

SESSION LAWS

OF

HAWAII

PASSED BY THE

SEVENTEENTH STATE LEGISLATURE

REGULAR SESSION

1993

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and
Adjourned sine die on Monday, May 3, 1993

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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 1993. 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 However, the text is edited to omit the bracketed matter for HRS sections repealed in their entirety and to delete the underscoring from new HRS sections.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 1, 1993

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**Session Laws of Hawaii
Passed By The
Seventeenth State Legislature
Regular Session
1993**

ACT 1

H.B. NO. 1

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 \$4,802,459, 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, 1994, including but not limited to the 1993 regular session, Seventeenth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 1993 and 1994 regular sessions.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$6,612,178, 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, 1994, including but not limited to the 1993 regular session, Seventeenth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 1993 and 1994 regular sessions.

SECTION 3. Payment of expenses of the Senate during the interim between the 1993 and 1994 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 1993 and 1994 sessions shall be made only with the approval of the Speaker of the House of Representatives.

SECTION 4. Before January 19, 1994, 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 19, 1994.

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

ACT 1

provisions of section 78-15, Hawaii Revised Statutes, or by any other general statute. Until otherwise prescribed by law, the expenses of such member shall be \$130 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 \$2,554,793, to the office of the legislative auditor for the following expenses: (a) the sum of \$1,854,000, or so much thereof as may be necessary, for defraying the expenses of the office of the legislative auditor during the fiscal year 1993-1994; (b) the sum of \$550,793, or so much thereof as may be necessary for defraying the expenses of the office of the state ethics commission during the fiscal year 1993-1994; and (c) the sum of \$150,000, or so much thereof as may be necessary during the fiscal year 1993-1994, 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 those 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 \$2,227,204, to the legislative reference bureau for the following expenses: (a) the sum of \$2,127,204, or so much thereof as may be necessary, for defraying the expenses of the legislative reference bureau during the fiscal year 1993-1994, including equipment relating to computer systems programming and operations; and (b) the sum of \$100,000, or so much thereof as may be necessary for defraying the expenses of the review commission on the state water code.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$712,074, 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 1993-1994.

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 "SHADO"): (a) \$500,000 to the Senate; and (b) \$500,000 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, 1994.

SECTION 10. 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 1992-1993 to be exceeded by \$12,414,637 or 0.3993 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 11. As of the close of business on June 30, 1994, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 12. Each section of this Act is declared to be severable from the remainder of this Act.

SECTION 13. This Act shall take effect upon its approval.

(Approved January 29, 1993.)

ACT 2

H.B. NO. 2052

A Bill for an Act Relating to Special Facility Revenue Bonds for Harbors.

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

SECTION 1. Section 266-52, Hawaii Revised Statutes, is amended to read as follows:

“§266-52 Powers. In addition and supplemental to the powers granted to the department by law, the department may:

- (1) With the approval of the governor, and without public bidding, enter into a special facility lease or an amendment or supplement thereto whereby the department agrees with another person engaged in maritime and maritime-related operations to construct, acquire, remodel, furnish, or equip a special facility solely for the use by such other person to a special facility lease; provided that such special facility lease may be amendatory and supplemental to an existing lease between the department and such other person for the land upon which the special facility which is the subject of such special facility lease is to be situated.
- (2) With the approval of the governor, (A) issue special facility revenue bonds in [such principal amounts as may be necessary to yield the amount of] the amounts authorized by specific act or acts of the legislature to finance in whole or in part the cost of any construction, acquisition, remodeling, furnishing, and equipping of any special facility[; provided that the total principal amount of the special facility revenue bonds which may be issued pursuant to the authorization of this paragraph shall not exceed \$50,000,000.], and (B) issue special facility revenue refunding bonds, without further authorization by the legislature, to refund outstanding special facility revenue bonds, including special facility revenue refunding bonds, or any part thereof, at or before maturity or redemption date thereof, issued pursuant to this part; provided that any issuance of such refunding bonds shall not reduce the amount authorized by the legislature as provided in subsection (2)(A).
- (3) Perform and carry out the terms and provisions of any special facility lease.
- (4) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, remodel, furnish, or equip any special facility, or accept the assignment of any contract therefor entered into by the other person to the special facility lease.
- (5) Construct any special facility on land owned by the State.
- (6) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by such other person. Neither such undertaking by

ACT 2

such other person nor the acceptance by the department of a contract theretofore entered into by such other person therefor, shall be subject to section 103-22."

SECTION 2. Section 266-53, Hawaii Revised Statutes, is amended to read as follows:

"[§] 266-53[] Findings and determination for special facility leases. The department shall not enter into any special facility lease unless the department shall first find and determine that:

- (1) The special facility which is to be the subject of such special facility lease will not be used to provide services, commodities, supplies, or facilities which are then adequately being made available through the harbors system of the State;
- (2) The use or occupancy of the special facility under such special facility lease would not result in the reduction of the revenues derived from the harbors system to an amount below the amount required to be derived therefrom by section [39-59;] 39-61; and
- (3) The entering into of such special facility lease would not be in violation of or result in a breach of any covenant contained in any resolution or certificate authorizing any bonds of the State and the department then outstanding."

SECTION 3. Section 266-55, Hawaii Revised Statutes, is amended to read as follows:

"[§] 266-55[] Special facility revenue bonds. All special facility revenue bonds, including special facility revenue refunding bonds, authorized to be issued shall be issued pursuant to [sections 39-51 to 39-70,] part III of chapter 39, except as follows:

- (1) No such revenue bonds shall be issued unless at the time of issuance the department shall have entered into a special facility lease with respect to the special facility for which such revenue bonds are to be issued.
- (2) Such revenue bonds shall be issued in the name of the department, and not in the name of the State.
- (3) No further authorization of the legislature shall be required for the issuance of the special facility revenue bonds, but the approval of the governor shall be required for such issuance.
- (4) Such revenue bonds shall be payable solely from and secured solely by the revenues derived by the department from the special facility for which they are issued, as defined in section 266-51(1).
- (5) The final maturity date of such revenue bonds shall not be later than either the estimated life of the special facility for which they are issued or the initial term of the special facility lease.
- (6) If deemed necessary or advisable by the department, or to permit the obligations of the other person to the special facility lease to be registered under the U.S. Securities Act of 1933, the department with the approval of the state director of finance may appoint a national or state bank within or without the State to serve as trustee for the holders of the revenue bonds and may enter into a trust indenture or trust agreement with such trustee. The trustee may be authorized by the department to collect, hold, and administer the revenues derived from the special facility for which the revenue bonds are issued and to

- apply such revenues to the payment of the principal and interest on such revenue bonds. In the event that any such trustee shall be appointed, any trust indenture or agreement entered into by the department with the trustee may contain the covenants and provisions authorized by [sections 39-51 to 39-70] part III of chapter 39 to be inserted in a resolution adopted or certificate issued, as though the words "resolution" or "certificate" as used in [those sections] that part read "trust indenture or agreement". Such covenants and provisions shall not be required to be included in the resolution or certificate authorizing the issuance of the revenue bonds if included in the trust indenture or agreement. Any resolution or certificate, trust indenture, or trust agreement adopted, issued, or entered into by the department pursuant to this part may also contain any provisions required for the qualification thereof under the U.S. Trust Indenture Act of 1939. The department may pledge and assign to the trustee the special facility lease and the rights of the department including the revenues thereunder.
- (7) If the department with the approval of the state director of finance shall have appointed or shall appoint a trustee for the holders of the revenue bonds, then notwithstanding the second sentence of section [39-65] 39-68 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 such fiscal agent. The department with the approval of the director of finance may appoint the trustee to serve as such fiscal agent, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange, and redemption, as the department 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 destruction thereof in accordance with sections 40-10 and 40-11. Nothing in this paragraph shall be a limitation upon or be construed as a limitation upon the powers granted in the preceding paragraph to the department with the approval of the director of finance to appoint the trustee, or granted in sections 36-3 and [39-12] 39-13 and the third sentence of section [39-65] 39-68 to the director of finance to appoint the trustee or others, as fiscal agents, paying agents, and registrars for the revenue bonds or to authorize and empower such fiscal agents, paying agents, and registrars to perform the functions referred to in such paragraph and sections, it being the intent of this paragraph to confirm that the director of finance as aforesaid may elect not to serve as fiscal agent for the revenue bonds or may elect to limit the functions the director shall perform as such fiscal agent, as the director of finance may deem necessary, advisable, or expedient.
- (8) The department may sell such revenue bonds either at public or private sale.
- (9) If no trustee shall be appointed to collect, hold, and administer the revenues derived from the special facility for which such revenue bonds are issued, such revenues shall be held in a separate account in the treasury of the State, separate and apart from the harbor special fund, to be applied solely to the carrying out of the resolution, certificate, trust indenture, or trust agreement authorizing or securing such revenue bonds.

ACT 3

- (10) If the resolution, certificate, trust indenture, or trust agreement shall provide that no revenue bonds issued thereunder shall be valid or obligatory for any purpose unless certified or authenticated by the trustee for the holders of such revenue bonds, signatures of the officers of the State upon such bonds and the coupons thereof as required by section [39-64] 39-56 may be evidenced by their facsimile signatures.
- (11) The proceeds of such revenue bonds may be used and applied by the department to reimburse the other person to the special facility lease for all preliminary costs and expenses, including architectural and legal costs.
- (12) If the special facility lease shall require the other person to operate, maintain, and repair the special facility which is the subject of such lease, at the other person's expense, such requirement shall constitute compliance by the department with section [39-59(2),] 39-61(a)(2), and none of the revenues derived by the department from such special facility shall be required to be applied to the purposes of section [39-60(2).] 39-62(2). Sections [39-60(4), 39-60(5), and 39-60(6)] 39-62(4), 39-62(5), and 39-62(6) shall not be applicable to the revenues derived from a special facility lease."

SECTION 4. Section 266-56, Hawaii Revised Statutes, is deleted as follows.

SECTION 5. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

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

(Approved April 1, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 3

S.B. NO. 1420

A Bill for an Act Making Emergency Appropriations for the Payment Programs.

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. 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 1992-1993 to be exceeded by \$6,175,152, or 0.198 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 3. Act 300, Session Laws of Hawaii 1992, appropriated a certain designated sum to the department of human services to provide funds for the payment programs under the family and adult services division for the fiscal period

ACT 4

beginning July 1, 1992, and ending June 30, 1993. The payment programs have been designated as Aid to Families with Dependent Children (AFDC), General Assistance (GA), and Aid to the Aged, Blind and Disabled (AABD).

A critical funding emergency exists. The payment programs will expend all appropriated funds before the end of the current fiscal year and the division will be unable to meet its fiscal obligation to provide financial assistance to needy individuals and families. The increase in the unemployment rate and the payment standard are the primary contributing factors to this financial situation. The expenditures for July 1992 increased in excess of nine per cent between the fiscal year 1992-1993 average expenditure and the July 1992 expenditures.

The purpose of this Act is to appropriate or authorize moneys to prevent the reduction or discontinuance of financial assistance payments to needy individuals and families under the payment programs.

SECTION 4. There are hereby appropriated or authorized from the sources of funding indicated below the following sums, or so much thereof as may be necessary for fiscal year 1992-1993, to be used for financial assistance payments to applicants and recipients.

General Funds:	\$6,175,152
Other Federal Funds:	\$4,736,586

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

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

(Approved April 7, 1993.)

ACT 4

S.B. NO. 1713

A Bill for an Act Making Emergency Appropriations for Operating Expenses for the State Medical Assistance Program.

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. 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 1992-1993 to be exceeded by \$35,250,924, or 1.13 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 needs provided for by this Act.

SECTION 3. Act 300, Session Laws of Hawaii 1992, appropriated a certain designated sum to the department of human services to provide funds for the medical assistance program under the division of health care administration for the fiscal period beginning July 1, 1992, and ending June 30, 1993.

ACT 5

A critical funding emergency exists. The medical assistance program, also known as the Medicaid program, will expend all appropriated funds before the end of the current fiscal year and the division will be unable to meet its fiscal obligation to provide health and health-related services to Medicaid recipients. The increase in health care costs in Hawaii and an increasing service utilization rate are the primary contributing factors to this financial situation. Health care reimbursements have increased, on the average, in excess of twelve per cent over the level of expenditures of the previous year. The extent of the increase in costs was not anticipated and reflects an unusually high escalation.

Additional funds are urgently needed to prevent the reduction or discontinuance of direct services.

SECTION 4. There are hereby appropriated or authorized from the sources of funding indicated below the following sums, or so much thereof as may be necessary for fiscal year 1992-1993, to be used for health care payments to medical assistance providers.

General Funds:	\$35,250,924
Other Federal Funds	\$12,336,347

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

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

(Approved April 7, 1993.)

ACT 5

H.B. NO. 635

A Bill for an Act Relating to Taxation.

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

SECTION 1. The legislature finds that the reporting of the general excise tax by taxation districts is cumbersome and not easily conformed to by many businesses which conduct transactions in several taxation districts. The problem is further compounded when the business is the provision of service in more than one taxation district.

SECTION 2. Section 237-34, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All monthly and annual returns shall be transmitted to the office of the taxation district in which the privilege upon which the tax accrued is exercised. Where the privilege is exercised in more than one taxation district the returns shall be transmitted to the office of the first district."

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 1993.

(Approved April 12, 1993.)

ACT 6

H.B. NO. 1564

A Bill for an Act Relating to Statutory Revision: Amending, Reenacting, or Repealing Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii 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 9-13, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The appeal process in the foundation’s rules adopted pursuant to section [9-2] 9-5 shall be available for any applicant.”

SECTION 2. Section 9-15, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Payment of funds shall be made within sixty days after a contract is executed. Contracts shall be executed in accordance with the foundation’s rules adopted pursuant to section [9-2] 9-5 and no later than ninety days after receipt of a foundation-approved revised service proposal or foundation-approved certification that there have been no programmatic or budgetary changes to the application.”

SECTION 3. Section 11-175, Hawaii Revised Statutes, is amended by amending the title to read as follows:

“**§11-175 Powers of [courts;] supreme court; costs.**”

SECTION 4. Section 26-14.6, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Effective July 1, 1990, the functions, authority, and obligations, together with the limitations imposed thereon and the privileges and immunities conferred thereby, exercised by a “sheriff”, “sheriffs”, a “sheriff’s deputy”, “sheriff’s deputies”, a “deputy sheriff”, “deputy sheriffs”, or a “deputy”, under sections 21-8, 47-18, 88-51, 105-4, 134-11, 134-51, 183D-11, 187A-14, 231-25, 281-108, 281-111, 286-52, 286-52.5, 321-1, 322-6, 325-9, 325-80, [329-55.] 353-11, 360-5, 360-14, 383-71, 438-5, 445-37, 482E-4, 485-6, 501-42, 501-171, 501-218, 521-78, 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, 651-33, 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 shall be exercised to the same extent by the department of public safety.”

SECTION 5. Section 47-5, Hawaii Revised Statutes, is amended to read as follows:

“**§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

ACT 6

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] or 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."

SECTION 6. Section 88-211, Hawaii Revised Statutes, is amended to read as follows:

"§88-211 Definitions. For the purposes of this part:

- (1) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that the term shall not include that part of the remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that Act;
- (2) The term "employment" means any service performed by an employee in the employ of the State, or any political subdivision thereof, for such employer except
 - (A) Service which in the absence of an agreement entered into under this part would constitute "employment" as defined in the Social Security Act; or
 - (B) Service which under the Social Security Act may not be included in an agreement between the State and the Department of Health, Education, and Welfare entered into under this part. Service which under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that Act shall be included in the term "employment" if and when the governor issues, with respect to such service, a certificate to the Secretary of Health, Education, and Welfare pursuant to section 88-219;
- (3) The term "employee" includes an officer of the State or political subdivision thereof;
- (4) The term "state agency" means the [secretary] administrator of the state employees retirement system;
- (5) The term "Secretary of Health, Education, and Welfare" includes an individual to whom the Secretary of Health, Education, and Welfare has delegated any of the secretary's functions under the Social Security Act with respect to coverage under the Act of employees of the states and territories and their political subdivisions;
- (6) The term "political subdivision" includes an instrumentality of the State, of one or more of its political subdivisions, or of the State and one or more of its political subdivisions, but only if the instrumentality is a juristic entity which is legally separate and distinct from the State or subdivision and only if its employees are not by virtue of their relation to the juristic entity employees of the State or subdivision;

- (7) The term "Social Security Act" means the Act of Congress approved August 14, 1935, chapter 531, 49 Statutes At Large 620, officially cited as the "Social Security Act," (including regulations and requirements issued pursuant thereto), as such Act has been and may from time to time be amended;
- (8) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the Federal Internal Revenue Code of 1939 and sub-chapters A and B of chapter 21 of the Federal Internal Revenue Code of 1954, as such Codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of the Code of 1939 and section 3101 of the Code of 1954."

SECTION 7. Section 132-12, Hawaii Revised Statutes, is amended by amending the title to read as follows:

"§132-12 Court aid[; notices; rehearings; appeals; record]."

SECTION 8. Section 189G-1, Hawaii Revised Statutes, is amended to read as follows:

"[§189G-1] Establishment of the Hawaii aquaculture advisory council; membership. There is established within the department of land and natural resources the Hawaii aquaculture advisory council, hereinafter referred to as the council, for the purpose of advising the board of land and natural resources on matters relating to aquaculture and the coordination of aquaculture activities among the various federal, state, and county agencies and private industry. The council shall be composed of thirteen voting members, and no more than ten nonvoting members, as follows:

- (1) Six shall be voting ex officio members to consist of the chairperson of the board of land and natural resources, the director of [planning and] business, economic development, and tourism, the chairperson of the board of agriculture, the dean of the college of tropical agriculture and human resources, the director of the sea grant college program, and the chairperson of the Hawaiian homes commission; or their designated representatives.
- (2) Six shall be voting members representing state aquaculture producers and private aquaculture consultants and appointed by the governor pursuant to section 26-34.
- (3) One shall be a voting member appointed by the governor pursuant to section 26-34 and selected from the State's aquaculture support industries such as feed manufacturing, marketing, and aquaculture equipment engineering.
- (4) There shall be no more than ten nonvoting ex officio members to consist of the respective economic development officers or other officials as designated by the respective mayors of the city and county of Honolulu, the county of Hawaii, the county of Maui, and the county of Kauai, and may include the director of health, the director of the University of Hawaii's Hawaii institute of marine biology, the director of the aquatic resources division of the department of land and natural resources, the state marine affairs advisor, the administrator of the office of Hawaiian affairs, and such other members as deemed appropriate by the chairperson of the Hawaii aquaculture coordinating council.

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The chairperson of the board of land and natural resources shall serve as the chairperson of the council. All members of the council shall serve without compensation but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of duties and responsibilities of the council."

SECTION 9. Section 286-116, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every licensee shall have a valid driver's license in the licensee's immediate possession at all times, and a valid no-fault or liability insurance identification card applicable to the motor vehicle operated as required under section 431:10C-107 and section 431:10G-106, when operating a motor vehicle, and shall display the same upon demand of a police officer. Every police officer or law enforcement officer when stopping a vehicle or inspecting a vehicle for any reason shall demand that the driver or owner display the driver's or owner's driver's license and insurance identification card. No person charged with violating this section shall be convicted if the person produces in court, or proves from the proper official or other records that the person was the holder of a driver's license or a no-fault or liability insurance identification card and policy conforming to article 10C and article 10G of chapter 431 or a certificate of self-insurance issued by the insurance commissioner [of motor vehicle insurance] pursuant to section 431:10C-107 and 431:10G-103, theretofore issued to the person and valid at the time of the person's arrest."

SECTION 10. Section 287-36, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The deposit shall be held by the administrator to satisfy, in accordance with this chapter any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after the deposit was made. Money or bonds so deposited shall not be subject to attachment or execution unless the attachment or execution arises out of a suit for damages as aforesaid."

SECTION 11. Section 287-40, Hawaii Revised Statutes, is amended to read as follows:

"§287-40 Duration of proof; when proof may be canceled or returned. The administrator shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the administrator shall return to the person entitled thereto any money or bonds deposited pursuant to this chapter as proof of financial responsibility, or the administrator shall waive the requirement of filing proof, in any of the following events:

- (1) At any time after three years from the date the proof was required when, during the three-year period preceding the request, the administrator has not received record of a conviction which would require or permit the suspension or revocation of the license or nonresident's operating privilege of the person by or for whom the proof was furnished;

- (2) In the event of [the death of] the person on whose behalf the proof was filed or the permanent incapacity of the person to operate a motor vehicle;
- (3) In the event the person who has given proof surrenders the person's license to the administrator;

Provided, that the administrator shall not consent to the cancellation of any bond or the return of any money or bonds in the event any action for damages upon a liability covered by the proof is then pending or any judgment upon any such liability is then unsatisfied, or in the event the person who has filed the bond or deposited the money or bonds, has, within one year immediately preceding the request been involved as a driver or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that the applicant has been released from all of the applicant's liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the administrator.

Whenever any person whose proof has been canceled or returned under paragraph (3) of this section applies for a license or registration within a period of three years from the date proof was originally required, any such application shall be refused unless the applicant reestablishes the proof for the remainder of the three-year period."

SECTION 12. Part IX of chapter 321, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**"PART IX. [VISION AND HEARING SCREEING AND EDUCATION]
SYSTEMATIC HEARING AND VISION PROGRAM"**

SECTION 13. Section 353-63, Hawaii Revised Statutes, is amended by amending the title to read as follows:

"§353-63 Service of Hawaii paroling authority members; compensation; expenses."

SECTION 14. Section 373F-2, Hawaii Revised Statutes, is amended to read as follows:

"[§373F-2] Tourism training council; establishment; composition. There is established within the department of labor and industrial relations a tourism training council. The members of the council shall be appointed by the governor for staggered terms of four years in accordance with section 26-34. Each term shall commence on July 1 of the year of appointment. The council shall consist of at least ten but not more than fifteen members representing organizations for visitor industry management; labor unions representing visitor industry workers; public and private visitor industry education and training programs; and the [state] advisory commission on employment and human resources. The director of labor and industrial relations shall serve as an ex officio member. The council shall elect a chairperson from among its members. The council members shall serve without compensation but shall be allowed personal expenses, at the rates specified in section 78-15, while attending council meetings or while on official business when such council meetings or official business requires a member to leave the island upon which the member resides."

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SECTION 15. Section 386-154.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) For the calendar year 1972 only, insurers of employers as defined in section 386-121(a)(1) shall pay a special assessment of one and one-quarter per cent on gross premiums as defined in section [431-318(a)] 431:7-202(a) and in accordance with the provisions of section 386-153. For the calendar year 1973 only, such insurers shall pay a special assessment established by rule of the director not to exceed 1.6 times the 1972 special assessment."

SECTION 16. Section 394-5, Hawaii Revised Statutes, is amended to read as follows:

"§394-5 Administration. The department of labor and industrial relations is authorized, with the advice of the [state] advisory commission on employment and human resources, to plan and administer human resource development and training programs under this chapter. The department shall process the payment of weekly compensation as provided under this chapter."

SECTION 17. Section 394B-2, Hawaii Revised Statutes, is amended by amending the definition of "relocation" to read as follows:

"“Relocation” means the removal of all or substantially all of the industrial, commercial, or business operations in a covered establishment to a location outside the State of Hawaii.”

