts, including, but not limited to, the general operating account and reserve fund account."

SECTION 12. Section 514A-90, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment constitute a lien on the apartment prior to all other liens, except only (1) liens for taxes and assessments lawfully imposed by governmental authority against the apartment, and (2) all sums unpaid on any [mortgages] mortgage of record[,] which was recorded prior to the recordation of a notice of a lien by the association of apartment owners, and costs and expenses including [attorney's] attorneys' fees provided in such mortgages. The lien of the association of apartment owners may be foreclosed by action by the manager or board of directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the apartment owners, may, unless prohibited by the declaration, bid on the apartment at foreclosure sale, and acquire and hold, lease, mortgage, and convey the same. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same."

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 14. This Act shall take effect upon its approval.

(Approved June 19, 1989.)

**Notes**

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Peer Review.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to elect to opt out of subsection (a) of the federal Health Care Quality Improvement Act of 1986, Public Law 99-660, 42 U.S.C. sections 11101-15, and to enact instead the Hawaii Health Care Quality Improvement Act of 1989, which follows below in section 3, except that

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the immunity from federal laws found in 42 U.S.C. section 11111(a) shall be retained.

**SECTION 2.** The State of Hawaii by this enactment formally elects to opt out of subsection (a) of the federal Health Care Quality Improvement Act of 1986, Public Law 99-660, 42 U.S.C. sections 11101-15, pursuant to section 411(c)(2)(B), 42 U.S.C. section 11111(c)(2)(B), of that Act, except that the State of Hawaii elects to retain the immunity from federal laws provided in 42 U.S.C. section 11111(a).

**SECTION 3.** The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### **“CHAPTER HEALTH CARE PEER REVIEW”**

#### **PART I. GENERAL PROVISIONS**

**§ -1 Short title.** This chapter may be cited as the “Hawaii Health Care Quality Improvement Act of 1989.”

**§ -2 Purpose.** The purpose of this chapter is to provide incentives and protection for physicians engaging in effective professional peer review.

**§ -3 Findings.** The legislature finds the following:

- (1) There is an overriding need to provide incentive and protection for physicians engaging in effective professional peer review;
- (2) The occurrence of medical malpractice actions has become a problem in Hawaii which can be addressed in part by promoting more effective peer review; and
- (3) The threat of private money damage liability under state laws unreasonably discourages physicians from participating in effective professional peer review.

**§ -4 Definitions.** For purposes of this chapter the following words have the following meanings:

“Adversely affecting” includes reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges or membership in a health care entity.

“Clinical privileges” includes privileges, membership on the medical staff, and the other circumstances pertaining to the furnishing of medical care under which a physician or other licensed health care practitioner is permitted to furnish such care by a health care entity.

“Director” means the director of the department of commerce and consumer affairs.

“Health care entity” means:

- (1) A hospital that is licensed by the State to provide health care services;
- (2) An entity, including a health maintenance organization or group medical practice, that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care as may be determined under rules or guidelines which may be adopted under section -13 of this chapter;

- (3) A professional society or committee thereof of physicians or other licensed health care practitioners that follows a formal peer review process for the purpose of furthering quality health care as may be determined under rules or guidelines which may be adopted under section -13 of this chapter;

provided that "health care entity" shall not include a professional society or committee thereof if, within the previous five years, the society has been found by the Federal Trade Commission or any court to have engaged in any anti-competitive practice which had the effect of restricting the practice of licensed health care practitioners.

"Hospital" means an entity described in paragraphs (1) and (7) of section 1861(e) of the Social Security Act.

"Licensed health care practitioner" and "practitioner" mean an individual, other than a physician, who is licensed or otherwise authorized by the State to provide health care services.

"Physician" means an individual licensed under chapter 453 or 460, or both, or 463E-1, to practice medicine or surgery or osteopathy or podiatric medicine; an individual licensed under chapter 448 to practice dentistry or dental surgery; or any individual who, without authority, holds oneself out to be so authorized.

"Professional review action" means an action or recommendation of a professional review body which is taken or made in the conduct of professional review activity, which is based on the competence or professional conduct of an individual physician which conduct affects or could affect adversely the health or welfare of a patient or patients, and adversely affects the clinical privileges, or membership in a professional society, of the physician. Such term includes a formal decision of a professional review body not to take an action or make a recommendation described in the previous sentence and also includes professional review activities relating to a professional review action. For purposes of this chapter an action shall not be considered to be based on the competence or professional conduct of a physician if the action is primarily based on any of the following:

- (1) The physician's association, or lack of association, with a professional society or association;
- (2) The physician's fees or the physician's advertising or engaging in other competitive acts intended to solicit or retain business;
- (3) The physician's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis;
- (4) A physician's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional; or
- (5) Any other matter that does not relate to the competence or professional conduct of a physician.

"Professional review activity" means an activity of a health care entity with respect to an individual physician to do any of the following:

- (1) To determine whether the physician may have clinical privileges with respect to, or membership in, the entity;
- (2) To determine the scope or conditions of such privileges or membership; or
- (3) To change or modify such privileges or membership.

"Professional review body" means a health care entity and the governing body or any committee of a health care entity which conducts professional review activity, and includes any committee of the medical staff of such an entity when assisting the governing body in a professional review activity.

## PART II. PROMOTION OF PROFESSIONAL REVIEW ACTIVITIES

**§ -10 Limitation of damages for professional review actions.** (a) If a professional review action of a professional review body meets all the standards specified in section -11(a) except as provided in section -11(b):

- (1) The professional review body;
- (2) Any person acting as a member or staff to the body;
- (3) Any person under a contract or other formal agreement with the body; and
- (4) Any person who participates with or assists the body with respect to the action;

shall not be liable in damages under any law of the state with respect to the action except laws relating to the civil rights of any person or persons, including chapter 378, part I. Nothing in this subsection shall prevent the State from bringing an action, including an anti-trust action under chapter 480, where such an action is otherwise authorized.

(b) Notwithstanding any other provision of law to the contrary, no person, whether as a witness or otherwise, providing information to a professional review body regarding the competence or professional conduct of a physician shall be held, by reason of having provided such information, to be liable in damages under any law of the state unless such information is false and the person providing it knew that such information was false.

**§ -11 Standards for professional review actions.** (a) For purposes of the protection set forth in section -10, a professional review action must be taken:

- (1) In the reasonable belief that the action was in the furtherance of quality health care;
- (2) After a reasonable effort to obtain the facts of the matter;
- (3) After adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances; and
- (4) In the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3).

A professional review action shall be presumed to have met the standards necessary for the protection set out in section -10 unless the presumption is rebutted by a preponderance of the evidence.

(b) A health care entity shall be deemed to have met the adequate notice and hearing requirement of subsection (a)(3) with respect to a physician if the following conditions are met or are waived voluntarily by the physician:

- (1) The physician has been given notice stating:
  - (A) That a professional review action has been proposed to be taken against the physician and the reasons for the proposed action;
  - (B) That the physician has the right to request timely hearings on the proposed action, and any time limit of not less than thirty days within which to request such a hearing; and
  - (C) A summary of the hearing procedures as set forth in paragraph (3) of this subsection.
- (2) If a hearing is requested on a timely basis under subsection (b)(1)(B), the physician involved must be given notice stating:
  - (A) The place, time, and date of the hearing, which date shall not be less than thirty days after the date of the notice; and

- (B) A list of the witnesses, if any, expected to testify at the hearing on behalf of the professional review body.
- (3) If a hearing is requested on a timely basis under subsection (b)(1)(B), the health care entity shall determine that the peer review hearing shall be held according to one of the following options, and the hearing shall be so held, subject to the provisions of subsection (b)(4), before:
  - (A) An arbitrator mutually acceptable to the physician and the health care entity; or
  - (B) A hearing officer who is appointed by the entity and who is not in direct economic competition with the physician involved; or
  - (C) A panel of individuals who are appointed by the entity and are not in direct economic competition with the physician involved.
- (4) The right to the peer review hearing may be forfeited if the physician has failed, without good cause to appear.
- (5) In any peer review hearing held under this chapter, the physician involved has the right to:
  - (A) Be represented by an attorney or other person of the physician's choice;
  - (B) Have a record made of the proceedings, copies of which may be obtained by the physician upon payment of any reasonable charges associated with their preparation;
  - (C) Call, examine, and cross-examine witnesses;
  - (D) Present evidence determined to be relevant by the hearing officer, arbitrator, or panel, regardless of its admissibility in a court of law; and
  - (E) Submit a written statement at the close of the hearing.
- (6) Upon completion of any peer review hearing held under this chapter, the physician involved has the right to receive:
  - (A) The written recommendation of the arbitrator, officer, or panel, including a statement of the basis for the recommendations; and
  - (B) A written decision of the health care entity, including a statement of the basis for the decision.

A professional review body's failure to meet the conditions described in this subsection shall not, in itself, constitute failure to meet the standards of subsection (a)(3).

- (c) For purposes of section -10, nothing in this section shall be construed as:
  - (1) Requiring the procedures referred to in subsection (a)(3):
    - (A) Where there is no adverse professional review action taken;
    - (B) In the case of a suspension or restriction of clinical privileges, for a period of not longer than fourteen days, during which an investigation is being conducted to determine the need for a professional review action; or
  - (2) Precluding an immediate suspension or restriction of clinical privileges, subject to subsequent notice and hearing or other adequate procedures, where the failure to take such an action may result in an imminent danger to the health of any individual.

**§ -12 Attorney's fees.** (a) In any suit brought against a defendant, to the extent that a defendant has met the standards set forth under section -11(a) and the defendant substantially prevails, the court, at the conclusion of the action, shall award to a substantially prevailing party defending against any such claim the cost of the suit attributable to such claim, including a reasonable attorney's fee, if the

## **ACT 364**

claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith.

(b) For the purposes of this section, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains an award for damages, or permanent injunctive or declaratory relief.

**§ -13 Guidelines of the director.** The director, in consultation with the director of the department of health, may adopt pursuant to chapter 91, such rules and voluntary guidelines as may assist the professional review bodies in meeting the standards described in section -11(a).

**§ -14 Construction.** (a) Except as specifically provided in this part, nothing in this part shall be construed as changing the liabilities or immunities under law.

(b) Nothing in this part shall be construed as requiring health care entities to provide clinical privileges to any or all classes or types of physicians or other licensed health care practitioners.

(c) Nothing in this part shall be construed as affecting or modifying any provision of state law with respect to activities of professional review bodies regarding nurses, other licensed health care practitioners, or other health professionals who are not physicians.

(d) Nothing in this chapter shall be construed as affecting in any manner the rights and remedies afforded patients under any provision of state law to seek redress for any harm or injury suffered as a result of negligent treatment or care by any physician, health care practitioner, or health care entity, or as limiting any defenses or immunities available to any physician, health care practitioner, or health care entity."

**SECTION 4.** This Act shall not affect any rights or duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.

**SECTION 5.** This Act shall take effect upon its approval.

(Approved June 19, 1989.)

## **ACT 364**

S.B. NO. 1788

A Bill for an Act Relating to Marriage Licenses.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** Section 572-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department of health shall appoint, and at its pleasure remove, one or more suitable persons as agents authorized to grant marriage licenses under this chapter in each judicial circuit. Such agents may issue licenses from any state facility when deemed necessary by the director. Any agent appointed under this subsection and receiving an application for a marriage license, shall collect from the applicant for the license [\$8,] \$16, of which the agent except those provided for in subsection (b), shall retain [\$4] \$8 for the agent's benefit and compensation and shall remit [\$4] \$8 to the director of finance of the State."

**SECTION 2.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 3.** This Act shall take effect upon its approval.

(Approved June 19, 1989.)

**ACT 365**

S.B. NO. 1897

A Bill for an Act Relating to Facilities for Older Adults.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$120,000, or 0.0051 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

**SECTION 2.** The executive office of aging shall conduct or commission a study which shall include ways to provide affordable liability insurance or to limit the liability of organizations sponsoring adult day care centers. The study shall make recommendations for legislation and government programs to alleviate the shortage of adult day care facilities. The executive office of aging shall submit a report of its findings and recommendations to the legislature at least twenty days before the convening of the regular session of 1990.

**SECTION 3.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$120,000, or so much thereof as may be necessary for fiscal year 1989-1990, to conduct or commission a study for the purposes of this Act.

**SECTION 4.** The sum appropriated shall be expended by the executive office on aging for the purposes of this Act.

**SECTION 5.** This Act shall take effect on July 1, 1989.

(Approved June 19, 1989.)

**ACT 366**

S.B. NO. 1870

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1. Findings and purpose.** For a long time, Hawaii's single statewide system of education was thought of as the best organizational structure for our public schools to ensure equal opportunities for all of the children of Hawaii. More recently, however, in conjunction with assessments to determine how far we are from achieving the excellence in education which is the objective of every concerned citizen of Hawaii and the nation, experts have suggested that our public school system could benefit from a restructuring, without eliminating the single statewide system, to maximize achievement of that goal.

The restructuring recommended by experts can be labeled "school/community-based management."

## **ACT 366**

Very generally, the legislature is informed that the school/community-based management model is a process centered in each school. Its effectiveness is said to result from the involvement of all those instrumental in educating our children—the principal who must be a strong leader, a well-trained and focused teaching and support staff dedicated to implementing new ideas, involved parents, students, and other community members and organizations who can take greater responsibility for creating an effective learning environment and facilities conducive to learning. Its primary tenet appears to be that all participants affected by decisions, including principals, teachers, support staff, students, parents, and community members, should play a significant role in making those decisions. Based on research, experts believe that educational reform efforts will be most effective and long lasting when carried out by people who feel a sense of ownership and responsibility for the process.

Using a school/community-based management system, basic resources, training for faculty and administrators, and a systematic improvement process, a growing number of educational experts have informed the legislature that Hawaii can once again have a public education system which is second to none. However, because in the past the thinking had been that a highly centralized system was the best means of ensuring the availability of a sound public education, if Hawaii is to heed the advice of the educational experts, some restructuring of the statewide public school system is required.

The legislature finds that the school/community-based management concept is worthy of pursuit as a means for restructuring public education. Recognizing also, however, that ours is and must be a single statewide public school system which does not discriminate amongst our children and our communities, it is equally essential to ensure that access to educational benefits and facilities are not diminished by our effort. The purpose of this Act is to empower the board of education and other state departments and agencies to make the adjustments needed to initiate and facilitate implementation of the school/community-based management concept in our public schools.

As is contemplated under the concept of school/community-based management, the board is expected to define overall educational objectives and establish the criteria for measuring efforts of each participating school toward achieving those objectives, but allow the schools to make the day-to-day decisions as to how to accomplish them. However, schools may be unable to achieve their objectives because of some existing rules, policies, or procedures of the board of education, the department of education, and other agencies of the State. This legislation intends to enable those state agencies that presently participate in the staffing, construction, funding, maintenance, and operation of the public schools to grant waivers from rules, policies, and procedures that would otherwise proscribe or limit the schools' ability to achieve excellence in realizing the statewide goals for students.

Finally, the board shall establish a plan and a process whereby all schools will eventually become locally managed beginning with procedures to select those public schools which will participate, at least initially, in making school/community-based management a reality in Hawaii. The initial schools will be considered as a demonstration of the feasibility and effectiveness of school/community-based management and a step toward restructuring of our public school system.

**SECTION 2.** The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## “CHAPTER SCHOOL/COMMUNITY-BASED MANAGEMENT”

**§ -1 Findings and purpose.** The legislature finds that efforts must be made to ensure the excellence of Hawaii's public schools. Changes in the way the state's single school system is managed, particularly by restructuring the system to allow for more educational decision-making at the school level and thereby increasing the involvement of those directly affected by the decisions, should increase accountability and result in the excellence we seek.

This chapter is enacted to direct the department of education, the board of education, and all other agencies of the State to exercise their powers to foster that involvement and accountability. It recognizes, however, that a system so different from the centralized system presently in place cannot be imposed instantaneously.

**§ -2 Mandate to initiate school/community-based management system.** The department of education through the board of education and its superintendent shall formulate policies, including criteria and procedures to determine which schools shall participate in the system, to initiate a school/community-based management system in the public schools. The board of education shall appoint a representative selection panel to recommend which schools should be selected. For purposes of this chapter, the term “school/community-based management system” shall mean a method of educational management which diffuses educational decision-making to involve or secure the input of those 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.

**§ -3 Educational objectives.** The board of education shall formulate such policy and exercise such control as may be necessary to define a common set of educational goals which 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.

**§ -4 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 and its school community, shall waive otherwise applicable policies, rules, or procedures when requested to do so by a school participating in the school/community-based management system unless an agency can within thirty days justify a denial to the appropriate authority. The board of education shall adopt procedures necessary to process waivers initiated by schools 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.

**§ -5 Rules.** The board of education may adopt rules to implement this chapter.”

SECTION 3. This Act shall take effect upon its approval.

(Approved June 19, 1989.)

**ACT 367**

S.B. NO. 910

A Bill for an Act Relating to Early Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that one of the most pressing needs of families within our State is finding adequate care and education for young children. The problem affects parents and children from all economic strata and geographic areas, and additionally, impacts on employers whose workers are parents of young children. Households with two working parents and the growing number of single parent households must struggle to find organizations and institutions that will provide young children with a strong foundation for their future academic development. Parents are especially concerned that their children's first formal learning be affordable and take place in a safe and stimulating environment. When these parents' hopes are not realized, they become preoccupied with the well-being of their children. For the employer of these parents this often results in workers with lower morale, lower productivity, and higher rates of absenteeism.

The legislature is particularly concerned about early childhood education options available to children before entering kindergarten. These children are at that critical age when an early childhood education program could provide a solid foundation for a lifetime of learning. Research in Hawaii and other states documents the difference that preschool makes in an individual's lifelong achievement and satisfaction. This research indicates that students in preschool receive a head start in language development and in gaining motivation and self-esteem.

The legislature finds that only half of Hawaii's four year olds attend preschool. Poor children and children from non-English-speaking homes are less likely to go to preschool.

The purpose of this Act is to require the department of education to plan for voluntary statewide early education to be delivered by private providers whenever possible. The department of education shall adopt standards for curriculum, facilities, teacher training, and methods for encouraging the involvement of parents and guardians. Provisions will also be made for parents and guardians who opt for home care to utilize early childhood education resources.

**SECTION 2.** Chapter 296, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . EARLY EDUCATION**

**§296- Policy.** The department of education shall develop a plan for quality voluntary early education which shall be fully implemented and available statewide to all eligible children on a voluntary basis no later than January 1, 2000.

**§296- Early education defined.** For the purposes of this part, "early education" means a developmentally appropriate early childhood development and education program for children from birth to age eight.

**§296- Quality early education plan.** (a) The department of education plan shall focus on children from ages four up to six years.

(b) The board of education 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 of education, 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."

**SECTION 3.** The department of education shall submit its initial plans to the 1990 legislature and submit a final plan, which shall include implementation recommendations and costs, to the legislature twenty days before the convening of the Regular Session of 1991.

**SECTION 4.** This Act shall take effect upon its approval.

(Approved June 19, 1989.)

## ACT 368

H.B. NO. 1826

A Bill for an Act Relating to State Educational Facilities Improvement Special Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds and determines that the quality of public education in the State is related to the condition of public school facilities. The physical facilities used by the department of education for public instruction require extraordinary amounts of funds for capital improvements and repairs to improve their condition. The legislature finds and determines that it is in the best interest of the State, for a reasonable time, to earmark a portion of tax revenues for purposes of improving physical facilities used by the department of education for public instruction.

**SECTION 2.** The Hawaii Revised Statutes is amended by adding a new section to be appropriately designated and to read as follows:

**“§ State educational facilities improvement special fund.** There is created in the treasury of the State the state educational facilities improvement special fund, into which shall be deposited a portion of all general excise tax revenues collected by the department of taxation under section 237-31. The state educational facilities improvement special fund shall be used solely to plan, design, acquire lands, construct, provide equipment, and improve public schools and other facilities under the jurisdiction of the department of education, except public libraries. Ex-

## ACT 368

penditures from the state educational facilities improvement special fund shall be limited to projects authorized by the legislature and shall be subject to the provisions of sections 37-31 through 37-40. Appropriations or authorizations from the state educational facilities improvement special fund shall be expended by the comptroller.

All unobligated, unencumbered, or unexpended funds remaining in the state educational facilities improvement special fund as of June 30, 1999, shall revert to the general fund of the State. The state educational facilities improvement special fund shall be terminated as of June 30, 1999."

SECTION 3. Section 237-31, Hawaii Revised Statutes, is amended to read as follows:

**"§237-31 Remittances.** All remittances of taxes imposed by this chapter shall be made by money, bank draft, check, cashier's check, money order, or certificate of deposit to the office of the department of taxation to which the return was transmitted. The department shall issue its receipts therefor to the taxpayer and shall pay the moneys into the state treasury as a state realization, to be kept and accounted for as provided by law; provided that on or about September 1 of each year from 1989 through 1995, the sum of \$90 million from all general excise tax revenues realized by the State shall be deposited in the state treasury in each fiscal year to the credit of the state educational facilities improvement special fund; provided further that from July 1, 1981, to June 30, 1991, all taxes derived from the sale of liquid fuel under section 237-16, sold or used for operating motor vehicles upon the public highways of the State, shall be deposited into the state treasury to the credit of the state highway fund.

The director of taxation with the approval of the governor shall establish by July 1 of each year from 1984 through 1990, a formula that will equitably establish the amount of taxes collected under section 237-16 in each fiscal year that are derived from the sale of liquid fuel sold or used for operating motor vehicles upon the public highways of the State which are to be deposited into the state treasury to the credit of the state highway fund."