SECTION 18. Section 431:9B-104, Hawaii Revised Statutes, is amended by amending the title to read as follows:

"[§431:9B-104] Books and records; reinsurance [intermediary brokers.] intermediary-brokers."

SECTION 19. Section 431:9B-106, Hawaii Revised Statutes, is amended by amending the title to read as follows:

"[§431:9B-106] Required contract provisions; reinsurance [intermediary managers.] intermediary-managers."

SECTION 20. Section 431:10C-304, Hawaii Revised Statutes, is amended to read as follows:

"§431:10C-304 Obligation to pay no-fault benefits. Every no-fault and self-insurer shall provide no-fault benefits for accidental harm as follows:

- (1) Except as otherwise provided in section 431:10C-305(d):
 - (A) In the case of injury arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to the following persons who sustain accidental harm as a result of the operation, maintenance or use of the vehicle, an amount equal to the no-fault benefits payable for wage loss and other expenses to that person under section 431:10C-103(10)(A)(iii) and (iv) as a result of the injury:
 - (i) Any person, including the owner, operator, occupant, or user of the insured motor vehicle;
 - (ii) Any pedestrian (including a bicyclist); or

- (iii) Any user or operator of a moped as defined in section 249-1;
- (B) In the case of injury arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to a provider of services on behalf of the persons listed in item (1)(A) charges for services covered under section 431:10C-103(10)(A)(i) and (ii); or
- (C) In the case of death of any person listed in item (1)(A), arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to the legal representatives of such person who sustains accidental harm as a result of the operation, maintenance or use of the vehicle, for the benefit of the surviving spouse and any [dependent], as defined in section 152 of the Internal Revenue Code of 1954, as amended, an amount equal to the no-fault benefits payable to the spouse and dependent as a result of the death of such person, subject to the provisions of section 431:10C-103(10);
- Provided that subparagraphs (A), (B), and (C) shall not apply in the case of injury to or death of any operator of a motorcycle or motor scooter as defined in section 286-2 arising out of a motor vehicle accident.
- (2) Payment of no-fault benefits shall be made as the benefits accrue, except that in the case of death, payment of benefits under section 431:10C-103(10)(A)(iii) and (iv) may be made immediately in a lump sum payment, at the option of the beneficiary.
- (3) (A) Payment of no-fault benefits shall be made within thirty days after the insurer has received reasonable proof of the fact and amount of benefits accrued, and demand for payment thereof.
- (B) Subject to section 431:10C-308.6, relating to peer review, if the insurer elects to deny a claim for benefits in whole or in part, the insurer shall within thirty days notify the claimant in writing of the denial and the reasons for the denial. The denial notice shall be prepared and mailed by the insurer in triplicate copies and be in a format approved by the commissioner. In the case of benefits for services specified in section 431:10C-103(10)(A)(i) and (ii), the insurer shall also mail a copy of the denial to the provider.
- (C) If the insurer cannot pay or deny the claim for benefits because additional information or loss documentation is needed, the insurer shall, within the thirty days, forward to the claimant an itemized list of all the required documents. In case of benefits for services specified in section 431:10C-103(10)(A)(i) and (ii), the insurer shall also forward the list to the service provider.
- (4) Amounts of benefits which are unpaid thirty days after the insurer has received reasonable proof of the fact and the amount of benefits accrued, and demand for payment thereof, after the expiration of the thirty days, shall bear interest at the rate of one and one-half per cent per month.
- (5) No part of no-fault benefits paid shall be applied in any manner as attorney's fees in the case of injury or death for which the benefits are paid. The insurer shall pay, subject to section 431:10C-211, in addition to the no-fault benefits due, all attorney's fees and costs of settlement or suit necessary to effect the payment of any or all no-fault benefits found due under the contract. Any contract in violation of this

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- provision shall be illegal and unenforceable. It shall constitute an unlawful and unethical act for any attorney to solicit, enter into or knowingly accept benefits under any such contract.
- (6) Any insurer who violates the provisions of this section shall be subject to the provisions of section 431:10C-117(b) and (c)."

SECTION 21. Section 431N-6, Hawaii Revised Statutes, is amended to read as follows:

"~~§431N-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.] chapter, 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 and industrial relations, 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."

SECTION 22. Section 448H-4, Hawaii Revised Statutes, is amended by amending the title to read as follows:

"**§448H-4 Meetings[; quorum]."**

SECTION 23. Section 486I-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The commission shall publish annually and submit to the governor and the legislature twenty days prior to the first day of the current [legislature] legislative session a summary, an analysis, and an interpretation of the information submitted to it pursuant to section 486I-3. Any person may submit comments in writing regarding the accuracy or sufficiency of the information submitted."

SECTION 24. Section 580-10, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Whenever it is made to appear to the court after the filing of any complaint, that there are reasonable grounds to believe that a party thereto may inflict physical abuse upon, threaten by words or conduct, or harass the other party, the court may issue a restraining order to prevent such physical abuse, threats, or harassment, and shall enjoy in respect thereof the powers pertaining to a court of equity. Where necessary, the order may require either or both of the parties involved to leave the marital residence during the period of the order, and may also restrain the party to whom it is directed from contacting, threatening, or physically abusing the children or other relative of the spouse who may be residing with that spouse at the time of the granting of the restraining order. The order may also restrain a party's agents, servants, employees, attorneys, or other persons in active concert or participation with the respective party.

(1) A knowing or intentional violation of a restraining order issued pursuant to this section is a misdemeanor. The court shall sentence a violator to appropriate counseling and shall sentence a person convicted under this section as follows:

- (A) For a first conviction for violation of the restraining order the person shall serve a mandatory minimum jail sentence of forty-eight hours;
- (B) For the second and any subsequent conviction for violation of the restraining order the person shall serve a mandatory minimum jail sentence of thirty days.

The court may suspend any jail sentence, except for the mandatory sentences under [paragraphs (1) and (2).] subparagraphs (A) and (B), upon appropriate conditions such as that the defendant remain alcohol and drug-free, conviction-free or complete court-ordered assessments or counseling. Nothing in this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor offense. All remedies for the enforcement of judgments, equitable as well as legal, including civil contempt, shall apply to this section.

(2) Any law enforcement officer shall enforce a restraining order issued pursuant to this subsection, including lawfully ordering the restrained party to voluntarily leave for a three-hour cooling off period, or, with or without a warrant, where the law enforcement officer has reasonable grounds to believe that the restrained party has violated the restraining order, arresting the restrained party."

SECTION 25. Section 626-1, Hawaii Revised Statutes, is amended by amending subsection (b) of rule 608 to read as follows:

"(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking the witness' credibility, may, if probative of untruthfulness, be inquired into on cross-examination of the witness and may, in the discretion of the court, be [provided] proved by extrinsic evidence. When a witness testifies to the character of another witness under [paragraph] subsection (a), relevant specific instances of the other witness' conduct may be inquired into on cross-examination but may not be proved by extrinsic evidence.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility."

SECTION 26. Section 672-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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"(b) A design professional conciliation panel, hereafter called "the panel", shall be formed for each claim filed pursuant to section 672-4 and, after each panel renders its decision or the claim is otherwise disposed of, it shall be disbanded. Each design professional conciliation panel shall consist of one chairperson selected from among persons who are familiar with and experienced in the tort claims settlement process, one attorney licensed to practice in the courts of the State and experienced in trial practice, and one architect, engineer, surveyor, or landscape architect licensed to practice under chapter 464. The chairperson shall be appointed by the director of commerce and consumer affairs from a list of eligible persons approved 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 architect, engineer, surveyor, or landscape architect shall be appointed by the chairperson from a list of not less than thirty-five design professionals submitted annually by the board [of registration] of professional engineers, architects, surveyors, and landscape architects.

The chairperson shall preside at the meetings of the panel. The chairperson and all panel members shall be compensated at the rate of \$300 per claim which will become payable when the decision of the panel is submitted. At the discretion of the director of commerce and consumer affairs, the chairperson and all panel members may be compensated at one-half of the amount of compensation specified in this section, when and if the claim is disposed of by any means prior to the hearing before the panel. The chairperson and all panel members shall also be paid allowances for travel and living expenses which may be incurred as a result of the performance of their duties. These costs shall be paid by the department of commerce and consumer affairs from funds collected from the parties, to be shared equally. The claimant shall deposit \$450 with the department upon the filing of the claim and the failure to do so shall result in the claim being rejected for filing. Each design professional shall deposit \$450 with the department within twenty days of being served with the claim and the failure to do so shall result in termination of proceedings under this chapter, allowing the claimant to proceed in accordance with section 672-8. If the claim is withdrawn, determined to be unsuitable for proceedings under this chapter, or otherwise terminated without participation by a panel, the department shall return all moneys collected to the respective parties. Any moneys remaining after all costs have been paid shall be returned to the respective parties on a pro rata basis.

The office and meeting space, secretarial and clerical assistance, office equipment and office supplies for the panel shall be furnished by the department of commerce and consumer affairs.

The board [of registration] shall prepare a list of architects, engineers, surveyors, and landscape architects 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, technical, 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 person's appearance before the panel. Such costs shall be paid by the department of commerce and consumer affairs."

SECTION 27. Section 672-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within thirty days after the completion of a hearing, the panel shall file a written advisory decision with the director of commerce and consumer affairs, who shall thereupon mail copies to all parties concerned, or their counsel if

represented by counsel, the board [of registration], and the representative of each design professionals' liability insurance carrier authorized to act for such carrier. The panel shall decide the issue of liability, and shall state its conclusions in writing. After a finding of liability, if evidence has been presented regarding damages, the panel shall decide the amount of damages, if any, which should be awarded in the case. The decision as to damages shall include in simple, concise terms a division as to which portion of the damages recommended are attributable to economic losses and which to noneconomic losses; provided that the panel may not recommend punitive damages."

SECTION 28. Act 197, Session Laws of Hawaii 1992, is amended by amending the prefatory language in section 7 to read as follows:

"SECTION 7. Section 502-25, Hawaii Revised Statutes, is amended by amending the title and subsection (a) to read as follows:"

SECTION 29. Act 198, Session Laws of Hawaii 1992, is amended by amending the prefatory language in section 1 to read as follows:

"SECTION 1. Section 408-14, Hawaii Revised Statutes, is amended by amending the title and subsection (a) to read as follows:"

SECTION 30. This Act shall be amended to conform to all other acts passed by the legislature during this regular session of 1993, whether enacted before or after the effective date of this Act, unless the other acts specifically provided otherwise.

SECTION 31. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 32. This Act shall take effect upon its approval; provided that sections 28 and 29 shall take effect retroactive to June 12, 1992.

(Approved April 12, 1993.)

ACT 7

H.B. NO. 1591

A Bill for an Act Relating to Expungement Orders.

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

SECTION 1. Section 831-3.2, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The attorney general, or the attorney general's duly authorized representative within the department of the attorney general, upon written application from a person arrested for, or charged with but not convicted of a crime, shall issue an expungement order annulling, canceling, and rescinding the record of arrest; provided that an expungement order shall not [issue] be issued:

- (1) [in] In the case of an arrest for a felony or misdemeanor where conviction has not been obtained because of bail forfeiture;
- (2) [for] For a period of five years after arrest or citation in the case of a petty misdemeanor or violation where conviction has not been obtained because of a bail forfeiture;

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- (3) [in] In the case of an arrest of any person for any offense where conviction has not been obtained because the person has rendered prosecution impossible by absenting oneself from the jurisdiction; [and]
- (4) [in] In the case of a person acquitted by reason of a mental or physical defect under chapter 704[.]; and
- (5) For a period of one year upon discharge of the defendant and dismissal of the charge against the defendant in the case of a deferred acceptance of guilty plea or nolo contendere plea, in accordance with chapter 853.

Any person entitled to an expungement order hereunder may by written application also request return of all fingerprints or photographs taken in connection with the person's arrest. The attorney general or the attorney general's duly authorized representative within the department of the attorney general, within 120 days after receipt of [such] the written application, shall, when so requested, deliver, or cause to be delivered, all [such] fingerprints or photographs of [such] the person, unless [such] the person has a [prior] record of conviction or is a fugitive from justice, in which case the photographs or fingerprints may be retained by the agencies holding such records.

(b) Upon the issuance of the expungement [order,] certificate, the person applying for the order shall be treated as not having been arrested in all respects not otherwise provided for in this section."

SECTION 2. Section 831-3.2, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) The meaning of the following terms as used in this section shall be as indicated:

- (1) "Conviction" means a final determination of guilt whether by plea of the accused in open court, by verdict of the jury or by decision of the court.
- (2) "Arrest record" means [the] any existing photographic and finger-print cards relating to the arrest."

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 12, 1993.)

ACT 8

H.B. NO. 1343

A Bill for an Act Relating to Controlled Substances.

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

SECTION 1. Section 329-14, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (1) Aminorex;
- [(1)] (2) Fenethylline;
- (3) Methcathinone;
- [(2)] (4) N-ethylamphetamine;
- [(3)] (5) 4-methylaminorex;
- [(4)] (6) N,N-dimethylamphetamine."

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 13, 1993.)

ACT 9

H.B. NO. 1344

A Bill for an Act Relating to Schedule IV Controlled Substances.

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

SECTION 1. Section 329-20, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Depressants. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a degree of danger or probable danger associated with a depressant effect on the central nervous system:

- (1) Alprazolam;
- (2) Barbital;
- (3) Bromazepam;
- (4) Camazepam;
- (5) Carisoprodol;
- [(5)] (6) Chloral betaine;
- [(6)] (7) Chloral hydrate;
- [(7)] (8) Chlordiazepoxide;
- [(8)] (9) Clobazam;
- [(9)] (10) Clonazepam;
- [(10)] (11) Clorazepate;
- [(11)] (12) Clotiazepam;
- [(12)] (13) Cloxazolam;
- [(13)] (14) Delorazepam;
- [(14)] (15) Diazepam;
- [(15)] (16) Estazolam;
- [(16)] (17) Ethchlorvynol;
- [(17)] (18) Ethinamate;
- [(18)] (19) Ethyl loflazepate;
- [(19)] (20) Fludiazepam;
- [(20)] (21) Flunitrazepam;
- [(21)] (22) Flurazepam;
- [(22)] (23) Halazepam;
- [(23)] (24) Haloxazolam;
- [(24)] (25) Ketazolam;
- [(25)] (26) Loprazolam;
- [(26)] (27) Lorazepam;
- [(27)] (28) Lormetazepam;

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[(28)] (29) Mebutamate;
[(29)] (30) Medazepam;
[(30)] (31) Meprobamate;
[(31)] (32) Methohexital;
[(32)] (33) Methylphenobarbital (mephobarbital);
[(33)] (34) Midazolam;
[(34)] (35) Nimetazepam;
[(35)] (36) Nitrazepam;
[(36)] (37) Nordiazepam;
[(37)] (38) Oxazepam;
[(38)] (39) Oxazolam;
[(39)] (40) Paraldehyde;
[(40)] (41) Petrichloral;
[(41)] (42) Phenobarbital;
[(42)] (43) Pinazepam;
[(43)] (44) Prazepam;
[(44)] (45) Quazepam;
[(45)] (46) Temazepam;
[(46)] (47) Tetrazepam;
[(47)] (48) Triazolam."

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 13, 1993.)

ACT 10

S.B. NO. 149

A Bill for an Act Relating to Bail Jumping.

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

SECTION 1. Section 710-1024, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of bail jumping in the first degree if, having been released from custody by court order with or without bail, upon condition that [he] the person will subsequently appear as ordered in connection with a charge of having committed a [class A, B or C] felony, [he] the person intentionally fails to appear as ordered."

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 on July 1, 1993.

(Approved April 13, 1993.)

ACT 11

S.B. NO. 1839

A Bill for an Act Relating to Lili'uokalani.

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

SECTION 1. Chapter 8, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§8- Queen Lili'uokalani Day. September 2 of each year shall be known and recognized as "Queen Lili'uokalani Day" in memory of the birth of Queen Lili'uokalani on September 2, 1838; provided that this day shall not be a state holiday."

SECTION 2. New statutory material is underscored.¹

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

(Approved April 13, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 12

H.B. NO. 62

A Bill for an Act Relating to Unlawful Entry.

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

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§708- Entry upon the premises of a facility utilized as a sex, child, or spouse abuse shelter; penalty. No person shall knowingly enter or remain unlawfully upon the premises of a facility utilized as a sex abuse, child abuse, or spouse abuse shelter after reasonable warning or request to leave by a member of the facility's staff.

Violation of this section is a misdemeanor."

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.¹ New statutory material is underscored.²

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

(Approved April 13, 1993.)

Notes

1. No bracketed material.

2. Edited pursuant to HRS §23G-16.5.

ACT 13

ACT 13

H.B. NO. 1068

A Bill for an Act Relating to Forgery.

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

SECTION 1. Section 708-850, Hawaii Revised Statutes, is amended by amending the definition of "forged instrument" to read as follows:

"(7) "Forged instrument" means a written instrument which has been falsely made, completed, endorsed, or altered;"

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon approval.

(Approved April 13, 1993.)

ACT 14

H.B. NO. 1075

A Bill for an Act Relating to Theft Offenses.

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

SECTION 1. Section 708-830.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of theft in the first degree if the person commits theft:

- (a) Of property[,] or services, the value of which exceeds \$20,000;
- (b) Of a firearm; or
- (c) Of dynamite or other explosive."

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 13, 1993.)

ACT 15

H.B. NO. 1601

A Bill for an Act Relating to Solar Energy.

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

SECTION 1. Section 196-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Townhouse" means a series of individual houses, having architectural unity and a common wall between each unit."

SECTION 2. New statutory material is underscored.

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

(Approved April 13, 1993.)

ACT 16

H.B. NO. 1602

A Bill for an Act Relating to Economic Redevelopment Program for Depressed Areas.

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

SECTION 1. The legislature finds that chapter 208, Hawaii Revised Statutes, authorizing the director of business, economic development, and tourism to declare any district in the State a "depressed area" has become obsolete with no state or federal funds available for this program.

SECTION 2. Chapter 208, Hawaii Revised Statutes, is repealed.

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

(Approved April 13, 1993.)

ACT 17

H.B. NO. 1604

A Bill for an Act Relating to the Hawaii State Enterprise Zones Program.

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

SECTION 1. Section 209E-2, Hawaii Revised Statutes, is amended by amending the definition of "qualified business" to read as follows:

"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) Engaged in producing agricultural products where the business is a producer as defined in section 237-5; and
- [(3)] (4) Qualified under section 209E-9."

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 13, 1993.)

ACT 18

H.B. NO. 1668

A Bill for an Act Relating to Recording.

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

SECTION 1. Section 501-84, Hawaii Revised Statutes, is amended to read as follows:

"§501-84 Certificates, when two or more owners. Where two or more persons are registered owners [as tenants in common,] under any tenancy, one certificate [may] shall be issued for the whole land[, or a separate certificate may be issued to each for the owner's undivided share]. Any conveyance of fee simple interest in registered land shall be recorded with the assistant registrar, who shall note the same on the certificate, cancel all the certificates affecting the whole land, and issue a new certificate to reflect all the owners of the whole land."

SECTION 2. Section 501-103, Hawaii Revised Statutes, is amended to read as follows:

"§501-103 Conveyances of less than fee simple. No new certificate shall be entered or issued upon any transfer of registered land which does not divest the title in fee simple from the owner or one of the registered owners. All interests in registered land less than an estate in fee simple shall contain a reference to the document number of the interest acquired and shall be registered by [filing or] recording with the assistant registrar the instrument creating or transferring or claiming such interest, and by a brief memorandum thereof made by the assistant registrar upon the certificate of title, and signed by the assistant registrar. The cancellation or extinguishment of such interests shall be [registered] recorded in the same manner."

SECTION 3. Section 501-106, Hawaii Revised Statutes, is amended to read as follows:

"§501-106 Entry of new certificate. (a) No new certificate of title shall be entered, and no memorandum shall be made upon any certificate of title by the registrar or assistant registrar, except:

- (1) [in] In pursuance of any deed or other voluntary instrument[, or];
- (2) Upon the recording of a certificate of merger that merges two or more condominium projects as provided by section 514A-19;
- (3) Upon the recording of an amendment to a declaration of condominium property regime which alters the percentage interest of the respective apartment owners in the common element;
- (4) [in] In cases expressly provided for in this chapter; or
- (5) [upon] Upon the order of the court, for cause shown. [Whenever such order is made, a memorandum thereof shall be entered on the new certificate of title.]

(b) The new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under the registered owner, in favor of every purchaser for value and in good faith; provided that in all cases of registration procured by fraud the owner may pursue all the owner's remedies against the parties to the fraud, without prejudice however to the rights of any innocent holder for value of a certificate of title; and provided further that after the transcription of the decree of registration on the original application any subsequent registration

under this chapter procured by the presentation of a forged deed or other instrument, shall be void."

SECTION 4. Section 501-151, Hawaii Revised Statutes, is amended to read as follows:

"§501-151 Pending actions, judgments; recording of, notice. No writ of entry, action for partition, or any action affecting the title to real property or the use and occupation thereof or the buildings thereon, and no judgment, nor any appeal or other proceeding to vacate or reverse any judgment, shall have any effect upon registered land as against persons other than the parties thereto, unless a full memorandum thereof, containing also a reference to the number of certificate of title of the land affected is filed or recorded and registered. Except as otherwise provided, every judgment shall contain or have endorsed on it the social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number for persons, corporations, partnerships or other entities against whom the judgment is rendered. If the judgment debtor has no social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, the judgment shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking registration of the judgment. Failure to disclose or disclosure of an incorrect social security number, State of Hawaii general excise taxpayer identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon [registration] recording of the judgment. This section does not apply to attachments, levies of execution, or to proceedings for the probate of wills, or for administration in a probate court; provided that in case notice of the pendency of the action has been duly registered it is sufficient to register the judgment in the action within sixty days after the rendition thereof.

As used in this chapter "judgment" includes an order or decree having the effect of a judgment.

Notice of the pendency of an action in a United States District Court, as well as a [state] court[,] of the State of Hawaii, may be [filed or] recorded [and registered]."

SECTION 5. Section 501-155, Hawaii Revised Statutes, is amended to read as follows:

"§501-155 Judgment directing conveyance. Any judgment of a court of competent jurisdiction, whether a federal court or a court of the State of Hawaii, affecting title or rights in registered land, may be [registered,] recorded, whether the claim adjudicated was legal or equitable in nature. Every instrument necessary to give effect to the judgment and directed by the court to be executed, whether executed by a party or by some other person appointed by the court, shall be [registered] recorded and shall have full force and effect to bind the land to be affected thereby. A judgment entered in lieu of directing a conveyance, and having the effect of a conveyance, shall be [registered] recorded with like force and effect."

SECTION 6. Section 514A-19, Hawaii Revised Statutes, is amended to read as follows:

ACT 19

"§514A-19 Merger of increments. (a) Two or more condominium projects, whether or not adjacent to one another, but which are part of the same incremental plan of development and in the same vicinity, may be merged together so as to permit the joint use of the common elements of the projects by all the owners of the apartments in the merged projects. The merger documents may provide for a single association of apartment owners and board of directors for the merged projects and for a sharing of the common expenses of the projects among all the owners of the apartments in the merged projects.

(b) Upon the recording in the office of the assistant registrar of the land court of the State of Hawaii of a certificate of merger that indicates that the fee simple title to the lands of the merged projects are merged, the assistant registrar shall cancel all existing certificates of title for the apartments in the condominium projects being merged and shall issue new certificates of title for the apartments in the merged project, covering all of the land of the merged condominium projects. The new certificates of title for the apartment in the merged condominium project shall describe, among other things, the new undivided interest in the land appertaining to each apartment in the merged condominium projects. The certificate of merger shall at least set forth all of the apartments of the merged condominium projects, their new undivided interest, and their current certificate of title numbers in the common elements of the merged condominium projects. ”

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

SECTION 8. This Act shall take effect sixty days after its approval.

(Approved April 13, 1993.)

ACT 19

H.B. NO. 1678

A Bill for an Act Relating to Controlled Substance Registrations.

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

SECTION 1. Section 329-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every person who manufactures, distributes, prescribes, or dispenses any controlled substance within this State or who proposes to engage in the manufacture, distribution, prescription, or dispensing of any controlled substance within this State, or who dispenses or proposes to dispense any controlled substance for use in this State by shipping, mailing, or otherwise delivering the controlled substance from a location out of this State, must obtain [annually] a registration issued by the department of public safety in accordance with its rules. A licensed or registered health care professional acting as the authorized agent of a practitioner who administers controlled substances at the direction of a practitioner is not required to obtain a registration.”

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 13, 1993.)

ACT 20

H.B. NO. 1687

A Bill for an Act Relating to Adult Probation Records.

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

SECTION 1. Section 806-73, Hawaii Revised Statutes, is amended 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 these records and perform other duties as the court may direct.

All records of the 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 the records, or the content of the 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, may upon request be provided only to an adult probation officer of a Hawaii state adult probation division; provided that a written summary of the record may be provided upon request 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 proceedings¹ or in a deportation proceeding, may be released only to a state or federal law enforcement agency.
- (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 or parole 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 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.

Every probation officer shall, within the scope of the probation officer's duties, have the powers of a police officer."

SECTION 2. New statutory material is underscored.

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

(Approved April 13, 1993.)

Note

1. Prior to amendment "proceeding" appeared here.

ACT 21

H.B. NO. 1688

A Bill for an Act Relating to Conditional Release Centers for Committed Persons.

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

SECTION 1. Section 353-8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The department shall notify the county prosecutors and police chiefs whenever a person committed for an offense against the person as described in chapter 707, or any convicted felon, is admitted to a work furlough, conditional release, or similar program. Notification shall be transmitted in writing no later than thirty days prior to the commencement of the program and shall list the conditions pertaining thereto. For parole violators who are recommitted to prison for less than thirty days or who are placed on a work furlough, conditional release, or similar program, notification as described above shall be transmitted in writing on the next working day after recommitment or placement in a program."

SECTION 2. New statutory material is underscored.

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

(Approved April 13, 1993.)

ACT 22

H.B. NO. 1895

A Bill for an Act Relating to Death Benefits Under the Employees' Retirement System.

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

SECTION 1. Section 88-286, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- "(b) In the case of ordinary death, the death benefit shall be as follows:
- (1) For the surviving spouse, the amount of the death benefit shall be an allowance equal to one-half of the member's accrued normal retirement allowance unreduced for age, payable to the surviving spouse until remarriage[.]; or if the member was eligible for retirement at the time of the member's death in service, the surviving spouse may elect the allowance which would have been payable if the member had retired the day prior to death and had elected to receive a retirement allowance under option B and computed on the basis of section 88-283.
 - (2) If there is a surviving spouse, each dependent child under age eighteen shall receive as a death benefit an allowance equal to ten per cent of the member's accrued normal retirement allowance unreduced for age, payable to each dependent child until the dependent child attains age

eighteen; provided that the aggregate death benefits for all the dependent children shall not exceed twenty per cent of the member's accrued normal retirement allowance unreduced for age.

- (3) If there is no surviving spouse, each dependent child under age eighteen shall receive as a death benefit an allowance equal to twenty per cent of the member's accrued normal retirement allowance unreduced for age, payable to each dependent child until the dependent child attains age eighteen; provided that the aggregate death benefits for all the dependent children shall not exceed forty per cent of the member's accrued normal retirement allowance unreduced for age."

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 13, 1993.)

ACT 23

S.B. NO. 240

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, Hawaii Revised Statutes, is amended to read as follows:

§304-8 Appropriations; accounts; reports. Moneys appropriated by the legislature for the university shall be payable by the director of finance, upon vouchers approved by the board of regents or by any officer elected or appointed by the board under section 304-4 and authorized by the board to approve such vouchers on behalf of the board. All moneys received by or on behalf of the board of the university shall be deposited with the director of finance, except that any moneys received from the federal government or from private contributions shall be deposited and accounted for in accordance with conditions established by the agencies or persons from whom the moneys are received and except that with the concurrence of the director of finance, moneys received from the federal government for research, training, and other related purposes of a transitory nature and moneys in trust or revolving funds administered by the university may be deposited in depositories other than the state treasury. Income from fees for tuition and similar charges against students and income derived from sale of goods or services shall be deposited to the credit of the general fund of the State; provided that income from university projects as defined and described in sections 306-1 to 306-12, may be credited to special or other funds; provided further that in each fiscal year from 1990-1991 through 1999-2000, at least the first \$1,000,000 of tuition collected by the university shall be deposited in the state treasury to the credit of the Hawaii opportunity program [[in]] education special fund[; and provided further that upon the recommendation of the director of finance, the comptroller may establish such other separate accounts or special funds for other designated revenues as may be deemed in the best interests of the university and the State]. The university shall also actively seek private participation in the Hawaii opportunity program in education program.

The university shall annually provide the legislature at least twenty days prior to the convening of the regular session with an itemized account of the

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income to and the expenditure from each university special and revolving fund during the previous fiscal year."

SECTION 2. Statutory material to be repealed is bracketed.

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

(Approved April 15, 1993.)

ACT 24

S.B. NO. 280

A Bill for an Act Relating to Elections.

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

SECTION 1. Section 11-12, Hawaii Revised Statutes, is amended to read as follows:

"**§11-12 Age; place of registering.** (a) Every person who has reached the age of eighteen years or who is seventeen years of age and will be eighteen years of age by the date of the next election, and is otherwise qualified to register may do so for that election. The person shall then be listed upon the appropriate county general register and precinct list. No person shall register or vote in any other precinct than that in which the person resides except as provided in section 11-21.

(b) A person who is otherwise qualified to register and is at least sixteen years of age but will not be eighteen years of age by the date of the next election may preregister upon satisfactory proof of age and shall be automatically registered upon reaching age eighteen."

SECTION 2. Section 11-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The clerk, not later than 4:30 p.m. on the sixtieth day after every general election, shall remove the name of any registered voter who did not vote in the election if the person also did not vote in the preceding primary election with the exception of:

- (1) [those] Those who voted in the special election for election of members of the board of trustees of the office of Hawaiian affairs held in conjunction with the general election; [or]
- (2) [those] Those who submitted written requests for absentee ballots as provided in section 15-4[.]; or
- (3) Anyone who preregistered pursuant to section 11-12(b).

For this purpose "vote" means the depositing of the ballot in the ballot box whether the ballot is blank or later rejected for any reason. In the case of voting machines "vote" means the voter has activated the proper mechanism and fed the vote into the machine.

The clerk shall remove the name of any person registered to vote in the special election for election of members of the board of trustees of the office of Hawaiian affairs, who did not vote in the special election, did not vote in the general election held in conjunction with the special election, and did not vote in the preceding primary election."

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 15, 1993.)

ACT 25

S.B. NO. 1158

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 with the decline of historic large scale sugar production, there is a need to promulgate government commitment, direction, and policy for agriculture to continue to be a dynamic, essential component of Hawaii's strategic, economic, and social well-being.

SECTION 2. Section 226-7, Hawaii Revised Statutes, is amended to read as follows:

"§226-7 Objectives and policies for the economy—agriculture. (a) Planning for the State's economy with regard to agriculture shall be directed towards achievement of the following objectives:

- (1) [Continued viability in] Viability of Hawaii's sugar and pineapple industries.
 - (2) [Continued growth] Growth and development of diversified agriculture throughout the State.
 - (3) An agriculture industry that continues to constitute a dynamic and essential component of Hawaii's strategic, economic, and social well-being.
- (b) To achieve the agriculture objectives, it shall be the policy of this State to:
- (1) Establish a clear direction for Hawaii's agriculture through stakeholder commitment and advocacy.
 - (2) Encourage agriculture by making best use of natural resources.
 - (3) Provide the governor and the legislature with information and options needed for prudent decision making for the development of agriculture.
 - (4) Establish strong relationships between the agricultural and visitor industries for mutual marketing benefits.
- [(1)] (5) Foster increased public awareness and understanding of the contributions and benefits of agriculture as a major sector of Hawaii's economy.
- [(2)] (6) Seek the enactment and retention of federal and state legislation that benefits Hawaii's agricultural industries.
- [(3)] (7) Strengthen diversified agriculture by developing an effective promotion, marketing, and distribution system between Hawaii's producers and consumer markets locally, on the continental United States, and internationally.
- [(4)] (8) Support research and development activities that provide greater efficiency and economic productivity in agriculture.
- [(5)] (9) Enhance agricultural growth by providing public incentives and encouraging private initiatives.
- [(6)] (10) Assure the availability of agriculturally suitable lands with adequate water to accommodate present and future needs.

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- [(7)] (11) Increase the attractiveness and opportunities for an agricultural education and livelihood.
- [(8)] (12) Expand Hawaii's agricultural base by promoting growth and development of flowers, tropical fruits and plants, livestock, feed grains, forestry, food crops, aquaculture, and other potential enterprises.
- [(9)] (13) Promote economically competitive activities that increase Hawaii's agricultural self-sufficiency.
- [(10)] (14) Promote and assist in the establishment of sound financial programs for diversified agriculture.
- [(11)] (15) Institute and support programs and activities to assist the entry of displaced agricultural workers into alternative agricultural or other employment.
- [(12)] (16) Facilitate the transition of agricultural lands in economically nonfeasible agricultural production to economically viable agricultural uses."

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 15, 1993.)

ACT 26

H.B. NO. 921

A Bill for an Act Relating to Disclosure of Financial Interests Amounts.

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

SECTION 1. Section 84-17, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) Where an amount is required to be reported, the person disclosing may indicate whether the amount is at least \$1,000 but less than \$10,000; at least \$10,000 but less than \$25,000; at least \$25,000 but less than \$50,000; at least \$50,000 but less than \$100,000; at least \$100,000 but less than \$150,000; [or \$150,000 or more.] at least \$150,000 but less than \$250,000; at least \$250,000 but less than \$500,000; at least \$500,000 but less than \$750,000; at least \$750,000 but less than \$1,000,000; or \$1,000,000 or more. An amount of stock may be reported by number of shares."

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 15, 1993.)

ACT 27

H.B. NO. 922

A Bill for an Act Relating to the Disposition of Financial Disclosure Statements.

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

SECTION 1. Section 84-17.5, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(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] in subsection (a) or (b) [above] has run."

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 15, 1993.)

ACT 28

H.B. NO. 1073

A Bill for an Act Relating to Extortion.

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

SECTION 1. Section 707-766, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of extortion in the second degree if [he] the person commits extortion:

- (a) Of property or services the value of which exceeds \$50 during any twelve-month period; or
- (b) As set forth in section 707-764(2)."

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 15, 1993.)

ACT 29

ACT 29

H.B. NO. 1127

A Bill for an Act Relating to the Public Utilities Commission.

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

SECTION 1. Act 130, Session Laws of Hawaii 1992, is amended by amending section 5 to read as follows:

“**SECTION 5.** This Act shall take effect upon its approval; provided that subsection (b) of section 3 shall allow for retroactive effect to the extent provided in [said] the subsection; provided further that section 1 of this Act shall be repealed effective June 30, 1996 and sections 2 and 3 of this Act shall be repealed effective June 30, [1993] 1994. Applications seeking relief pursuant to section 3 of this Act shall be approved only where the amount in excess of the approved or prescribed rate will be either paid during the period of time section 3 is in effect, or assessed as a result of electricity purchased during the period of time section 3 is in effect.”

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 15, 1993.)

ACT 30

H.B. NO. 1460

A Bill for an Act Relating to a Tax Administration Fund.

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

SECTION 1. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§231- Tax administration fund.** (a) There is established a special fund in the state treasury, to be known as the tax administration fund, into which shall be deposited not more than \$500,000 during any fiscal year from delinquent taxes collected by the department. The moneys in the fund shall be used by the department to defray the expenses for: employees’ overtime, emergency hires, temporary hires, filling vacant civil service positions, or conducting out-of-state audits of taxpayers. The department may use the moneys in the fund when the balance of outstanding delinquent taxes during any fiscal year reaches three and one-half per cent of the total tax collections reported by the department under title 14 for the prior fiscal year. The director of taxation, from time to time, may deposit delinquent taxes, collected under title 14 as administered by the department, into the special fund.

(b) The tax administration fund shall not be subject to sections 36-27 and 36-30 relating to reimbursements to the state general fund.

(c) As used in this section:

“Delinquent taxes” means the taxes assessed under title 14 by the department that have become delinquent as described in section 231-32.

“Out-of-state audit” means an audit of a taxpayer performed by department employees outside the State.”

SECTION 2. New statutory material is underscored.¹

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SECTION 3. This Act shall take effect on July 1, 1993, and shall be repealed on June 30, 1997.

(Approved April 15, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 31

H.B. NO. 1692

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

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 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 report required by this subsection shall be made in the form of an amendment of the person’s return filed under this chapter. The amended return shall be accompanied by a copy of the document issued by the United States under (1) to (3). 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 on January 1, 1994.

(Approved April 15, 1993.)

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ACT 32

H.B. NO. 1693

A Bill for an Act Relating to Reporting Gross Income Changes to the Department of Taxation.

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- Federal assessments; adjustments of gross income or gross proceeds of sale; report to the department. (a) Any person required to report to the department by section 235-101(b), also shall report to the department any change, correction, adjustment, or recomputation of gross income or gross proceeds of sale subject to the tax imposed by this chapter. This report shall be made in the form of a return amending the person's gross income or gross proceeds of sale as previously reported on a return filed with the department for the taxable year. If no return has been filed with the department for the taxable year, a return shall be filed and shall take into account any change, correction, adjustment, or recomputation of gross income or gross proceeds of sale.

(b) Any return or amended return required by this section shall be filed with the department within ninety days after the change, correction, adjustment, or recomputation is finally determined or an amended return is filed with the Internal Revenue Service. The return or amended return shall be accompanied by a copy of the document issued by the United States notifying the taxpayer of the change, correction, adjustment, or recomputation.

(c) The statutory period for the assessment of any deficiency or the determination of any refund attributable to the report required by this section 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 as provided in subsection (a). 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. Chapter 237D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§237D- Federal assessments; adjustments of gross rental or gross rental proceeds; report to the department. (a) Any person required to report to the department by section 235-101(b), also shall report to the department any change, correction, adjustment, or recomputation of gross rental or gross rental proceeds subject to the tax imposed by this chapter. This report shall be made in the form of a return amending the person's gross rental or gross rental proceeds as previously reported on a return filed with the department for the taxable year. If no return has been filed with the department for the taxable year, a return shall be filed and shall take into account any change, correction, adjustment, or recomputation of gross rental or gross rental proceeds.

(b) Any return or amended return required by this section shall be filed with the department within ninety days after the change, correction, adjustment, or recomputation is finally determined or an amended return is filed with the Internal Revenue Service. The return or amended return shall be accompanied by a copy of the document issued by the United States notifying the taxpayer of the change, correction, adjustment, or recomputation.

(c) The statutory period for the assessment of any deficiency or the determination of any refund attributable to the report required by this section 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 as provided in subsection (a). 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 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on January 1, 1994.

(Approved April 15, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 33

H.B. NO. 1717

A Bill for an Act Relating to Negotiable Instruments.

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

SECTION 1. Article 3 of the uniform commercial code was repealed and replaced by Act 118, Session Laws of Hawaii 1991, effective January 1, 1992. However, section 708-857 of the Hawaii penal code, relating to the negotiation of worthless negotiable instruments, contains several cross-references to the old version of article 3. The purpose of this Act is to update these obsolete cross-references to article 3 contained in that section, retroactive to the effective date of the repeal and replacement of that article.

This Act replaces each of the cross-references contained in section 708-856 by direct substitution of the new reference contained in article 3, except for the reference to section 490:3-503 contained in section 708-857(2)(b), regarding a reasonable time for presentment with respect to the liability of a drawer. This reference is deleted since the new version of article 3 does not specifically carry over the reasonable time provisions. Instead, a thirty-day period of time for presentment for payment by a drawer is inserted in place of the obsolete cross-reference since: (1) the presumed reasonable period under the old version of section 490:3-503(2)(a) was thirty days after date or issue, whichever was later, for uncertified checks drawn and payable within the United States and which are not drafts drawn by a bank; and (2) a thirty-day time period for presentment by a drawer is also contained in new section 490:3-414(f)(i) with respect to checks, other than cashier's checks or other drafts drawn on the drawer.

SECTION 2. Section 708-857, Hawaii Revised Statutes, is amended by amending subsections (1), (2), and (3) to read as follows:

"(1) A person commits the offense of negotiating a worthless negotiable instrument if [he] that person intentionally issues or negotiates a negotiable instrument knowing that it will not be honored by the maker or drawee.

(2) For the purpose of this section, as well as in any prosecution for theft committed by means of a worthless negotiable instrument, either of the following

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shall be prima facie evidence that the drawer knew that the negotiable instrument would not be honored upon presentation:

- (a) The drawer had no account with the drawee at the time the negotiable instrument was negotiated; or
 - (b) Payment was refused by the drawee for lack of funds upon presentation within [a reasonable time] thirty days after [negotiation or delivery, as determined according to section 490:3-503,] date or issue, whichever is later, and the drawer failed to make good within ten days after actual receipt of a notice of dishonor, as defined in section [490:3-508.] 490:3-503.
- (3) The definitions of the following terms shall apply to this section:
- (a) "Issue" as defined in section [490:3-102;] 490:3-105;
 - (b) "Negotiable instrument" as defined in section 490:3-104;
 - (c) "Negotiation" as defined in section [490:3-202.] 490:3-201."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

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

(Approved April 15, 1993.)

ACT 34

H.B. NO. 1798

A Bill for an Act Relating to Costs and Fees.

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

SECTION 1. The purpose of this Act is to amend section 607-18(b) to carry out the original intention of that section. The section was initially enacted to authorize a trustee to receive an additional compensation if the trustee performed clerical and bookkeeping services rather than hiring third parties to perform those services. However, as the result of the unintended effect of subsequent amendments, the section, read literally, now prohibits the additional compensation in all cases and is meaningless.

The amendment now proposed would eliminate the inconsistency between section 607-18(b) and section 554A-3(c) and give effect to the intention of the legislature to preclude a trustee from receiving the additional compensation only to the extent the trustee employs others to perform bookkeeping and clerical services at the expense of the estate.

In addition, it would make section 607-18(b) consistent with section 554A-3(c) of the Uniform Trustees' Powers Act which eliminated the requirement for court authorization to pay compensation of the trustee or for the trustee to employ persons to assist in the performance of administrative duties as provided in section 554A-3(c)(23).

SECTION 2. Section 607-18, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Upon the principal of the estate, trustees shall be allowed as commissions one per cent on the value at the inception of the trust payable at the inception out of the principal, one per cent on the value of all or any part of the estate upon final distribution payable at the termination out of the principal, and two and one-half per cent upon all cash principal received after the inception of the trust and neither being nor representing principal upon which the two and one-half per cent has previously at any time been charged, payable at the receipt out of the principal, and two and one-half per cent upon the final payment of any cash principal prior to the termination of the trust, payable at the final payment out of the principal, and in addition thereto five-tenths of one per cent on the value at the expiration of each year during the continuance of the trust payable annually out of the principal; [provided that such five-tenths of one per cent on the principal shall not apply to trust estates created under a trust document which authorizes the trustees to employ others to perform bookkeeping and clerical services at the expense of the estate, unless first approved by the court, nor shall such five-tenths of one per cent be allowed when such authority is granted by statute. For the purposes of this subsection, the value of the estate shall be determined in such manner as the court may approve.] provided that such five-tenths of one per cent on the principal shall not apply to charitable trusts, nor to the extent the trustee has employed others to perform bookkeeping and clerical services at the expense of the estate as permitted by the trust document or as provided in section 554A-3."

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

SECTION 4. This Act shall apply to existing estates as well as to new estates.

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

(Approved April 15, 1993.)

ACT 35

H.B. NO. 2006

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 payment to the office of Hawaiian affairs pursuant to Act 304, Session Laws of Hawaii 1990, and Act 300, Session Laws of Hawaii 1992, including interest on such amount and costs of issuance.

SECTION 3. There is appropriated a sum not to exceed \$136,500,000 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, 1993, to February 28, 1995, for the purposes of this Act. Any funds remaining unexpended or unencumbered as of February 29, 1996, shall lapse as of such date.

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SECTION 4. The sum appropriated shall be expended by the Department of Budget and Finance for the purposes of this Act.

SECTION 5. 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 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 1992-93 and estimated for each fiscal year from 1993-94 to 1996-97, is as follows:

Fiscal Year	Net General Fund Revenues	Debt Limit
1989-90	\$2,418,273,831	
1990-91	2,654,706,036	
1991-92	2,672,238,596	
1992-93	2,818,634,000	\$477,621,805
1993-94	2,735,972,000	502,310,682
1994-95	2,876,293,000	507,322,083
1995-96	3,064,835,000	519,905,438
1996-97	(not applicable)	535,087,833

For fiscal years 1992-93, 1993-94, 1994-95, 1995-96 and 1996-97 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 1989-90, 1990-91, and 1991-1992 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, 1990, dated December 1, 1992. The net general

fund revenues for fiscal years 1992-93 to 1995-96 are estimates, based on general fund revenue estimates made as of November 23, 1992, 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 February 1, 1993, is as follows for fiscal year 1993-94 to fiscal year 2000-2001:

Fiscal Year	Principal and Interest
1993-94	\$308,909,178
1994-95	313,329,677
1995-96	321,127,981
1996-97	291,683,374
1997-98	278,682,895
1998-99	256,910,123
1999-2000	248,748,407
2000-2001	205,141,238

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit generally continues to decline each year from fiscal year 2001-2002 to fiscal year 2012-2013 when the final installment of \$5,400,000 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 October 31, 1992, adjusted for Act 209, Session Laws of Hawaii, 1992, the issuance of \$120,000,000 taxable general obligation bonds dated October 1, 1992, Series BY, \$200,000,000 general obligation bonds dated October 1, 1992, Series BZ, \$90,000,000 general obligation bonds dated February 1, 1993, Series CA, the total amount of authorized but unissued general obligation bonds, is \$394,203,844. The total amount of general obligation bonds authorized by this Act is \$136,500,000. The total amount of general obligation bonds previously authorized and unissued and the general obligation bonds authorized by this Act is \$530,703,844.
- (5) Proposed general obligation bond issuance. As reported by the department of budget and finance for fiscal years 1992-93, 1993-94, 1994-95, 1995-96 and 1996-97, the State proposes to issue \$136,500,000 during the remainder of fiscal year 1992-93 and \$100,000,000 semi-annually in each of fiscal years 1993-94, 1994-95, 1995-96 and 1996-97. 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

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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 bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. From the schedule reported in paragraph (5), the total amount of general obligation bonds which the State proposes to issue during the period of March 1, 1993 to February 29, 1996 is \$736,500,000. The total amount of \$736,500,000 which is proposed to be issued prior to March 1, 1996 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 \$530,703,844 as reported in paragraph (4). The \$736,500,000 proposed to be issued during the period of March 1, 1993 to February 29, 1996 and the \$200,000,000 during FY 1996-97 will be sufficient to meet requirements of \$530,703,844 with the remaining amount being applied to such other appropriations as the Legislature may subsequently authorize.