SECTION 4. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

**"§36-27 Transfers from special funds for central service expenses.** Except as hereinafter provided, and notwithstanding any provisions of any other law to the contrary, there shall be deducted from time to time by 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 special summer school fund under section 298-3.5; the school cafeteria special funds of the community colleges, the department of education, and the university laboratory school; [and] the special funds of the student housing, summer session, division of continuing education and community service, campus center, and bookstores of the University of Hawaii[,]; and the state educational facilities improvement special fund, five per cent of all receipts of each such special fund, 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."

SECTION 5. Section 36-30, Hawaii Revised Statutes, is amended to read as follows:

**"§36-30 Special fund reimbursements for departmental administrative expenses.** Each special fund, except the special summer school fund under section

298-3.5; the school cafeteria special funds of the community colleges, the department of education, and the university laboratory school; [and] the special funds of the student housing, summer session, division of continuing education and community service, campus center, and bookstores of the University of Hawaii[.]; and the state educational facilities improvement special fund, 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. Administrative expenses shall include, but shall not be limited to, salaries, maintenance of buildings and grounds, utilities, and general office expenses. The pro rata share of each special fund shall be that proportion of the administrative expenses of the department, including those paid from all special funds administered by the department, which the expenditures of the special fund bear to the total expenditures of the department; provided that in determining the amount to be charged to each special fund for its pro rata share, credit shall be given for any administrative expenses paid from the special fund concerned and such other adjustments shall be made as may be necessary to achieve an equitable apportionment. The director of finance may determine the amount to be charged to each special fund and may cause the amounts to be transferred to the general funds as reimbursements."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect on July 1, 1989.

(Approved June 19, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 369**

S.B. NO. 1622

A Bill for an Act Relating to Schools.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Schools that are well maintained and cared for inspire learning and involvement on the part of students, teachers, parents, and the community at large. The legislature agrees with the governor's remarks in his 1989 State of the State address, that, as part of the State's commitment to ensuring that Hawaii's public schools will be renewed places of learning by the turn of this century, the public schools must be housed in facilities that are conducive to learning and foster pride in achievement.

The purpose of this Act is to establish a school inspection program that will achieve and maintain a high level of sanitation, safety, maintenance, upkeep, and care of the general physical appearance of the public schools consistent with public health and safety standards.

SECTION 2. Chapter 296, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§296- 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

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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 which 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, lockerrooms, classrooms, and other facilities."

**SECTION 3.** New statutory material is underscored.<sup>1</sup>

**SECTION 4.** This Act shall take effect upon its approval.

(Approved June 19, 1989.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.

## **ACT 370**

**S.B. NO. 1868**

A Bill for an Act Relating to Fiscal Control.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** Act 320, Session Laws of Hawaii 1986, as amended by section 68 of Act 283, Session Laws of Hawaii 1987, is amended by adding a new section to read as follows:

"**SECTION 6A.** When it has been determined by the governor that any allowance or exception conferred upon the department of education or the University of Hawaii by the amendments made by this Act to sections 37-34, 37-35, 37-36, 37-37, and 37-74, Hawaii Revised Statutes, impairs the governor's ability to promote and ensure the economic and efficient management of the State's financial resources, that allowance or exception may be suspended by the governor for no more than twelve months, as appropriate, before this Act is repealed. The governor shall report any suspension to the legislature within thirty days of its institution."

**SECTION 2.** Act 320, Session Laws of Hawaii 1986, as amended by section 68 of Act 283, Session Laws of Hawaii 1987, is amended by amending section 8 to read as follows:

"**SECTION 8.** This Act shall take effect on July 1, 1986, and be repealed as of June 30, [1989;] 1994; provided that on repeal sections 37-34, 37-35, 37-36, 37-37, and 37-74, Hawaii Revised Statutes, are reenacted in the form in which they read on June 30, 1986."

**SECTION 3.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

**SECTION 4.** This Act shall take effect on June 29, 1989.

(Approved June 19, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 371**

S.B. NO. 1856

A Bill for an Act Relating to Accounting.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The purposes of this Act are: (1) to extend for another five years the administrative flexibility granted to the University of Hawaii and the department of education under Act 321, Session Laws of Hawaii 1986; (2) to request the legislative auditor to make another evaluation of the administrative flexibility legislation, including an evaluation of the progress of educational assessment activities at the University of Hawaii and the department of education, for consideration by the legislature in 1994; and (3) to keep the payroll function with the department of accounting and general services instead of allowing it to be transferred to the University of Hawaii and the department of education.

**SECTION 2.** Act 321, Session Laws of Hawaii 1986, as amended by section 69 of Act 283, Session Laws of Hawaii 1987, is amended by adding a new section to read as follows:

“**SECTION 10A.** The University of Hawaii and the department of education shall provide the legislature during the first week of each of its regular sessions of 1990, 1991, 1992, 1993, and 1994 reports on the progress of their respective educational assessment activities. These reports shall include the status of educational assessment programs within the university and the department of education and shall indicate interrelationships between educational assessment activities of the programs of higher and lower education.”

**SECTION 3.** Act 321, Session Laws of Hawaii 1986, as amended by Act 283, Session Laws of Hawaii 1987, is amended by adding a new section to read as follows:

“**SECTION 10B.** When it has been determined by the governor that any allowance or exception conferred upon the University of Hawaii or department of education by the amendments made by this Act to sections 40-1, 40-2, 40-4, 40-6, 40-81, and 103-23, Hawaii Revised Statutes, impairs the governor’s ability to promote and ensure the economic and efficient management of the State’s financial resources, such allowance or exception may be suspended by the governor for no more than twelve months, as appropriate, before this Act is repealed. The governor shall report any suspension to the legislature within thirty days of its institution.”

**SECTION 4.** Section 40-1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) With respect to the executive branch, except the University of Hawaii and the department of education, the comptroller shall have complete supervision of all accounts. The comptroller shall preaudit all proposed payments to determine the propriety of expenditures and compliance with such executive orders and rules as may be in effect. When necessary, the comptroller shall withhold approval of any payment. Whenever approval is withheld, the department or agency concerned shall be promptly notified. With respect to the University of Hawaii and the de-

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partment of education, the comptroller shall issue warrants for the release of funds for the operating costs of the university or the department of education, as applicable, in amounts and at times mutually agreed upon by the governor or director of finance and the university or the department of education, as applicable; provided that the amounts released shall not exceed the allotment ceilings for the respective funding sources of the university's or the department of education's appropriations established by the governor for an allotment period pursuant to section 37-34. The University of Hawaii and the department of education shall preaudit all proposed payments to determine the propriety of expenditures and compliance with applicable laws, executive orders, and rules as may be in effect. The University of Hawaii and the department of education shall make disbursements for [payroll and other] operating expenses from the amounts released by the comptroller and maintain records and documents necessary to support those disbursements at times mutually agreed upon by the university president or the superintendent of education, as applicable, and the comptroller; provided that when requested by the university or the department of education, the comptroller shall make all disbursements for the university or the department of education, as applicable, subject to available allotment. Funds released pursuant to this section shall be deposited by the university or the department of education, as applicable, in accordance with the provisions applicable to the director of finance by chapter 38. Any interest earned on the deposit of funds released pursuant to this section shall be deposited in the state treasury at the end of each fiscal year."

**SECTION 5.** Act 321, Session Laws of Hawaii 1986, as amended by section 69 of Act 283, Session Laws of Hawaii 1987, is amended by amending section 1 to read as follows:

"**SECTION 1.** The purpose of this Act is to:

- (1) [To allow] Allow the University of Hawaii and the department of education to assume authority and responsibility for all matters relating to the acquisition of goods and services, [pre-audit] preaudit of payments, [payroll,] disbursing, fund accounting, and business and accounting forms.
- (2) Provide the board of regents of the University of Hawaii and the board of education with the authorization to approve certain exceptions to statutory competitive bidding requirements."

**SECTION 6.** Act 321, Session Laws of Hawaii 1986, as amended by section 69 of Act 283, Session Laws of Hawaii 1987, is amended by amending section 10 to read as follows:

"**SECTION 10.** The legislative auditor shall conduct a review of the University of Hawaii and the department of education in order to assess and evaluate any impact of the provisions of this Act on the quality and effectiveness of the instruction, organized research, public service, academic support, student services, and institutional support program areas, as applicable, at the university and the department of education. Particular emphasis shall be given to the impact of the provisions on<sup>1</sup> this Act upon student education. This review shall be conducted in [three] two phases with an initial [reports] report to the legislature during the first week of its [1987] 1991 regular session[.] and a final report to the legislature during the first week of its 1994 regular session. Each report shall include [an inventory and assessment of the conditions of the university and the department of education prior to implementation of this Act; interim reports to the legislature during the first week of its 1988 regular session evaluating progress made and identifying

problems encountered to date within any or all of the educational program areas; and] an assessment of the impact of this Act on the university and the department of education and an evolution<sup>2</sup> of the progress to date on educational assessment activities at the university and the department of education. The final [reports] report to the legislature during the first week of its [1989] 1994 regular session [with] shall contain overall evaluations and final recommendations, including recommended drafts of legislation, on continuation of the provisions of this Act."

SECTION 7. Act 321, Session Laws of Hawaii 1986, as amended by section 69 of Act 283, Session Laws of Hawaii 1987, is amended by amending section 12 to read as follows:

"SECTION 12. This Act shall take effect on July 1, 1986, and be repealed as of June 30, [1989;] 1994; provided that on repeal sections 40-1, 40-2, 40-4, 40-6, 40-81, and 103-23, Hawaii Revised Statutes, are reenacted in the form in which they read on June 30, 1986."

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

SECTION 9. This Act shall take effect upon its approval.

(Approved June 19, 1989.)

#### Notes

1. Should probably read "of".
2. Should probably read "evaluation".
3. Edited pursuant to HRS §23G-16.5.

## ACT 372

H.B. NO. 1196

A Bill for an Act Relating to the University of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 304-8.6, Hawaii Revised Statutes, is amended to read as follows:

**"[§304-8.6][] University of Hawaii student activities revolving fund.** There is established the "University of Hawaii student activities revolving fund" into which shall be deposited all funds assessed as compulsory student activity fees and collected by the University of Hawaii on behalf of chartered student organizations and student activity programs of the several campuses of the University of Hawaii system. All revenues received by chartered student organizations and student activity programs from student activities and programs, except those revenues to which other special funds have prior claim, shall also be deposited into the revolving fund.

Separate accounts shall be maintained for each chartered student organization and student activity program. Funds from the accounts may be withdrawn and expended by each respective chartered student organization or student activity program for any purpose which it deems necessary and proper to carry out and achieve its educational responsibilities, programs, and related activities; provided that approval for such expenditure is first obtained from the board of regents or its designated representative[ ], except that approval is not required for expenditures for

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the purchase of flowers, leis, food, refreshments, and prizes if the purchases do not exceed the equivalent of ten per cent of the funds available to any chartered student organization or student activity program annually. All moneys received for the University of Hawaii student activities revolving fund shall be deposited in a depository maintained by the university in accordance with policies which shall be adopted by the board of regents."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 19, 1989.)

## ACT 373

S.B. NO. 914

A Bill for an Act Relating to Discovery.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 624-25.5, Hawaii Revised Statutes, is amended to read as follows:

"§624-25.5 Proceedings and records of [medical, dental and optometric] peer review committees and [hospitals.] quality assurance committees. (a) As used in this section, "professional society" or "society" means any association or other organization of persons engaged in the same profession or occupation, or a speciality within a profession or occupation, a primary purpose of which is to maintain the professional standards of the persons engaged in its profession or occupation or specialty practice; "peer review committee" means a committee created by a professional society, or by the medical, dental, optometric, or administrative staff of a licensed hospital or clinic whose function is to maintain the professional standards established by the bylaws of the society, hospital, or clinic of the persons engaged in its profession or occupation, or area of specialty practice, or in its hospital or clinic; and "hospital or clinic quality assurance committee" means an interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital or clinic providing medical, dental, or optometric care, whose function is to monitor and evaluate patient care, and to identify, study, and correct deficiencies and seek improvements in the patient care delivery process.

[(a)] (b) Neither the proceedings nor the records of peer review committees [of medical, dental or optometric staffs in hospitals having the responsibility of evaluation and improvement of the quality of care rendered in the hospital or peer review committees of local medical, dental, or optometric societies], or hospital or clinic quality assurance committees shall be subject to discovery. Except as hereinafter provided, no person in attendance at a meeting of the committee shall be required to testify as to what transpired at the meeting. The prohibition relating to discovery or testimony shall not apply to the statements made by any person in attendance at the meeting who is a party to an action or proceeding the subject matter of which was reviewed at the meeting, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits. For the purposes of this section, "records of hospital or clinic quality assurance committees" are limited to recordings, transcripts, minutes, and summaries and reports of com-

mittee meetings and conclusions contained therein. Information protected shall not include incident reports, occurrence reports, or similar reports which state facts concerning a specific situation, or records made in the regular course of business by a hospital or other provider of health care. Original sources of information, documents or records shall not be construed as being immune from discovery or use in any civil proceeding merely because they were presented to, or prepared at the direction of, such committee.

[(b)] [(c)] The prohibitions contained in this section shall not apply to medical, dental, or optometric society committees that exceed ten per cent of the membership of the society, nor to any committee if any person serves upon the committee when the person's own conduct or practice is being reviewed.

[(c)] [(d)] The prohibitions contained in this section shall apply to investigations and discovery conducted by the board of medical examiners, except as required by sections 92-17, 453-8.7, or 663-1.7(d)."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 20, 1989.)

**ACT 374**

H.B. NO. 1544

A Bill for an Act Making an Appropriation for Maritime Activities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that it is in the best interest of the State to encourage and recognize the maritime activities of modern-day pioneers who strove to test the limits of their endurance and set forth to go where few have ever sought to go alone. The purpose of this Act is to appropriate funds to transport the Lady Timarau or replica thereof, the historic twenty-four-foot boat that adventurer Florentino Das used on his one-man, five thousand mile voyage from Hawaii to the Philippines, to the maritime museum.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$25,000, or so much thereof as may be necessary for fiscal year 1989-1990, to transport the Lady Timarau or replica thereof to the maritime museum in Honolulu, Hawaii.

SECTION 3. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$25,000, or 0.0011 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 4. The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 5. This Act shall take effect on July 1, 1989.

(Approved June 26, 1989.)

**ACT 375**

S.B. NO. 783

A Bill for an Act Relating to the Reorganization of Youth Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER  
OFFICE OF YOUTH SERVICES**

**§ -1 Finding and purpose.** The legislature finds that:

- (1) The State of Hawaii has the responsibility to provide its youth a fair and full opportunity to reach their full potential and become law-abiding citizens of our community by providing and encouraging services, which will strengthen their physical, emotional, social, educational, and moral development;
- (2) There is a need for a strong state commitment to the needs of youth and families. Of particular concern are those youth who come into conflict with the laws of our community. To achieve this commitment, there is need for statewide planning and system coordination; oversight of activities and services; and evaluation and monitoring of the effectiveness of these services. In addition, a single entity is needed to serve as a central intake agency, and to coordinate the delivery of services, and provide a continuum of programs to eliminate gaps and provide a clear sense of responsibility and accountability for youth services. This agency must have sufficient statutory authority to ensure that its directives and mandates are complied with by the various affected agencies.

The purpose of this chapter is to establish the office of youth services for the planning, case management, and delivery of services to youth at risk.

**§ -2 Policy for youth.** A policy for youth is established for the State as follows:

- (1) It shall be the policy of this State to concentrate on the prevention of delinquency as an important strategy which can be planned and implemented on behalf of youth and their families. The State shall encourage community involvement in the provision of services for youth including, as an integral part, local government, public and private voluntary groups, public and private nonprofit groups, and private-for-profit groups in order to encourage and provide innovative strategies for these services. To maximize resources and services to youth in need of services, agencies shall develop standards of care, methods to coordinate services, and evaluate and monitor these activities. For youth with special needs, the furtherance of this policy requires all agencies to recognize that their jurisdiction in meeting these youths' needs are not mutually exclusive and that they will work jointly under the coordination of the office of youth services;
- (2) When youth at risk or their families request help, state and local government resources shall be utilized to complement community efforts to help meet the needs of youth by aiding in the prevention and resolution of their problems. The State shall direct its efforts first to strengthen and encourage family life as the most appropriate environ-

- ment for the care and nurturing of youth. To this end, the State shall assist and encourage families to utilize all available resources. For youth in need of services, the State shall secure those services as are needed to serve the emotional, mental, and physical welfare of youth and the best interests of the community, preferably in the youth's home or in the least restrictive environment possible. When youths must be placed in care away from their homes, the State shall ensure that they are protected against any harmful effects resulting from the temporary or permanent inability of parents to provide care and protection for their youth; and
- (3) This policy for youth shall be implemented through the cooperative efforts of state and county legislative, judicial, and executive branches, as well as other public and private resources. Where resources are limited, services shall be targeted to those youth in greatest need.

**§ -3 Definitions.** As used in this chapter:

“Executive director” means the executive director of the office of youth services.

“Office” means the office of youth services.

“Youth at risk” or “youth in need of services” means any youth who has been arrested, or who has had contact with the police, or who is experiencing social, emotional, psychological, educational, moral, physical, or other similar problems.

“Youth service system” means any youth services, facilities, or community-based programs provided through the family court and public and private agencies receiving state funds.

“Youth services” means public or privately funded programs which provide developmental, preventive, protective, recreational, treatment or rehabilitative services for youth at risk including: after school programs, foster care services, residential group homes, independent living programs; child nurturing and family living programs; camps; playground programs; services to youth with school-related problems including educational neglect; services to youth who are found to be subject to neglect, abuse, or exploitation; employment/training programs; diagnostic, preventive, and remedial medical and mental health services to youth, including chemically dependent, physically, mentally, and emotionally disabled and handicapped youth; information and referral services; and legal services to assure the rights of youth.

**§ -4 Establishment; purpose.** There is established within the department of human services for administrative purposes only the office of youth services. The office of youth services is established to provide services and programs for youth at risk under one umbrella agency in order to facilitate optimum service delivery, to prevent delinquency, and to reduce the incidence of recidivism among juveniles through the provision of prevention, rehabilitation, and treatment services. The office shall also be responsible for program planning and development, intake/assessment, oversight, as well as consultation, technical assistance, and staff training relating to the delivery of services.

The office shall provide a continuum of services as follows:

- (1) An integrated intake/assessment and case management system;
- (2) The necessary educational, vocational, social counseling and mental health services;
- (3) Community-based shelter and residential facilities;
- (4) Oversight of youth services; and

- (5) Other programs which encourage the development of positive self-images and useful skills in such youth.

To this end, on July 1, 1991, this office shall assume the responsibilities for juvenile corrections functions, which were temporarily placed in the department of corrections pursuant to Act 338 of 1987. These functions shall include, but not be limited to, all responsibilities, under chapter 352, for the Hawaii youth correctional facilities.

**§ -5 Appointment of director; powers and duties.** The office of youth services shall be headed by an executive director who shall be appointed by the governor without regard to chapters 76 and 77. The director may appoint such other staff as may be necessary to carry out the duties of the office of youth services.

**§ -6 Organizational structure.** The office of youth services shall be composed of such divisions and sections as are deemed necessary by the director to provide:

- (1) Diagnostic evaluation, treatment, and rehabilitation services for all youths referred to services provided by the office or placed in the office's custody by the family court;
- (2) Supervision and counseling services for youth in shelter or correctional facilities under the office's jurisdiction, including community-based facilities;
- (3) Educational, vocational-educational, and other programs to effectively occupy the time of the youth placed in a facility under the office's jurisdiction which promote the development of self-esteem and useful skills to prepare youths in becoming productive members of the community;
- (4) Continuous program planning, development, and coordination of youth services, including the coordination with other government and private social service agencies that work with youths to ensure that a full-range of programs is available and that such programs are consistent with the policy of this chapter and are not unnecessarily duplicative or conflicting;
- (5) Prevention services to include a comprehensive intake/assessment and information/referral system throughout the State which shall access services to youth and their families;
- (6) A case management system based on the individual needs of youth which shall provide for in-depth client assessment, appropriate service planning, and client advocacy;
- (7) Provide for the implementation of chapter 352, youth correctional facilities and other needed correctional services;
- (8) Facilitate the development of and, when appropriate, provide for training programs for persons offering services to youth at risk;
- (9) Provide for technical assistance and consultation to providers and potential providers;
- (10) Seek, apply for, and encourage the use of all federal funds for youth services and facilitate the coordination of federal, state, and local policies concerning services for youth;
- (11) Prepare and submit an annual report to the governor and the legislature. This report shall include, but not be limited to, a review of the status of youth services within the State, recommendations for priorities for the development and coordination of youth services; and

- (12) Monitor, evaluate, and audit all grant subsidies, and purchase of services under chapter 42 which relate to the office of youth services.

**§ -7 Youth services centers; creation.** (a) Beginning July 1, 1991, the office of youth services shall create, develop, and operate youth service centers throughout the State including one or more in each county. This may be done either directly or by contract with private parties. Delinquency prevention shall be a primary objective of these centers. The population eligible for services at the centers would be all youths in need of services. Centers would also develop individualized intake capabilities, program plans, delivery of services, and a comprehensive referral network. The objectives of the youth service centers shall be to:

- (1) Develop and implement programs in delinquency prevention;
- (2) Provide a wider range of informal dispositions, particularly alternatives to the juvenile justice system;
- (3) Develop an improved system of intake, assessment, and follow-up for youths; and
- (4) Provide better coordination of juvenile justice and nonjuvenile justice services in order to reduce overlaps and gaps in services.

(b) Each center shall be responsible for coordinating all services, justice system or nonjustice system, both public and private, to the youth referred to it.