- (7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds. (A) General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds which are excludable from the amount of each proposed bond issuance because:

- (i) it is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in the Budget will be implemented and will require the application of proceeds from a particular bond issue; and
- (ii) 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, as reported in Section 3 herein, the average proportion of principal and interest which is excludable each year from calculation against the debt limit is 8.4 percent for the ten years from fiscal year 1993-94 to fiscal year 2002-2003. For the purpose of this declaration, the assumption is made that five percent of each bond issue will be excludable from the debt limit, an assumption which the director finds to be reasonable and conservative. (B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor can be excluded but only to the extent the principal amount of such guaranties does not exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of this paragraph (7) and provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law. According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under Article VII, section 13 of the State

Constitution for the fiscal years 1993-94, 1994-95, 1995-96 and 1996-97 are as follows:

Fiscal year	Total amount of General Obligation Bonds not otherwise excluded by Article VII, section 13 of the State Constitution
1993-94	\$2,530,495,136
1994-95	2,538,317,857
1995-96	2,512,673,974
1996-97	2,500,552,399

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven percent of the average amount set forth in the last column of the above table and for which reserve funds have been or will have been established as heretofore provided by, can be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to a actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to Article VII, section 13 of the State Constitution will become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such assumptions and on the determination in paragraph (8), the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which must be included in determining the power of the State to issue general obligation bonds is \$25,564,311.

- (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 7.0% for the remainder of fiscal year 1992-93 and 7.5% for the ensuing fiscal years, as reported by the department of budget and finance, 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:

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	Time of Issue and Amount of Issue to be Counted Against Debt Limit	Debt Limit at Time of Issuance	Greatest Amount & Year of Principal & Interest
	2nd issue remainder FY 1992-93		
	\$136,500,000	\$477,621,805	\$363,832,293 (1995-96)
	1st half FY 1993-94		
	\$95,000,000	\$502,310,682	\$370,957,293 (1995-96)
	2nd half FY 1993-94		
	\$95,000,000	\$502,310,682	\$378,082,293 (1995-96)
	1st half FY 1994-95		
	\$95,000,000	\$507,322,083	\$385,207,293 (1995-96)
	2nd half FY 1994-95		
	\$95,000,000	\$507,322,083	\$392,332,293 (1995-96)
	1st half FY 1995-96		
	\$95,000,000	\$519,905,438	\$379,774,660 (1996-97)
	2nd half FY 1995-96		
	\$95,000,000	\$519,905,438	\$386,899,600 (1996-97)
(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 6. The legislature finds the bases 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 7. 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 purposes authorized in this Act and designated to be financed from the general obligation bond fund; provided that the sum total of the general obligation bonds so issued shall not exceed \$136,500,000.

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.

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SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$9,555,000, or so much thereof as may be necessary for fiscal year 1993-1994, and \$9,555,000, or so much thereof as may be necessary for fiscal year 1994-1995, for debt service on the bonds authorized herein.

SECTION 9. The sums appropriated for debt service shall be expended by the department of budget and finance.

SECTION 10. 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 11. This Act shall take effect upon its approval.

(Approved April 16, 1993.)

ACT 36

H.B. NO. 1648

A Bill for an Act Relating to Premarital Rubella Testing.

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

SECTION 1. Section 572-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The serological test for determining immunity against rubella shall be [approved by the department of health and] performed in a laboratory of the department of health, or [one approved] a clinical laboratory licensed by the department[.], or one meeting federal standards established under the Clinical Laboratory Improvement Amendments of 1988 (Pub. L. No. 100-578, 102 Stat 2903). Only blood samples obtained in a department clinic will be analyzed in the department's [lab] laboratory without charge."

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 22, 1993.)

ACT 37

H.B. NO. 1651

A Bill for an Act Relating to Radium for Medical and Surgical Purposes.

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

SECTION 1. Chapter 331, Hawaii Revised Statutes, is repealed.

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

(Approved April 22, 1993.)

ACT 38

ACT 38

H.B. NO. 1656

A Bill for an Act Relating to Coordination of Services for Children With Severe Emotional and Developmental Problems.

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

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

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

SECTION 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 22, 1993.)

ACT 39

H.B. NO. 1699

A Bill for an Act Relating to Fiscal Year Tax Returns.

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

SECTION 1. Section 237-30, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

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

year taxpayers, on or before the last day of the seventh month following the beginning of the fiscal year and on or before the last day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes due thereon and [that] the [director] is satisfied that the] taxpayer's total tax liability for the calendar or fiscal year under this chapter will not exceed \$1,000.

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

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

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

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

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

SECTION 3. Section 238-5, Hawaii Revised Statutes, is amended to read as follows:

"**§238-5 Returns.** (a) On or before the last day of each calendar month, any person who has become liable for the payment of a tax under this chapter during the preceding calendar month in respect of any property or the use thereof, shall file a return with the assessor of the taxation district in which the property was held

when the tax first became payable, or with the director of taxation at Honolulu, setting forth a description of the property and the character and quantity thereof in sufficient detail to identify the same or otherwise in such reasonable detail as the director by [regulations] rule shall require, and the purchase price or value thereof as the case may be. The return shall be accompanied by a remittance in full of the tax, computed at the rate specified in section 238-2 upon the price or value so returned. Any [such] tax remaining unpaid after the last day following the end of the calendar month during which the [same] tax first became payable shall become delinquent; provided that a receipt from a seller required or authorized to collect the tax, given to a taxpayer in accordance with section 238-6, shall be sufficient to relieve the taxpayer from further liability for the tax to which the receipt may refer, or for the return thereof.

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

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

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

(c) On or before the twentieth day of the fourth month following the close of the taxable year, every person who has become liable for the payment of taxes both under this chapter and also under chapter 237 during the preceding calendar or fiscal year [(or during the preceding tax year if the person has established a tax year other than the calendar year,)] shall file a return summarizing the person's liability under this chapter for the taxable year, in such form as the director shall prescribe and shall file it with the person's annual return of general excise taxes."

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

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

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

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

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

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

(Approved April 22, 1993.)

ACT 40

S.B. NO. 33

A Bill for an Act Relating to the Status of Convicted Persons.

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

SECTION 1. The legislature finds that under general rules of statutory construction, a specific law is given effect over a general law on the same subject. The purpose of this Act is to follow this customary rule of statutory construction by deleting from the law on the status of convicted persons a provision giving effect to general law over specific statutes.

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

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or any of its political subdivisions or agencies; provided that this section shall] not apply to:

- (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;
- (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.¹

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

(Approved April 22, 1993.)

Note

1. No underscored material.

ACT 41

S.B. NO. 120

A Bill for an Act Relating to Massage Therapy.

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, 1991:

- (1) Chapter 468K (Travel Agencies)

(b) The following chapters and sections are hereby repealed effective December 31, 1992:

- (1) Chapter 467D (Social Workers)

(2) Sections 321-13 to 321-15 only as they relate to sanitarians

(3) Sections 445-131 to 136 (Pawnbrokers)

(c)] (a) The following chapters and sections are hereby repealed effective December 31, 1993:

- [(1) Chapter 452 (Board of Massage)]

[(2) (1) Chapter 453 (Board of Medical Examiners)]

[(3) (2) Chapter 460 (Board of Osteopathic Examiners)]

[(4) (3) Chapter 461J (Board of Physical Therapy)]

[(5) (4) Chapter 463E (Podiatry)]

[(6) (5) Chapter 514E (Time Sharing Plans)]

[(7) (6) Sections 804-61 and 804-62]

[(d)] (b) The following chapters are hereby repealed effective December 31, 1994:

- (1) Chapter 447 (Dental Hygienists)

(2) Chapter 457 (Board of Nursing)

(3) Chapter 457A (Nurse Aides)

(4) Chapter 457B (Board of Examiners of Nursing Home Administrators)

(5) Chapter 461 (Board of Pharmacy)

(6) Chapter 468L (Travel Agencies)

[(e)] (c) The following chapters are hereby repealed effective December 31,

1995:

(1) Chapter 437 (Motor Vehicle Industry Licensing Board)

(2) Chapter 437B (Motor Vehicle Repair Industry Board)

(3) Chapter 440 (Boxing Commission)

(4) Chapter 448H (Elevator Mechanics Licensing Board)

(5) Chapter 451A (Board of Hearing Aid Dealers and Fitters)

(6) Chapter 445 Part V (Pawnbrokers)

[(f)] (d) The following chapters and sections are hereby repealed effective

December 31, 1996:

(1) Chapter 321, Part XXX, (Tattoo Artists)

(2) Chapter 321, Part XXXI, (Midwives)

(3) Chapter 448F (Electrologists)

(4) Chapter 466J (Board of Radiologic Technology)

(5) Sections 321-13 to 321-15 (laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, and sanitarians)

(6) Sections 431:10A-116(4) and 432:1-605 (Mammogram Screening)

[(g)] (e) The following chapters are hereby repealed effective December 31,

1997:

(1) Chapter 438 (Board of Barbers)

(2) Chapter 448 (Board of Dental Examiners)

(3) Chapter 455 (Board of Examiners in Naturopathy)

(4) Chapter 459 (Board of Examiners in Optometry)

(5) Chapter 471 (Board of Veterinary Examiners)

(6) Chapter 460J (Pest Control Board)

(7) Chapter 462A (Pilotage)

[(h)] (f) The following chapters are hereby repealed effective December 31,

1998:

(1) Chapter 373 (Commercial Employment Agencies)

(2) Chapter 441 (Cemetery and Funeral Trusts)

(3) Chapter 443B (Collection Agencies)

(4) Chapter 463 (Board of Private Detectives and Guards)

(5) Chapter 468 (Solicitors; Business of Taking Orders)

[(i)] (g) The following chapters are hereby repealed effective December 31,

1999:

(1) Chapter 436E (Board of Acupuncture)

(2) Chapter 442 (Board of Chiropractic Examiners)

(3) Chapter 444 (Contractors License Board)

(4) Chapter 448E (Board of Electricians and Plumbers)

(5) Chapter 464 (Professional Engineers, Architects, Surveyors and Landscape Architects)

(6) Chapter 465 (Board of Psychology)

(7) Chapter 468E (Speech Pathology and Audiology)

(8) Chapter 452 (Board of Massage Therapy)

[(j)] (h) The following chapters are hereby repealed effective December 31,

2000:

(1) Chapter 439 (Board of Cosmetology)

(2) Chapter 448F (Electrologists)

(3) Chapter 454 (Mortgage Brokers and Solicitors)

(4) Chapter 454D (Real Estate Collection Servicing Agents)

(5) Chapter 466 (Board of Public Accountancy)

(6) Chapter 467 (Real Estate Commission)

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[(k)] (i) The following chapter is hereby repealed effective December 31, 2001:

- (1) Chapter 458 (Board of Dispensing Opticians)"

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 22, 1993.)

ACT 42

S.B. NO. 212

A Bill for an Act Relating to Interest Income.

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

SECTION 1. Chapter 601, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§601- Interest income. Interest income earned on court deposits shall be credited to the depositor specified in the court order or to the State of Hawaii if not otherwise specified by statute."

SECTION 2. New statutory material is underscored.¹

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

(Approved April 22, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 43

S.B. NO. 747

A Bill for an Act Relating to 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 be-

- tween 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;

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- (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;
 - (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 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:
 - (A) An association of apartment owners of a condominium property regime established in accordance with chapter 514A; or
 - (B) A nonprofit homeowners or community association incorporated in accordance with chapter 415B or any predecessor thereto and existing pursuant to covenants running with the land, 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 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[.]; and
- (26) Amounts received by a labor organization for real property leased to:
(A) A labor organization; or
(B) A trust fund established by a labor organization for the benefit of its members, families, and dependents for medical or hospital care, pensions on retirement or death of employees, apprenticeship and training, and other membership service programs.
As used in this paragraph, “labor organization” means a labor organization exempt from federal income tax under section 501(c)(5) of the Internal Revenue Code, as amended.”

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

SECTION 3. This Act shall take effect on July 1, 1993.

(Approved April 22, 1993.)

A Bill for an Act Relating to Pawnbrokers.

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

SECTION 1. Section 445-134.13, Hawaii Revised Statutes, is amended to read as follows:

"[[§445-134.13]] Prohibited practices. (a) No pawnbroker shall:

- (1) Charge or receive any pawn finance charge exceeding twenty per cent a month;
- (2) Contract for or receive any amounts other than the pawn finance charge in connection with a pawn transaction;
- (3) Accept a pledge or purchase of property from a person under the age of eighteen years;
- (4) Accept any waiver, in writing or otherwise, of any right or protection accorded a customer under this part;
- (5) Fail to exercise reasonable care to protect pledged goods from loss or damage;
- (6) Fail to return pledged goods to a customer within three business days of payment of the full amount due the pawnbroker on the pawn transaction;
- (7) Make any charge for insurance, storage, or handling in connection with a pawn transaction;
- (8) Enter into a pawn transaction which has a maturity date more than one month after the date the pawn transaction agreement is signed;
- (9) Accept pledged goods or buy merchandise from a person unable to supply verification of identity by photo identification card, a state-issued identification card, driver's license, or federal government-issued identification card; [or]
- (10) Make any agreement requiring the personal liability of a customer in connection with a pawn transaction or creating any obligation on the part of the customer to redeem pledged goods or make any payment on a pawn transaction[.]; or
- (11) Allow a customer's pawn account to exceed \$10,000. For purposes of this paragraph, "pawn account" means the total accumulation of unpaid pawn finance charges for any single customer.
(b) Any person who violates this section shall be penalized pursuant to section 445-136.

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 22, 1993.)

ACT 45

S.B. NO. 1458

A Bill for an Act Relating to Use Tax Reports.

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

SECTION 1. Chapter 238, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§238. Report by dealers. Every dealer, as defined in section 437-1.1, shall submit a report to the director, on or before the last day of each calendar month, for all motor vehicles delivered by the dealer in the prior month as a courtesy delivery. The report shall contain the name and address of the dealer making the courtesy delivery, name and address of the seller of the vehicle, type of motor vehicle, the landed value of the vehicle, the name and address of the purchaser or importer, the date of importation, and other information relevant to the courtesy delivery as requested by the director.

As used in this section, “courtesy delivery” means the preparation for delivery and the delivery by a dealer of a motor vehicle imported into the State by a person who purchased the motor vehicle from an out-of-state motor vehicle manufacturer or an out-of-state dealer and does not apply to motor vehicles sold by the in-state dealer.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 1993.

(Approved April 22, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 46

S.B. NO. 1523

A Bill for an Act Relating to State Government Payments.

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

SECTION 1. Chapter 40, Hawaii Revised Statutes, is amended by adding to part III a new section to be appropriately designated and to read as follows:

“§40. Checks in lieu of warrants. With reference to warrants addressed under this part, the comptroller may, with the approval of the director of finance, issue checks drawn from depositories of state treasury moneys in lieu of warrants drawn from the state treasury.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 1994.

(Approved April 22, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 47

H.B. NO. 2001

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

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. In accordance with Section 9 of Article VII of the Constitution of the State of Hawaii and part V, chapter 39A, Hawaii Revised Statutes, the legislature has determined that the authorization provided by this Act is appropriate and necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 3. The legislature finds that it is in the public interest to encourage the development of nonfossil fuel projects that make electric energy available to members of the general public by its sale to an electric utility serving the public. The legislature further finds that the Wailuku River Hydroelectric Power Company, Inc., a Hawaii corporation, is engaged in the development of a hydroelectric power plant project that will sell the electric energy it produces to the Hawaii Electric Light Company, Inc., which is an electric utility serving the public.

A critical funding emergency exists and has placed a major and immediate financial burden upon this hydroelectric power project. The legislature has determined that the Wailuku River Hydroelectric Power Company, Inc. may be assisted through the issuance of special purpose revenue bonds because it is an industrial enterprise pursuant to part V, chapter 39A, Hawaii Revised Statutes. The legislature previously authorized under Act 222, Session Laws of Hawaii 1990, and Act 142, Session Laws of Hawaii 1991, the issuance of one or more series of special purpose revenue bonds in total amounts not to exceed \$18,000,000 and \$7,000,000, respectively, for the purpose of assisting the Wailuku River Hydroelectric Power Company, Inc., or a partnership in which the Wailuku River Hydroelectric Power Company, Inc. is a general partner, for the establishment of a hydroelectric power plant and related facilities.

The legislature finds and declares that the issuance of special purpose revenue bonds under this part is in the public interest and for the public health, safety and general welfare, and will greatly assist in improving the electrical power generation needed to meet the energy demands of the County of Hawaii.

SECTION 4. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue in one or more series special purpose revenue bonds in a total amount not to exceed \$6,000,000, for the purpose of assisting the Wailuku River Hydroelectric Power Company, Inc., or a partnership in which Wailuku River Hydroelectric Power Company, Inc. is a general partner, for the establishment of a hydroelectric power plant and related facilities. The electrical output of this plant and facilities shall be made available for use by members of the general public by sale to the Hawaii Electric Light Company, Inc. The legislature finds and determines that the activity and facilities of the Wailuku River Hydroelectric Power Company, Inc. constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

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SECTION 5. The special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on December 31, 1994.

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

(Approved April 26, 1993.)

ACT 48

H.B. NO. 247

A Bill for an Act Relating to Conservation and Resources.

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- Hihiwai, hapawai, and opae kala‘ole selling prohibited. It shall be unlawful for any person at any time to sell or offer for sale any hihiwai, hapawai, and opae kala‘ole taken from any of the waters within the jurisdiction of the State.”

SECTION 2. New statutory material is underscored.¹

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

(Approved April 26, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 49

H.B. NO. 293

A Bill for an Act Relating to Housing.

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

SECTION 1. Section 201E-212, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) The plans and specifications for the project shall:
- (1) Provide for economically integrated housing by stipulation and design; [provided that not less than sixty per cent of the units shall be sold in price ranges established by the corporation under this chapter and chapter 91 as being within the purchasing power of lower income purchasers and the balance of the units to be sold at these or other prices; provided further that the variously priced units shall not be segregated and shall be randomly dispersed individually or in clusters throughout the project horizontally, and if applicable, vertically;]
 - (2) Provide for the sale of all units in fee simple or in leasehold either to the corporation or to the purchaser and in all cases subject to all of the

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- provisions of sections 201E-221, 201E-222, and 201E-223, excepting units sold at market price; and
- (3) Encompass the use of lands adequately suited to the size, design, and types of occupancies designated in subsection (a), properly located for occupancy by the groups for which primarily designed under this section, properly districted for the use intended prior to this application, and appropriately zoned within an urban land use district, or appropriate in its situation and surroundings for more intensive or denser zoning."

SECTION 2. Statutory material to be repealed is bracketed.

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

(Approved April 26, 1993.)

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H.B. NO. 435

A Bill for an Act Relating to Insurance.

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

SECTION 1. The legislature finds and declares that a devastating combination of circumstances has significantly threatened the stability of Hawaii's insurance industry:

- (1) On September 11, 1992, the State of Hawaii was impacted by a severe hurricane that damaged or destroyed hundreds of homes on the islands of Kauai and Oahu. As the result of this, many insurance companies issuing homeowners policies have either become insolvent, or are on the verge of becoming insolvent, as a result of losses incurred due to hurricane Iniki; and
- (2) Due to massive claim losses and the strength of the U.S. dollar in foreign markets, insurance companies have experienced great difficulties in obtaining sufficient reinsurance to reduce reserve liabilities, increase surplus, and expand capacity to underwrite policies. As the result of the withdrawal of reinsurers from the market, consumers, particularly new homebuyers, have been unable to obtain affordable policies for property insurance coverage.

In light of this, the legislature believes that the combination of: (a) massive property damage claims on property insurance policies due to hurricane Iniki; and (b) withdrawal of reinsurers from the insurance market, has created an overpowering public need for additional monitoring regulations on the financial solvency of insurance companies to ensure the welfare of the general public while the market stabilizes.

The purpose of this Act is to establish additional disclosure requirements, on a temporary basis, pertaining to the sale of insurance in the State of Hawaii.

SECTION 2. All insurers authorized to conduct business in the State of Hawaii shall notify the insurance commissioner not later than three days after determining that the insurer, in good faith, believes it may be in a financial condition hazardous to the policyholders or the public. The commissioner may suspend or revoke the certificate of authority of any insurer who knowingly fails to comply with this section.

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SECTION 3. The insurance commissioner shall notify the legislature of the insolvency of any insurance company conducting business in the State of Hawaii not later than three days after the commissioner has determined that the insurer is insolvent, as defined in section 431:15-103, Hawaii Revised Statutes.

SECTION 4. This Act shall take effect on January 1, 1994, and shall be repealed on January 1, 1999.

(Approved April 26, 1993.)

ACT 51

H.B. NO. 438

A Bill for an Act Relating to Accountants.

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

SECTION 1. Section 466-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [Subsection effective July 1, 1993. L 1992, c 204, §3.] There shall be a board of public accountancy to be known as the state board of public accountancy, which shall consist of nine members. All members of the board shall be citizens of the United States and residents of this State. Six members thereof shall be certified public accountants holding current licenses [and current permits to practice public accountancy] issued under this chapter, of which [four] five of the six certified public accountant members shall hold current permits to practice public accountancy and be in active practice. One member thereof shall be a public accountant in active practice holding a current license and a current permit to practice public accountancy issued under this chapter, and two shall be public members.”

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

SECTION 3. This Act shall take effect on July 1, 1993.

(Approved April 26, 1993.)

ACT 52

H.B. NO. 948

A Bill for an Act Relating to Public Inspection of Statements Required by the Lobbyists Law.

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

SECTION 1. Section 97-4, Hawaii Revised Statutes, is amended to read as follows:

“§97-4 Manner of filing; public records. All statements required by this chapter to be filed with the state ethics commission:

- (1) Shall be deemed properly filed when delivered or deposited in an established post office within the prescribed time, duly stamped, registered, or certified, and directed to the state ethics commission; provided, however, in the event it is not received, a duplicate of the statement shall be promptly filed upon notice by the state ethics commission of its nonreceipt; and

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- (2) Shall be preserved by the state ethics commission for a period of four years from the date of filing; and shall constitute part of the public records of the state ethics commission [and shall be open to public inspection pursuant to section 92-51]."

SECTION 2. Statutory material to be repealed is bracketed.

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

(Approved April 26, 1993.)

ACT 53

H.B. NO. 1191

A Bill for an Act Relating to Airports.

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

SECTION 1. Chapter 261, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§261- Keahole-Kona International Airport. The official name of the airport situated at Keahole-Kona, Hawaii shall be the Keahole-Kona International Airport."

SECTION 2. New statutory material is underscored.¹

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

(Approved April 26, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

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H.B. NO. 1583

A Bill for an Act Relating to Measurement Standards.

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

SECTION 1. Section 486-1, Hawaii Revised Statutes, is amended as follows:

(1) By adding new definitions to be appropriately inserted and to read as follows:

"National type evaluation program" means a program of cooperation between the National Institute of Standards and Technology, the National Conference on Weights and Measures, the states, and the private sector for determining, on a uniform basis, conformance of a type with the relevant provisions of National Institute of Standards and Technology handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices"; National Institute of Standards and Technology handbook 105-1, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Weights (NIST class F)"; National Institute of Standards and Technology handbook 105-2, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures,

Specifications and Tolerances for Field Standard Measuring Flask"; or National Institute of Standards and Technology handbook 105-3, "Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards."

"Nonconsumer package" or "package of nonconsumer commodity" means any package other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution.

"Package," whether standard package or random package, means any commodity:

- (1) Enclosed in a container or wrapped in any manner in advance of wholesale or retail sale; or
- (2) Whose weight or measure has been determined in advance of wholesale or retail sale.

The term "package" shall not apply to:

- (1) Inner wrappings not intended to be individually sold to the customer;
- (2) Shipping containers or wrapping used solely for the transportation of any commodities in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors, but in no event shall this exclusion apply to packages of consumer or nonconsumer commodities, as defined herein;
- (3) Auxiliary containers or outer wrappings used to deliver packages of such commodities to retail customers if such containers or wrappings bear no printed matter pertaining to any particular commodity;
- (4) Containers used for retail tray pack displays when the container itself is not intended to be sold (e.g., the tray that is used to display individual envelopes of seasonings, gravies, etc., and the tray itself is not intended to be sold); or
- (5) Open carriers and transparent wrappers or carriers for containers when the wrappers or carriers do not bear any written, printed, or graphic matter obscuring the label information required by this chapter.

An individual item or lot of any commodity on which there is marked a selling price based on an established price per unit of weight or of measure shall be considered a package or packages.

"Participating laboratory" means any state measurement laboratory that has been certified by the National Institute of Standards and Technology, in accordance with its program for the certification of capability of state measurement laboratories, to conduct a type evaluation under the national type evaluation program.

"Random measure package" or "random package" means a package that is one of a lot, shipment, or delivery of packages of the same commodity with no fixed pattern of measure.

"Standard package" means a package that is one of a lot, shipment, or delivery of packages of the same commodity with identical net contents declarations.

"Type evaluation" means the testing, examination, or evaluation of a type by a participating laboratory under the national type evaluation program. "

(2) By amending the definition of "advertising" or "advertising medium" to read as follows:

"Advertising" or "advertising medium" includes all publicity, mass media, signs, banners, posters, placards, labels, streamers, marks, brands, grades, descriptions, or displays."

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(3) By amending the definition of "consumer package" or "package of consumer commodity" to read as follows:

"Consumer package" or "package of consumer commodity" means a [commodity in] package [form] that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions."

(4) By amending the definition of "correct" to read as follows:

"Correct", as used in connection with measurement standards, means conformance to all applicable requirements of this chapter and to rules adopted under its authority; all other measures and measurement standards are "incorrect"."

(5) By amending the definition of "label" to read as follows:

"Label" includes any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon or adjacent to a consumer commodity, or a package containing any consumer commodity, for purposes of branding, pricing, identifying, or giving any information with respect to the commodity or to the contents of the package, except that an inspector's tag or other nonpromotional matter affixed to or appearing upon a consumer commodity shall not be considered a label requiring the repetition of label information required by this chapter."

(6) By amending the definition of "measure" to read as follows:

"Measure" includes all measures of every kind, including but not limited to weight, mass, length, volume, time, and count; instruments and devices for weighing, measuring, or counting; and appliances and accessories associated with any such instruments and devices."

(7) By amending the definition of "measurement standards" to read as follows:

"Measurement standards" includes any standard or definition or model or reference or measurement relating to metrology including but not limited to weights and measures, artifacts, and reproducible definitions of a unit of measure and their applicable tolerances including those of the SI, and definitions of a lot size, sample and tolerances as related to statistical inspection.

[Such standards shall, insofar as it is appropriate, be traceable and in agreement with their counterpart as established by the National Institute of Standards and Technology, the American Society for Testing and Materials, the American National Standards Institute, the International Organization of Legal Metrology, the International Bureau of Weights and Measures and as related to SI, to the standards established by the Secretary of Commerce and adopted or amended and adopted by rule.]'

SECTION 2. Section 486-7, Hawaii Revised Statutes, is amended to read as follows:

"§486-7 Specific powers and duties of the board; rules. (a) The board shall adopt reasonable rules pursuant to chapter 91 for the enforcement of this chapter. These rules shall have the force and effect of law and shall govern the use of application of measurement standards, measures, and measuring transactions in the State.

(b) These rules may include:

- (1) Standards of net measure, and reasonable standards of fill for any [commodity in] package [form];
- (2) The technical and reporting procedures to be followed, the report and record forms to be used by persons subject to the provisions of this

chapter, and the marks of approval and rejection to be used by the administrator, inspectors, and measurement standards personnel in the discharge of their official duties;

- (3) Exemptions from the sealing, labeling, marking, or other requirements of the respective parts of this chapter;
- (4) The voluntary registration of service persons and service agencies for commercial weighing and measuring devices. These rules may include, but are not limited to, provisions for registration fees, period of registration, requirements for test equipment, privileges and responsibilities of a voluntary registrant, reports required, qualification requirements, examinations to be administered, certificates of registration, and means for revocation of registration;
- (5) Schedules and fees for licensing measuring devices;
- (6) Schedules and fees for calibrating or testing measurement standards, and registration of the products covered by such measurement standards;
- (7) Specifications, tolerances, and other technical requirements with respect to the packaging, registering, handling, storing, advertising, labeling, dispensing, and selling of petroleum products;
- (8) Specifications, tolerances, and other technical requirements for weighing and measuring devices;
- (9) Practices to assure that amounts of commodities or services sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest;
- (10) Requirements for type evaluation; [and]
- (11) Definitions, applicability, use, units, standards, and tolerances relating to the International System of Units; and
- [11] (12) Such other rules as the board deems necessary for the enforcement of this chapter.

(c) These rules shall include specifications, tolerances, and other technical requirements designed to eliminate from use those measures and measurement standards:

- (1) That are not accurate;
- (2) That are of such construction that they are faulty, that is, that are not reasonably permanent in their adjustment or will not repeat their indications correctly; or
- (3) That facilitate the perpetration of fraud.

(d) [In addition, the board may adopt rules relating to SI, definitions, standards, tolerances, use, applicability, and units.] The specifications, tolerances, and other technical requirements for measuring devices [as] and the uniform laws and regulations as adopted by the National Conference on Weights and Measures, recommended and published by the National Institute of Standards and Technology [as] and adopted, or amended and adopted by the board[; and those standards published by any of the standards-setting bodies identified in the definition of measurement standards under section 486-1 as adopted, or amended and adopted by the board, together with rules adopted by the board under chapter 91 and this chapter,] pursuant to chapter 91,² shall be the [specifications, tolerances, and other technical requirements for measures and] basis for measurement standards in² the State. In addition, the board, pursuant to chapter 91, may adopt or amend and adopt any other measurement standard established by the National Institute of Standards and Technology, the American Society for Testing and Materials, the American National Standards Institute, the International Organization of Legal Metrology, the

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International Bureau of Weights and Measures, and the Society of Automotive Engineers, among others.

[e] The board may, pursuant to chapter 91, adopt, or amend and adopt, in whole or in part, any measurement standard established by the National Institute of Standards and Technology or by the standards setting bodies identified in the definition of measurement standards under section 486-1.]”

SECTION 3. Section 486-32, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Civil. Any person who performs any one of the acts enumerated in this subsection shall be fined not more than \$2,000 for each separate offense:

- (1) Use, or have in possession for use in commerce an incorrect device, measure, or measurement standard;
- (2) Dispose of any rejected or condemned measure or measurement standard in a manner contrary to law or rule;
- (3) Sell, or offer or expose for sale, less than the quantity the person represents of any commodity, thing, or service;
- (4) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell any commodity, thing, or service in a condition or manner contrary to law or rule; [or]
- (5) Fail to submit a weighing or measuring device for inspection and testing at a time and place specified by the administrator; or
- (5) [6] Violate any provision of this chapter or any rules adopted under it for which a specific penalty has not been prescribed.”

SECTION 4. Section 486-87, Hawaii Revised Statutes, is amended to read as follows:

“**§486-87 Penalties.** Any person guilty of committing any of the prohibited acts or omitting any of the required acts of this part [or the rules promulgated hereunder] shall be guilty of a misdemeanor [and shall be fined not less than \$200 nor more than \$500, or be imprisoned not to exceed 90 days, for such first offense and, upon each subsequent violation, shall be fined not less than \$500 nor more than \$1,000, or be imprisoned for a period not to exceed one year, or suffer both such fine and imprisonment].”

SECTION 5. Section 486-101, Hawaii Revised Statutes, is amended as follows:

“**§486-101 Definitions.** As used in this part, unless the context otherwise requires:”

- (1) By amending the definition of “weight” to read as follows:

““Weight”, as used in connection with any commodity or service, means net weight; when a commodity is sold by drained weight, the term means net drained weight.”

- (2) By repealing the definition of “commodity in package form”:

““Commodity in package form” means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be considered a commodity in package form.

Where the term "package" is used in this chapter, it shall mean "commodity in package form" as here defined."]

(3) By repealing the definition of "consumer package; package of consumer commodity":

[““Consumer package; package of consumer commodity” means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.”]

(4) By repealing the definition of "measure":

[““Measure” includes all measures of every kind, including but not limited to weight, mass, length, volume, and count; instruments and devices for measuring; and appliances and accessories associated with any such instruments and devices. When used in connection with any commodity in package form, the term shall mean net measure.”]

(5) By repealing the definition of "national type evaluation program":

[““National type evaluation program” means a program of cooperation between the National Institute of Standards and Technology, the National Conference on Weights and Measures, the states, and the private sector for determining, on a uniform basis, conformance of a type with the relevant provisions of National Institute of Standards and Technology handbook 44, “Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices”; National Institute of Standards and Technology handbook 105-1, “Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Weights (NIST class F)”]; National Institute of Standards and Technology handbook 105-2, “Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Field Standard Measuring Flask”; or National Institute of Standards and Technology handbook 105-3, “Specifications and Tolerances for Reference Standards and Field Standard Weights and Measures, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards.””]

(6) By repealing the definition of "package":

[““Package” means a container or wrapper enclosing a commodity for sale, delivery, or display, but does not include shipping containers or wrapping used solely for the transportation of that commodity.”]

(7) By repealing the definition of "participating laboratory":

[““Participating laboratory” means any state measurement laboratory that has been certified by the National Institute of Standards and Technology, in accordance with its program for the certification of capability of state measurement laboratories, to conduct a type evaluation under the national type evaluation program.”]

(8) By repealing the definition of "type":

[““Type” means a model or models of a particular measurement system, instrument, element, or a field standard that positively identifies the design. A specific type may vary in its measurement ranges, size, performance, and operating characteristics as specified in the certificate of conformance.”]

(9) By repealing the definition of "type evaluation":

[““Type evaluation” means the testing, examination, or evaluation of a type by a participating laboratory under the national type evaluation program.”]

SECTION 6. Section 486-111, Hawaii Revised Statutes, is amended to read as follows:

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“§486-111³ Packages; information required; variations; exemptions.

Except as otherwise provided in this chapter, any [commodity in] package [form] introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale, shall bear on the outside of the package definite, plain, and conspicuous declarations of:

- (1) The identity of the commodity in the package, unless the commodity can be identified easily through the wrapper or container;
- (2) The net quantity of the contents in terms of measure; and
- (3) In the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by rule of the board;

provided that, in connection with the declaration of net quantity, neither the qualifying term “when packed” or words of similar import, nor any term qualifying a unit of measure (for example, “jumbo,” “giant,” “full,” and the like) that tends to exaggerate the amount of commodity in the package shall be used; and provided further that the board may, by rule, establish reasonable variations from the declared measure and exemptions pertaining to the required declarations.”

SECTION 7. Section 486-112, Hawaii Revised Statutes, is amended to read as follows:

“§486-112³ Declarations of unit price on random packages. In addition to the declarations required by section 486-111, any [commodity in] package [form] that is one of a lot containing random measure of the same commodity and that bears the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of measure, as established by rule of the board.”

SECTION 8. Section 486-113, Hawaii Revised Statutes, is amended to read as follows:

“§486-113³ Deceptive package. No commodity [in package form] shall be so wrapped or labeled, nor shall it be in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the commodity in the package, and the contents of a container shall not fall below such reasonable standard of fill as has been prescribed for the commodity by rule of the board.

For commodities measured by volume and packaged in containers standardized as to capacity or generally recognized by consumers as having a set capacity, the standard of fill shall be equal to that capacity, e.g., the volume of fill in the commonly designed one-gallon jug shall be one gallon.”

SECTION 9. Section 486-114, Hawaii Revised Statutes, is amended to read as follows:

“§486-114³ Advertising packages for sale. Whenever a [commodity in] package [form] is advertised in any manner, excluding its labeling, and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as is required by law or rule to appear on the package; provided that, where the law or rule requires a dual declaration of net quantity to appear on the package, only the declaration that sets forth the quantity in terms of the smaller unit of measure (the declaration that is required to appear first and without parentheses on the package) need appear in the advertisement; and

provided further that there shall not be included as part of the declaration required under this section such qualifying terms as "when packed," "minimum," "not less than," or other terms of similar import, nor any term qualifying a unit of measure (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in the package."

SECTION 10. Section 486-116, Hawaii Revised Statutes, is amended to read as follows:

"§486-116³ Misrepresentation of price. Whenever any commodity or service is bought or sold, or is offered, exposed, or advertised for sale or purchase, by weight, measure, or count, the price shall not be misrepresented, nor presented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser or seller. The price of [commodities in package form] packages or commodities sold from bulk, when offered for sale at retail, shall be clearly displayed and shall reflect the retail price at which the public may, without special credentials or other requirements, purchase such packages or commodities. Whenever an advertised, posted, or labeled price per unit of measure includes a fraction of a cent, all numerals expressing the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to and of the same general design and style as the whole numeral or numerals of the price per unit as established by rule of the board."

SECTION 11. Section 486-117, Hawaii Revised Statutes, is amended to read as follows:

"§486-117³ Inspection of packages. (a) The department, through the division of measurement standards, shall measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale or sold in accordance with the law. When such packages or amounts of commodities are found not to contain the amount represented, or are found to be kept, offered, or exposed for sale in violation of law, the department, through the division of measurement standards, may order them off sale and may mark or tag them to show them to be illegal. The department, through the division of measurement standards, may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from the representative of the lot.

(b) No person shall:

- (1) Sell, or keep, offer, or expose for sale any package [or amount of commodity in package form] unless the package [or amount of commodity in package form] is in full compliance with all legal requirements;
- (2) Sell, or keep, offer, or expose for sale any package [or amount of commodity in package form] that has been ordered off sale or marked or tagged as provided in this section, and which package [or amount of commodity in package form] has subsequently been brought into legal compliance, unless and until written authorization for such action has been issued by the administrator; or
- (3) Dispose of any package [or amount of commodity in package form] that has been ordered off sale or marked or tagged as provided in this chapter that has not been brought into full compliance with all legal

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requirements, until written authorization for such disposal has been issued by the administrator.

(c) Nothing in this section shall prohibit the administrator from authorizing the disposal of any package [or amount of commodity in package form], when in the administrator's discretion the best interest of the public will be served by such disposal.

(d) The department, through the division of measurement standards, may seize and dispose of any package [or amount of commodity in package form] that has been ordered off sale for reasons of legal noncompliance when remedial action is not effected as required under the terms of the off sale order, as established by rule of the board."

SECTION 12. Section 486-121, Hawaii Revised Statutes, is amended to read as follows:

"§486-121³ Misrepresentation of quantity. No person shall:

- (1) Sell, offer, or expose for sale less than the quantity represented; [nor]
- (2) Take any more than the quantity represented when the buyer furnishes the weight or measure by means of which the quantity is determined[.]; or
- (3) Represent the quantity in any manner calculated to mislead or in any way deceive another person."

SECTION 13. Section 486-122, Hawaii Revised Statutes, is amended to read as follows:

"§486-122³ Sale from bulk. All bulk sales in which the buyer and seller are not both present to witness the measurement, all bulk deliveries of heating fuel, and all other bulk sales specified by rule [or regulation] of the board shall be accompanied by a delivery ticket containing the following information:

- (1) The name and address of the buyer and seller;
- (2) The date delivered;
- (3) The quantity delivered and the quantity upon which the price is based, if this differs from the delivered quantity[,], for example when temperature compensated sales are made;
- (4) The unit price, unless otherwise agreed upon by both buyer and seller;
- [44] (5) The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale; and
- [55] (6) The count of individually wrapped packages, if more than one."

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 15. This Act shall take effect upon its approval.

(Approved April 26, 1993.)

Notes

1. Prior to amendment "or" appeared here.
2. Should be underscored.
3. So in original.

ACT 55

H.B. NO. 1584

A Bill for an Act Relating to Exports of Flowers and Foliage.

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

SECTION 1. Section 147-35, Hawaii Revised Statutes, is repealed.

SECTION 2. Statutory material to be repealed is bracketed.¹

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

(Approved April 26, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 56

H.B. NO. 1587

A Bill for an Act Relating to Pests.

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

SECTION 1. Section 141-3.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 land-owner’s last known address by [registered] certified 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.”

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, 1993.)

ACT 57

H.B. NO. 1593

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. Section 92F-18, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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 on or before December 31, [1993.] 1994. The public reports shall include:

(1) The name and location of each set of records;

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- (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
- (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."

SECTION 2. Section 11 of Act 192, Session Laws of Hawaii 1989, as amended by section 3 of Act 167, Session Laws of Hawaii 1991, and section 3 of Act 118, Session Laws of Hawaii 1992, is amended to read as follows:

"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 December 31, [1992,] 1993, fifty per cent on or before March 31, [1993,] 1994, seventy-five per cent on or before July 1, [1993,] 1994, and one hundred per cent on or before December 31, [1993,] 1994."

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 26, 1993.)

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H.B. NO. 1629

A Bill for an Act Relating to Motor Vehicle Warranties.

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

SECTION 1. Section 481I-3, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(i) Where the state certified arbitration program is invoked by the consumer of a motor vehicle under express warranties, a decision resolving the dispute shall be rendered within forty-five days after the procedure is invoked. If no decision is rendered within forty-five days as required by this subsection, the

dispute shall be submitted to the regulated industries complaints office of the department of commerce and consumer affairs for investigation and hearing.

Any decision rendered resolving the dispute shall provide appropriate remedies including, but not limited to, the following:

- [1] Repair of the motor vehicle;
- [2] (1) Provision of a replacement motor vehicle; or
- [3] (2) Acceptance of the motor vehicle from the consumer, [and] refund of the full purchase price, and all collateral and incidental charges.

The decision shall specify a date for performance and completion of all awarded remedies."

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

SECTION 3. This Act shall take effect on July 1, 1993.

(Approved April 26, 1993.)

ACT 59

H.B. NO. 1639

A Bill for an Act Relating to the Uniform Securities Act (Modified).

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

SECTION 1. Section 485-12, Hawaii Revised Statutes, is amended to read as follows:

"§485-12 Commissioner as agent to accept service; consent to; actions in what circuit; notice to issuer. Upon any application for registration by notification under section 485-9 made by an issuer and upon any application for registration by qualification under section 485-10 whether made by an issuer or registered dealer[, where the issuer is not domiciled in the State], there shall be filed with the application the irrevocable written consent of the issuer that in suits, proceedings, and actions growing out of the violation of this chapter, the service on the commissioner of securities of any notice, process, or pleading therein, authorized by the laws of the State, shall be as valid and binding as if due service had been made on the issuer. Any such action shall be brought either in the circuit of the plaintiff's residence or in the circuit in which the commissioner has the commissioner's office. The written consent shall be authenticated by the seal of the issuer, if it has a seal, and by the acknowledged signature of a member of the copartnership or company, or by the acknowledged signature of any officer of the incorporated or unincorporated association, if it is an incorporated or unincorporated association, duly authorized by resolution of the board of directors, trustees, or managers of the corporation or association, and shall in such case be accompanied by a duly certified copy of the resolution of the board of directors, trustees, or managers of the corporation or association, authorizing the officers to execute the same. In case any process or pleadings mentioned in this chapter are served upon the commissioner it shall be by duplicate copies, one of which shall be filed in the office of the commissioner and another immediately forwarded by the commissioner by registered mail to the principal office of the issuer against which the process or pleadings are directed."

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

ACT 60

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

(Approved April 26, 1993.)

ACT 60

H.B. NO. 1641

A Bill for an Act Relating to School Employees.

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

SECTION 1. Section 846-43, Hawaii Revised Statutes, is amended to read as follows:

“[[§846-43]] Employees of the department of education; criminal history checks. (a) The department of education and respective private schools, may develop procedures for obtaining verifiable information regarding the criminal history of persons who are employed or are seeking employment in public or private schools in positions which place them in close proximity to children. These procedures shall include, but not be limited to, criminal history record checks. For the purposes of this section, “criminal history record check” means an examination or search for evidence of an individual’s criminal history by means of:

- (1) A search for the individual’s fingerprints in the national criminal history record files and, if found, an analysis and any other information available pertaining thereto; and
- (2) A criminal history record check conducted by the Hawaii criminal justice data center;

provided that the Hawaii criminal justice data center may charge a reasonable fee for criminal history record checks performed for private schools.

(b) Except as otherwise specified, any person who is employed or seeks employment with a public or private school in a position which necessitates close proximity to children may be required to provide the employer or prospective employer:

- (1) A sworn statement indicating whether or not the person has ever been convicted of a crime (other than a traffic violation involving a fine of \$50 or less), and the details thereof;
- (2) Written consent for the employer to conduct a criminal history record check as provided in subsection (a) and to obtain other information for verification; and
- (3) Permission to be fingerprinted.

Information obtained pursuant to subsection (a) and this subsection shall be used exclusively by the employer or prospective employer for the purpose of determining whether or not a person is suitable for working in close proximity to children. All such decisions shall be subject to federal laws and regulations currently or hereafter in effect.

(c) The employer or prospective employer may refuse to employ, may refuse to issue a teaching or other educational certificate to, may revoke the teaching or other educational certificate of, or may terminate the employment of any employee or applicant if the person has been convicted of a crime, other than a minor traffic offense involving a fine of \$50 or less, and if the employer or prospective employer finds by reason of the nature and circumstances of the crime that the person poses a risk to the health, safety, or well-being of children. Such refusal, revocation, or termination may occur only 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.