(c) Every youth referred to a youth services center shall, as soon as possible, be appropriately placed with service provider and provided services. The center shall develop procedures which will insure that appropriate service providers are available on a twenty-four hour basis for each youth. The center may contract with such service providers for such services.

(d) Each youth service center shall maintain a registry of every youth referred to it and shall monitor and supervise the follow-up services that are provided to the youth. Each center shall be primarily responsible to insure that the youth is fully diverted from the juvenile justice system.

**§ -8 Office of youth services oversight committee; powers, duties, and authority.** (a) Beginning July 1, 1991, and terminating on June 30, 1992, there shall be established within the office of youth services an oversight committee, consisting of seven members. The committee shall include five members who represent providers of youth services and two lay citizens. All members shall have knowledge and experience regarding the needs of youth. All members shall be appointed by the governor as provided in section 26-34. The director shall serve as executive secretary of the committee. The oversight committee shall have the responsibility of investigating and reporting misfeasance and malfeasance within the youth service system, inquiring into areas of concern, and conducting periodic audit evaluations of the youth service system to ascertain its effectiveness and compliance with established responsibilities. This responsibility shall not include, however, services which are provided directly by the office of youth services.

It shall be the duty of the oversight committee to conduct regular, periodic, unannounced inspections of state-operated children's institutions and facilities and to review the reports of the inspections of the state fire marshall and the department of health and any agencies which accredit such institutions and facilities.

- (b) The oversight committee shall have the authority to:
  - (1) Examine all records and budgets pertaining to the youth service system and shall have access to all facilities within the youth service system for the purpose of conducting site visits and speaking with the residents of such facilities;

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- (2) Subpoena witnesses and hold public hearings;
- (3) Issue reports to the governor, the speaker of the house of representatives, the president of the senate, the chief justice of the supreme court, the director of the agency under consideration, and such other persons as necessary and appropriate;
- (4) Publish its findings and recommendations on an annual basis to be made available to members of the general public upon request, and such special findings and reports as deemed necessary; and
- (5) Establish a quality assurance program that identifies evaluation and monitoring procedures to assure that quality services are provided in an efficient and effective manner. This program shall include standards of performance that is expected of youth service providers.”

**SECTION 2.** It is the intent of this Act the office of youth services will initially perform a planning and program development function. Its primary duties for the first two years shall be to:

(a) Define and describe with particularity, the various types of youth to be included in the target population, and describe the nature and type of services that are most appropriate for the different types of youth. Collect data on the problems and needs of the target population and the nature, extent, and availability of services, public and private, for youth in need of services to provide empirical basis for the development of operational and organizational plans for the office of youth services.

(b) Determine what services need to be developed and which can be transferred from the department of human services, department of health, and the judiciary except for protective supervision and probation. The study shall also include purchase of services and alternative services.

- (c) Develop an organizational plan that will implement the operational plan.
- (d) Propose legislation to implement the operational and organizational plans.

The operational and organizational plans which shall be submitted to the legislature no later than twenty days prior to the convening of the regular session of 1991 shall provide for the following:

- (1) A study of all services, public and private, for youth at risk in the State and an overall plan for the delivery of services needed. This plan should include operational and organizational detail to include goals and objectives of the office of youth services and timetables for implementation.
- (2) An operational plan which shall contain the following:
  - (A) Plans for the transfer of the Hawaii youth correctional facility and its juvenile parole functions to the office of youth services on July 1, 1991;
  - (B) Recommendations regarding the feasibility of transferring functions and services, including grants, subsidies, and purchases of service, which are currently provided by the department of health, department of human services, and the family court, except that probation and protective supervision functions shall remain with the family court;
  - (C) Recommendations for actions required of the affected agencies and the legislature, timetables to implement any transfer recommendations, identification of the specific resources including staff that will require transfer or the establishment of new positions, and interagency agreements needed to insure that services are provided;

- (D) Recommendations regarding whether detention functions should be transferred to the office; and
  - (E) Design of a comprehensive intake/assessment system such as the youth service center, which shall include a study of the impact of this proposed intake system upon the present operations of the departments of health, education, human services, the family court, police, and prosecutors. The study shall plan for referral of all youth in need of services by the police departments, family court, departments of health, education, human services and other public and private agencies to the intake/assessment system for follow-up services.
  - (F) An examination of the function and role of the oversight committee established in section -8 within the office of youth services. A preliminary operational plan only examining the function and role of the oversight committee shall be submitted to the legislature no later than twenty days prior to the convening of the regular session of 1990.
- (3) An organizational plan which shall include the functions and services of the office, to include grants, subsidies, and purchases of service, as well as budget projections to operationalize the office of youth services.
  - (4) Implement services on July 1, 1991, with the transfer of purchases of service and functions or the development of parallel services.

SECTION 3. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency.

SECTION 4. All laws and parts of laws heretofore in conflict with the provisions of this Act are hereby amended to conform herewith. All acts passed during this regular session of 1989, whether enacted before or after the passage of this Act, shall be amended to conform to this Act, unless such acts specifically provide that this Act is being amended.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$600,000 or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$600,000 or so much thereof as may be necessary for fiscal year 1990-1991, to carry out the purposes of this Act. The sums appropriated shall be expended by the department of human services.

SECTION 6. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$600,000, or 0.026 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 7. If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 8. This Act shall take effect on July 1, 1989.

## **ACT 376**

(Approved June 26, 1989.)

## **ACT 376**

H.B. NO. 836

A Bill for an Act Relating to HIV Counseling.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 325-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No health care provider, blood bank, plasma center, or any other public or private agency, institution, or individual may subject a person's body fluids or tissue to a test for the presence of human immunodeficiency virus (HIV) infection unless the subject of the test first provides informed written consent to the testing. Any person in this State whose body fluids or tissue are subject to a test for the presence of HIV infection shall be afforded the opportunity to receive HIV counseling by the party ordering or requesting that the test be performed and shall be afforded the opportunity to obtain the test results. The counseling provided shall be consistent with guidelines established by the department. The opportunity to receive counseling shall be afforded both prior to obtaining a sample for HIV testing and upon disclosure of the test results, regardless of the serostatus of the individual tested, except that testing conducted pursuant to subsections (b)(1) and (2) shall be exempted from the counseling requirements of this subsection.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 26, 1989.)

## **ACT 377**

H.B. NO. 1847

A Bill for an Act Relating to Communicable Diseases.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 325-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The records of any person which indicate that a person has a human immunodeficiency virus (HIV) infection, AIDS related complex (ARC), or acquired immune deficiency syndrome (AIDS), which are held or maintained by any state agency, health care provider or facility, physician, laboratory, clinic, blood bank, third party payor, or any other agency, individual, or organization in the State shall be strictly confidential. For the purposes of this part, the term “records” shall be broadly construed to include all communication which identifies any individual who has HIV infection, ARC, or AIDS. [Such] This information shall not be released or made public upon subpoena or any other method of discovery. Notwithstanding any other provision to the contrary, release of the [information] records protected under this part shall be permitted under the following circumstances:

- (1) Release is made [of specific medical or epidemiological information] to the department of health [for statistical purposes in such a way that no person can be identified;] in order that it may comply with federal reporting requirements imposed on the State. The department shall ensure that personal identifying information from these records are protected from public disclosure;
- (2) Release is made of the records, or of specific medical or epidemiological information contained therein, with the prior written consent [to the specific information to be released] of the person or persons [identified therein;] to whom the records pertain;
- (3) Release is made [of medical or epidemiological information] to medical personnel in a medical emergency only to the extent necessary to protect the health, life, or well-being of the named party;
- (4) Release to or by the department of health is necessary to protect the health and well-being of the general public; provided that release is made in such a way that no person can be identified, except as specified in paragraph (5);
- (5) Release is made by the department of health of medical or epidemiological information from the records to medical personnel, appropriate county and state agencies, blood banks, plasma centers, organ and tissue banks, schools, preschools, day care centers, or county or district courts to enforce the provisions of this part and to enforce rules adopted by the department of health concerning the control and treatment of HIV infection, ARC, and AIDS; provided that release of information under this paragraph shall only be made by confidential communication to a designated individual charged with compliance of the provisions of this part;
- (6) Release is made for the purpose of enforcing the provisions of chapter 350;
- (7) Release is made to the patient's health care insurer to obtain reimbursement for services rendered to the patient; provided that release shall not be made if, after being informed that a claim will be made to an insurer, the patient is afforded the opportunity to make the reimbursement directly and actually makes the reimbursement;
- (8) Release is made by the patient's health care provider to another health care provider for the purpose of continued care [of] or treatment of the patient; or
- (9) Release is made pursuant to a court order, after an in camera review of the [information,] records, upon a showing of good cause by the party seeking the release of the records.

[For the purpose of] As used in this part, [the term "medical] unless the context requires otherwise:

"Medical emergency" means any disease-related situation which threatens life or limb[, and the term "medical"].

"Medical personnel" means any health care provider[,] in the State, as provided in section 323D-2, [in the State,] who deals directly or indirectly with the identified patient or the patient's contacts, and includes hospital emergency room personnel; the staff of the communicable disease division of the department of health, and any other department personnel as designated by the director."

SECTION 2. Section 325-102, Hawaii Revised Statutes, is amended to read as follows:

**"[§325-102] Civil penalty.** Any person or institution who wilfully violates any provision of this part shall be fined not less than \$1,000 nor more than

\$10,000 for each violation plus reasonable court costs as determined by the court, which penalty and costs shall be paid to the person or persons whose records were released."

**SECTION 3.** Section 325-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- "(b) Consent to testing is not required for any of the following:
- (1) Anatomical gifts. A health care provider or organ donor center which procures, processes, distributes, or uses human body parts donated for scientific purposes may, without obtaining consent to the testing, test for the presence of HIV in order to assure medical acceptability of the gift for the purpose intended.
  - (2) Research. The department, laboratories and research facilities, health care providers, blood banks, plasma centers, and educational institutions may subject any body fluids or tissue to be used in research to a test for HIV infection if the test is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.
  - (3) Anonymous testing carried out at HIV test sites established by the department provided that informed verbal consent is obtained.
  - (4) Testing of body fluids or tissue which is ordered by a third party, so long as that third party, including but not limited to an insurance company, employer, or school, obtains the informed written consent of the person to be tested authorizing the release of the test results to the third party, and transmits a signed copy of the written informed consent to the health provider prior to any release of the requested test results to the third party.
  - (5) Patient diagnosis or treatment. Informed consent is not required where the patient is unable to give consent and it is determined by the patient's treating physician that the patient's HIV status is necessary (A) to make a diagnosis, or (B) to determine an appropriate course of treatment for the patient. The patient shall be informed in a timely manner that a test for the presence of HIV has been performed pursuant to the provisions of this paragraph and the patient shall be provided the opportunity to obtain the test results and appropriate counseling.
  - (6) Protection of health care workers. A treating physician may order an HIV test without the patient's informed consent if the physician has determined that the patient is incapable of giving consent prior to the rendering of treatment and when there is reason to believe that the safety of a health care [providers] worker may be affected due to exposure to the blood or bodily fluids of a patient suspected of possible HIV infection. The availability and quality of health care services shall not be compromised based on the findings and testing performed pursuant to this paragraph. The costs of any testing performed shall be borne by the health care provider and may not be claimed against the patient or the patient's health care insurer. The patient and the health care worker shall be informed in a timely manner that a test for the presence of HIV has been performed pursuant to the provisions of this paragraph, and the patient and the health care worker shall be provided the opportunity to obtain the test results and appropriate counseling."

**SECTION 4.** Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 26, 1989.)

## ACT 378

H.B. NO. 1906

A Bill for an Act Relating to the State Health Insurance Program.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### **“CHAPTER STATE HEALTH INSURANCE PROGRAM ACT**

**§ -1 Findings and purpose.** (a) The legislature finds that despite the fact that Hawaii has the only statutorily mandated prepaid health care program in the country, as well as a broad-based medicaid program which provides an array of medical benefits to Hawaii's lowest income level residents, there remain in the State uninsured "gap group individuals". Available statistics consistently reveal that an estimated five per cent of the civilian population of this State, or 50,000 individuals, lack any form of medical insurance whatsoever and are therefore limited in access to medical care.

(b) These "gap group individuals" are characterized by one or more of the following conditions or factors contributing to lack of insurance or "medical indigency":

- (1) They have too much income or too many assets to qualify for medicaid, but too little to afford private insurance;
- (2) They do not qualify for prepaid health care insurance coverage through employment;
- (3) They choose not to obtain health insurance; or
- (4) They are dependents, primarily children of insureds who are not covered by their parent's, guardian's, or spouse's policies.

(c) The legislature further finds that it is a matter of compelling public interest to provide for the health and well-being of all the people of this State. This is also consistent with the health provisions of the Hawaii State Planning Act as set forth in section 226-20(a)(1), which establish as an objective the "fulfillment of basic individual health needs of the general public." This objective is construed to include access to basic health insurance coverage. To responsibly carry out this objective, it is therefore appropriate that the legislature use innovative means to ensure that all residents, regardless of age, income, employment status, or any other factor, have access to health insurance coverage which will provide basic medical services necessary to sustain a healthy life.

(d) The purpose of this chapter is to establish a program within the department of health, funded through legislative appropriations, to ensure basic health insurance coverage is available for Hawaii residents who are medically uninsured and who are defined in section -2 as "gap group individuals".

**§ -2 Definitions.** As used in this chapter unless otherwise indicated by the context:

"Gap group individuals" means medically uninsured persons who are residents of the State.

"Health care coverage" means contractually arranged medical, personal, or other services, including preventive services, education, case management, and outreach, provided to an eligible member.

"Health care contractor" means any medical group or organization which undertakes, under a prepaid health care program, to provide health care, or any nonprofit organization or insurer who undertakes, under a prepaid health care program, to defray or reimburse in whole or part, the expenses of health care.

"Medical indigence" means the status of a person who is uninsured or lacks medical insurance.

**§ -3 State health insurance program established.** There is established within the department of health the state health insurance program whose goals shall be to:

- (1) Subsidize health care coverage for gap group individuals, including but not necessarily limited to outpatient primary and preventive care;
- (2) Encourage the uninsured who can afford to participate in existing health plans to seek that coverage;
- (3) Discourage individuals who are already adequately insured from seeking benefits under the state health insurance program;
- (4) Assure that those persons who have the ability to pay for all or part of their coverage be appropriately assessed by the contractors on a sliding fee scale basis; and
- (5) Ensure that the state health insurance program is affordable to gap group individuals.

The program shall be funded by legislative appropriations made to the department of health.

**§ -4 Transfer of funds.** The department of health shall have the authority to utilize funds appropriated under this chapter to directly purchase services in accordance with chapter 42 when it is determined that such a purchase is more effective and cost efficient in meeting the goals of this chapter. The department of health shall also have the authority to transfer funds appropriated under this chapter to the department of human services. The department of human services may receive and apply such funds for the purpose of maximizing medical care services to gap group individuals under the medicaid program contained in the medicaid state plan. The departments of health and human services shall develop and implement an inter-agency working agreement necessary to carry out the purpose of this section.

**§ -5 Rulemaking authority.** The director of health shall adopt rules in accordance with chapter 91 which are necessary to carry out this chapter. The rules shall include, but need not be limited to:

- (1) Establishment of guidelines for the purchase of health care coverage from health care contractors by the department;
- (2) Establishment of specific health care services to be covered, limited, and excluded by the program, including preventive services, outreach, and education strategies designed to reach gap group individuals;
- (3) Establishment of eligibility requirements for participation in the program;
- (4) Development and implementation of an identification and notification process for eligible program participants;
- (5) Establishment of a payment schedule based on the person's ability to pay;

- (6) Establishment of program participation criteria for health care contractors;
- (7) Establishment of monitoring and evaluative guidelines for the program;
- (8) Establishment of appeal procedures for denial of eligibility, disqualification from program participation, assessment of civil penalties, or other negative action; and
- (9) Establishment of procedures to exclude or remove from the program persons who drop individual or group coverage to obtain insurance.

**§ -6 Reporting, continued funding.** The department of health shall report to the legislature on or about October 1, 1989 on the progress made in implementation of this act, including:

- (1) Establishment of an advisory committee to review: the scope of the work to be done by a consultant, the input from the committee and the community to the consultant, and the schedule of work of the advisory committee;
- (2) Final scope of work for the consultant, selection of the consultant, and the consultant's workplan;
- (3) Involvement of the departments of labor, human services, and other departments needed to successfully develop the program;
- (4) Required data collection efforts to successfully develop the program.

The department of health, in collaboration with the health care contractors, shall submit reports to the legislature and the governor no later than twenty days prior to the convening of each and every legislative session regarding program activities and expenditures, needed resources, participant demographics, evaluations, and such other information as may be necessary to determine the usefulness of and continued need for the state health insurance program.

The purchase of insurance shall not proceed without the formal approval of the governor and a review by the legislature during the 1990 regular session. Implementation is predicated upon the successful completion of the consultant's reports and findings. The legislature, by concurrent resolution, may opt to withhold funding appropriated for implementation if not satisfied with the plan, provided that such a concurrent resolution must be passed within thirty days after completion of the implementation plan or March 1, 1990 whichever occurs last.

**§ -7 Violation, penalty.** Any person who violates this chapter or any rule adopted by the department of health pursuant to this chapter may be permanently disqualified from participation in the program, required to reimburse any benefits wrongfully obtained, and shall be fined not more than \$500. Any action taken to impose or collect the penalty provided for in this section may be considered a civil action.

**§ -8 Severability.** If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

**SECTION 2.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$4,000,000 or 0.17 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the need provided for by this Act.

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**SECTION 3.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$4,000,000, or so much thereof as may be necessary for fiscal year 1989-1990, for the purposes of this Act; provided that not more than \$1,000,000 may be released in fiscal year 1989-1990 for planning and designing a state health insurance program. There is appropriated out of the general revenues of the State of Hawaii the sum of \$10,000,000, or so much thereof as may be necessary for fiscal year 1990-1991, for the purposes of this Act.

**SECTION 4.** The sum appropriated shall be expended by the department of health for the purposes of this Act.

**SECTION 5.** This Act shall take effect upon its approval.

(Approved June 26, 1989.)

## **ACT 379**

H.B. NO. 913

A Bill for an Act Relating to Adult Residential Care Homes.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** Section 346-53, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The director, pursuant to chapter 91, shall determine the rate of payment for the different levels of domiciliary care provided to recipients eligible either for Federal Supplemental Security Income, or public assistance in accordance with state standards, or both. The director shall provide for level of care increases effective July 1, [1988, in amounts not less than \$60 for each level of care.] 1989, as follows:

- (1) For those adult residential care homes classified as facility type I: not less than \$70 for level of care (LOC) I; not less than \$105 for LOC II; and not less than \$145 for LOC III; and
- (2) For those adult residential care homes classified as facility type II: not less than \$124 for LOC I; not less than \$105 for LOC II; and not less than \$145 for LOC III.

The rate of payment at which level a recipient enters an adult residential care home licensed pursuant to section 321-15.6 shall remain the same for as long as the recipient resides in that adult residential care home. The rate of payment may be raised if the recipient's condition so requires, or by rule of the department in accordance with this subsection; provided that:

- (1) Notwithstanding the rate of payment at the time of entry, the department shall ensure that the recipient shall receive the quality of care consistent with the level of care as determined by the department; and
- (2) If the operator does not provide the quality of care consistent with the needs of the individual as determined by and to the satisfaction of the department, the department may reduce the rate of payment, or adjust the level of care, or remove the recipient to another facility.

The department shall handle abusive practices under this section in accordance with chapter 91.

Nothing in this subsection shall allow the director to remove a recipient from an adult residential care home or other similar institution if the recipient does not desire to be removed and the operator thereof is agreeable to the recipient remaining therein, except where the recipient requires a higher level of care than provided thereby, or where the recipient no longer requires any domiciliary care.”

**SECTION 2.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$3,175,389, or 0.154 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 3.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,175,389, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$3,334,158, or so much thereof as may be necessary for fiscal year 1990-1991.

**SECTION 4.** The department of health shall adopt rules to set standards assuring the quality of the services provided by adult residential care homes. Through monitoring and evaluation, including such measures as inspection of these care homes without prior notice, the department shall identify, study, and require correction of deficiencies whenever feasible.

**SECTION 5.** The sums appropriated shall be expended by the department of human services for the purposes of this Act.

**SECTION 6.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 7.** This Act shall take effect on October 1, 1989.

(Approved June 26, 1989.)

**ACT 380**

H.B. NO. 64

A Bill for an Act Relating to Long Term Care.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that experts in the field of long term care and elders themselves have long advocated community-based approaches as the preferred method of providing long term care to the broadest spectrum of persons with functional limitations.

In light of Hawaii's high longevity rate, there is a growing number of persons in need of long term care, and because government-provided long term care services cannot be expected to meet the current and anticipated demand for these services, an active state role in encouraging more private sector involvement would not only help ensure the availability, appropriateness, and accessibility of community-based services, but could assure the quality of such services offered.

The legislature further finds that matters related to elderly care fall under the aegis of the executive office on aging, which is designated by law as the state agency responsible for programs affecting older adults in this state.

The purposes of this Act are to:

- (1) Establish a long term care service development fund providing grants to promote the establishment, reorganization, or expansion of businesses and nonprofit corporations offering community-based long term care services on a fee-for-service basis;

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- (2) Appropriate funds for the Hawaii capital loan program to make loans to promote the establishment, reorganization, or expansion of businesses offering community-based long term care services on a fee-for-service basis;
- (3) Conduct a study to determine methods by which the private sector can more effectively participate in the provision of community-based services; and
- (4) Provide for training and business plan development, including, but not limited to, workshops assisting providers on the development of their business plans, assistance with applications for grants and loans, business management training, and other types of training.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§321- Long term care service development fund established.** There is established in the treasury of the State a special fund to be known as the long term care service development fund, which shall be administered by the executive office on aging to provide grants to promote the establishment, reorganization, or expansion of businesses and nonprofit corporations offering community-based long term care services on a fee-for-service basis and to provide funding for training and business plan development, including, but not limited to, workshops assisting providers on the development of their business plans, assistance with applications for grants, business management training, and other types of training."