(d) This section shall not be used by the department of education to secure criminal history record checks on persons who have been employed continuously by the department on a salaried basis prior to July 1, 1990.

(e) For the purpose of this section, notwithstanding any other law to the contrary, the department of education and private schools shall be exempt from section 831-3.1 and need not conduct its investigations, notifications, or hearings in accordance with 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 April 26, 1993.)

ACT 61

H.B. NO. 2078

A Bill for an Act Relating to Public Safety.

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

SECTION 1. Act 151, Session Laws of Hawaii 1991, is amended by amending section 7, to read as follows:

“SECTION 7. This Act shall take effect upon its approval; provided that no new construction or development shall be initiated at the Kailua sites, for correctional or any other purpose, after July 1, [1994] 1995 without prior legislative approval.”

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, 1993.)

ACT 62

S.B. NO. 25

A Bill for an Act Relating to Medical Claims Conciliation Panels.

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

SECTION 1. Chapter 671, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§671- Expungement of records; malpractice insurance rates. (a) Upon a decision by the medical claim conciliation panel finding for the health care provider pursuant to section 671-15(a), the health care provider may apply to the panel for expungement of all records of the related proceedings. The panel shall expunge all records if a majority of the panel finds that the complaint is fraudulent or frivolous.

(b) No insurer providing professional liability insurance for a health care provider shall increase any premium rate for the health care provider on the basis of the filing of a medical tort claim against the health care provider that is determined by the medical claim conciliation panel to be fraudulent or frivolous.”

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SECTION 2. New statutory material is underscored.¹

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

(Approved April 26, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 63

S.B. NO. 35

A Bill for an Act Relating to Loyalty Oaths.

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

SECTION 1. Part II, chapter 85, Hawaii Revised Statutes, is repealed.

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

(Approved April 26, 1993.)

ACT 64

S.B. NO. 213

A Bill for an Act Relating to the Supreme Court Law Library.

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

SECTION 1. Section 601-3.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§601-3.5[]] Supreme court law library [special] revolving fund. There is established a [special] revolving fund for the statewide supreme court law library system into which shall be deposited all fines, fees, and other revenue derived from the system's operations. Moneys deposited in this fund may be expended to replace or repair lost, damaged, stolen, unreturned, or outdated books, serials, periodicals, and other library materials, or to support and improve¹ library services.”

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, 1993.)

Note

1. Prior to amendment “law” appeared here.

ACT 65

S.B. NO. 217

A Bill for an Act Relating to the Exemption of the Judiciary's Gender and Other Fairness Coordinator from Civil Service.

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, 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; one deputy administrative director of the courts; 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, one additional law clerk for the civil administrative judge of the circuit court of the first circuit, one additional law clerk for the civil motions judge of the circuit court of the first circuit, one additional law clerk for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director

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- 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 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, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating in 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 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; four 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; four additional 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, economic development, and tourism to perform the duties assigned by the director of business, economic development, and tourism and approved by the governor; one additional deputy in the department of business, economic development, and tourism in charge of the office of tourism and other tourism-related activities as may be assigned by the director of

- business, economic development, and tourism, with the approval of 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 not 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;
 - (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;
 - (24) One public high school student to be selected by the Hawaii state student council as a nonvoting member on the board of education as authorized by the State Constitution; [and]
 - (25) Sheriff, first deputy sheriff, and second deputy sheriff[.]; and
 - (26) A gender and other fairness coordinator hired by the judiciary.

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 April 26, 1993.)

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ACT 66

S.B. NO. 405

A Bill for an Act Relating to Gray Water.

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

SECTION 1. The purpose of this Act is to authorize the implementation of a gray water recycling program that would use gray water from residential units to irrigate lawns and gardens. This measure is in response to a resolution adopted at the 1992 State Democratic Convention.

SECTION 2. Chapter 342D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§342D- Use of gray water from residential units for irrigation purposes. The department may authorize any county to implement a gray water recycling program within its jurisdiction. The gray water recycling program shall be limited to the use of gray water from residential units for the purpose of irrigating lawns and gardens.

The county seeking authorization shall submit to the department for its approval prior to implementation a detailed residential gray water recycling plan, including rules and procedures for the proposed program. The plan shall address the appropriateness of the program for the geographic area, the environmental impact of the program on the geographic area, the cost of the program, and any other factors deemed relevant by the department. The department may revoke the authorization at any time.

For the purposes of this section, “gray water” means any water from the domestic plumbing system of a residence except toilets; provided that the discharged gray water is not contaminated with any household hazardous waste as defined in section 342G-1 or any other contaminant the department deems inappropriate.”

SECTION 2.¹ New statutory material is underscored.²

SECTION 3.¹ This Act shall take effect upon its approval.

(Approved April 26, 1993.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

ACT 67

S.B. NO. 476

A Bill for an Act Relating to Pension and Retirement Systems.

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

SECTION 1. Section 88-84, Hawaii Revised Statutes, is amended to read as follows:

“§88-84 Ordinary death benefit. (a) Upon [the] receipt of proper [proofs] proof of a member’s death in service, there shall be paid to the member’s

designated beneficiary[, otherwise to the member's estate,] an ordinary death benefit consisting of:

- (1) The member's accumulated contributions and, if no pension is payable under section 88-85, in addition thereto, [and]
- (2) An amount equal to fifty per cent of the compensation earned by the member during the year immediately preceding the member's death if the member had at least one year but not more than ten full years of credited service, which amount shall increase by five per cent [of such compensation] for each full year of service in excess of ten years, to a maximum of one hundred per cent of [such] the compensation; provided that if the member had at least one year of credited service, the amount, together with the member's accumulated contributions shall not be less than one hundred per cent of the compensation[.], or
- (3) If the member had ten or more years of credited service but was ineligible for service retirement at the time of [the member's] death in service, and the death occurred after June 30, 1988, the member's designated beneficiary may elect to receive in lieu of any other payment provided in this section[,] the allowance [which] that would have been payable to the beneficiary under option 3 of section 88-83 and computed on the basis of section 88-76[.], or
- (4) If the member was eligible for service retirement at the time of [the member's] death in service, the member's designated beneficiary[,] may elect to receive in lieu of any other payments provided in this section, the allowance [which] that would have been payable if the member had retired the day prior to death and had elected to receive a retirement allowance under option 2 of section 88-83.

(b) If the member's designation of beneficiary is void as specified in section 88-93, or if the member did not designate a beneficiary, there shall be payable:

- (1) To the surviving spouse, an allowance payable under option 3 of section 88-83 if the member had at least ten years of credited service but was ineligible for service retirement at the time of the death in service, which allowance shall be computed on the basis of section 88-76; or if the member was eligible for service retirement at the time of death in service, the allowance that would have been payable if the member had retired the day prior to death and had elected to receive a retirement allowance under option 2 of section 88-83; or a benefit as specified under subsection (a)(1) and (2); or
- (2) To the deceased member's dependent child, or children under age eighteen if there is no surviving spouse, an equally divided benefit as specified under subsection (a)(1) and (2); or
- (3) To the deceased member's estate, if there is no surviving spouse or dependent child or children, a benefit as specified under subsection (a)(1) and (2)."

SECTION 2. Section 88-283, Hawaii Revised Statutes, is amended to read as follows:

"88-283 Retirement allowance options. (a) A member may elect to have the member's normal, early, or disability retirement allowance paid under one of the following actuarially equivalent amounts:

- (1) Option A: A reduced allowance payable to the member, then upon the member's death, one-half of [such] the allowance, including fifty per cent of all cumulative post retirement allowances, to the member's

- beneficiary designated by the member at the time of retirement, for the life of the beneficiary[.];
- (2) Option B: A reduced allowance payable to the member, then upon the member's death, the same allowance, including cumulative post retirement allowances, paid to the member's beneficiary designated by the member at the time of retirement, for the life of the beneficiary[.]; or
- (3) Option C: A reduced allowance payable to the member, and if the member dies within ten years[,] of retirement, the same allowance, including cumulative post retirement allowances, paid to the member's beneficiary [designated by the member at the time of retirement,] for the balance of the ten-year period.
- (4) (b) Any election of a mode of retirement shall be irrevocable."

SECTION 3. Section 88-286, Hawaii Revised Statutes, is amended to read as follows:

"[[§88-286]] Death benefit. (a) The surviving spouse and dependent child or children of a member at the time of the member's death shall be eligible for a death benefit if the member suffers either an accidental death or an ordinary death while in service after accumulating ten years of credited service.

- (b) In the case of ordinary death, the death benefit shall be as follows:
- (1) For the surviving spouse, [the amount of the death benefit shall be] an allowance equal to one-half of the member's accrued normal retirement allowance unreduced for age, payable to the surviving spouse until remarriage[.]; or if the member was eligible for retirement at the time of death in service, and death occurred after June 30, 1990, the surviving spouse may elect the allowance that would have been payable if the member had retired the day prior to death and had elected to receive a retirement allowance under option B of section 88-283;
- (2) If there is a surviving spouse, each dependent child under age eighteen shall receive [as a death benefit] an allowance equal to ten per cent of the member's accrued normal retirement allowance unreduced for age, payable to each dependent child until the dependent child attains age eighteen; provided that the aggregate death benefits for all the dependent children shall not exceed twenty per cent of the member's accrued normal retirement allowance unreduced for age[.]; and
- (3) If there is no surviving spouse, each dependent child under age eighteen shall receive [as a death benefit] an allowance equal to twenty per cent of the member's accrued normal retirement allowance unreduced for age, payable to each dependent child until the dependent child attains age eighteen; provided that the aggregate death benefits for all the dependent children shall not exceed forty per cent of the member's accrued normal retirement allowance unreduced for age.
- (c) In the case of accidental death, the death benefit shall be as follows:
- (1) For the surviving spouse, the amount of the death benefit shall be [an allowance equal to the greater of:
- (A) One-half of the member's accrued normal retirement allowance, unreduced for age; or
- (B) Fifteen] thirty per cent of the member's average final compensation, payable [to the surviving spouse] until remarriage[.];
- (2) If there is a surviving spouse, each dependent child under eighteen shall receive [as a death benefit] an allowance equal to the greater of:

- (A) Ten per cent of the member's accrued normal retirement allowance, unreduced for age; provided that the aggregate death benefits for all the dependent children shall not exceed twenty per cent of the member's accrued normal retirement allowance unreduced for age; or
 - (B) Three per cent of the member's average final compensation; provided that the aggregate death benefits for all the dependent children shall not exceed six per cent of the member's average final compensation.
- The death benefit under this paragraph shall be payable to each dependent child until [each] the dependent child attains age eighteen[.]; and
- (3) If there is no surviving spouse, each dependent child under eighteen shall receive [as a death benefit] an allowance equal to the greater of:
 - (A) Twenty per cent of the member's accrued normal retirement allowance, unreduced for age; provided that the aggregate death benefits for all the dependent children shall not exceed forty per cent of the member's accrued normal retirement allowance unreduced for age; or
 - (B) Six per cent of the member's average final compensation; provided that the aggregate death benefits for all the dependent children shall not exceed twelve per cent of the member's average final compensation.
- The death benefit under this paragraph shall be payable to each dependent child until [each] the dependent child attains age eighteen."

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 26, 1993.)

ACT 68

S.B. NO. 831

A Bill for an Act Relating to Child Care Facilities.

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

SECTION 1. Part VIII of chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§346- **No smoking in child care facilities.** Smoking shall be prohibited in all group child care homes, group child care centers, and family child care homes during their hours of operation."

SECTION 2. New statutory material is underscored.¹

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

(Approved April 26, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Out-of-State Prescriptions.

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

SECTION 1. Section 328-17.6, Hawaii Revised Statutes, is amended as follows:

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

“(b) Any pharmacist who fills or refills an out-of-state prescription shall:

(1) Note the following on the pharmacist’s prescription record: the out-of-state practitioner’s full name, address, telephone number, and DEA registration number[.], provided that the DEA registration number shall be required only for original fills;

(2) Be responsible for validating the authenticity of the out-of-state practitioner’s DEA registration number; and

(3) Demand proper identification from the person whose name appears on the prescription prior to filling the prescription, in addition to complying with any identification procedures established by the department for filling and refilling an out-of-state prescription.

(c) Before [filling or] refilling an out-of-state prescription, a pharmacist receiving transferred prescription information shall:

(1) Advise the person whose name appears on the prescription that the prescription on file at the originating out-of-state pharmacy may be canceled before the pharmacist can [fill or] refill the prescription; and

(2) Record all information required to be on a prescription, including, but not limited to:

(A) The date of issuance of the original prescription;

(B) The number of refills authorized on the original prescription;

(C) The date the original prescription was dispensed;

(D) The number of valid refills remaining and the date of the last refill;

(E) The out-of-state pharmacy’s name, address, and DEA registration number, and the original prescription number from which the prescription information was transferred; and

(F) The name of the transferor pharmacist.”

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

“(e) The pharmacist shall follow all labeling procedures established by the department for filling and refilling an out-of-state prescription. The [label] prescription shall [also] be appropriately [identify the prescription] identified as “Out-of-State Filled” or “Out-of-State Refilled”, and shall state the date of filling or refilling and the local address of the person whose name appears on the prescription.”

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, 1993.)

ACT 70

S.B. NO. 1216

A Bill for an Act Relating to Spouses.

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

SECTION 1. The common law upon which early American jurisprudence is based considered the husband and wife to be one legal unit. As a result, married women were deprived of valuable personal rights, such as the right to own property, to enter into contracts, and to bring legal actions. Social changes resulted in the demise of the theory that husbands and wives formed one legal unit, and laws were enacted giving wives the right to own property and to maintain separate legal actions. However, actions by one spouse against the other were still prohibited, based upon the belief that allowing such suits would destroy marital harmony. This prohibition was called the interspousal tort immunity rule.

Today, most states have either abolished or limited the interspousal tort immunity rule, recognizing that marital harmony no longer exists in many cases in which a person would wish to sue a spouse, as in instances of domestic violence. Thus, the interspousal tort immunity rule serves as a bar to a legitimate claim for compensation where injuries are inflicted upon one spouse by the other.

Additionally, the interspousal tort immunity rule denies a married person the right to bring an action against his or her spouse even when such a suit is desired by both spouses. An accident victim may sue to receive compensation for medical, psychological, and other expenses from the insurance company of the person at fault. If, however, the victim is the spouse of the person who caused the accident, the interspousal tort immunity rule prohibits the injured spouse from suing for compensation, although any other injured party possesses the right to bring suit.

It is the purpose of this Act to remove the prohibition against tort suits between spouses, to more fairly and equitably protect married persons.

SECTION 2. Section 572-28, Hawaii Revised Statutes, is amended to read as follows:

“§572-28 Suits by and against. A married person may sue and be sued in the same manner as if the person were sole[; but this]. This section shall [not] be construed to authorize tort suits between spouses.”

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 26, 1993.)

ACT 71

S.B. NO. 1381

A Bill for an Act Relating to Real Estate Brokers and Salesmen.

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

SECTION 1. Section 467-8, Hawaii Revised Statutes, is amended to read as follows:

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"§467-8 Prerequisites for licensing. No license [hereunder] under this chapter shall be issued to:

- (1) Any person who does not satisfy the requirements set forth in section 467-9.5;
- (2) Any person unless the person has demonstrated by passing with a grade satisfactory to the [real estate] commission [a written] an examination appropriate to the license sought that the person has a reasonable knowledge of (A) estates, interests, and rights in real property, (B) the documents or acts or occurrences by which such property is transferred or otherwise affected, (C) the rights and duties of an agent, (D) the laws of the State relating to real estate brokers and salespersons, and (E) such other subjects as the commission determines to be essential for the protection of the general public in its real estate transactions;
- (3) Any person who does not possess a reputation for honesty, truthfulness, financial integrity, and fair dealing;
- (4) Any [copartnership] partnership unless [every member of the copartnership who actively participates in] the real estate brokerage business thereof is under the direct management of a general partner or employee thereof and unless the general partner or employee holds a real estate broker's license; or
- (5) Any corporation unless the real estate brokerage business thereof is under the direct management of an officer or employee thereof and unless the officer or employee holds a real estate broker's 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 April 26, 1993.)

ACT 72

S.B. NO. 1453

A Bill for an Act Relating to Corrections.

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

SECTION 1. Section 353-1, Hawaii Revised Statutes, is amended to read as follows:

"§353-1 Definitions; director may delegate powers. As used in this chapter, unless the context [clearly indicates] otherwise[:] requires:

"Committed person" means a person committed to the custody of the director of public safety for imprisonment pursuant to chapter 706, including a probationer serving a term of imprisonment pursuant to section 706-624(2)(a) and a misdemeanant or petty misdemeanant sentenced pursuant to section 706-663.

"Department" means the department of public safety.

"Director" means the director of public safety; provided that the signing or approval of vouchers and other routine matters may be delegated by the director to any authorized subordinate."

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, 1993.)

ACT 73

S.B. NO. 1454

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 by amending subsection (a) to read as follows:

“(a) For all taxable years beginning after December 31, [1991,] 1992, 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, [1991,] 1992, 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.”

SECTION 2. Section 235-55.6, Hawaii Revised Statutes, is amended by amending subsection (b) 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 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] if the center is located within the jurisdiction of this State; or
 - (ii) Such center complies with all applicable laws, rules, and regulations of the jurisdiction in which the center is located, if the center is located outside the State; and
 - [[(ii)]] (iii) 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)."

SECTION 3. Section 235-55.6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

- "(e) Special rules. For purposes of this section:
- (1) Maintaining household. An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for such 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.
 - (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 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 the person is located outside the State, the name, address, and taxpayer identification number, if any, of the person and a statement indicating that the service provider is located outside the State and that the general excise tax license and, if applicable, the taxpayer identification numbers are not required, or
 - [(B)] (C) 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."

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SECTION 4. Section 235-61, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) For each withholding period (whether weekly, biweekly, monthly, or otherwise) the amount of tax to be withheld under this section shall be at a rate which, for the taxable year, will yield the tax imposed by section 235-51 upon each employee's annual wage, as estimated from the employee's current wage in any withholding period[; but (for the purposes of this subsection) of the rates provided by section 235-51 the maximum to be taken into consideration shall be eight per cent]. The tax for the taxable year shall be calculated upon the following assumptions:

- (1) That the employee's annual wage, as estimated from the employee's current wage in the withholding period, will be the employee's sole income for the taxable year;
- (2) That there will be no deductions therefrom in determining adjusted gross income;
- (3) That in determining taxable income there shall be a standard deduction allowance which shall be an amount equal to one exemption (or more than one exemption if so prescribed by the director) unless (A) the taxpayer is married and the taxpayer's spouse is an employee receiving wages subject to withholding, or (B) the taxpayer has withholding exemption certificates in effect with respect to more than one employer. For the purposes of this section, any standard deduction allowance under this paragraph shall be treated as if it were denominated a withholding exemption[.];
- (4) That in determining taxable income there also will be deducted the amount of exemptions and withholding allowances granted to the employee in the computation of taxable income, as shown by a certificate to be filed with the employer as provided by subsection (f); and
- (5) If it appears from the certificate filed pursuant to subsection (f) that the employee [is], under section 235-93, is entitled to make a joint return, that the employee and the employee's spouse will so elect."

SECTION 5. Section 235-97, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) (1) Individuals, corporations (including S corporations), estates, and trusts, shall annually furnish the department of taxation with a declaration of estimated tax for the current taxable year. Declarations of estimated tax, except as otherwise provided by rule, shall be governed by the provisions as to returns contained in sections 235-94, 235-98, 235-99, and 235-128. The declarations shall be made on estimated tax payment voucher forms. The payment voucher shall be filed, in the case of [individuals, estates, and trusts] taxpayers on the calendar year basis, on or before April 20[, and in the case of corporations on the calendar year basis on or before September 20]. In the case of a husband and wife who are entitled to submit a joint payment voucher for federal purposes, a single payment voucher may be submitted by them jointly, in which case the liability with respect to the estimated tax shall be joint and several; if a joint payment voucher is submitted but a joint income tax return is not made for the taxable year, the

- estimated tax for [such] the year may be treated as the estimated tax of either the husband or the wife or may be divided between them.
- (2) Each [individual, estate, and trust] taxpayer shall transmit, with the payment voucher, payment of one-quarter of the estimated tax for the current taxable year. In determining this quarterly payment and all other installments, there first shall be deducted from the total estimated tax the amount of estimated tax withholding or collection at source for the taxable year. Thereafter, on the twentieth day of June and September, the [individual, estate, and trust] taxpayer shall transmit with the payment voucher, payment of one-quarter of the estimated tax. The fourth quarter payment of the estimated tax shall be transmitted with the payment voucher by January 20 of the year following the taxable year for which the estimate was made.
- (3) [Each corporation shall transmit, with its payment voucher, payment of one-half of the estimated tax for the current taxable year. The second half payment of the estimated tax shall be transmitted with the payment voucher by January 20 of the year following the taxable year for which the estimate was made.]
- (4) Individuals, corporations, estates, and trusts] Taxpayers operating on a fiscal year basis shall make similar estimates and tax payments, on or before the twentieth day of the fourth month of the fiscal year [in the case of individuals, estates, and trusts and the ninth month of the fiscal year in the case of corporations,] and periodically thereafter so as to conform to the payments and returns required in the case of those on a calendar year basis.
- [(5)] (4) The department by rule may excuse individuals from filing an estimate in those cases where the gross income and exemptions are such that no tax is expected to accrue under this chapter, or are such that substantially all the tax will be collected through tax withholding or at the source.
- [(6)] (5) In the case of a foreign corporation, the department may excuse the filing of an estimate and the payment of estimated tax if it is satisfied that less than fifteen per cent of the corporation's business for the taxable year will be attributable to the State. For the purposes of this paragraph, fifteen per cent of a corporation's business shall be deemed attributable to the State if fifteen per cent or more of the entire gross income of the corporation (which for the purposes of this paragraph means gross income computed without regard to source in the State) is attributable to the State under sections 235-21 to 235-39 or other provisions of this chapter.
- [(7)] (6) In the case of [an individual, estate, trust, or domestic corporation] a taxpayer whose tax liability is less than [\$100,] \$500, the filing of an estimate and the payment of estimated tax shall not be required."