SECTION 3. The executive office on aging, in consultation with the department of business and economic development, shall conduct a study to determine the methods by which the private sector can more effectively participate in the provision of community-based services. The study shall provide a financial analysis of the community-based long term care industry on an industry-wide basis and by industry segments, such as in-home respite care and day health care. The industry segment analyses shall include, for each segment, an analysis of internal financial needs, such as insurance and staffing. The study shall develop information on an industry-wide basis and for each segment of the industry that can be used to estimate start-up costs and operating expenses; this study shall also recommend how the funds can best be allocated to maximize the number of service providers in each industry segment.

The executive office on aging shall submit a report of its findings and recommendations to the legislature at least twenty days before the convening of the regular session of 1990.

SECTION 4. The executive office on aging shall adopt rules pursuant to chapter 91 for the purposes of administering the long term care service development fund and shall report to the legislature on the activities undertaken pursuant to this Act not less than twenty days prior to convening of Regular Sessions of 1990 and 1991.

SECTION 5. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$2,000,000, or 0.085 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000, or so much thereof as may be necessary for fiscal year 1989-1990, to be used as follows:

- |   |           |
|---|-----------|
| (1) For deposit into the long term care service development fund;   | \$800,000 |
| (2) For training and assistance in business plan development;   | \$100,000 |
| (3) For a study to recommend long term care business development methods and perform analyses of the community-based long-term care industry. | \$50,000  |
| (4) For staffing and operating expenses.  | \$50,000  |

The sum appropriated shall be expended by the executive office on aging for the purposes of this act.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000, or so much thereof as may be necessary for fiscal year 1989-1990, to be deposited into the Hawaii capital loan program to promote the establishment, reorganization, or expansion of businesses offering community-based long term care services on a fee-for-service basis. The sum appropriated shall be expended by the department of business and economic development for the purposes of this Act.

SECTION 8. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect on July 1, 1989.

(Approved June 26, 1989.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 381

H.B. NO. 1844

A Bill for an Act Relating to Adult Protective Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### **"PART . DEPENDENT ADULT PROTECTIVE SERVICES**

**§346- Purpose; construction.** The legislature recognizes that citizens of the State who are elderly and mentally or physically impaired constitute a significant and identifiable segment of the population and are particularly subject to risks of abuse, neglect, and exploitation.

The legislature also recognizes that it is a person's dependency status, not age, which is often encountered in cases of abuse, neglect, and exploitation. While advanced age alone is not sufficient reason to intervene in a person's life, the legislature finds that many elderly have become subjects of abuse and neglect. Substantial public interest exists to ensure that this segment of the population receives protection.

The legislature declares that the State shall develop and promote community services for the economic, social, and personal well-being and protection of its elderly citizens who are mentally or physically impaired.

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In taking this action, the legislature intends to place the fewest possible restrictions on personal liberty and to permit the exercise of constitutional rights by adults consistent with protection from abuse, neglect, and exploitation.

### **§346- Definitions.**

“Abuse” means actual or imminent physical injury, psychological abuse or neglect, sexual abuse, financial exploitation, negligent treatment, or maltreatment as further defined in this chapter.

Abuse occurs where:

- (1) Any dependent adult exhibits evidence of:
  - (A) Substantial or multiple skin bruising or any other internal bleeding;
  - (B) Any injury to skin causing substantial bleeding;
  - (C) Malnutrition;
  - (D) A burn or burns;
  - (E) Poisoning;
  - (F) The fracture of any bone;
  - (G) A subdural hematoma;
  - (H) Soft tissue swelling;
  - (I) Extreme physical pain; or
  - (J) Extreme mental distress which includes a consistent pattern of actions or verbalizations including threats, insults, or harassment, that humiliates, provokes, intimidates, confuses, and frightens the dependent adult;

and the injury is not justifiably explained, or where the history given is at variance with the degree or type of injury, or circumstances indicate that the injury is not the product of an accidental occurrence;

- (2) Any dependent adult has been the victim of non-consensual sexual contact or conduct, including, but not limited to:
  - (A) Sexual assault, molestation, sexual fondling, incest, prostitution;
  - (B) Obscene or pornographic photographing, filming, or depiction; or
  - (C) Other similar forms of sexual exploitation;
- (3) Any dependent adult is not provided in a timely manner with adequate food, clothing, shelter, psychological care, physical care, medical care, or supervision;
- (4) Any dependent adult is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; however, this paragraph shall not apply when such drugs are provided to the dependent adult pursuant to the direction or prescription of a practitioner, as defined in section 712-1240;
- (5) There has been a failure to exercise that degree of care toward a dependent adult which a reasonable person with the responsibility of a caregiver would exercise, including, but not limited to, failure to:
  - (A) Assist in personal hygiene;
  - (B) Provide necessary food, shelter, and clothing;
  - (C) Provide necessary health care, access to health care, or prescribed medication;
  - (D) Protect a dependent adult from health and safety hazards; or
  - (E) Protect against acts of abuse by third parties;
- (6) Any dependent adult appears to lack sufficient understanding or capacity to make or communicate responsible decisions concerning the dependent adult's person, and appears to be exposed to a situation or

- condition which poses an imminent risk of death or risk of serious physical harm; or
- (7) There is financial and economic exploitation in addition to other manifestations of abuse as enumerated herein. For the purpose of this part, "financial and economic exploitation" means the wrongful or negligent taking, withholding, misappropriation, or use of a dependent adult's money, real property, or personal property. "Financial and economic exploitation" can include but is not limited to:
- (A) Breaches of fiduciary relationships such as the misuse of a power of attorney or the abuse of guardianship privileges, resulting in the unauthorized appropriation, sale, or transfer of property;
  - (B) The unauthorized taking of personal assets;
  - (C) The misappropriation, misuse, or transfer of moneys belonging to the dependent adult from a personal or joint account; or
  - (D) The intentional or negligent failure to effectively use a dependent adult's income and assets for the necessities required for the person's support and maintenance.

The exploitation may involve coercion, manipulation, threats, intimidation, misrepresentation, or exertion of undue influence.

"Capacity" means the ability to understand and appreciate the nature and consequences of making decisions concerning one's person or to communicate such decisions.

"Court" means the family court having jurisdiction over a matter under this part.

"Department" means the department of human services and its authorized representatives.

"Dependent adult" means any adult who, because of mental or physical impairment is dependent upon another person for personal health, safety, or welfare.

"Emergency medical treatment" means those services necessary to maintain a person's physical health and without which there is a reasonable belief that the person will suffer irreparable harm or death.

"Imminent abuse" means that there exists reasonable cause to believe that abuse will occur or recur within the next ninety days.

"Party" means those persons entitled to notice of proceedings under sections 346- and 346-, including any state department or agency that is providing services and treatment to a dependent adult in accordance with a protective services plan.

"Protective services plan" means a specific written plan, prepared by the department, setting forth the specific services and treatment to be provided to a dependent adult.

**§346- Jurisdiction; venue.** The family court shall have jurisdiction in protective proceedings under this part concerning any dependent adult who was or is found within the circuit at the time such facts and circumstances occurred, were discovered, or were reported to the department, which constitute the basis for a finding that the person has been abused and is threatened with imminent abuse; provided that the protective proceedings under this part are not exclusive and shall not preclude the use of any other criminal, civil, or administrative remedy. The protective proceedings under this part shall be held in the judicial circuit in which the dependent adult resides at the time of the filing of the petition or in which the dependent adult has assets.

**§346- Reports.** (a) The following persons who, in the performance of their professional or official duties, know or have reason to believe that a dependent

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adult has been abused and is threatened with imminent abuse shall promptly report the matter orally to the department of human services:

- (1) Any licensed or registered professional of the healing arts and any health-related occupation who examines, treats, or provides other professional or specialized services to dependent adults, including, but not limited to, physicians, physicians in training, psychologists, dentists, nurses, osteopathic physicians and surgeons, optometrists, chiropractors, podiatrists, pharmacists, and other health-related professionals;
- (2) Employees or officers of any public or private agency or institution providing social, medical, hospital or mental health services, including financial assistance;
- (3) Employees or officers of any law enforcement including, but not limited to, the courts, police departments, correctional institutions, and parole or probation offices;
- (4) Employees or officers of any adult residential care home, adult day care center, or similar institution; and
- (5) Medical examiners or coroners.

(b) The initial oral report required by subsection (a) shall be followed as soon as possible by a written report to the department; provided that where a police department is the initiating agency, a written report shall not be required unless the police department has declined to take further action and the department informs the police department that it intends to pursue the matter of the orally reported incident of abuse. All written reports shall contain the name and address of the dependent adult and the person who is alleged to have been responsible for the dependent adult abuse, if known; the nature and extent of the dependent adult's injury or harm; and any other information the reporter believes might be helpful in establishing the cause of the dependent adult abuse.

(c) This section shall not prohibit any of the persons enumerated in subsection (a) from reporting incidents which those persons have reason to believe involve abuse which came to their attention in any private or nonprofessional capacity.

(d) Any other person who has reason to believe that a dependent adult has been abused or is threatened with abuse may report the matter orally to the department.

(e) Any person who knowingly fails to report as required by this section or who wilfully prevents another person from reporting pursuant to this part shall be guilty of a petty misdemeanor.

(f) The department shall maintain a central registry of reported cases.

**§346- Confidentiality of reports.** All reports made pursuant to this part, including the identity of the reporting person, as well as all records of such reports, are confidential and any person who makes an unauthorized disclosure of a report or records of the court proceedings under this part shall be guilty of a misdemeanor. The director of human services may adopt, amend, or repeal rules, pursuant to chapter 91, to provide for the confidentiality of reports and records, and for the authorized disclosure of reports and records.

**§346- Access to records.** Records of a dependent adult shall be obtained by the department or the dependent adult's court-appointed guardian ad litem with the written consent of the dependent adult or that person's representative, or by court order. Any person who reports to the department under section 346-, upon demand of the department, shall provide all information related to the alleged incident of dependent adult abuse or neglect, including, but not limited to, financial records and medical reports, which were not included in the written report submitted pursuant to section 346- (b).

**§346- Investigation.** Upon receiving a report that abuse of a dependent adult has occurred and is imminent, the department shall cause an investigation to be commenced in accordance with this part as the department deems appropriate.

**§346- Action upon investigation.** Upon investigation the department shall take action toward preventing further abuse and shall have the authority to do any or all of the following:

- (1) Resolve the matter in an informal fashion as is appropriate under the circumstances;
- (2) Exercise its right of entry under section 346- ;
- (3) Seek an order for immediate protection;
- (4) Seek a temporary restraining order;
- (5) File a petition with the court under this part; and
- (6) Seek any protective or remedial actions authorized by law.

**§346- Right of entry.** (a) An employee of the department engaged in an investigation under this part shall be authorized to visit and communicate with the dependent adult who is the subject of the report. Any person intentionally or knowingly obstructing or interfering with the department's access to or communication with the dependent adult shall be guilty of a misdemeanor.

(b) Any employee of the department engaged in an investigation under this part, having probable cause to believe that a dependent adult will be physically injured through abuse before a court order for entry can be obtained, without a warrant, may enter upon the premises where the dependent adult may be found for the purpose of ascertaining that person's welfare. Where a warrantless entry is authorized under this section, the employee of the department may request the assistance of a police officer to gain entrance.

**§346- Termination of services.** The department shall act only with the consent of the victim, unless the department obtains court authorization to provide necessary services, as provided in section 346- . Investigation and services provided under this part shall be immediately terminated if:

- (1) A dependent adult does not consent to the receipt of protective services;
- (2) The dependent adult withdraws the consent;
- (3) The department determines that protection is no longer needed under this part; or
- (4) The court so orders.

Upon the department's determination that protective services are no longer needed, the dependent adult shall be referred to the agency responsible for follow-up services. For the mentally ill and developmentally disabled adult, the state agency designated to provide services shall be the department of health.

**§346- Order for immediate protection.** (a) If the department believes that a person is a dependent adult and it appears probable that the dependent adult has been abused and is threatened with imminent abuse unless immediate action is taken; and the dependent adult consents, or if the dependent adult does not consent and there is probable cause to believe that the dependent adult lacks the capacity to make decisions concerning the dependent adult's person, the department shall seek an order for immediate protection in accordance with section 346- .

(b) A finding of probable cause may be based in whole or in part upon hearsay evidence when direct testimony is unavailable or when it is demonstrably inconvenient to summon witnesses who will be able to testify to facts from personal knowledge.

(c) Upon finding that the person is a dependent adult and that there is probable cause that the dependent adult has been abused and is threatened with imminent

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abuse unless immediate action is taken; and the dependent adult consents, or if the dependent adult does not consent and there is probable cause to believe that the dependent adult lacks the capacity to make decisions concerning the dependent adult's person, the court shall issue an order for immediate protection. This order may include, but is not limited to:

- (1) An authorization for the department to transport the person to an appropriate medical or care facility;
  - (2) An authorization for medical examination;
  - (3) An authorization for emergency medical treatment; and
  - (4) Such other matters as may prevent imminent abuse, pending a hearing under section 346-.
- (d) The court may also make orders as may be appropriate to third persons, including temporary restraining orders, enjoining them from:
- (1) Removing the dependent adult from the care or custody of another;
  - (2) Abusing the dependent adult;
  - (3) Living at the dependent adult's residence;
  - (4) Contacting the dependent adult in person or by telephone;
  - (5) Selling, removing, or otherwise disposing of the dependent adult's personal property;
  - (6) Withdrawing those funds from any bank, savings and loan association, credit union, or other financial institution, or from a stock account in which the dependent adult has an interest;
  - (7) Negotiating any instruments payable to the dependent adult;
  - (8) Selling, mortgaging, or otherwise encumbering any interest that the dependent adult has in real property;
  - (9) Exercising any powers on behalf of the dependent adult by representatives of the department, any court-appointed guardian or guardian ad litem or any official acting on their behalf;
  - (10) Engaging in any other specified act which, based upon the facts alleged, would constitute harm or present a threat of imminent harm to the dependent adult or would cause the loss of the dependent adult's property.
- (e) Court orders under section 346- and this section may be obtained upon oral or written application by the department, without notice and without a hearing. Any oral application shall be reduced to writing within twenty-four hours. The court shall issue its order orally, provided that it shall reduce the order to writing as soon as possible thereafter and in any case not later than twenty-four hours after the court received the written application. Certified copies of the application and order shall be personally served upon the dependent adult and any other person or entity affected by the order together with notice of the order to show cause hearing in section 346-.
- (f) If a written order for immediate protection is issued, the department shall file a petition invoking the jurisdiction of the court under this part within twenty-four hours.

**§346- Order to show cause hearing.** (a) When a written order for immediate protection is issued, the court shall hold a hearing on the application for immediate protection, no later than seventy-two hours after issuance of the oral order excluding any Saturday or Sunday, requiring cause to be shown why the order or orders should not continue. The department shall make arrangements to have the dependent adult attend the hearing or show cause why the dependent adult cannot attend.

(b) When the court finds that there is probable cause to believe that a dependent adult has been abused and is threatened with imminent abuse, and the

dependent adult consents, or if the dependent adult does not consent and the court finds that there is probable cause to believe that the dependent adult lacks the capacity to make decisions concerning the dependent adult's person, the court may continue or modify any order pending an adjudicatory hearing on the petition. These orders may include orders for the dependent adult's temporary placement and ordinary medical care.

(c) The parties personally or through counsel may stipulate to the entry or continuance of such orders as the court deems to be in the best interest of the dependent adult, and the court shall set the case for an adjudicatory hearing as soon as it is practical.

**§346- Petition.** (a) A petition invoking the jurisdiction of the court under this part shall be entitled "In the matter of the protection of \_\_\_\_\_," and shall be verified.

- (b) The petition shall set forth with specificity the:
  - (1) Reasons the person is considered to be a dependent adult;
  - (2) Facts which bring the dependent adult within this part;
  - (3) Name, birth date, sex, and residence address of the dependent adult;
  - (4) Names and addresses of any living persons, or entities required to be notified pursuant to section 346- ; and
  - (5) If appropriate, allegations describing any lack of capacity of the dependent adult.

**§346- Guardian ad litem; counsel.** (a) In any case where the court has reason to believe that a dependent adult or any other party lacks the capacity to effectively make decisions concerning the party's person, it may appoint a guardian ad litem to represent the interests of that party throughout the pendency of proceedings under this part. The court shall appoint counsel for the dependent adult at any time where it finds that the dependent adult requires a separate legal advocate and is unable to afford private counsel.

(b) The court may order reasonable costs and fees of the guardian ad litem to be paid by the party for whom the guardian ad litem is appointed, if that party has sufficient financial resources to pay such costs and fees. The court may also order the appropriate parties to pay or reimburse reasonable costs and fees of the guardian ad litem and counsel appointed for the dependent adult.

**§346- Consolidation with guardianship proceedings.** A proceeding for the appointment of a guardian of the person or property under article V of chapter 560 may be consolidated with the proceedings under this part as the applicable circuit court and the family court in the exercise of their discretion shall permit.

**§346- Permanent changes.** Permanent changes in the living situation of an abused dependent adult shall not ordinarily be made under authority of this part. If permanent changes in the living situation or nonemergency medical treatment are necessary, the appropriate guardianship, or civil commitment action shall be initiated pursuant to applicable state law.

**§346- Notice of proceedings.** After a petition has been filed, the matter shall be set for hearing and a notice of hearing shall be issued to all parties to the proceeding. The parties to the proceeding shall include:

- (1) The dependent adult;
- (2) Any caregiver or facility in which the dependent resides or is a patient;

- (3) The spouse and adult children of the dependent adult;
- (4) The parents of the dependent adult, unless waived by the court for good cause;
- (5) Any guardian of the person or property who may have been appointed; and
- (6) Any person or entity affected by an order for immediate protection which has been sought or issued including any alleged perpetrator of abuse.

Where the name or whereabouts of a potential party is unknown, the court may require the petitioner to set forth the reasonable efforts the petitioner made to ascertain the party's name or whereabouts and why the petitioner has been unable to determine those facts.

**§346- Service.** (a) Service of the notice shall be made by delivery of a copy thereof together with a certified copy of the petition to each person or entity to be given notice either by personal service, by certified mail, return receipt requested and addressed to the last known address, by publication, or by other means authorized by the court. Upon a showing of good cause, the court may waive notice to any party except the dependent adult.

(b) Service shall be effected at least forty-eight hours prior to the time fixed in the notice for hearing when held pursuant to section 346- (a), or at least fifteen days prior to the time fixed in the notice for an adjudicatory, disposition, or review hearing, unless the party otherwise was ordered by the court to appear at those hearings.

**§346- Required findings concerning postponed hearings.** Except as otherwise provided, no hearing shall be delayed upon the grounds that a party other than the dependent adult is not present at the hearing or has not been served with a copy of the order for immediate protection or the petition, where reasonable efforts have been made to effect service and it would be detrimental to the dependent adult to postpone the proceedings until service can be made. Whenever a hearing is delayed or postponed under this section, the court shall enter a finding that it will not be detrimental to the dependent adult and shall also specify what additional measures shall be undertaken to effect service.

**§346- Adjudicatory hearing.** (a) When a petition has been filed, the court shall set a return date hearing to be held within thirty days of the filing of the petition. On the return date, the parties personally or through counsel may stipulate to the entry or continuance of the orders as the court deems to be in the best interests of the dependent adult, and the court shall set the case for an adjudicatory hearing as soon as is practical.

(b) In an adjudicatory hearing, the court shall determine whether the person is a dependent adult, and whether the dependent adult has been abused and is threatened with imminent abuse, based upon a preponderance of the evidence. Evidence which is contained in a written report, study, or examination shall be admissible, provided that the maker of the written report, study, or examination be subject to direct and cross-examination upon demand when the maker is reasonably available. A social worker employed by the department in the area of adult protective services shall be presumed to be qualified to testify as an expert in the field of protective services.

(c) If facts sufficient to sustain the petition are established in court, or are stipulated to by all parties, the court shall enter an order finding that the dependent adult has been abused and threatened with imminent abuse and shall state the grounds for the finding. The court shall also make a finding concerning the capacity of the

dependent adult to effectively make decisions concerning personal needs or property or both. If the capacity of the dependent adult is at issue, the court shall require that the dependent adult be examined by a psychiatrist or other physician who is skilled in evaluating the particular area in which the dependent adult is alleged to lack capacity before making any finding that the dependent adult lacks capacity. If there is no finding that the dependent adult lacks capacity to make such decisions and if the dependent adult does not give consent, the court shall not have authority to proceed further and the court shall dismiss the case.

(d) Upon the completion of the adjudicatory hearing, the disposition hearing may commence immediately after the required findings are made, provided the requirements of subsection 346- (a) have been met, or the court may set the disposition hearing for such time as it deems appropriate.

(e) If facts sufficient to sustain the petition under this part are not established, the court shall dismiss the petition and shall state the grounds for dismissal.

(f) If the court sustains the petition and does not commence immediately to the disposition hearing, it shall determine, based upon the facts adduced during the adjudicatory hearing and any additional facts presented to it, whether any temporary orders should be issued pending final disposition.

**§346- Disposition.** (a) Unless waived by the parties who have entered an appearance, the department shall prepare a proposed protective order and a written protective services plan, and submit copies to the court and each of the parties or their counsel at least seven days prior to the disposition hearing.

(b) The proposed protective order may include any of the provisions set forth in section 346- , and, in addition may include an order that:

- (1) The person inflicting abuse on the dependent adult participate in counseling or therapy as the court deems appropriate;
- (2) Any party report to the department any violation of the protective order or protective services plan;
- (3) The department make periodic home visits to the dependent adult; and
- (4) The department monitor compliance with the order.
- (c) The proposed protective services plan shall set forth the following:
  - (1) Specific services or treatment to be provided to the dependent adult and the specific actions the parties shall take;
  - (2) Specific responsibilities that the parties shall assume;
  - (3) Period during which the services shall be provided;
  - (4) Dates by which the actions shall be completed;
  - (5) Specific consequences that may be reasonably anticipated to result from a party's failure to comply with any terms and conditions of the plan; and
  - (6) Steps that shall be necessary to terminate the court's jurisdiction.

(d) In preparing such a proposed protective order, the department shall seek to impose the least restrictive limitation on the freedom and liberties of the dependent adult. To the greatest extent possible, the dependent adult should be permitted to participate in decisions concerning the dependent adult's person, or property, or both.

(e) The court shall conduct a disposition hearing concerning the terms and conditions set forth in the proposed protective order and proposed protective services plan unless each of the parties has signed and fully understands and accepts the order and plan, in which event, the court may approve the order and plan without hearing. If a party cannot or does not accept the terms and conditions set forth in the proposed order or proposed plan, and, after such hearing as the court deems to be appropriate, the court shall order such terms and conditions, as are deemed to be in the best interests of the dependent adult.

**§346- Review hearings.** Except for good cause shown, the court shall set each case for a review hearing not later than six months after the date that a protective order and protective services plan are ordered by the court and, thereafter, the court shall set subsequent review hearings at intervals of not longer than six months until the court's jurisdiction has been terminated. The department and the guardian ad litem, if any, shall submit a written report, with copies to the parties or their counsel, at least fifteen days prior to the date set for each review hearing. The report shall evaluate whether the parties have complied with the terms and conditions of the protective order and protective services plan; shall recommend any modification to the order or plan; and shall recommend whether the court shall retain jurisdiction or terminate the case. At each review hearing, the court shall determine whether the parties have complied with the terms and conditions of the order and plan; enforce such sanctions for noncompliance as may be appropriate; and order such revisions to the existing order or plan as are in the best interests of the dependent adult. At each review hearing, the court shall make an express finding as to whether it shall retain jurisdiction or terminate the case, and, in each instance, shall state the basis for its action.

**§346- Appeal.** Any party aggrieved by an order or decree of the court may appeal as provided by section 571-54.

**§346- Admissibility of evidence.** The physician-patient privilege, the psychologist-client privilege, and the spousal privilege shall not be grounds for excluding evidence in any judicial proceeding resulting from a report pursuant to this part.

**§346- Hearings.** The protective proceedings shall be heard without a jury. The hearing may be adjourned from time to time. The general public shall be excluded, and only such persons as are found by the court to have a direct interest in the case shall be admitted.

**§346- Failure to comply with court orders.** The court may apply contempt of court provisions and all other provisions available under the law if a party fails to comply with the terms and conditions of any order issued under this part.

**§346- Payment for service or treatment provided to a party.** Whenever service, treatment, care, or support of a dependent adult is provided under this part, the persons or legal entities who may be legally obligated to pay for the service, treatment, care, or support of the dependent person, may be ordered by the court to pay the cost of the service, care, support, or treatment provided to the dependent adult in whole or in part, after notice and hearing.

**§346- Fiscal and service responsibility.** The department or other authorized agencies shall provide only the care, service, treatment, support, or payment authorized by law. The department or authorized agencies shall have the authority to establish priorities and limitations of services based on their resources.

**§346- Cooperation.** Every public official or department shall render all assistance and cooperation within the official's or department's power and which may further the purpose and objectives of this part. The department and the court may seek the cooperation of organizations whose objectives are to protect or aid dependent adults.

**§346- Immunity from liability.** (a) Anyone participating in good faith in the making of a report pursuant to this part shall have immunity from any liability,

civil or criminal, that might be otherwise incurred or imposed by or as a result of the making of such a report. Any participant shall have the same immunity with respect to participation in any judicial proceeding resulting from that report.

(b) Any individual who assumes a duty or responsibility pursuant to this part shall have immunity from civil liability for acts or omissions performed within the scope of the individual's duty or responsibility. Nothing in this part shall limit the liability of the department, any other state agency, or any private organization for the conduct of individuals acting within the scope of their duties provided immunity under this section.

**§346- Presumption of capacity.** An individual shall be presumed capable of making decisions concerning the individual's person. A determination that an individual lacks capacity under this part shall not be construed as a finding that the individual lacks capacity for any other purpose.

**§346- Advanced age.** An individual shall not be involuntarily subjected to the provisions of this part solely based on advanced age.

**§346- Rules.** The department shall adopt rules pursuant to chapter 91 necessary for the purposes of this part."

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§346- Confidentiality of court records.** (a) The court shall maintain records of all adult protective proceedings under this chapter. All court documents and records pertaining to the action or proceeding shall be subject to inspection only by the dependent adult, guardian of the person, guardian of the property, their respective attorneys, and the guardian ad litem of the dependent adult, with the consent of the court.

(b) All other requests for information contained in the confidential record shall be made in writing and shall include the reasons for the request and how the information is to be used and may be granted by the court for good cause."

SECTION 3. 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, 709-904, 709-905, 709-906, or 298-12, 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 a domestic abuse protective 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) [of this section], the court [may], in its discretion, may waive its jurisdiction over the offense charged.

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- (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, and in all proceedings to appoint a guardian of the person of an adult.
- (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<sup>1</sup> 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 .

In any case within paragraph (3), (4), or (6) [of this section], the attorney general, through the child support enforcement agency, may exercise concurrent jurisdiction as provided in chapter 576E."

SECTION 4. Section 571-87, Hawaii Revised Statutes, is amended to read as follows:

"[§571-87[]] Appointment of counsel and guardian ad litem; compensation. (a) When it appears to a judge that a person requesting the appointment of counsel satisfies the requirements of chapter 802 for determination of indigency, or the court in its discretion appoints counsel under chapter 587[.] and 346, or that a person requires appointment of a guardian ad litem, the judge shall appoint counsel or a guardian ad litem to represent the person at all stages of the proceedings, including appeal, if any. Appointed counsel and the guardian ad litem shall receive reasonable compensation for necessary expenses, including travel, the amount of which shall be determined by the court, and fees pursuant to subsection (b). All of these expenses shall be certified by the court and paid upon vouchers approved by the judiciary and warrants drawn by the comptroller.

(b) The court shall determine the amount of reasonable compensation to appointed counsel and guardians ad litem, based on the rate of \$40 an hour for out-of-court services, and \$60 an hour for in-court services with a maximum fee in accordance with the following schedule:

- |  |          |
|--|----------|
| (1) Cases arising under chapter 587[:.] and 346:           |          |
| (A) Predisposition   | \$1,500; |
| (B) Postdisposition review hearing                         | \$ 500;  |
| (2) Cases arising under chapters 560,<br>571, 580, and 584 | \$1,500. |

Payments in excess of any maximum provided for under paragraphs (1) and (2) may be made whenever the court in which the representation was rendered certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the administrative judge of such court."

SECTION 5. Chapter 349C, Hawaii Revised Statutes, is repealed.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 7. This Act shall take effect on July 1, 1991, and shall be repealed as of June 30, 1993.

(Approved June 26, 1989.)

**Notes**

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

**ACT 382**

S.B. NO. 195

A Bill for an Act Relating to Handicapped Access.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section<sup>1</sup> 103, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated to read as follows:

**“§103- Architectural access committee.** (a) There is established within the department of health for administrative purposes, an architectural access committee to be composed of three members to be appointed by the governor for staggered terms of four years without the advice and consent of the senate. The members shall have a special interest or knowledge concerning design standards for persons with disabilities.

(b) The committee shall have the authority to vary specific requirements of section 103-50 when the variance will ensure an alternate design that provides equal access for persons with disabilities; and to establish guidelines for design specifications not covered in the Uniform Federal Accessibility Standards.

(c) The committee may hire staff to assist in the performance of its duties. The staff shall be exempt from chapters 76 and 77.

(d) The director of health shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.”

SECTION 2. Section 103-50, Hawaii Revised Statutes, is amended to read as follows:

**“§103-50 Building design to consider needs of handicapped.** (a) Notwithstanding [the provisions of] any law to the contrary, all plans and specifications for the construction of public buildings and facilities by the State or any political subdivision thereof subject to this chapter shall be prepared so the buildings and facilities are accessible to and usable by the physically handicapped. The buildings and facilities shall conform to the [latest issue of the “American Standards Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped” as approved by the American Standards Association, Inc. (A117.1).] Uniform Federal Accessibility Standards, 41 C.F.R. §101-19.6, Appendix A.

(b) All agencies subject to this section shall seek advice and recommendation from the commission on the handicapped on any construction plans.”

SECTION 3. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$30,562, or 0.0013 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$30,562, or so much as may be necessary for fiscal year

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1989-1990, and the sum of \$30,562, or so much thereof as may be necessary for fiscal year 1990-1991, to carry out the purposes of this Act. The sums appropriated shall be expended by the department of health.

**SECTION 5.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

**SECTION 6.** This Act shall take effect on July 1, 1989.

(Approved June 26, 1989.)

### **Notes**

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

## **ACT 383**

H.B. NO. 1236

A Bill for an Act Relating to the Landlord Tenant Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that many rental agreements require payments on the first day of the month. Public assistance, flat grant, checks on which recipients depend for their rental obligations, are mailed too late for tenants to meet the deadlines for their payments. As a result, some tenants are assessed financial penalties for late payments.

The purpose of this Act is to relieve tenants dependent on public assistance checks for their rental payments from being penalized for a situation over which they have no control.

**SECTION 2.** Section 521-21, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Rents shall be payable at the time and place agreed to by the parties. Unless otherwise agreed, the entire rent shall be payable at the beginning of any term for one month or less, and for longer terms in equal monthly installments payable at the beginning of each month. When a rental agreement with a public assistance recipient requires that the rent be paid on or before the third day after the day on which the public assistance check is usually received, the tenant shall have the option of establishing a new due date by making a one-time payment to cover the period between the original due date and the newly established date. The new date shall not exceed by more than three days, excluding Saturdays, Sundays, and holidays, the date on which checks are mailed. The one-time payment shall be established by dividing the monthly rental by thirty and multiplying the result by the number of days between the original and the new due dates.”

**SECTION 3.** Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

**SECTION 4.** This Act shall take effect on July 1, 1989.

(Approved June 26, 1989.)

**Note**

1. No bracketed material.

**ACT 384**

S.B. NO. 1154

A Bill for an Act Relating to the Penal Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§712- Commercial promotion of marijuana in the first degree.** (1) A person commits the offense of commercial promotion of marijuana in the first degree if the person knowingly:

- (a) Possesses marijuana having an aggregate weight of twenty-five pounds or more; or
- (b) Distributes marijuana having an aggregate weight of five pounds or more; or
- (c) Possesses, cultivates, or has under the person’s control one hundred or more marijuana plants; or
- (d) Cultivates on land owned by another person, including land owned by the government or other legal entity, twenty-five or more marijuana plants, unless the person has the express permission from the owner of the land to cultivate the marijuana or the person has a legal or an equitable ownership interest in the land or the person has a legal right to occupy the land; or
- (e) Uses, or causes to be used, any firearm or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner used is capable of causing death, serious bodily injury, substantial bodily injury, or other bodily injury, as defined in chapter 707 in order to prevent the theft, removal, search and seizure, or destruction of marijuana.

(2) Commercial promotion of marijuana in the first degree is a class A felony.

(3) Any marijuana seized as evidence in violation of this section in excess of an aggregate weight of twenty-five pounds as stated in subsection (1)(a), or in excess of an aggregate weight of five pounds as stated in subsection (1)(b), or in excess of one hundred marijuana plants as stated in subsection (1)(c), or in excess of twenty-five marijuana plants as stated in subsection (1)(d) may be destroyed after the excess amount has been photographed and the number of plants and the weight thereof has been recorded. The required minimum amount of the marijuana needed to constitute the elements of this offense shall remain in the custody of the police until the termination of any criminal action brought as a result of the seizure of the marijuana. Photographs duly identified as accurately representing the marijuana shall be deemed competent evidence of the marijuana involved and shall be admissible in any proceeding, hearing, or trial to the same extent as the marijuana itself; provided that nothing in this subsection shall be construed to limit or restrict the application of Rule 901 of the Hawaii Rules of Evidence.”

SECTION 2. Section 712-1247, Hawaii Revised Statutes, is amended to read as follows:

**"§712-1247 Promoting a detrimental drug in the first degree.** (1) A person commits the offense of promoting a detrimental drug in the first degree if [he] the person knowingly:

- (a) Possesses four hundred or more capsules or tablets containing one or more of the Schedule V substances; or
- (b) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more,<sup>1</sup> containing one or more of the Schedule V substances; or
- (c) Distributes fifty or more capsules or tablets containing one or more of the Schedule V substances; or
- (d) Distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of one-eighth ounce or more, containing one or more of the Schedule V substances; or
- (e) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of [two and two-tenths pounds] one pound or more, containing any marijuana; or
- (f) Distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of [two ounces] one ounce or more, containing any marijuana; or
- (g) Possesses, cultivates, or has under the person's control twenty-five or more marijuana plants; or<sup>1</sup>
- (h) [Distributes] Sells or barters any marijuana or any Schedule V substance in any amount. [to a minor.]

(2) Promoting a detrimental drug in the first degree is a class C felony.

(3) Any marijuana seized as evidence of a violation of this section in excess of [ten pounds] one pound may be destroyed after it has been photographed and the weight thereof recorded. The remainder of the marijuana shall remain in the custody of the police department until the termination of any criminal action brought as a result of the seizure of the marijuana. Photographs duly identified as accurately representing the marijuana shall be deemed competent evidence of the marijuana involved and shall be admissible in any proceeding, hearing, or trial to the same extent as the marijuana itself. Provided, however,]; provided that nothing in this subsection shall be construed to limit or to restrict the application of Rule 901 of the Hawaii Rules of Evidence."

SECTION 3. Section 712-1248, Hawaii Revised Statutes, is amended to read as follows:

**"§712-1248 Promoting a detrimental drug in the second degree.** (1) A person commits the offense of promoting a detrimental drug in the second degree if [he] the person knowingly:

- (a) Possesses fifty or more capsules or tablets containing one or more of the Schedule V substances; or
- (b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one-eighth ounce or more, containing one or more of the Schedule V substances; or
- (c) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one ounce or more, containing any marijuana; or
- (d) [Sells] Distributes any marijuana or [distributes] any Schedule V substance in any amount.

(2) Promoting a detrimental drug in the second degree is a misdemeanor."

SECTION 4. Section 712-1249.5, Hawaii Revised Statutes, is amended to read as follows:

**"§712-1249.5 Commercial promotion of marijuana[.] in the second degree.** (1) A person commits the offense of commercial promotion of marijuana in the second degree if the person knowingly:

- (a) Possesses marijuana having an aggregate weight of [forty-four] two pounds or more; or
- (b) Distributes marijuana having an aggregate weight of [two and two-tenths pounds] one pound or more; or
- (c) Possesses, cultivates, or has under the person's control [one hundred] fifty or more marijuana plants; or
- (d) Cultivates on land owned by another person, including land owned by the government or other legal entity, [twenty-five or more] any marijuana plant[s], unless the person has the express permission from the owner of the land to cultivate the marijuana or the person has a legal or an equitable ownership interest in the land or the person has a legal right to occupy the land; or
- (e) [Uses, or causes to be used, any firearm or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner used is capable of causing death or serious bodily injury, substantial bodily injury, or other bodily injury as defined in chapter 707 in order to prevent the theft, removal, search and seizure, or destruction of marijuana.] Sells or barters any marijuana or any Schedule V substance in any amount to a minor.

(2) Commercial promotion of marijuana in the second degree<sup>1</sup> is a class B felony.

(3) Any marijuana seized as evidence in violation of this section in excess of an aggregate weight of two pounds as stated in subsection (1)(a), or in excess of an aggregate weight of one pound as stated in subsection (1)(b), or in excess of twenty-five marijuana plants as stated in subsection (1)(c) may be destroyed after the excess amount has been photographed and the number of plants and the weight thereof has been recorded. The required minimum amount of the marijuana needed to constitute the elements of this offense shall remain in the custody of the police until the termination of any criminal action brought as a result of the seizure of the marijuana. Photographs duly identified as accurately representing the marijuana shall be deemed competent evidence of the marijuana involved and shall be admissible in any proceeding, hearing, or trial to the same extent as the marijuana itself; provided that nothing in this subsection shall be construed to limit or to restrict the application of Rule 901 of the Hawaii Rules of Evidence."

**SECTION 5.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

**SECTION 6.** This Act shall take effect upon its approval.

(Approved June 27, 1989.)

#### Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

## ACT 385

### ACT 385

S.B. NO. 1551

A Bill for an Act Relating to the Employees' Retirement System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Part II of chapter 88, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§88- Purchasing credits for military service.** Any member of the system who has rendered honorable active military service for which the member is not receiving or is not eligible to receive a military pension, and who has at least eight years of credited service in the system, may purchase up to four years of membership service credit for active military service or for the actual number of years of active military service, whichever is less. Membership service credit may be purchased as follows:

- (1) Any member with eight years of credited service may purchase up to two years of membership service credit;
- (2) Any member with twenty years of credited service may purchase up to three years of membership service credit; and
- (3) Any member with twenty-five years of credited service may purchase up to four years of membership service credit.

Active military service in the military reserve or National Guard is not considered active military service unless in time of war or declared national or state emergency. Purchase of those membership service credits shall be in accordance with sections 88-59 and 88-272(4)(B).

Any violation of this section shall result in the forfeiture of the amount of the purchase of membership service pursuant to sections 88-59 and 88-272(4)(B) and loss of benefits for such military service."

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect on July 1, 1989.

(Approved June 27, 1989.)

\* Note

1. Edited pursuant to HRS §23G-16.5.

### ACT 386

S.B. NO. 1413

A Bill for an Act Relating to Civil Rights.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 368, Hawaii Revised Statutes, is amended by adding seven new sections to be appropriately designated and to read as follows:

**"§368- Complaint against unlawful discrimination.** (a) The commission shall have jurisdiction over the subject of discriminatory practices made unlawful by chapters 489 and 515 and part I of chapter 378. Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice may file with the commission a verified complaint in writing that shall state the name and address of the person or party alleged to have committed the unlawful discriminatory practice

complained of, set forth the particulars thereof, and contain other information as may be required by the commission. The attorney general, or the commission upon its own initiative may, in like manner, make and file a complaint.

(b) A complaint may be filed on behalf of a class by the attorney general or the commission, and a complaint so filed may be investigated, conciliated, heard, and litigated on a class action basis.

(c) No complaint shall be filed after the expiration of one hundred eighty days after the date:

- (1) Upon which the alleged unlawful discriminatory practice occurred; or
- (2) Of the last occurrence in a pattern of ongoing discriminatory practice.

**§368- Notice of right to sue.** The commission may issue a notice of right to sue upon written request of the complainant. Within ninety days after receipt of a notice of right to sue, the complainant may bring a civil action under this chapter. The commission may intervene in a civil action brought pursuant to this chapter if the case is of general importance.

**§368- Investigation and conciliation of complaint.** (a) After the filing of any complaint, or whenever it appears to the commission that an unlawful discriminatory practice may have been committed, the commission shall make an investigation in connection therewith. At any time after the filing of a complaint but prior to the issuance of a determination as to whether there is or is not reasonable cause to believe that chapter 489, 515, or part I of chapter 378 have been violated, the parties may agree to resolve the complaint through a predetermination settlement.

(b) In the event that the commission determines after the investigation that there is reasonable cause to believe that an unlawful discriminatory practice within the commission's jurisdiction has been committed, the commission shall immediately endeavor to eliminate any alleged unlawful discriminatory practice by informal methods, such as, conference, conciliation, and persuasion.

(c) Where the commission has been unable to secure from the respondent a conciliation agreement acceptable to the commission within sixty days of the filing of the complaint, the commission shall demand that the respondent cease the unlawful discriminatory practice. The commission's determination that a final conciliation demand is to be made shall be subject to reconsideration by the commission on its own initiative but shall not be subject to judicial review. The commission may demand appropriate affirmative action as, in the judgment of the commission, will effectuate the purpose of this chapter, and include a requirement for reporting on the manner of compliance.

**§368- Commission hearings.** (a) If, fifteen days after service of the final conciliation demand, the commission finds that conciliation will not resolve the complaint, the commission shall appoint a hearings examiner and schedule a public hearing that shall be held in accordance with chapter 91. The case in support of the complaint shall be presented at the hearing by the commission. Following the completion of the hearing, the hearings examiner shall issue a written decision. If the hearings examiner finds that discrimination occurred, the commission shall issue an order requiring the respondent to cease the unlawful practice and to take appropriate remedial action. If there is no finding of discrimination, the commission shall issue an order dismissing the case.

(b) At any time after a complaint is filed, the commission may file a petition in the circuit court in the circuit in which the subject of the complaint occurred, or in the circuit in which a respondent resides or transacts business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this chapter, including an order or decree restraining the respondent from

doing or procuring any act tending to render ineffectual any order the commission may enter with respect to the complaint. The court may grant the temporary relief or restraining order as it deems just and proper, but no relief or order extending beyond five days shall be granted except by consent of the respondent or after hearing upon notice to the respondent and a finding by the court that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice.