SECTION 6. Section 235-97, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

- "(f) In the case of any underpayment of estimated tax, except as provided by [paragraph (3) of] this subsection, there shall be added to the tax for the taxable year an amount determined at the rate of eight per cent a year upon the amount of the underpayment [(determined under paragraph (1) of this subsection)] for the period of the underpayment [(determined under paragraph (2) of this subsection)].
- (1) [For purposes of this subsection, the] The amount of the underpayment shall be the excess of:

- (A) The [amount of the installment which would be required to be paid if the estimated tax were equal to seventy per cent (fifty per cent in the case of corporations) of the tax shown on the return for the taxable year or, if no return is filed, seventy per cent (fifty per cent in the case of corporations) of the tax for such year,] required installment, over
- (B) The amount, if any, of the installment paid on or before the [last date prescribed for such payment.] due date for the installment.
- (2) The period of the underpayment shall run from the due date for the installment [was required to be paid] to whichever of the following dates is the earlier:
- (A) The twentieth day of the fourth month following the close of the taxable year[.], or
- (B) With respect to any portion of the underpayment, the date on which [such] the portion is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be [considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under paragraph (1)(A) for such installment date.] credited against unpaid required installments in the order in which the installments are required to be paid.
- (3) [Notwithstanding the preceding paragraphs, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds whichever of the following is the lesser:
- (A) The amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least:
- (i) The tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for the tax was filed by the taxpayer under the income tax law of 1957 for the preceding taxable year and such preceding year was a taxable year of twelve months, or
- (ii) An amount equal to the tax computed on the basis of the facts shown on the taxpayer's return for, and the law applicable to, the preceding taxable year, if a return for such preceding year was filed by the taxpayer under the income tax law of 1957, but at the rates applicable to the taxable year and on the basis of an individual taxpayer's status with respect to personal exemptions under section 235-54 for the taxable year, or
- (iii) An amount equal to seventy per cent (fifty per cent in the case of corporations) of the tax for the taxable year computed by placing on an annualized basis the adjusted gross income and taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this subparagraph, the adjusted gross income and taxable income shall be placed on an annualized basis by:
- First, multiplying by twelve (or, in the case of a taxable year of less than twelve months, the number of months in the taxable year) the adjusted gross income, or the taxable income (computed without deduction of personal exemp-

- Second, tions), for the months in the taxable year ending before the month in which the installment is required to be paid, dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, and
- Third, deducting from such amount, in the case of computation of taxable income of individuals, the deductions for personal exemptions allowable for the taxable year (such personal exemptions being determined as of the last date prescribed for payment of the installment), or
- (B) An amount equal to ninety per cent (sixty-five per cent in the case of corporations) of the tax computed at the rates applicable to the taxable year, on the basis of the actual adjusted gross income and taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.]
- For the purposes of this section, the term "tax" means the tax imposed under this chapter reduced by any credits available to the taxpayer other than the credit for amounts withheld from the taxpayer's wages or taxes withheld at the source, if any, for the taxable year.
- (4) Sections 6654(d), (e)(2), (e)(3), (h), (i), (j), (k), and (l) (with respect to failure by an individual to pay estimated income tax), and 6655(d), (e), (g)(2), (g)(3), (g)(4), and (i) (with respect to failure by a corporation to pay estimated income tax) of the Internal Revenue Code, as of the date set forth in section 235-2.3(a), shall be operative for the purposes of this section; provided that the due dates contained in any of the preceding Internal Revenue Code sections shall be deemed to be the twentieth day of the applicable month."

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 sections 1 to 3 shall apply to taxable years beginning after December 31, 1992; and provided that sections 4 to 6 shall apply to taxable years beginning after December 31, 1993.

(Approved April 26, 1993.)

ACT 74

S.B. NO. 1665

A Bill for an Act Relating to Pest Control Operators.

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

SECTION 1. Section 460J-1, Hawaii Revised Statutes, is amended by:

1. Deleting the definition of "fumigator".

[““Fumigator” means any person licensed by the board as a pest control operator who shall have been qualified by the board in the branch of pest control which includes fumigation.”]

2. Amending the definition of “household pests” to read as follows:

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“‘Household pests’ means those pests other than wood-destroying [insects and microbes] pests which invade households and other structures, including, but not limited to, rodents, vermin, insects, and birds.”

3. Amending the definition of “pest control” to read as follows:

“‘Pest control’ means, with respect to wood-destroying pests, or other pests which may invade households or other structures, including railroad cars, ships, docks, trucks, airplanes, or the contents thereof, the engaging in, offering to engage in, advertising for, soliciting, or performing the following[:] for hire:

- (1) Identifying pests or infestations;
- (2) Making an inspection for the purpose of identifying or attempting to identify infestations of household or other structures by pests;
- (3) Making inspection reports, recommendations, estimates, and bids, whether oral or written, with respect to infestations; [and] or
- (4) Making contracts, or submitting bids for, or the use of avicides, insecticides, pesticides, rodenticides, fumigants, or allied chemicals or substances, or mechanical devices, for the purpose of eliminating, exterminating, controlling, or preventing infestations of pests or organisms.”

SECTION 2. Section 460J-6, Hawaii Revised Statutes, is amended to read as follows:

“**§460J-6 Licenses required.** No person within the purview of this chapter shall act or assume to act, or advertise, as a pest control operator [or fumigator] or be engaged in the business of pest control without a license previously obtained under and in compliance with this chapter and the rules of the board. No person required to be licensed under this chapter shall be subject to chapter 444.”

SECTION 3. Section 460J-8, Hawaii Revised Statutes, is amended to read as follows:

“**§460J-8 [No license issued when.** No license shall be issued to:

- (1) Any person unless the person has filed an application therefor;
- (2) Any person who does not possess a history of honesty, truthfulness, financial integrity, and fair dealing;
- (3) Any partnership, joint venture, corporation or sole proprietorship, unless it is under the direct management of an operator or responsible managing employee with an appropriate license;
- (4) Any individual unless the individual is of the age of eighteen years or more;
- (5) Any person unless the person submits satisfactory proof to the board that the person has obtained workers' compensation insurance or has been authorized to act as a self-insurer as required by chapter 386.]

License requirements. To obtain an operator's license, a person shall fulfill the following requirements:

- (1) File an application as prescribed by the board;
- (2) Possess a history of honesty, truthfulness, financial integrity, and fair dealing;
- (3) Be at least eighteen years of age;
- (4) Satisfy the board's examination and experience requirements;
- (5) If a partnership, joint venture, corporation, or sole proprietorship, be under the direct management of a responsible managing employee or operator with an appropriate license;

- (6) Submit satisfactory proof to the board that the person has obtained workers' compensation insurance or has been authorized to act as a self-insurer as required by chapter 386;
- (7) Submit satisfactory proof to the board that the person has obtained liability insurance, pursuant to section 460J-25; and
- (8) Provide other documentation as required by the board. "

SECTION 4. Section 460J-12, Hawaii Revised Statutes, is amended to read as follows:

"[[§460J-12[]]] [Group license; classification] Classification of branches of pest control; [designation of groups;] examinations; rules and regulations; [licenses in other groups;] subjects of examination; passing grade. (a) Licenses issued to operators or field representatives shall be limited to the branch or branches of pest control for which the applicant has qualified by application and examination. For the purpose of delimiting the type and character of work authorized by the various branch licenses hereinafter set forth, the practice of pest control is classified into the following branches:

- (1) Branch 1. Fumigation. The practice relating to the control of household and [wood destroying] wood-destroying pests by fumigation with poisonous or lethal gases.
- (2) Branch 2. General Pest. The practice relating to the control of household pests, other than termites, excluding fumigation with poisonous or lethal gases.
- (3) Branch 3. Termite. The practice relating to the control of [wood destroying] wood-destroying pests by the use of insecticides and corrections, excluding fumigation with poisonous or lethal gases.

The board may issue a license for a combination of two or more branches for which an applicant qualifies under this chapter, and such combination license shall be considered one license for the purpose of determining the fee to be charged under section 460J-14.

(b) Any person who, on or after January 1, 1951, was operating as a fumigator or a pest control operator under a permit issued by the department of health or operating under a license issued by the contractors license board, shall, without requirement or examination, receive a license commensurate to the class of active permit or license presently held by the person.

(c) Unless otherwise authorized by the board, all written examinations shall be in ink in books supplied by the board. All examination papers shall be kept for a period of one year, upon the expiration of which such papers may be destroyed on order of the board. Each applicant for license shall be designated by a number instead of by name and the identity thereof shall not be disclosed until the examination papers are graded. No person shall be admitted to the examination room except the examining personnel and the applicants for license.

(d) The board shall make rules and regulations for the purpose of securing fair, impartial, and proper examinations.

(e) Licensees of any branch may be licensed in other branches upon complying with the requirements for qualification and by examination in such other branches. No failure of the licensee to pass examination in such other branches shall have any effect on existing licenses.

(f) The examinations shall be in each of the subjects specified in the branch or branches relating to the respective applications. A license according to such applications shall be granted to any applicant who scores a [general average] passing grade on the examination [of not less than seventy per cent on] in each of the subjects of such branch or branches."

SECTION 5. Section 460J-15, Hawaii Revised Statutes, is amended to read as follows:

"§460J-15 Revocation, suspension, and refusal of renewal of licenses; prohibition against certain offenses, etc. (a) In addition to any other actions authorized by law, the board may revoke, suspend, or refuse to renew any license issued hereunder, for any cause authorized by law, including but not limited to the following:

- (1) Departure from, or disregard of, plans or specifications in the performance of pest control work in any material respect, without consent of the owner or the owner's authorized representative;
- (2) Disregard and violation of any law of the State or any county relating to building, including any violation of any applicable rule of the department of health, or of any applicable safety or labor law;
- (3) Misrepresentation of a material fact by the applicant in obtaining a license;
- (4) Failure on the part of a licensee to complete any operation or construction repairs for the price stated in the contract for the operation or construction repairs or in any modification of the contract;
- (5) Failure to comply with this chapter, or any rule adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for [wood-destroying pests;] termites;
- (6) The commission of any grossly negligent or fraudulent act by the licensee as an operator;
- (7) The negligent handling or use of any poisonous exterminating agent without regard to public safety;
- (8) Fraud or misrepresentation, after inspection, by any licensee engaged in pest control work [or] relating to any infestation or infection of [wood-destroying pests] termites found in property or structures, or respecting any conditions of the structure that would ordinarily subject structures to attack by [wood-destroying pests] termites whether or not a report was made pursuant to sections 460J-19 and 460J-20;
- (9) Failure of an operator to make and keep all inspection reports, contracts, documents, and records, other than financial records, for a period of not less than two years after completion of any work or operation for the control of [wood-destroying pests;] termites;
- (10) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with the operator's operations as an operator when the operator has the ability to pay or when the operator has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- (11) The false denial of any debt due or the validity of the claim therefor with intent to secure for the licensee, the licensee's employer, or other person, any discount of the debt or with intent to hinder, delay, or defraud the person to whom the debt is due;
- (12) Failure to secure or maintain workers' compensation insurance when not authorized to act as a self-insurer under chapter 386;
- (13) Knowingly entering into a contract with an unlicensed operator involving work or activity for the performance of which licensing is required under this chapter; or

(14) Conviction of any offense described in chapter 708 committed while in the performance of the person's regular occupation as a [fumigator or] pest control operator.

(b) [Any] During a period of disciplinary sanction, a person [who has been denied a license for any of the reasons specified in section 460J-8, or who has had the person's license revoked, or whose license is under suspension, or who has failed to renew the person's license while it was under suspension, or who has been a member, officer, director, associate, or responsible managing employee of any partnership, corporation, firm, or association whose application for a license has been denied for any of the reasons specified in section 460J-8, or whose license has been revoked, or whose license is under suspension, or who has failed to renew a license while it was under suspension, and while acting as such a member, officer, director, associate, or responsible managing employee had knowledge of or participated in any of the prohibited acts for which the license was denied, suspended, or revoked,] shall be prohibited from serving as an officer, director, associate, partner, or responsible managing employee of a licensee[.] under the following circumstances:

- (1) The person's license has been revoked and the person has not been granted a new license;
- (2) The person's license is under suspension; or
- (3) The person has been a member, officer, director, associate, or responsible managing employee of any partnership, corporation, firm, or association whose license is revoked or is under suspension, and while acting as such a member, officer, director, associate, or responsible managing employee, the person had knowledge of or participated in any of the prohibited acts for which the license was suspended or revoked.

SECTION 6. Section 460J-19, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No licensee shall commence work on a contract for the control of termites until an inspection has been made and a written inspection report and a written estimate have been approved by the person requesting the work; provided that no written inspection report shall be required in the event that a live infestation exists. The written inspection report shall be on a PC-9 form prescribed by the board and shall include the following:

- (1) The date of the inspection and the name of the person making the inspection;
- (2) The name and address of the person or firm ordering the report;
- (3) The name and address of any person who is a party in interest to whom the licensee is to send certified copies of inspection reports and completion notices;
- (4) The address or location of the property;
- (5) A general description of the building or premises inspected; and
- (6) The location of visible termite infestations apparent to the licensee.

The licensee shall not be responsible for [subsequent infestations] an infestation unless [their] its presence was visible at the time of the inspection. There shall be no guarantees or warranties on the written inspection report."

SECTION 7. Section 460J-20, Hawaii Revised Statutes, is amended to read as follows:

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"[§460J-20] Document expressing an opinion or making statement regarding the presence or absence of [wood-destroying pests;] termites; contents. Any work contract, billing, agreement, letter of work completed, or other correspondence or document, expressing an opinion or making a statement relating to the presence or absence of [wood-destroying pests] termites shall refer to the report defined in section 460J-19(b). Such documents shall indicate specifically whether all of the recommended work as set forth in the inspection report was completed, or, if not, it shall indicate specifically which recommendations were not completed."

SECTION 8. Section 460J-21, Hawaii Revised Statutes, is amended to read as follows:

"[§460J-21] Fumigation under supervision. Fumigation shall be performed only under the direct [and personal] supervision of an individual who is [licensed by the board as an operator in the branch of pest control which includes fumigation.] an applicator certified for structural fumigation by the department of agriculture."

SECTION 9. Section 460J-24, Hawaii Revised Statutes, is amended to read as follows:

"[§460J-24] Application of soil treatment pest control work. A licensed contractor may contract for the performance of any soil treatment pest control work to eliminate, exterminate, control, or prevent infestations or infections of pests [in] from the ground beneath or adjacent to any existing building or structure or in or upon any site upon which any building or structure is to be constructed, but the actual performance of any such work [must] shall be done by a licensed pest control operator."

SECTION 10. Section 460J-24.5, Hawaii Revised Statutes, is amended to read as follows:

"[§460J-24.5] Nonchemical pest control devices efficacy and safety data; examination and testing; approval prior to sale, lease, or transfer of devices in the State. (a) All manufacturers or their representatives intending to sell, lease, or provide through other means a nonchemical pest control device in the State shall submit efficacy and safety data prior to sale, lease, or transfer to the department of agriculture; provided such requirement for submission of efficacy and safety [data] may include the furnishing of specimen devices or samples. The department of agriculture or its designated representative shall conduct such examination and testing as may be necessary to ascertain the reliability, efficacy and safety data and actual or potential adverse effects upon human health and safety of such device. The costs of conducting such test shall be borne by the manufacturer or the manufacturer's representative. The department of agriculture shall adopt and enforce rules pursuant to chapter 91 to carry out this section.

(b) Any person including a wholesaler, retailer, or pest control operator who sells, leases, or provides through other means a device which has not been approved [for sale in the State] as provided in subsection (a) shall be subject to penalty as provided in section 460J-27."

SECTION 11. Section 460J-25, Hawaii Revised Statutes, is amended to read as follows:

"§460J-25 Insurance. No person shall engage in the business of pest control unless the person has filed with the director of commerce and consumer affairs a general liability insurance policy approved by the director [in the minimum amount of \$20,000 for any one claim and a minimum aggregate of not less than \$50,000 for all claims, and for fumigation work, in the minimum amount of \$50,000, for all claims arising during a policy term of one year. If a policy cannot be obtained, the licensee may file with the director in lieu thereof a verified statement providing proof satisfactory to the director, of financial responsibility equivalent to that provided for by any such insurance policy;] in an amount prescribed by the board through its rules; provided that no employee of any company need have such policy in effect with respect to work covered by a policy of the company by which the employee is employed. This section shall not apply to vault fumigation."

SECTION 12. Section 460J-26, Hawaii Revised Statutes, is amended to read as follows:

"[§460J-26] **Exemptions.** This chapter shall not apply to officials of the federal government on military reservations; or to personnel of the United States [department of agriculture,] Department of Agriculture, the state department of agriculture, or state department of land and natural resources, or the United States [public health service] Public Health Service in the performance of their official duties; or other government employees who conduct research on pesticides or pest control or who use pesticides in the performance of their duties; or to qualified scientific personnel specially exempted by the board; or to persons engaged in pest control for agricultural purposes."

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

SECTION 14. This Act shall take effect upon its approval; provided that SECTION 10 shall take effect one year from the effective date of this Act.

(Approved April 26, 1993.)

Note

1. No end bracket.

ACT 75

S.B. NO. 1711

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

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

SECTION 1. Section 314-3, Hawaii Revised Statutes, is amended to read as follows:

"[§314-3] **Term; vacancy.** Members of the board shall serve for terms of [six] four years and until their successors have been appointed and qualified. [Of the members originally appointed, four shall be appointed for a term of two years, four for four years, and three for six years.]

A member shall not serve for more than two consecutive terms."

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SECTION 2. Section 314-13, Hawaii Revised Statutes, is amended to read as follows:

"[§]§314-13[]] Revolving fund. (a) There is established in the state treasury [a fund to be known as] the public broadcasting revolving fund into which shall be [utilized for the purpose of receiving and expending funds derived from private sources] deposited all revenues received for services, [and] airtime, [and] or other uses of public broadcasting facilities; any state funds specifically appropriated for deposit into the [public broadcasting] revolving fund[.]; and donations, grants, and fees. All revenues deposited into the revolving fund shall be expended for the public broadcasting authority and the authority's related activities and programs.

(b) The board shall prepare an annual report for the legislature identifying the amount and source of all revenues deposited into the revolving fund. The report shall be submitted to the legislature not less than twenty days prior to the convening of each regular session of the legislature."

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 unexpired terms of the current members of the board of public broadcasting shall not be affected by this Act.

(Approved April 26, 1993.)

ACT 76

S.B. NO. 1864

A Bill for an Act Relating to Public Lands.

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

SECTION 1. The purpose of this Act is to authorize the withdrawal of a portion of land designated in executive order no. 3061 upon which Maluhia Hospital, Kapalama, Oahu is situated. The portion of land is to be leased by the department of land and natural resources to the Pacific housing assistance corporation, a tax-exempt, non-profit entity, to develop and construct a forty unit apartment building for the frail elderly to be serviced by the program for all-inclusive care for the elderly (PACE) operating from Maluhia Hospital. The PACE project targets frail elderly who are not able to totally care for themselves but do not require full nursing home care.

This project has been selected for funding by the United States Department of Housing and Urban Development (HUD) under the Section 202 Capital Advance program. The HUD Section 202 program will provide a forty year capital advance for construction of the project and tenant rental assistance to enable low income tenants who earn less than fifty per cent of the median income to pay thirty per cent of their income toward rent, with HUD subsidizing the remaining amount up to an operating cost standard.

SECTION 2. Notwithstanding chapter 171, Hawaii Revised Statutes, the legislature hereby approves withdrawal of a portion of land from executive order no. 3061, described as land situated on the Northeasterly side of Kuakini Street Extension, Kalaepohaku, Kapalama, Honolulu, Oahu, Hawaii, being a portion of

R.P. 4475, L.C. Aw. 7713, Ap. 38 to V. Kamamalu and R.P. 7834, L.C. Aw. 7714-B, Ap. 7 to M. Kekuaiwa.

Beginning at the east corner of this parcel of land, being also the South corner of Lot 3, Block 1, Section C of Land Court Application 290 on the Northwesterly boundary of Lot 81 of the Lanakila Tract, Section "C" (File Plan 127), the coordinates of said point of beginning referred to Government Survey Triangulation Station "KALAEPOHAKU" being 329.47 feet South and 464.56 feet East and running by azimuths measured clockwise from true South:

- | | | |
|-----------------|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. 48° 53' | 75.40 feet | along Lots 81 and 96 of Lanakila Tract Section "C" (File Plan 127); |
| 2. 45° 36' | 47.90 feet | along Lot 97 of Lanakila Tract, Section "C" (File Plan 127); |
| 3. 48° 53' | 60.93 feet | along remainder of R.P. 3466, L.C. Aw. 6732 to Nuuanu;
Thence follows along the Northeast side of Kuakini Street Extension on a curve to the left with a radius of 375.85 feet, the chord azimuth and distance being: |
| 4. 115° 47' 13" | 182.00 feet; | along remainder of R.P. 4475, L.C. Aw. 7713, Ap. 38 to V. Kamamalu and R.P. 7834, L.C. Aw. 7114-B, Ap. 7 to M. Kekuaiwa; |
| 5. 191° 46' 30" | 62.31 feet | along remainder of R.P. 4475, L.C. Aw. 7713, Ap. 38 to V. Kamamalu and R.P. 7834, L.C. Aw. 7114-B, Ap. 7 to M. Kekuaiwa; |
| 6. 256° 00' | 178.20 feet | Thence along remainder of R.P. 4475, L.C. Aw. 7713, Ap. 38 to V. Kamamalu and R.P. 7834, L.C. Aw. 7114-B, Ap. 7 to M. Kekuaiwa on a curve to the left with a radius of 70.00 feet, the chord azimuth and distance being: |
| 7. 207° 15' | 105.26 feet; | along remainder of R.P. 4475, L.C. Aw. 7713, Ap. 38 to V. Kamamalu and R.P. 7834, L.C. Aw. 7114-B, Ap. 7 to M. Kekuaiwa; |
| 8. 248° 30' | 6.00 feet | along Lots 2 and 3, Block 1, Section "C" of Land Court Application 290 to the point of beginning and containing an area of 36,307 square feet or 0.834 acre. |
| 9. 338° 30' | 167.55 feet | |

Together with Easement RU-1 for Road and Utility Purposes described as follows:

Beginning at the Northeast corner of this parcel of land, being also the West corner of Lot 2, Block 1, Section "C" of Land Court Application 290 on the Southeast side of Hala Drive the coordinates of said point of beginning referred to Government Survey Triangulation "KALAEPOHAKU" being 68.39 feet south and 361.72 feet East and running by azimuths measured clockwise from true South:

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- | | | | |
|-----|-----------------------|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | $338^{\circ} 30'$ | 113.05 feet | along Lot 2, block 1, Section "C" of Land Court Application 290; |
| 2. | $68^{\circ} 30'$ | 6.00 feet | along remainder of R.P. 4475, L.C. Aw. 7713, Ap. 38 to V. Kamamalu and R.P. 7834, L.C. Aw. 7114-B, Ap. 7 to M. Kekuaiwa;
Thence along remainder of R.P. 4475, L.C. Aw. 7713, Ap. 38 to V. Kamamalu and R.P. 7834, L.C. Aw. 7114-B, Ap. 7 to M. Kekuaiwa on a curve to the right with a radius of 70.00 feet, the chord azimuth and distance being: |
| 3. | $27^{\circ} 15'$ | 105.26 feet; | along remainder of R.P. 4475, L.C. Aw. 7713, Ap. 38 to V. Kamamalu and R.P. 7834, L.C. Aw. 7114-B, Ap. 7 to M. Kekuaiwa; |
| 4. | $76^{\circ} 00'$ | 337.33 feet | Thence along remainder of R.P. 4475, L.C. Aw. 7713, Ap. 38 to V. Kamamalu and R.P. 7834, L.C. Aw. 7114-B, Ap. 7 to M. Kekuaiwa on a curve to the left with a radius of 10.00 feet, the chord azimuth and distance being: |
| 5. | $348^{\circ} 20'$ | 19.98 feet; | Thence along the Northeast side of Kuakini Street Extension on a curve to the right with a radius of 185.00 feet, the chord azimuth and distance being: |
| 6. | $101^{\circ} 08' 37"$ | 129.44 feet; | Thence along remainder of R.P. 4475, L.C. Aw. 7713, Ap. 38 to V. Kamamalu and R.P. 7834, L.C. Aw. 7114-B, Ap. 7 to M. Kekuaiwa on a curve to the left with a radius of 50.00 feet, the chord azimuth and distance being: |
| 7. | $278^{\circ} 48' 37"$ | 38.77 feet; | along remainder of R.P. 4475, L.C. Aw. 7713, Ap. 38 to V. Kamamalu and R.P. 7834, L.C. Aw. 7114-B, Ap. 7 to M. Kekuaiwa; |
| 8. | $256^{\circ} 00'$ | 419.59 feet | Thence along remainder of R.P. 4475, L.C. Aw. 7713, Ap. 38 to V. Kamamalu and R.P. 7834, L.C. Aw. 7114-B, Ap. 7 to M. Kekuaiwa on a curve to the left with a radius of 50.00 feet, the chord azimuth and distance being: |
| 9. | $207^{\circ} 15'$ | 75.18 feet; | along remainder of R.P. 4475, L.C. Aw. 7713, Ap. 38 to V. Kamamalu and R.P. 7834, L.C. Aw. 7114-B, Ap. 7 to M. Kekuaiwa; |
| 10. | $158^{\circ} 30'$ | 81.54 feet | Thence along remainder of R.P. 4475, L.C. Aw. 7713, Ap. 38 to V. Kamamalu and R.P. |

11. 112° 44' 42.99 feet;
 12. 246° 58' 56.82 feet

7834, L.C. Aw. 7114-B, Ap. 7 to M. Kekuaiwa on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being:

along the Southeast side of Hala Drive to the point of beginning and containing an area of 14,444 square feet.