If a complaint is dismissed by final order of the commission or a court after a court has granted temporary relief or a restraining order under this subsection, the respondent is entitled to recover from the State damages and costs, not to exceed a total of \$500, sustained by reason of the temporary relief or restraining order in an action in the court that granted the temporary relief or restraining order.

**§368- Compliance review.** At any time in its discretion but not later than one year from the date of a conciliation agreement, or after the date of a commission's order to cease an unlawful practice and to take appropriate remedy, the commission shall investigate whether the terms of the agreement or order are being complied with by the respondent. Upon a finding that the terms of the agreement or the terms of the commission's order, are not being complied with by the respondent, the commission shall take affirmative action as authorized in section 368-3.

**§368- Appeals; de novo review; procedure.** (a) A complainant and a respondent shall have a right of appeal from a final order of the commission, including cease and desist orders and refusals to issue charges in the circuit court for the circuit in which the alleged violation occurred or where the person against whom the complaint is filed, resides, or has the person's principal place of business. An appeal before the circuit court shall be reviewed de novo. If an appeal is not taken within thirty days after the service of an appealable order of the commission, the commission may obtain an order for the enforcement of the order from the circuit court that has jurisdiction of the appeal.

(b) Where a respondent petitions for an appeal to the circuit court, the commission shall be a party to any proceeding as the appellee. The complainant shall have the right to intervene.

(c) A proceeding for review or enforcement of an appealable order is initiated by filing a petition in the circuit court. Copies of the petition shall be served upon the parties of record. Within thirty days after the service of the petition upon the commission or filing of the petition by the commission, or within further time as the court may allow, the commission shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including a transcript of the testimony, which need not be printed. By stipulation of the parties to the review proceeding, the record may be shortened. The court may grant temporary relief as it considers just, or enter an order enforcing, modifying and enforcing as modified, or setting aside in whole or in part the order of the commission, or may remand the case to the commission for further proceedings. The commission's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(d) The final judgment or decree of the circuit court shall be subject to review by appeal in the same manner and form as other appeals from that court.

(e) A proceeding under this section shall be initiated not more than thirty days after a copy of the order of the commission is received, unless the commission is the petitioner or the petition is filed under subsection (d). If a proceeding is not so initiated, the commission may obtain a court order for enforcement of its order upon showing that a copy of the petition for enforcement was served on the re-

spondent, that the respondent is subject to the jurisdiction of the court, that the order sought to be enforced is an order of the commission, regularly entered, and that the commission has jurisdiction over the subject matter and the respondent.

**§368- Remedies.** (a) The remedies ordered by the commission or the court under this chapter may include compensatory and punitive damages and legal and equitable relief, including, but not limited to:

- (1) Hiring, reinstatement, or upgrading of employees with or without back pay;
- (2) Admission or restoration of individuals to labor organization membership, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program, or other occupational training or retraining program, with the utilization of objective criteria in the admission of persons to those programs;
- (3) Admission of persons to a public accommodation or an educational institution;
- (4) Sale, exchange, lease, rental, assignment, or sublease of real property to a person;
- (5) Extension to all persons of the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the respondent;
- (6) Reporting as to the manner of compliance;
- (7) Requiring the posting of notices in a conspicuous place that the commission may publish or cause to be published setting forth requirements for compliance with civil rights law or other relevant information that the commission determines necessary to explain those laws;
- (8) Payment to the complainant of damages for an injury or loss caused by a violation of chapters 489 and 515 and part I of chapter 378, including a reasonable attorney's fee;
- (9) Payment to the complainant of all or a portion of the costs of maintaining the action before the commission, including reasonable attorney's fees and expert witness fees, when the commission determines that award to be appropriate; and
- (10) Other relief the commission or the court deems appropriate.

(b) Section 386-5 notwithstanding, a workers' compensation claim or remedy does not bar relief on complaints filed with the commission."

SECTION 2. Chapter 489, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§489- Suits by persons injured; amount of recovery, injunctions.** (a) Any person who is injured by an unlawful discriminatory practice may:

- (1) Sue for damages sustained, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorneys' fees together with the costs of suit; and
- (2) Bring proceedings to enjoin the unlawful discriminatory practices, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable attorneys' fees together with the cost of suit.

(b) The remedies provided in subsection (a) shall be applied in class action and de facto class action lawsuits or proceedings provided that:

- (1) The minimum \$1,000 recovery provided in subsection (a) shall not apply in a class action or a de facto class action lawsuit; and

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- (2) That portion of threefold damages in excess of compensatory damages shall be apportioned and allocated by the court in its exercise of discretion so as to promote effective enforcement of this chapter and deterrence from violation of its provisions.
- (c) The remedies provided in this section are cumulative and may be brought in one action."

SECTION 3. Section 378-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"“Commission” means the civil rights commission.”

SECTION 4. Section 515-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"“Commission” means the civil rights commission.”

SECTION 5. Section 368-2, Hawaii Revised Statutes, is amended to read as follows:

**"[§368-2] Civil rights commission established.** (a) There is established a civil rights commission composed of five members nominated and, by and with the advice and consent of the senate, appointed by the governor for staggered terms in accordance with section 26-34. The members appointed to the commission shall be selected on the basis of their knowledge and experience in civil rights matters and on the basis of a demonstrated commitment to the preservation of the civil rights of all individuals. The governor shall designate one of the commissioners as the chair of the commission.

(b) Any action taken by the commission shall be by a simple majority of the members of the commission. All decisions of the commission shall be reduced to writing and shall state separately its findings of fact and conclusions. Any vacancy in the commission shall not impair the authority of the remaining members to exercise all the powers of the commission. The governor may appoint an acting member of the commission during the temporary absence from the State or the illness of any regular member. An acting member, during the acting member's term of service, shall have the same powers and duties as the regular member.

(c) The members shall serve without compensation but shall be paid per diem and travel expenses when attending meetings of the commission. The commission shall be within the department of labor and industrial relations for administrative purposes only."

SECTION 6. Section 368-3, Hawaii Revised Statutes, is amended to read as follows:

**"[§368-3] Powers and functions of commission.** The commission shall have the following powers and functions:

- (1) To receive, investigate, and conciliate complaints alleging any unlawful discriminatory practice under [existing state laws] chapters 489 and 515 and part I of chapter 378 and conduct proceedings on complaints alleging unlawful practices where conciliatory efforts are inappropriate or unsuccessful.
- (2) To hold [such] hearings and make [such] inquiries, as it deems necessary, to carry out properly its functions and powers, and for the purpose of [such] these hearings and inquiries, administer oaths and

- affirmations, compel the attendance of witnesses and the production of documents by the issuance of subpoenas, examine witnesses [and documents, take testimony and receive documents by the issuance of subpoenas,] under oath, require answers to interrogatories issued, and delegate [such] these powers to any member of the commission or any person appointed by the commission for the performance of its functions.
- (3) To commence civil action in circuit court to seek appropriate relief[.], including the enforcement of any commission order.
  - (4) To issue the right to sue to a complainant.
  - (5) To order appropriate legal and equitable relief or affirmative action when a violation is found.
  - [5)] (6) To issue publications and results of investigations and research [as] that, in its judgment, will tend to promote goodwill and minimize or eliminate discrimination in employment, housing, and public accommodations.
  - [6)] (7) To submit annually to the governor and the legislature a written report of its activities and of its recommendations for administrative or statutory changes required to further the purposes of this chapter.
  - (8) To appoint an executive director, attorneys, and hearings examiners who shall be exempt from chapters 76 and 77, and investigators and other necessary support personnel who shall be subject to chapters 76 and 77. Section 103-3 notwithstanding, an attorney employed by the commission as a full-time staff member may represent the commission in litigation, draft legal documents for the commission, provide other necessary legal services to the commission, and shall not be deemed to be a deputy attorney general.
  - [7)] (9) To adopt rules under chapter 91."

SECTION 7. Section 386-4,<sup>1</sup> Hawaii Revised Statutes, is amended to read as follows:

**"[§386-4] Records; confidentiality; reporting requirements.** All records of the commission shall be kept confidential and shall not be disclosed to anyone except as may be required by order of a court with jurisdiction in a case arising from a complaint filed with the commission or as otherwise provided by law. The commission shall maintain complete records of all complaints filed with the commission and shall compile annual statistical data on the number of complaints filed and the status or disposition of [such] those complaints by types of complaints. The commission shall provide to the governor and the legislature a report of [such] that statistical data on an annual basis, not less than thirty days prior to the convening of the legislative session."

SECTION 8. Section 378-4, Hawaii Revised Statutes, is amended to read as follows:

**"§378-4 Enforcement jurisdiction[; complaint against unlawful discrimination].** [(a)] The [department] commission shall have jurisdiction over the subject of discriminatory practices made unlawful by this part. Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice may file with the [department] commission a [verified] complaint in [writing which shall state the name and address of the person, employer, labor organization, or employment agency alleged to have committed the unlawful discriminatory practice complained of and which shall set forth the particulars thereof and contain such other information

as may be required by the department. The attorney general, or the department upon its own initiative, may, in like manner, make and file such complaint.] accordance with the procedure established under chapter 368.

[(b) A complaint may be filed on behalf of a class by the attorney general or the department, and a complaint so filed may be investigated, conciliated, and litigated on a class action basis.

(c) No complaint shall be filed after the expiration of ninety days after the date upon which the alleged unlawful discriminatory practice occurred.]”

SECTION 9. Section 378-5, Hawaii Revised Statutes, is amended to read as follows:

**“§378-5 [Power of department to prevent unlawful discrimination.** (a) After the filing of any complaint, or whenever it appears to the department that an unlawful discriminatory practice may have been committed, the department shall make an investigation in connection therewith. At any time after the filing of a complaint but prior to the issuance of a determination as to whether there is or is not reasonable cause to believe that this part has been violated, the parties may agree to resolve the complaint through a predetermination settlement.

(b) In the event that the department determines after such investigation that there is reasonable cause to believe that this part has been violated, the department shall immediately endeavor to eliminate any such alleged unlawful discriminatory practice by informal methods of conference, conciliation, and persuasion.

(c) Where the department has been unable to secure from the respondent a conciliation agreement acceptable to the department, the department shall demand that the respondent cease such unlawful discriminatory practice. The department’s determination that a final conciliation demand is to be made shall be subject to reconsideration by the department on its own initiative but shall not be subject to judicial review.] **Remedies.** (a) The[department] commission may order appropriate affirmative action,<sup>1</sup> including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, [or] restoration to membership in any respondent labor organization, or other remedies as provided under chapter 368, [as,] which in the judgment of the [department,] commission, will effectuate the purpose of this part, [and] including a requirement for reporting on the manner of compliance.

[(d) The department may commence a civil action in circuit court seeking appropriate relief. In a civil action brought pursuant to this subsection:

- (1) The complainant shall have the right to intervene;
  - (2) The director may join various complainants in one cause of action;
  - (3) The director shall not be required to pay the filing fee or other costs or fees of any nature or to file a bond or other security of any nature in connection with such action or with proceedings supplementary thereto, or as a condition precedent to the availability to the director of any process in aid of such action or proceedings;
  - (4) In no event shall any action be brought more than three years after the complaint to which the action relates was filed with the department; provided that the running of the said three-year period shall be suspended during the life of the conciliation agreement.
- (e) Notice of right to sue.
- (1) The department may issue a right to sue upon written request of the complainant;
  - (2) Within ninety days after receipt of a notice of right to sue, the complainant may bring a civil action under this part;

(3) The department may intervene in a civil action brought pursuant to this subsection if the case is of general importance.

(f) [b] In [an] any civil action brought [pursuant to subsection (d) or (e),] under this part, if the court finds that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this part, the court may enjoin the respondent from engaging in such unlawful discriminatory practice and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement, hiring, or upgrading of employees, with or without backpay, or restoration of membership in any respondent labor organization, or any other equitable relief [as] the court deems appropriate. Backpay liability shall not accrue from a date more than two years prior to the filing of the complaint with the [department.] commission.

[(g) In an action brought pursuant to subsection (d) or (e), if any judgment obtained by the director or by the complainant against the respondent remains unsatisfied for a period of thirty days, the director or the complainant, may request the circuit court to compel the respondent to comply with the judgment, including, but not limited to, an order directing the respondent to cease doing business until the respondent has complied with the judgment.

(h) Whenever it appears to the director that a person, employer, labor organization, or employment agency is engaged in any act or practice which constitutes or will constitute a violation of this part, or any related regulation, the director may bring an action, in the circuit court of the circuit in which it is charged the act or practice complained of occurred, to enjoin the act or practice and to enforce compliance with this part or with the regulation, and upon a proper showing, a permanent or temporary injunction or decree or restraining order shall be granted without bond.

(i) It is an unlawful discriminatory practice for a party to a predetermination settlement or conciliation agreement made pursuant to this part to violate the terms of the settlement or agreement.

(j) [c] In any action brought under this part, the court,<sup>1</sup> [shall] in addition to any judgment awarded to the plaintiff or plaintiffs, shall allow costs of action, including costs of fees of any nature[,] and reasonable attorney's fees, to be paid by the defendant."

SECTION 10. Section 378-6, Hawaii Revised Statutes, is amended to read as follows:

**"§378-6 Inspection; investigation; records.** (a) In connection with an investigation of a complaint filed under this part, or whenever it appears to the [department] commission that an unlawful discriminatory practice may have been or is being committed, the [director or the director's] commission's authorized representative shall have access to the premises of the parties or persons reasonably connected thereto, records, documents, and other material relevant to the complaint and shall have the right to examine, photograph, and copy [such] that material, and may question [such] employees and make [such] investigation to determine whether any person has violated this part or any rule [or regulation] issued hereunder or which may aid in the enforcement of this part.

(b) Every employer, employment agency, and labor organization shall:

- (1) Make and keep records relevant to this part, and
- (2) Make such reports therefrom, as the [department] commission shall prescribe by [regulation] rule or order."

SECTION 11. Section 489-6, Hawaii Revised Statutes, is amended to read as follows:

**"[§489-6] Complaint against unfair discrimination; reporting requirements.** The [department of labor and industrial relations, hereinafter referred to as "department",] civil rights commission shall receive [all] complaints of unfair discriminatory treatment in public accommodations[. Any person claiming to be aggrieved by an unfair discriminatory practice contrary to the purposes of this act may file a verified complaint with the department on a form provided by the department, which shall state the name and address of the public accommodation alleged to have committed the unfair discriminatory practice complained of and set forth the particulars thereof and such other information as may be required by the department. The department shall provide to the legislature a complete record of all complaints that it has received on an annual basis, not less than thirty days prior to the commencement of the legislative session. For each public accommodation alleged to have committed an unfair discriminatory practice, the report shall specify the number and types of complaints that were received.] in accordance with the procedures established under chapter 368."

SECTION 12. Section 489-8, Hawaii Revised Statutes, is amended to read as follows:

**"[§489-8] Violations of this chapter.] Civil penalty.** It shall be unlawful for a person to discriminate unfairly in public accommodations. [Violations of] Any person, firm, company, association, or corporation who violates this chapter shall be [per se violations of section 480-2 and the rights and penalties provided for in sections 480-3.1 and 480-13 applicable to the violations of section 480-2 shall apply to violations of this chapter.] fined a sum of not less than \$500 nor more than \$10,000 for each violation, which sum shall be collected in a civil action brought by the attorney general or the civil rights commission on behalf of the State. The penalties provided in this section shall be cumulative to the remedies or penalties available under all other laws of this State. Each day of violation under this chapter shall be a separate violation."

SECTION 13. Section 515-9, Hawaii Revised Statutes, is amended to read as follows:

**"[§515-9 Enforcement; powers of department to prevent unlawful discrimination].** The [department of commerce and consumer affairs] civil rights commission has jurisdiction over the subject of real property transaction practices and discrimination made unlawful by this chapter. The [department] commission has the following powers:

- (1) To receive, initiate, investigate, seek to conciliate, hold hearings on, and pass upon complaints alleging violations of this chapter[;] in accordance with the procedure established in chapter 368;
- (2) At any time after a complaint is filed, to require answers to interrogatories, compel the attendance of witnesses, examine witnesses under oath or affirmation, and require the production of documents relevant to the complaint. The [department] commission may make rules authorizing any individual designated to exercise these powers in the performance of official duties;
- (3) To furnish technical assistance requested by persons subject to this chapter to further compliance with the chapter or an order issued thereunder;
- (4) To make studies appropriate to effectuate the purposes and policies of this chapter and to make the results thereof available to the public;

- (5) To render at least annually a comprehensive written report to the governor and to the legislature. The report may contain recommendations of the [department] commission for legislative or other action to effectuate the purposes and policies of this chapter;
- (6) In accordance with chapter 91 to adopt[, promulgate, amend, and rescind] rules [and regulations] to effectuate the purposes and policies of this chapter, including [regulations] rules requiring the inclusion in advertising material of notices prepared or approved by the [director of commerce and consumer affairs.] commission.”

SECTION 14. Section 515-13, Hawaii Revised Statutes, is amended to read as follows:

**“§515-13 [Determination of discriminatory practice; relief.] Remedies.**

(a) If the [department of commerce and consumer affairs] commission determines that the respondent has engaged in a discriminatory practice, the [department] commission shall state its findings of fact and conclusions of law and shall issue an order requiring the respondent to cease and desist from the discriminatory practice and to take such affirmative actions as in the judgment of the [department] commission will carry out the purposes of this chapter. A copy of the order shall be delivered to the respondent, the complainant, the attorney general, and to such other public officers and persons as the [department] commission deems proper.

(b) Affirmative action ordered under this section may include, but is not limited to:

- (1) Sale, exchange, lease, rental, assignment, or sublease of real property to an individual;
- (2) Extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent;
- (3) Reporting as to the manner of compliance;
- (4) Posting notices in conspicuous places in the respondent's place of business in form prescribed by the [department] commission and inclusion of such notices in advertising material;
- (5) Cancellation, rescission, or revocation of a contract, deed, lease, or other instrument transferring real property, which is the subject of a complaint of a discriminatory practice, to a person who had actual knowledge or record notice, prior to the transfer or the execution of the legally binding obligation to make the transfer, that a determination of reasonable cause had been made with respect to the discriminatory practice;
- (6) Payment to an injured party of profits obtained by the respondent through a violation of section 515-7, subject to the principles of equity;
- (7) Payment to the complainant of damages for an injury caused by the discriminatory practice and costs, including a reasonable attorney's fee. Unless greater damages are proven, damages may be assessed at \$500 for each violation.

(c) In the case of a respondent who is found by the [department] commission to have engaged in a discriminatory practice in the course of performing under a contract or subcontract with the State or a county, or agency thereof, if the discriminatory practice was authorized, requested, commanded, performed, or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of the officer's or agent's employment, the [department] commission shall so certify to the contracting agency. Unless the [department's] commission's finding of a discriminatory practice is reversed in the course of judicial review [under section 515-14], the finding of discrimination is binding on the contracting agency.

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(d) Thirty days after an order is issued under this section, unless an appeal by the respondent is pending, the [department] commission may publish or cause to be published the name of a person who has been determined to be engaged in a discriminatory practice.”

SECTION 15. Section 515-16, Hawaii Revised Statutes, is amended to read as follows:

**“§515-16 Other discriminatory practices.** It is a discriminatory practice for a person, or for two or more persons to conspire:

- (1) To retaliate or discriminate against a person because the person has opposed a discriminatory practice, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this chapter;
- (2) To aid, abet, incite, or coerce a person to engage in a discriminatory practice;
- (3) Wilfully to interfere with the performance of a duty or the exercise of a power by the [department of commerce and consumer affairs;] commission; or
- (4) Wilfully to obstruct or prevent a person from complying with this chapter or an order issued thereunder.”

SECTION 16. Section 515-19, Hawaii Revised Statutes, is amended to read as follows:

**“§515-19 Public contractors.** Upon receiving a certification made under section 515-13(c), a contracting agency may take appropriate action to:

- (1) Terminate a contract or portion thereof previously entered into with the respondent, either absolutely or on condition that the respondent carry out a program of compliance with this chapter[.]; and
- (2) Assist the State and all counties, and agencies thereof, to refrain from entering into further contracts, or extensions or other modifications of existing contracts, with the respondent until the [department of commerce and consumer affairs] commission is satisfied that the respondent will carry out policies in compliance with this chapter.”

SECTION 17. Section 378-1, Hawaii Revised Statutes, is amended by deleting the definitions of “department” and “director”.

[“ “Department” means the department of labor and industrial relations.  
“Director” means the director of the department of labor and industrial relations.”]

SECTION 18. Section 378-7, Hawaii Revised Statutes, is repealed.

SECTION 19. Section 378-8, Hawaii Revised Statutes, is repealed.

SECTION 20. Section 378-9, Hawaii Revised Statutes, is repealed.

SECTION 21. Section 515-2, Hawaii Revised Statutes, is amended by deleting the definitions of “department” and “director”.

[“ “Department” means the department of commerce and consumer affairs.  
“Director” means the director of commerce and consumer affairs.”]

SECTION 22. Section 515-10, Hawaii Revised Statutes, is repealed.

**SECTION 23.** Section 515-11, Hawaii Revised Statutes, is repealed.

**SECTION 24.** Section 515-12, Hawaii Revised Statutes, is repealed.

**SECTION 25.** Section 515-14, Hawaii Revised Statutes, is repealed.

**SECTION 26.** Section 515-15, Hawaii Revised Statutes, is repealed.

**SECTION 27.** It is the intent of this Act to preserve all existing rights and remedies relating to the enforcement of discriminatory practices under current laws, and to this end, this Act shall not be construed to impair any contractual agreement currently in force between the State and the federal Equal Employment Opportunities Commission under Title VII of the Civil Rights Act of 1964, or to affect any rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

**SECTION 28.** It is the intent of the legislature that the civil rights commission share overlapping jurisdiction over complaints filed under chapters 489 and 515 and part I of chapter 378, Hawaii Revised Statutes, with the agencies which currently perform enforcement functions under this part. Jurisdiction and enforcement responsibilities shall be transferred after July 1, 1990, according to the transition plan developed by the commission and the departments and rules to be promulgated.

**SECTION 29.** The civil rights commission shall begin its operations by hiring its director, deputy director, and professional and necessary clerical staff. During the 1989-90 fiscal year, the commission shall adopt rules and draft a transition plan for the transfer of jurisdiction, functions, and records from the current enforcement agencies. Those agencies shall work with the civil rights commission on the transition plan.

**SECTION 30.** The civil rights commission shall assume jurisdiction over complaints filed under chapter 368 only upon the transfer of jurisdiction pursuant to the transition plan, agreements between the commission and the current enforcement agencies, and rules adopted by the commission. Until that time, all complaints shall be processed by those agencies pursuant to chapters 489 and 515 and part I of chapter 378. It is the intent of the legislature that after July 1, 1990, and until the transfer of enforcement jurisdiction to the commission, that the commission staff shall assist the department of labor and industrial relations where possible in processing complaints and eliminating backlog.

**SECTION 31.** The civil rights commission, prior to the convening of the 1990 regular session, shall prepare and submit to the legislature, a transition plan which includes specifications for the transfer of all permanent positions within the employment practices branch of the department of labor and industrial relations.

**SECTION 32.** If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**SECTION 33.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded

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by \$200,000 or 0.008 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 34. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000, or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$200,000, or so much thereof as may be necessary for fiscal year 1990-1991, to carry out the purposes of this Act.

The sums appropriated shall be expended by the civil rights commission for the purposes of this Act.

SECTION 35. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 36. This Act shall take effect on July 1, 1989, except section 2 through 4 and 8 through 25 shall take effect on January 1, 1991.

(Approved June 27, 1989.)

### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

## ACT 387

H.B. NO. 932

A Bill for an Act Relating to Civil Rights.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 368-1, Hawaii Revised Statutes, is amended to read as follows:

**“§368-1 Purpose and intent.** (a)<sup>1</sup> The legislature finds and declares that the practice of discrimination because of race, color, religion, age, sex, marital status, national origin, ancestry, or handicapped status[, or medical condition] in employment, housing, [or] public accommodations, or access to services receiving state financial assistance is against public policy. It is the purpose of this chapter to provide a mechanism which provides for a uniform procedure for the enforcement of the State's discrimination laws. It is the legislature's intent to preserve all existing rights and remedies under such laws.”

SECTION 2. Chapter 368, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

**“§368- Programs and activities receiving state financial assistance.** (a) No otherwise qualified individual in the state shall, solely by reason of his or her handicapped status, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by State agencies, or under any program or activity receiving State financial assistance.

(b) As used in this section, the term “handicapped status” means the state of having a physical or mental impairment which substantially limits one or more major life activities, having a record of such an impairment, or being regarded as having such an impairment.

(c) As used in this section, "State financial assistance" means grants, purchase-of-service contracts, or any other arrangement by which the State provides or otherwise makes available assistance in the form of funds to an entity for the purpose of rendering services on behalf of the State. It does not include procurement contracts, state insurance or guaranty contracts, licenses, tax credits, or loan guarantees to private businesses of general concern that do not render services on behalf of the State."

**SECTION 3.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

**SECTION 4.** This Act shall take effect on July 1, 1989.

(Approved June 27, 1989.)

#### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

## ACT 388

H.B. NO. 30

A Bill for an Act Relating to Historic Preservation.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that over the past two decades, Hawaii has witnessed dramatic changes in her landscape, population, and economic development. Unfortunately, some of this change has resulted in the loss of significant remnants of Hawaii's rich heritage.

The legislature further finds that as we begin to compete economically in the Pacific Basin, we are beginning to realize that much of our strength lies in our own uniqueness - those factors that provide us with a distinct advantage over our competitors. This uniqueness comes in all forms such as our geographical location that makes the South Point on the Big Island an ideal space launching site; or our accessibility to cold, pure ocean water that makes Keahole the prime spot for aquaculture and other forms of ocean science research.

The legislature further finds that another distinct advantage that has not been fully tapped is our unique historic heritage. The preservation and enhancement of this valuable resource can provide an additional attraction to our visitors in addition to our beautiful climate, environment, and people. But more important, the preservation of special elements of our past can instill a distinct pride in our people and serve as a reminder, through our historic buildings, documents, photographs, and sites, that we are indeed a unique people and that we have a deep appreciation and sense of our place.

The purpose of this Act is to establish a Hawaii historic preservation special fund to enhance and preserve elements of our past that should be integrated into our daily living.

**SECTION 2.** Chapter 6E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§6E- Hawaii historic preservation special fund.** (a) There is established a Hawaii historic preservation special fund into which shall be deposited the following moneys:

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- (1) Appropriations by the legislature to the special fund; and
- (2) Gifts, donations, and grants from public agencies and private persons.

All interest earned or accrued on moneys deposited in the fund shall become part of the fund. The fund shall be administered by the department of land and natural resources; provided that the department may contract with a public or private agency to provide the day-to-day management of the fund.

(b) The department may expend moneys from the fund to provide financial assistance to public agencies and private agencies in accordance with chapter 42 involved in historic preservation activities other than those covered by section 6E-9.

(c) The department shall adopt rules in accordance with chapter 91 for the purposes of this section."

**SECTION 3.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$1,000,000 or 0.043 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

**SECTION 4.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000, or so much thereof as may be necessary for the fiscal year 1989-1990, to be deposited into the Hawaii historic preservation special fund.

**SECTION 5.** The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

**SECTION 6.** New statutory material is underscored.<sup>1</sup>

**SECTION 7.** This Act shall take effect on July 1, 1989.

(Approved June 27, 1989.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 389

S.B. NO. 1140

A Bill for an Act Relating to Art in State Buildings.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** Chapter 103, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§103- Works of art special fund.** (a) There is created a works of art special fund, into which shall be transferred one per cent of all state fund appropriations for capital improvements designated for the construction cost element; provided that this transfer shall apply only to capital improvement appropriations that are designated for the construction or renovation of state buildings.

(b) The works of art special fund shall be used solely for the following purposes:

- (1) Costs related to the acquisition of works of art, including any consultant or staff services required to carry out the art in public places and relocatable works of art programs;
  - (2) Site modifications, display, and interpretive work necessary for the exhibition of works of art;
  - (3) Upkeep services, including maintenance, repair, and restoration of works of art; and
  - (4) Storing and transporting works of art.
- (c) The one per cent amount, which is included in all capital improvement appropriations, shall be calculated at the time the appropriation bills are signed into law. The moneys shall be transferred into the works of art special fund upon availability of moneys from the appropriations.
- (d) The comptroller and the state foundation on culture and the arts shall decide on the specific art objects to acquire, giving first consideration to placing appropriate pieces of art at the locations of the original appropriation.
- The selection of, commissioning artists for, reviewing of design, execution, and placement of, and the acceptance of works of art shall be the responsibility of the comptroller and the state foundation on culture and the arts in consultation with the affected agency or department.
- Expenditures from the works of art special fund shall be made by the comptroller."

**SECTION 2.** Section 9-4, Hawaii Revised Statutes, is amended to read as follows:

"**§9-4[] Student art work.** The foundation, in consultation with the department of education, the University of Hawaii, private schools, and community art groups, shall establish a program for the recognition and display of student art work. Student art work shall mean any work of art made by any student attending any elementary, intermediate, high school, college, or university in the State.

Recognition shall be through the sponsoring of student art exhibits and the granting of scholarships, monetary awards, or certificates to the student whose art work is being recognized. Any funds appropriated to the foundation may be used for the recognition of student art work. Student art work recognized under this section may be acquired for the purpose of temporary or permanent display in state buildings and public facilities pursuant to section [103-8.] 103-."

**SECTION 3.** Section 103-8, Hawaii Revised Statutes, is repealed.

**SECTION 4.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

**SECTION 5.** This Act shall take effect upon its approval.

(Approved June 27, 1989.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

ACT 390

H.B. NO. 1879

A Bill for an Act Relating to the State Enterprise Zones.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 209E-2, Hawaii Revised Statutes, is amended to read as follows:

**“§209E-2 Definitions.** As used in this chapter:

[“Business” means any entity authorized to do business in the State and subject to the state income tax on net corporate rate income, or a public service company subject to tax under chapter 239, or a financial institution subject to tax under chapter 241, or a partnership or sole proprietorship.]

“Department” means the department of business and economic development.

“Director” means the director of business and economic development.

“Enterprise zone” means an area declared by the governor to be eligible for the benefits of this chapter.

“Establishment” means a single physical location where business is conducted. A business firm may include one or more establishments, any number of which may be in the enterprise zones.

“Qualified business” means any corporation, partnership, or sole proprietorship authorized to do business in the State which is:

- (1) Subject to the state corporate or individual income tax under chapter 235, the public service company tax under chapter 239, or the bank and financial corporation tax under chapter 241;
- (2) Engaged in manufacturing, the wholesale sale of tangible personal property, or a service business or calling; and
- (3) Qualified under section 209E-9.

“Service business or calling” for the purposes of this chapter means any corporation, partnership, or sole proprietorship that acts upon or processes tangible personal property, such as cleaning, repair and maintenance and does not mean activities which are not performed upon tangible personal property.

“Taxes due the State” means:

- (1) In the case of a corporation, partnership, or sole proprietorship, income taxes due under chapter 235;
- (2) In the case of a public service company, tax due under chapter 239;
- (3) In the case of a financial institution, tax due under chapter 241.

“Wholesale” means those activities defined in section 237-4.”

SECTION 2. Section 209E-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The governor shall approve, upon the recommendation of the director, the designation of up to six areas in each county as enterprise zones for a period of twenty years. [Not more than four zones shall be designated during the first year after April 22, 1986.] Any such area shall [consist of] be located in one United States census tract or two or more contiguous United States census tracts in accordance with the 1980 United States Census. Any [such] area designated as an enterprise zone after 1990 United States census data becomes available shall be located in one United States census tract or two or more contiguous United States census tracts in accordance with the 1990 United States Census. The census tract or tracts within which each enterprise zone is located also shall meet at least one of the following criteria:

- (1) Twenty-five per cent or more of the population [of the area] shall have incomes below eighty per cent of the median family income of the county, or
- (2) An unemployment rate 1.5 times the state average."

SECTION 3. Section 209E-8, Hawaii Revised Statutes, is amended to read as follows:

**"[§209E-8] Rules.** Rules prescribing procedures effectuating the purpose of this chapter shall be adopted by the department in consultation with the department of taxation pursuant to chapter 91."

SECTION 4. Section 209E-9, Hawaii Revised Statutes, is amended to read as follows:

**"[§209E-9] Eligibility.** (a) Any business firm may be designated a "qualified business" for purposes of this chapter if the business:

- (1) Begins the operation of a trade or business within an enterprise zone;
- (2) During each taxable year has at least fifty per cent of [the business'] its enterprise zone establishment's gross receipts attributable to the active conduct of trade or business within the enterprise zone; and
- (3) Forty per cent or more of the employees employed at the business' establishment or establishments located within the enterprise zone meet the criteria set forth in section 209E-4(b)(1) prior to employment.

(b) A business also may be designated a "qualified business" for purposes of this chapter if the business:

- (1) Is actively engaged in the conduct of a trade or business in an area immediately prior to an area being designated an enterprise zone;
- (2) Meets the requirements of subsection (a)(2); [and]
- (3) Increases the average number of full-time employees employed at the business' establishment or establishments located within the enterprise zone by at least [ten] five per cent over the preceding year's employment with not less than forty per cent of the increase being employees meeting the criteria of section 209E-4(b)(1) prior to employment[.] and during each subsequent taxable year maintains that higher level of employment; and
- (4) Increases by at least five per cent during each taxable year the average number of full-time employees meeting the criteria of section 209E-4(b)(1) until forty per cent or more of the employees employed at the business' establishment or establishments within the enterprise zone meet the foregoing criteria.

(c) After designation as an enterprise zone, each qualified business firm in the zone shall submit annually to the department a statement requesting one or more of the tax incentives provided in this chapter. The statement shall be accompanied by an approved form supplied by the department and completed by an independent certified public accountant licensed by the State which states that the business firm meets the definition of a "qualified business". A copy of the statement submitted by each business to the department shall be forwarded to the governing body of the county in which the enterprise zone is located.

(d) The form referred to in subsection (c) shall be prima facie evidence of the eligibility of a business for the purposes of this section.

(e) Tangible personal property must be sold by an establishment of a qualified business within an enterprise zone and the transfer of title and delivery to the buyer of the tangible personal property must take place in the same enterprise zone in

## **ACT 391**

which the tangible personal property is sold. Services must be sold by an establishment of a qualified business engaged in a service business or calling within an enterprise zone and the services must be delivered in the same enterprise zone in which sold. Any services rendered outside of an enterprise zone shall not be deemed to be the services of a qualified business.”

SECTION 5. Section 209E-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) When a partnership is eligible for a tax credit under this section, each partner shall be eligible for the tax credit provided for in this section on the partner’s [individual] income tax return in proportion to the amount of income received by the partner from the partnership. Any qualified business having taxable income from business activity, both within and without the enterprise zone, shall allocate and apportion its taxable income attributable to the conduct of business. Tax credits provided for in this section shall only apply to taxable income of a qualified business attributable to the conduct of business within the enterprise zone.”

SECTION 6. Section 209E-11, Hawaii Revised Statutes, is amended to read as follows:

**“[§209E-11]** **State general excise tax exemptions.** The department shall certify annually to the department of taxation that any qualified business is exempt from the payment of general excise taxes on the gross proceeds from [all items sold] the manufacture of tangible personal property, the wholesale sale of tangible personal property, or the engaging in a service business or calling by a qualified business in the enterprise zone. The exemption shall extend for a period not to exceed seven years.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 27, 1989.)

## **ACT 391**

S.B. NO. 59

A Bill for an Act Relating to Discrimination in Real Property Transactions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that there are some inconsistencies in the provisions under chapter 515, Hawaii Revised Statutes, relating to discrimination in real property transactions in that discrimination because of marital status, parental status, or HIV (human immunodeficiency virus) infection are not prohibited in the provisions regarding financial practices and restrictive covenants and conditions. The purpose of the Act is to bring these sections into conformance with the general discriminatory practices section, section 515-3, Hawaii Revised Statutes, by adding marital status, parental status, and HIV (human immunodeficiency virus) infection to the list of discriminatory practices prohibited.

SECTION 2. Section 515-3, Hawaii Revised Statutes, is amended to read as follows:

**“§515-3 Discriminatory practices.** It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesman, because of race, sex, color, religion, marital status, parental status, ancestry, physical handicap, or HIV (human immunodeficiency virus) infection:

- (1) To refuse to engage in a real estate transaction with a person;
- (2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;
- (3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;
- (4) To refuse to negotiate for a real estate transaction with a person;
- (5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to the person's attention, or to refuse to permit the person to inspect real property;
- (6) To print, circulate, post, or mail, or cause to be so published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;
- (7) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith; provided that it shall not be a discriminatory practice under this section to exclude a person based on parental status, or to so advertise or otherwise state, from a real estate transaction or housing accommodation developed specifically for the elderly. For the purposes of this paragraph an elderly person is a person who is sixty-two years of age or older. Nothing in this section shall affect covenants, bylaws, or administrative provisions established in accordance with chapter 514A or established under organizational documents and proprietary leases for housing cooperatives, placing restrictions based upon parental status, existing prior to April 19, 1984;
- (8) To refuse to engage in a real estate transaction with a blind or deaf person because the person uses the services of a certified guide or signal dog; provided that reasonable restrictions or prohibitions may be imposed regarding excessive noise or other problems caused by those animals. For the purposes of this paragraph:

“Blind” shall be as defined in section 235-1;

“Deaf” shall be as defined in section 235-1;

“Guide dog” means any dog individually trained by a licensed guide dog trainer for guiding a blind person by means of a harness attached to the dog and rigid handle grasped by the person; [and]

“Reasonable restriction” shall not include any restriction that allows any owner or person to refuse to negotiate or refuse to engage in the real estate transaction; as used herein, the “reasonableness” of the restriction shall be examined by giving due consideration to the needs of a reasonable prudent person in the same or similar circumstances as the blind or deaf person. Depending on the circumstances, a “reasonable restriction” may require the owner of the certified guide or signal dog to comply with one or more of the following: (a) provide proof that the animal is a certified guide dog or signal dog; (b) observe

applicable laws including leash laws and pick-up laws; (c) assume responsibility for damage caused by the dog; (d) use a harness with a rigid handle on the dog at all times; or (e) have the housing unit cleaned upon vacating, by fumigation, deodorizing, professional carpet cleaning, or other method appropriate under the circumstances. The foregoing list is illustrative only, and neither exhaustive nor mandatory;  
and

"Signal dog" means any dog trained to alert a deaf person to intruders or sounds; or

- (9) To solicit or require as a condition of engaging in a real estate transaction that the buyer, renter, or lessee be tested for human immunodeficiency virus infection (HIV), the causative agent of acquired immunodeficiency syndrome (AIDS)."

SECTION 3. Section 515-5, Hawaii Revised Statutes, is amended to read as follows:

**"§515-5 Discriminatory financial practices.** It is a discriminatory practice for a person to whom application is made for financial assistance in connection with a real estate transaction or for the construction, rehabilitation, repair, maintenance, or improvement of real property, or a representative of such a person:

- (1) To discriminate against the applicant because of race, sex, color, religion, marital status, parental status, ancestry, [or a] physical handicap[.], or HIV (human immunodeficiency virus) infection;  
(2) To use a form of application for financial assistance or to make or keep a record or inquiry in connection with applications for financial assistance which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination as to race, sex, color, religion, marital status, parental status, ancestry, [or a] physical handicap[.], or HIV infection."

SECTION 4. Section 515-6, Hawaii Revised Statutes, is amended to read as follows:

**"§515-6 Restrictive covenants and conditions.** (a) Every provision in an oral agreement or a written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, sex, color, religion, marital status, parental status, ancestry, [or] with a physical handicap, or who are infected by the HIV (human immunodeficiency virus) is void.

(b) Every condition, restriction, or prohibition, including a right of entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, sex, color, religion, marital status, parental status, ancestry, [or a] physical handicap, or HIV infection is void, except a limitation of use on the basis of religion or sex of real property held by a religious institution or organization or by a religious or charitable organization operated, supervised, or controlled by a religious institution or organization, and used for religious or charitable purposes.

(c) It is a discriminatory practice to insert in a written instrument relating to real property a provision that is void under this section or to honor or attempt to honor such a provision in the chain of title."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 6.** This Act shall take effect upon its approval.

(Approved June 27, 1989.)

**ACT 392**

S.B. NO. 1250

A Bill for an Act Making an Appropriation for Hawaiian Health Initiatives.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that the health status and needs of the native Hawaiian people are of utmost importance. This has also been recognized as a critical concern of the federal government as demonstrated by the passage of the Native Hawaiian Health Care Act of 1988. This federal law provides significant funding to support comprehensive community-oriented health initiatives aimed at improving the health of our native population. The federal law also requires twenty-five per cent state matching funds to fully realize the benefits of that benchmark legislation.

The purpose of this Act is to provide the needed funds to the department of health, office of Hawaiian health, to be used to fund the community-based health and medical coalition defined in the federal legislation.

**SECTION 2.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and Sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$50,000, or 0.0021 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

**SECTION 3.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000, or so much thereof as may be necessary for fiscal year 1989-1990, to fund the Hawaiian health coalition defined by the Native Hawaiian Health Care Act of 1988.

**SECTION 4.** The sum appropriated shall be expended by the department of health, office of Hawaiian health, for the purposes of this Act.

**SECTION 5.** This Act shall take effect on July 1, 1989.

(Approved June 27, 1989.)

**ACT 393**

H.B. NO. 62

A Bill for an Act Relating to Human Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that health care for pregnant women, infants, and very young children from families with low incomes has not been made available to a sufficient degree. Because of high health care costs and lack of eligibility for pregnant women and infants in families with incomes greater than the poverty level, this group currently is ineligible for health care provided through

medicaid, even though members of this group face grave hardships in meeting health care costs. In addition, under the current phase-in program to extend eligibility to young children, the period of time during which they are vulnerable to medical costs for health care is prolonged. The legislature further finds that a program to:

- (1) Expand medicaid eligibility to children under the age of four and to older children to the extent permitted under optional federal medicaid rules; and
- (2) Extend medicaid eligibility to pregnant women and infants under one year of age from families with incomes up to one hundred eighty-five per cent of the poverty level would remove these individuals from vulnerability.

The purpose of this Act is to extend immediate medicaid eligibility to these women and children.

SECTION 2. Section 346-14, Hawaii Revised Statutes, is amended to read as follows:

**"§346-14 Duties generally.** Except as otherwise provided by law, the department of human services shall:

- (1) [Administer, establish] Establish and administer programs and standards, and adopt rules as deemed necessary for all public assistance programs;
- (2) Establish, extend, and strengthen services for the protection and care of neglected children and children in danger of becoming delinquent;
- (3) Assist in preventing family breakdown;
- (4) Place, or cooperate in placing, neglected children in suitable private homes or institutions[,] and place, or cooperate in placing, children in suitable adoptive homes;
- (5) Have authority to establish, maintain, and operate receiving homes for the temporary care and custody of neglected children until suitable plans are made for their care; and accept from the police and other agencies, for temporary care and custody, any neglected child until satisfactory plans are made for the child;
- (6) Administer the medical assistance programs for eligible public welfare and other medically needy individuals by establishing standards, eligibility, and health care participation rules, payment methodologies, reimbursement allowances, systems to monitor recipient and provider compliance, and assuring compliance with federal requirements in order to maximize federal financial participation;
- (7) Cooperate with the federal government in carrying out the purposes of the Social Security Act[,] and in other matters of mutual concern pertaining to public welfare, public assistance, and child welfare services, including the making of [such] reports, the adoption of [such] methods of administration, and the making of [such] rules as are found by the federal government, or any properly constituted authority thereunder, to be necessary or desirable for the efficient operation of the plans for [such] public welfare, assistance, and child welfare services[,] or as may be necessary or desirable for the receipt of financial assistance from the federal government;
- (8) Carry on research and compile statistics relative to public and private welfare activities throughout the State, including those dealing with dependence, defectiveness, delinquency, and related problems;

- (9) Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare problems;
- (10) [Make such] Adopt rules governing the procedure in hearings, investigations, recording, registration, determination of allowances, and accounting[,] and conduct [such] other activities as may be necessary or proper to carry out this chapter[, which rules, when approved by the governor, shall have the force and effect of law];
- (11) Supervise or administer any other activities authorized or required by this chapter, including the development of the staff of the department through in-service training and educational leave to attend schools and other appropriate measures, and any other activities placed under the jurisdiction of the department by any other law;
- (12) Make, prescribe, and enforce [such] policies and rules governing the activities provided for in section 346-31 [as] it deems advisable, including the allocation of moneys available for assistance to persons assigned to work projects among the several counties or to particular projects where [such] the apportionment has not been made pursuant to other provisions of law, if any, governing expenditures of the funds[, which rules, when approved by the governor, shall have the force and effect of law];
- (13) Determine the appropriate level for the Hawaii security net, by developing a tracking and monitoring system to determine what segments of the population are not able to afford the basic necessities of life, and advise the legislature annually regarding the resources required to maintain the security net at the appropriate level; and
- (14) Subject to the appropriation of state funds and availability of federal matching assistance, expand optional health care to low-income persons as follows: pregnant women[,] and infants under one year of age living in families with incomes up to one hundred eighty-five per cent of the poverty level and without any asset restrictions, children[,] under four years of age living in families with incomes below the federal poverty level and without any asset restrictions, older children to the extent permitted under optional federal medicaid rules, elderly persons, aliens, the homeless, and other handicapped and medically needy persons.”

**SECTION 3.** In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$419,832, or 0.018 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

**SECTION 4.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$419,832 or so much thereof as may be necessary for fiscal year 1989-1990, and the sum of \$892,110, or so much thereof as may be necessary for fiscal year 1990-1991, to carry out the purposes of this Act. The sums appropriated shall be expended by the department of human services for the purposes of this Act.

**SECTION 5.** Statutory material to be repealed is bracketed. New statutory material is underscored.

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SECTION 6. The department shall enact rules to implement this program within ninety days of the effective date of this Act.

SECTION 7. This Act shall take effect on January 1, 1990.

(Approved June 27, 1989.)

## ACT 394

H.B. NO. 360

A Bill for an Act Relating to Foster Care.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§346- Foster board allowances for students.** Any eligible foster child shall continue to be eligible for foster board allowances after reaching the age of majority and the foster board payments for that person shall continue to be paid to the person’s foster parents, provided that:

- (1) The person is twenty-one years old or younger; and
- (2) The person is attending an accredited institution of higher learning in the State on a full-time basis.

Foster board allowances may be applied to costs incurred in undertaking full-time studies at an institution of higher education.”

SECTION 2. Section 346-16, Hawaii Revised Statutes, is amended as follows:

1. By adding the definition of “institution of higher education” to be appropriately inserted and to read as follows:

“Institution of higher education” means any institution normally requiring a high school diploma or equivalency certificate for enrollment, including but not limited to colleges, universities, and vocational or technical schools.”

2. By amending the definition of “foster boarding home” to read as follows:

“Foster boarding home” means any [children’s] boarding home in which one or more, but [less] fewer than six, minor children are received for care and maintenance apart from their parents or guardians on a twenty-four hour basis for fee or charge.”

SECTION 3. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$150,000, or 0.0064 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000, or so much thereof as may be necessary for fiscal year 1989-1990, for a comprehensive study of Hawaii’s system of foster care, conducted by the legislative auditor in cooperation with the office of children and youth which shall include, but not be limited to:

- (1) An evaluation of Hawaii's foster care system, including an analysis of the impacts which other out-of-home placements, such as shelters and institutions, may have on the system;
- (2) An evaluation of the state foster care review system;
- (3) An exploration of alternative systems of service delivery for children now being placed in foster homes; and
- (4) Recommendations with cost analysis, where appropriate, for improvements to the system or solutions to existing problems.

SECTION 5. The sum appropriated shall be expended by the office of the legislative auditor for the purposes of this Act.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect on July 1, 1989.

(Approved June 27, 1989.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 395**

H.B. NO. 390

A Bill for an Act Relating to Redress Payments to Japanese Interned During World War II.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 346-29, Hawaii Revised Statutes, is amended to read as follows:

**“§346-29 Applications for public assistance; manner, form, conditions.** Applications for public assistance under this chapter shall be made by the applicant, or by someone acting in the applicant's behalf, in the manner, place, and form prescribed by the department.

No applicant shall be entitled to public assistance under this chapter who has sufficient income or other resources to provide a standard above that provided in this chapter, or who is an inmate of any public institution as long as the Social Security Act precludes the use of federal funds to provide public assistance to an inmate of such an institution, but an inmate of such an institution mentioned in this section may apply for assistance to begin after the inmate's discharge from the institution. In determining the needs of an applicant or recipient for public assistance by the department, the department:

- (1) Shall disregard such amounts of earned or unearned income and resources as required by the Social Security Act or other federal acts, to receive federal matching funds and may disregard such additional amounts as these acts permit, now or in the future, to be disregarded.
- (2) Shall consider as net income in all cases such income as the Social Security Act or other federal acts may require the department to consider for receipt of federal matching funds and may consider such additional income and resources as these acts may permit, now or in the future, to be considered.

## **ACT 396**

- (3) Shall disregard a total of \$1,000 in assets in determining the needs of persons for financial assistance; provided that the amount to be disregarded, shall not exceed standards under federally funded financial assistance programs. This provision shall not apply to persons eligible for Federal Supplemental Security Income benefits. In determining the needs of such persons, the department shall apply the resource retention requirements under the Federal Supplemental Security Income Program.
- (4) Shall apply the resource retention requirements under the Federal Supplemental Security Income Program in determining the needs of a single person for medical assistance only.
- (5) Shall apply the resource retention requirements under the Federal Supplemental Security Income Program in determining the needs of a family of two persons for medical assistance only and an additional \$250 for each additional person included in an application for medical assistance only.
- (6) Shall disregard amounts of emergency assistance granted under section 346-65.
- (7) Shall not consider as income or resources any payment for services to or on behalf of, or any benefit received by, a participant under the workfare program of part IX, other than wages. Wages earned by a participant while participating in the workfare program shall be considered income of the participant, unless the wages are excluded or disregarded under any other law.
- (8) Shall not consider as income or resources payment made to eligible individuals, eligible surviving spouses, surviving children or surviving parents as specified under Title I of the Civil Liberties Act of 1988, P. L. 100-383, which made restitution to individuals of Japanese ancestry who were interned during World War II.

In determining eligibility for medical assistance, the department shall require from all applicants and recipients the assignment of any benefits due to a third party liability. Any rights or amounts so assigned shall be applied against the cost of medical care paid under this chapter.

The director shall adopt rules pursuant to chapter 91 defining assets and to determine eligibility for medical assistance; provided that the cash surrender value of life insurance policies owned by persons included in an application shall be treated as assets."

**SECTION 2.** New statutory material is underscored.

**SECTION 3.** This Act shall take effect upon its approval.

(Approved June 27, 1989.)

## **ACT 396**

H.B. NO. 1635

A Bill for an Act Relating to Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** Section 431:13-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

- (1) Misrepresentations and false advertising of insurance policies. Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:
  - (A) Misrepresents the benefits, advantages, conditions, or terms of any insurance policy;
  - (B) Misrepresents the dividends or share of the surplus to be received on any insurance policy;
  - (C) Makes any false or misleading statement as to the dividends or share of surplus previously paid on any insurance policy;
  - (D) Is misleading or is a misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;
  - (E) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;
  - (F) Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy;
  - (G) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy;
  - (H) Misrepresents any insurance policy as being shares of stock;
  - (I) Publishes or advertises the assets of any insurer without publishing or advertising with equal conspicuousness the liabilities of the insurer, both as shown by its last annual statement; or
  - (J) Publishes or advertises the capital of any insurer without stating specifically the amount of paid-in and subscribed capital.
- (2) False information and advertising generally. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive or misleading.
- (3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.
- (4) Boycott, coercion, and intimidation.
  - (A) Entering into any agreement to commit, or by any action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance; or
  - (B) Entering into any agreement on the condition, agreement or understanding that a policy will not be issued or renewed unless the prospective insured contracts for another class or an additional policy of the same class of insurance with the same insurer.

- (5) False financial statements.
  - (A) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or knowingly causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of a material fact as to the financial condition of an insurer; or
  - (B) Knowingly making any false entry of a material fact in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom the insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, knowingly omitting to make a true entry of any material fact pertaining to the business of the insurer in any book, report or statement of the insurer.
- (6) Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.
- (7) Unfair discrimination.
  - (A) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contract;
  - (B) Making or permitting any unfair discrimination in favor of particular individuals or persons, or between insureds or subjects of insurance having substantially like insuring, risk, and exposure factors, or expense elements, in the term or conditions of any insurance contract, or in the rate or amount of premium charge therefor, or in the benefits payable or in any other rights or privilege accruing thereunder;
  - (C) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:
    - (i) The refusal, cancellation or limitation is for a business purpose which is not a mere pretext for unfair discrimination,
    - (ii) The refusal, cancellation or limitation is required by law or regulatory mandate; or
  - (D) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property, unless:

- (i) The refusal, cancellation or limitation is for a business purpose which is not a mere pretext for unfair discrimination, or
- (ii) The refusal, cancellation or limitation is required by law or regulatory mandate;
- (E) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex or marital status of the individual; however, nothing in this subsection shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits; or
- (F) To terminate, or to modify coverage or to refuse to issue or refuse to renew any property or casualty policy or contract of insurance solely because the applicant or insured or any employee of either is mentally or physically impaired; provided that this subsection shall not apply to disability insurance sold by a casualty insurer; provided further that this subsection shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance or renewal of any insurance policy or contract; or
- (G) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual based solely upon the individual's having taken a human immunodeficiency virus (HIV) test prior to applying for insurance; or
- (H) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because the individual refuses to consent to the release of information which is confidential as provided in section 325-101; provided that nothing in this subparagraph shall prohibit an insurer from obtaining and using the results of a test satisfying the requirements of the commissioner, which was taken with the consent of an applicant for insurance[.]; provided further that any applicant for insurance who is tested for HIV infection shall be afforded the opportunity to obtain the test results, within a reasonable time after being tested, and that the confidentiality of the test results shall be maintained as provided by section 325-101.
- (8) Rebates. Except as otherwise expressly provided by law:
  - (A) Knowingly permitting or offering to make or making any contract of insurance, or agreement as to the contract other than as plainly expressed in the contract, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to the insurance, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits, or any valuable consideration or inducement not specified in the contract; or
  - (B) Giving, selling or purchasing, or offering to give, sell or purchase as inducement to the insurance or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value not specified in the contract.
- (9) Nothing in item (7) or item (8) shall be construed as including within the definition of discrimination or rebates any of the following practices:

- (A) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any bonus or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer and its policyholders.
  - (B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.
  - (C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for the policy year.
  - (D) In the case of any contract of insurance, the distribution of savings, earnings or surplus equitably among a class of policyholders, all in accordance with this article.
- (10) Unfair claim settlement practices. Committing or performing with such frequency as to indicate a general business practice any of the following:
- (A) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
  - (B) With respect to claims arising under its policies, failing to respond with reasonable promptness, in no case more than fifteen working days, to communications received from:
    - (i) The insurer's policyholder, or
    - (ii) Any other persons, including the commissioner, or
    - (iii) The insurer of a person involved in an incident in which the insurer's policyholder is also involved.
- The response shall be more than an acknowledgment that such person's communication has been received, and shall adequately address the concerns stated in the communication;
- (C) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
  - (D) Refusing to pay claims without conducting a reasonable investigation based upon all available information;
  - (E) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
  - (F) Failing to offer payment within thirty calendar days of affirmation of liability, if the amount of the claim has been determined and is not in dispute;
  - (G) Failing to provide the insured, or when applicable the insured's beneficiary, with a reasonable written explanation for any delay, on every claim remaining unresolved for thirty calendar days from the date it was reported;
  - (H) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;
  - (I) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by the insureds;

- (J) Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application;
  - (K) Attempting to settle claims on the basis of an application which was altered without notice, or knowledge or consent of the insured;
  - (L) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made;
  - (M) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
  - (N) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;
  - (O) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;
  - (P) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; and
  - (Q) Indicating to the insured on any payment draft, check, or in any accompanying letter that the payment is "final" or is "a release" of any claim if additional benefits relating to the claim are probable under coverages afforded by the policy; unless the policy limit has been paid or there is a bona fide dispute over either the coverage or the amount payable under the policy.
- (11) Failure to maintain complaint handling procedures. Failure of any insurer to maintain a complete record of all the complaints which it has received since the date of its last examination under section 431: 2-302. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this section, complaint shall mean any written communication primarily expressing a grievance.
- (12) Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual."

SECTION 2. Statutory material to be repealed in bracketed. New material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 27, 1989.)

## ACT 397

H.B. NO. 1822

A Bill for an Act Relating to the Transfer of the Hawaii State Coordinating Council on Deafness to the Department of Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 347D-1, Hawaii Revised Statutes, is amended to read as follows:

**“[§347D-1] Hawaii state coordinating council on deafness; establishment.** (a) There is established a Hawaii state coordinating council on deafness within the department of [human services] health for administrative purposes. The council shall consist of:

- (1) Seven representatives of state agencies, including the departments of health, education, labor and industrial relations, human services, personnel services, the University of Hawaii, and the office of the governor;
- (2) Seven members who are hearing impaired or who are immediate family members of hearing impaired persons; and
- (3) Seven members of the public who have an interest in hearing impaired persons.

(b) Members shall be appointed by the governor without the necessity of the advice and consent of the senate and shall serve at the pleasure of the governor.

(c) Members shall elect the officers of the council.

(d) Members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.”

SECTION 2. Section 374D-4,<sup>1</sup> Hawaii Revised Statutes, is amended to read as follows:

**“[§347D-4] Responsibility of council for payment of interpreter services.** The council, subject to legislative appropriations, shall coordinate the payment of interpreter services for hearing impaired persons when participating in [state] programs and activities of the State and its political subdivisions which do not receive federal financial assistance. For the purposes of this section, payment of interpreter services may include transportation and per diem.”

SECTION 3. All rights, powers, functions, and duties of the department of human services relating to the administration of the Hawaii state coordinating council on deafness are transferred to the department of health.

All appropriations, position counts, records, equipment, machines, files, supplies, contracts, books, papers, documents, and other personal property heretofore made, used, acquired, or held by the department of human services relating to the functions transferred to the department of health shall be transferred with the functions to which they relate.

SECTION 4. In accordance with Section 9 of article VII of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriation contained in this Act will cause the state general fund expenditure ceiling for fiscal year 1989-1990 to be exceeded by \$21,663 or 0.00092 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriation made in this Act is necessary to serve the public interest and to meet the need provided for by this Act.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$21,663, or so much thereof as may be necessary for fiscal

year 1989-1990, and the sum of \$13,054, or so much thereof as may be necessary for fiscal year 1990-1991, to supplement the expenditures of the Hawaii state coordinating council on deafness.

The sums appropriated shall be expended by the department of health for the purposes of this Act.

**SECTION 6.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 7.** This Act shall take effect on July 1, 1989.

(Approved June 27, 1989.)

**Note**

1. So in original.



**COMMITTEE REPORTS  
ON MEASURES ENACTED**

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**TABLES SHOWING EFFECT  
OF ACTS**

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**GENERAL INDEX**

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170	SB 633	476	1080	SC 138 HC 70
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177	HB 979	1274	722	SC 172 HC 151
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179	HB 1778	1023	694	SC 112 HC 119
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180	HB 744	1150	606	SC 44 HC 92
181	HB 748	1148	779	SC 70 HC 98
182	HB 917	1010	222	SC 5 HC 5
		1237	590	
183	HB 1188	1327	724	SC 154 HC 133
184	HB 1825	1261	435	HC 20 SC 95
185	HB 1827	1151	292	SC 15 912
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186	HB 1887	1152	769	SC 69 HC 78
187	SB 661	549	1015	SC 39 HC 19
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188	SB 1190	249	1754	
		630		
189	SB 1427	535	1266	SC 139 HC 79
190	SB 1469	66	1148	SC 128 HC 83
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191	SB 1565	324	1070	SC 109 HC 44
		740	1229	
192	SB 1799	554	1288	SC 17 HC 167
193	SB 1823	870	1259	SC 27 HC 28
194	SB 1825	103	1073	SC 84 SC 133
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195	SB 1871	833	1303	HC 165 SC 66
196	SB 2004	780	993	HC 132 SC 93
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197	SB 645	490	1092	SC 157 HC 117
198	SB 653	267	1020	SC 94 HC 140
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199	SB 678	191	968	SC 110 HC 110
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209	SB 1818	864	1149	SC 24 HC 27
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211	HB 920	1026 1207	823	SC 135 HC 156
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213	SB 424	825	1263	SC 125 HC 87
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221	SB 621	923	1268	
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224	SB 691	542	1337	
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227	SB 785	256 840	974 1197	
228	SB 869	512	1745	
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230	SB 959	114 889	1750	
231	SB 963	584	1742	
232	SB 964	610	1753	
233	SB 968	58	992	
234	SB 970	694	1317	
235	SB 1224	450	1115	
236	SB 1229	567	1152	
237	SB 1241	827 402	1209 1047	
238	SB 1294	676 591	1170 1189	
239	SB 1376	510	1305	SC 52 HC 77
240	SB 1385	788	1252	SC 21 HC 171
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248	SB 1872	582	1740	
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250	SB 1898	581	1118	
251	SB 1907	547	1074	
			1315	
252	SB 1912	558	1154	
253	SB 1919	468	1330	
254	SB 1947	595	1146	
255	SB 1983	720	1206	
256	SB 1977	457	1331	
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259	HB 80	977	87	SC 97
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261	HB 225	1324	728	
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263	HB 658	1285	841	
264	HB 741	1135	518	
265	HB 886	1124	510	
266	HB 941	1130	768	
267	HB 1198	1126	501	SC 11
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268	HB 1534	1392	761	
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281	HB 1445	1187	98	
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283	HB 1905	972	311	
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292	SB 1005	453	1040 1296	SC 38 HC 90
293	SB 1197	415 861	1275	SC 163 HC 176
294	SB 1360	672	1249	SC 29 HC 16
295	SB 1433	800	1298	SC 41 HC 30
296	SB 1851	600	942 1075 1319	SC 37 HC 89
297	SB 1874	570	1207	SC 144 HC 84
298	SB 1859	366 769	945 1179	
299	SB 2038	571	1299	SC 122 HC 47
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304	HB 662	1270	840	SC 142 HC 139
305	HB 1378	1065 1293	356 572	
306	HB 1535	1182	766	SC 25 HC 123
307	HB 1575	1040 1201	453	
308	HB 1695	1279	488	
309	HB 1842	1073 1224	284 885	SC 105 HC 66
310	HB 1912	985 1263	255 905	
311	HB 1920	1178	620	SC 16 HC 102
312	SB 148	590	1248	
313	SB 1128	622	1246	SC 51 HC 33
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322	SB 42	651	1142	SC 140
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326	HB 737	1167	468	
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330	SB 1382	458	1211	
331	SB 832	648	1221	SC 176
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332	SB 1800	329	1067	
		741	1159	
333	HB 1549	1024	240	SC 59
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334	HB 1358	1064	357	SC 101
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335	SB 55	522	1308	SC 123
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340	SB 976	447	1200	
341	SB 1052	383	1034	SC 148
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353	HB 1217	951 1233	32 369 544	HC 18 SC 42
354	HB 1382	1013 1360	831	
355	HB 1756	995 1190	289 858	
356	HB 1902	1177	738	SC 57 HC 22
357	HB 79	978 1244	88 863	SC 61 HC 43
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359	HB 1299	1117 1252	319 871	SC 72 HC 36
360	SB 408	180	1156	SC 155 HC 53 SC 177 HC 168
361	SB 1321	206 681	948 1166	SC 108 HC 106
362	SB 1374	574	1304	SC 121 HC 137
363	SB 1476	109 880	1009 1292	
364	SB 1788	592	1290	
365	SB 1897	299 844	950 1163	SC 114 HC 82
366	SB 1870	725	1212	SC 56 HC 24
367	SB 910	576	1117	SC 55 HC 60
368	HB 1826	1045 1197	228 684	SC 143 HC 111
369	SB 1622	425 575	1213	SC 2 HC 35
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371	SB 1856	102 718	1000 1225	
372	HB 1196	987 1265	280 581	
373	SB 914	926	1291	SC 162 HC 174
374	HB 1544	967 1193	83 908	SC 62 HC 41
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383	HB 1236	1149	715	SC 22
384	SB 1154	896	1272	HC 57
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390	HB 1879	1112	312	HC 169
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393	HB 62	1089	52	HC 95
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**Fifteenth State Legislature  
1989 Regular Session**

**Key:** Am = Amended  
N = New  
R = Repealed

— = Section number to be assigned in  
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