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

(Approved April 26, 1993.)

ACT 77

S.B. NO. 879

A Bill for an Act Relating to the Retirement of University of Hawaii Football Coaches.

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

SECTION 1. The legislature finds that the achievements of any major university's athletic program contribute greatly to the overall excellence of the institution. To achieve a successful athletic program, coaches are usually viewed as a variable factor and thus are often short-term employees.

The legislature also finds that the full-time coaches at the University of Hawaii are members of the employees' retirement system. Coaches who became state employees after June 30, 1984 are noncontributory members who are not entitled to retirement benefits unless they have ten or more years of service. Many coaches at the college level do not remain at one institution for ten or more years.

In response to this peculiar situation, in the college football field, for example, a nationwide retirement trust has been established to provide a viable retirement plan for coaches who may change employers more than once and may not remain with one employer long enough to receive optimal benefits. The legislature recognizes that coaching is a highly stressful occupation which requires extraordinarily dedicated and committed persons. It would be unfortunate if a coach, after rendering eight years of devoted service to the State and moving on to a program in another state for better career opportunities, is not eligible for retirement benefits for his service in Hawaii because the system's vesting requirement is ten years. The legislature believes that this service should not go unrewarded.

The legislature further finds that the University of Hawaii is permitted, under chapter 303, Hawaii Revised Statutes, to enter into agreements with employees to purchase annuity contracts and to provide for the withholding of premiums from the employee's salary. The purpose of this Act is to provide University of Hawaii football coaches with better options in planning for retirement.

SECTION 2. Chapter 303, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§303- Participation in qualified football coaches pension plan. The University of Hawaii, on behalf of any of its football coaches, may enter into a written agreement with any association of football coaches with a qualified coaches plan under the Employee Retirement Income Security Act of 1974, as amended, for the purpose of enabling its football coaches to participate in the association's

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qualified pension plan. The University of Hawaii may withhold sums from a participating football coach's salary and pay those sums directly to the qualified coaches plan if withholding and payment are required under the plan."

SECTION 3. Section 303-2, Hawaii Revised Statutes, is amended to read as follows:

"§303-2 Contract for purchase of annuity. The department of education and the University of Hawaii [may], on behalf of any employee of [their] the respective institutions, may enter into a written agreement with any such employee[,] to purchase for the employee an annuity contract from an insurer who holds a certificate of authority under section [431-82.] 431-3-201 or who offers an annuity contract qualified under section 401(k) of the Internal Revenue Code, as amended, which provides a nationwide retirement trust for a group of college or university football coaches who, due to the nature of their jobs, change employers frequently."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved April 27, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 78

H.B. NO. 16

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 286-52, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Within twenty calendar days thereafter, the transferee shall forward both the certificate of ownership so indorsed and the certificate of registration to the director of finance who shall file the same. Whenever a transferee fails to comply with these provisions, the director of finance shall charge a fee of [\$5,] \$50, in addition to the fee provided in section 286-51, for a new certificate of ownership."

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

SECTION 3. This Act shall take effect upon approval.

(Approved April 27, 1993.)

ACT 79

H.B. NO. 232

A Bill for an Act Relating to Precious and Semiprecious Metal.

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

SECTION 1. Section 486M-1, Hawaii Revised Statutes, is amended by amending the definition of "precious or semiprecious metal" to read as follows:

"Precious or semiprecious metal" means any of the less common and more valuable metals, including but not limited to gold, silver, platinum, and alloys thereof, without regard to their fineness, [and includes] but excludes bullion and bullion type coins and bars."

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 27, 1993.)

ACT 80

H.B. NO. 1669

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 by amending subsection (a) to read as follows:

"(a) 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] Waikaea canals, Kauai."

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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 upon its approval.

(Approved April 27, 1993.)

ACT 81

H.B. NO. 1673

A Bill for an Act Relating to Public Lands.

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

SECTION 1. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§171- Unencumbered public lands; penalty. Any person violating any of the rules regulating unencumbered public lands adopted by the department pursuant to this chapter shall be guilty of a violation and upon conviction thereof shall be fined not more than \$500 for each offense.”

SECTION 2. Section 171-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Unencumbered public lands” means any lands defined as public lands by section 171-2 and which have not been:

- (1) Set aside for any purpose, by statute, executive order, or other means to a governmental agency; or
- (2) Encumbered by lease, license, permit, easement, or other document issued by the department.

Unencumbered public lands include, but are not limited to, beach and coastal areas, submerged lands, and mountainous nonforest reserve, wildlife, or park areas.”

SECTION 3. New statutory material is underscored.¹

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

(Approved April 27, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 82

H.B. NO. 1702

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,] Forty inches or less, the weight imposed shall not exceed twenty-two thousand five hundred[s]¹ pounds.
 - (B) [At least forty-two inches but less than six] More than forty inches but not more than eight 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:

$$W = 500 (LN/(N-1) + 12N + 36)$$

when the distance between the first and last axles of the group under consideration is [at least six] over eight 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, and

N = Number of axles in group under consideration[.];

[Provided] 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] and 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 axles of the group under consideration is [at least six] over eight 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[.] and

L = Distance in feet between the extremes of any group of two or more consecutive axles, to the nearest foot[.]; [Provided] provided also 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

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- 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-two thousand five hundred pounds. For the purpose of this section, axles placed in the same transverse plane [which are closer than forty-two] and are spaced forty inches or less apart, 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 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 April 27, 1993.)

Note

1. So in original.

ACT 83

H.B. NO. 1754

A Bill for an Act Relating to Child Health Supervision Services.

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

SECTION 1. Section 431:10A-115.5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Child health supervision services shall include twelve visits at approximately the following intervals: birth; two months; four months; six months; nine months; twelve months; fifteen months; eighteen months; two years; three years; four years; and five years. Services to be covered at each visit shall include a history, physical examination, developmental assessment, anticipatory guidance, [and appropriate] immunizations, and laboratory tests, in keeping with prevailing medical standards. For purposes of this subsection, the term "prevailing medical standards" means the recommendations of the Immunizations Practices Advisory Committee of the U.S. Department of Health and Human Services and the American Academy of Pediatrics; provided that in the event that the recommendations of

the committee and the academy differ, the department of health shall determine which recommendation shall apply.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section[.], except that the limitations authorized by this subsection shall not apply to immunizations recommended by the Immunizations Practices Advisory Committee of the U.S. Department of Health and Human Services and the American Academy of Pediatrics; provided that in the event that the recommendations of the committee and the academy differ, the department of health shall determine which recommendation shall apply. ”

SECTION 2. Section 431:10A-206.5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Child health supervision services shall include twelve visits at approximately the following intervals: birth; two months; four months; six months; nine months; twelve months; fifteen months; eighteen months; two years; three years; four years; and five years. Services to be covered at each visit shall include a history, physical examination, developmental assessment, anticipatory guidance, [and appropriate] immunizations, and laboratory tests, in keeping with prevailing medical standards. For purposes of this subsection, the term “prevailing medical standards” means the recommendations of the Immunizations Practices Advisory Committee of the U.S. Department of Health and Human Services and the American Academy of Pediatrics; provided that in the event that the recommendations of the committee and the academy differ, the department of health shall determine which recommendation shall apply.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section[.], except that the limitations authorized by this subsection shall not apply to immunizations recommended by the Immunizations Practices Advisory Committee of the U.S. Department of Health and Human Services and the American Academy of Pediatrics; provided that in the event that the recommendations of the committee and the academy differ, the department of health shall determine which recommendation shall apply. ”

SECTION 3. Section 432:1-602.5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Child health supervision services shall include twelve visits at approximately the following intervals: birth; two months; four months; six months; nine months; twelve months; fifteen months; eighteen months; two years; three years; four years; and five years. Services to be covered at each visit shall include a history, physical examination, developmental assessment, anticipatory guidance, [and appropriate] immunizations, and laboratory tests, in keeping with prevailing medical standards. For purposes of this subsection, the term “prevailing medical standards” means the recommendations of the Immunizations Practices Advisory Committee of the U.S. Department of Health and Human Services and the American Academy of Pediatrics; provided that in the event that the recommendations of the committee and the academy differ, the department of health shall determine which recommendation shall apply.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section[.], except that the limitations authorized by this subsection shall not apply to immunizations recommended by the Immunizations Practices Advisory Committee of the U.S. Depart-

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ment of Health and Human Services and the American Academy of Pediatrics; provided that in the event that the recommendations of the committee and the academy differ, the department of health shall determine which recommendation shall apply."

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 27, 1993.)

ACT 84

H.B. NO. 1851

A Bill for an Act Relating to Feed.

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

SECTION 1. The legislature finds that maintaining the economic viability of the livestock industry in the State is important to the continuation of a healthy agricultural industry in Hawaii. Although feed is one of the largest expense items in the production of livestock in the State, the legislature has little ability to control this rising cost to local livestock producers. The State can, however, control the feed-related costs of feed brand registration and feed inspection fees that either are paid directly by livestock producers or are passed on to them.

The purpose of this Act is to make the feed registration process more efficient and less costly and to allow the board of agriculture to set the inspection fee.

SECTION 2. Section 144-3, Hawaii Revised Statutes, is amended to read as follows:

“§144-3 Registration. (a) Each commercial feed shall be registered before being distributed in this State or imported; provided that custom-mixed feed and toll-milled feed are exempt from registration. The application for registration shall be submitted on forms furnished by the department and[, if the department so requests, shall] also shall be accompanied by a label or other printed matter describing the product. All registrations shall [be effective for one year beginning January 1 and expiring December 31 of each year.] remain in effect until withdrawn in writing by the registrant or cancelled pursuant to this chapter or rules of the department. A registration fee shall be paid to the department for each commercial feed registered. [Each registration may be renewed for one year.] Upon approval by the department a copy of the registration shall be furnished to the applicant. The application shall include the information required by section 144-4(a).

(b) A distributor or importer shall not be required to register any brand of commercial feed which is already registered under this chapter by another person.

(c) [Changes] Minor changes in the guarantee of either chemical or ingredient composition of a registered commercial feed may be permitted[:] as provided in department rules; provided there is satisfactory evidence that the changes would not result in a lowering of the feeding value of the product for the purpose for which designed.

(d) The department may refuse registration of any application not in compliance with this chapter or rules adopted under this chapter and may cancel any registration subsequently found not to be in compliance with this chapter[;] or rules adopted under this chapter; provided that no registration shall be refused or canceled until the registrant [shall have] has been given an opportunity to be heard before the department and to amend the registrant's application in order to comply with the requirements of this chapter."

SECTION 3. Section 144-5, Hawaii Revised Statutes, is amended by amending its title and subsections (a) and (b) to read as follows:

"§144-5 Inspection fees[.] and tonnage reports. (a) There shall be paid to the department for all feeds distributed or imported for use or sale in this State, inspection fees [to reasonably cover the costs of inspecting, sampling, and analyzing feed for the requirements of this chapter and rules adopted pursuant to it;] as established by the rules of the department; provided that the department shall exempt by rule the payment of inspection fees on feed not subject to specific requirements of this chapter[; and provided further that a distributor shall pay an annual registration fee for each brand of feed distributed in individual packages of ten pounds or less, and the distributor of the brand shall not be required to pay the inspection fee on the packages of the brand so registered.] or rules adopted under this chapter. All inspection fees collected shall be deposited with the state director of finance to the credit of the general fund.

(b) Every person, except as hereinafter provided, who distributes or imports for use or sale feed in this State shall:

- (1) File, not later than the last day of January, last day of April, last day of July, and last day of October of each year, quarterly statements, setting forth the number of net tons of feeds distributed or imported in this State during the preceding calendar quarter; and upon filing the statements shall pay the inspection fees. Inspection fees which are due and owing and have not been remitted to the department within thirty days following the due date shall have a penalty fee in an amount established by rules of the department added to the amount due when payment is finally made. The assessment of this penalty fee shall not prevent the department from taking other action as provided in this chapter. When more than one person is involved in the distribution or importation of a feed, the person who imports or distributes to the consumer is responsible for reporting the tonnage and paying the inspection fee unless the report and payment have been made by a prior distributor, seller, or exporter of the feed. The forms used for the quarterly statements shall be provided by the department.
- (2) Keep such records as may be necessary or required by rules of the department to indicate accurately the tonnage of feed distributed in this State, and the department shall have the right to examine the records to verify statements of tonnage. Failure to make accurate statement of tonnage or to pay the inspection fee or to comply as provided herein shall constitute sufficient cause for the cancellation of all registrations on file for the distributor[.] and the imposition of administrative penalties."

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

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

(Approved April 27, 1993.)

ACT 85

H.B. NO. 1975

A Bill for an Act Relating to Governmental Assistance.

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 Article VII, Section 9, of the Constitution of the State of Hawaii.

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 1992-1993 to be exceeded by \$800,000, or 0.026 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 3. The legislature finds that a loan for the Trustee or Receiver or Other Responsible Operator of Hamakua Sugar Company from a private lending institution can only be secured through the use of a guaranty from the State.

The legislature finds and declares that the issuance of the loan guaranties under this Act is in the public interest and for the public health, safety, and general welfare of the State.

The purpose of this Act is to assist the Trustee or Receiver or Other Responsible Operator of Hamakua Sugar Company to continue the operations of Hamakua Sugar Company by authorizing the department of agriculture to guaranty loans from private lending institutions.

SECTION 4. Loans guarantied by the department. (a) The department of agriculture may guaranty loans made by private lending institutions to the Trustee or Receiver or Other Responsible Operator of Hamakua Sugar Company subject to the condition that each loan guarantied shall be approved by the board of agriculture under such terms and conditions that it may prescribe.

(b) The outstanding balance on all loans guarantied under this section shall not exceed \$8,000,000.

(c) The terms for the loan guaranties shall be determined by the board of agriculture.

SECTION 5. Pursuant to Article VII, Section 13, clause 8, of the State Constitution that states: "Bonds constituting instruments of indebtedness under which the State or any political subdivision incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded under this section; provided that the State or political subdivision shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State or political subdivision as provided by law," the legislature finds and declares that the amount presented below satisfies the reasonable reserve requirement of the State Constitution.

SECTION 6. There is created a trust fund in the state treasury to be known as the Hamakua Sugar Loan Guaranty trust fund which shall serve as the reserve for all loans guaranteed under this Act.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$800,000, for fiscal year 1992-1993, to be deposited into the Hamakua Sugar Loan Guaranty trust fund. This sum shall, when and if necessary, be expended by the department of agriculture for the purposes of this Act.

SECTION 8. 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 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 1992-93 and estimated for each fiscal year from 1993-94 to 1996-97, is as follows:

Fiscal Year	Net General Fund Revenues	Debt Limit
1989-90	\$2,418,273,831	
1990-91	2,654,706,036	
1991-92	2,672,238,596	
1992-93	2,773,716,000	\$477,621,805
1993-94	2,779,671,000	499,540,739
1994-95	2,910,923,000	507,246,912
1995-96	3,099,945,000	521,965,783
1996-97	(not applicable)	542,083,238

For fiscal years 1992-93, 1993-94, 1994-95, 1995-96, and 1996-97 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 1989-90, 1990-91, and 1991-1992 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, 1992, dated December 1, 1992. The net general fund revenues for fiscal years 1992-93 to 1995-96 are estimates, based on general fund revenue estimates made as of April 15, 1993, 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. (A) 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, 1993, is as follows for fiscal year 1993-94 to fiscal year 2000-2001:

Fiscal Year	Principal and Interest
1993-94	\$300,563,903
1994-95	305,191,838
1995-96	341,582,157
1996-97	311,408,865
1997-98	301,461,742
1998-99	270,457,448
1999-2000	261,792,602
2000-2001	194,951,353

the department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit generally continues to decline each year from fiscal year 2001-2002 to fiscal year 2012-2013 when the final installment of \$18,275,000 shall be due and payable.

(B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$202,000,000, part of which is excludable in determining the power to the State to issue obligation bonds, pursuant to Article VII, Section 13, of the State Constitution.

- (4) Amount of authorized and unissued general obligation bonds and guarantees. (A) As calculated from the state comptroller's bond fund report as of October 31, 1992, adjusted for Act 209, Session Laws of Hawaii 1992, the issuance of \$120,000,000 taxable general obligation bonds dated October 1, 1992, Series BY, \$200,000,000 general obligation bonds dated October 1, 1992, Series BZ, \$90,000,000 general obligation bonds dated February 1, 1993, Series CA, the total amount of authorized but issued general obligation bonds, is \$394,203,844. The total amount of general obligation bonds authorized by Act 35,

Session Laws of Hawaii 1993, is \$136,500,000. The total amount of general obligation bonds previously authorized and unissued is \$530,703,844.

(B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State has incurred a contingent liability as a guarantor is \$202,000,000, part of which pursuant to Article VII, Section 13, of the State Constitution, is excludable in determining the power to the State to issue general obligation bonds. The total amount of guaranties authorized by this Act is \$8,000,000 and are herein validated. The total amount of guaranties previously authorized and the guaranties validated by this Act is \$210,000,000.

- (5) Proposed general obligation bond issuance. As reported by the department of budget and finance for fiscal years 1992-93, 1993-94, 1994-95, 1995-96, and 1996-97, the State proposes to issue \$136,500,000 during the remainder of fiscal year 1992-93 and \$100,000,000 semi-annually in each of fiscal years 1993-94, 1994-95, 1995-96, and 1996-97. 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 bond issuance to meet the requirements of authorized and unissued bonds, as adjusted. From the schedule reported in paragraph (5), the total amount of general obligation bonds which the State proposes to issue during the period of March 1, 1993, to June 30, 1996, is \$736,500,000. The total amount of \$736,500,000 which is proposed to be issued prior to July 1, 1996, is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, the total amount of which is \$530,703,844 as reported in paragraph (4). The \$736,500,000 proposed to be issued during the period of March 1, 1993, to June 30, 1996, and the \$200,000,000 during the fiscal year 1996-97 will be sufficient to meet requirements of \$530,703,844 with the remaining amount being applied to such other appropriations as the legislature may subsequently authorize.
- (7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds.
 - (A) General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds which are excludable from the amount of each proposed bond issuance because:
 - (i) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in the budget will be implemented and will require the application of proceeds from a particular bond issue; and
 - (ii) 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, as reported in paragraph (3) herein, the average proportion of principal and interest which is excludable each year from calculation against the debt limit is 8.4 per cent for the ten years from fiscal year 1993-94 to fiscal year 2002-2003. For the purpose of this declaration, the assumption is made that five per cent of each bond issue will be excludable from the debt limit, an assumption which the director finds to be reasonable and conservative.

(B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor can be excluded but only to the extent the principal amount of such guaranties does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of this paragraph (7) and provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law. According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under Article VII, Section 13, of the State Constitution for the fiscal years 1993-94, 1994-95, 1995-96, and 1996-97 are as follows:

Fiscal year	Total amount of General Obligation Bonds not otherwise excluded by Article VII, section 13 of the State Constitution
1993-94	\$ 2,574,780,933
1994-95	2,585,794,970
1995-96	2,535,215,924
1996-97	2,498,159,186

Based on the foregoing and based on the assumption that the full amount of guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven per cent of the average amount set forth in the last column of the above table and for which reserve funds have been or will have been established as heretofore provided by, can be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to Article VII, Section 13, of the State Constitution will become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such assumptions and on the determination in paragraph (8), the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which

must be included in determining the power of the State to issue general obligation bonds is \$29,605,857.

- (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 7.0 per cent for the remainder of fiscal year 1992-93 and 7.5 per cent for the ensuing fiscal years, as reported by the department of budget and finance, 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 guarantees authorized by this Act, will not cause the debt limit to be exceeded at the time of each bond issuance:

Time of Issue and Amount of Issue to be Counted Against Debt Limit	Debt Limit at Time of Issuance	Greatest Amount & Year of Principal & Interest
2nd issue remainder FY 1992-93 \$136,500,000	\$477,621,805	\$388,328,014 (1995-96)
1st half FY 1993-94 \$95,000,000	\$499,540,739	\$395,453,014 (1995-96)
2nd half FY 1993-94 \$95,000,000	\$499,540,739	\$402,578,014 (1995-96)
1st half FY 1994-95 \$95,000,000	\$507,246,912	\$409,703,014 (1995-96)
2nd half FY 1994-95 \$95,000,000	\$507,246,912	\$416,828,014 (1995-96)
1st half FY 1995-96 \$95,000,000	\$521,965,783	\$403,614,697 (1996-97)
2nd half FY 1995-96 \$95,000,000	\$521,965,783	\$410,739,697 (1996-97)

- (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 9. The legislature finds the bases 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

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be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 10. 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 11. This Act shall take effect upon its approval.

(Approved April 29, 1993.)

ACT 86

H.B. NO. 51

A Bill for an Act Relating to Fishing.

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

SECTION 1. Section 188-30.2, Hawaii Revised Statutes, is amended to read as follows:

"[§188-30.2] Fishing with gill nets[.] prohibited. (a) It is unlawful for any person engaged in gill net fishing to:

- (1) [leave] Leave the person's net unattended without visually inspecting the net every two hours and releasing or removing any undersized, illegal, or unwanted catch; or
- (2) Leave the net in the water for a period of more than [twelve] four hours[.] in any twenty-four hour period.

(b) For purposes of this section, "gill net" means a curtainlike net suspended in the water with mesh openings large enough to permit only the heads of the fish to pass through, ensnaring them around the gills when they attempt to escape."

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 7, 1993.)

ACT 87

H.B. NO. 214

A Bill for an Act Relating to Penal Responsibility and Fitness to Proceed.

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

SECTION 1. Section 704-406, Hawaii Revised Statutes, is amended to read as follows:

"§704-406 Effect of finding of unfitness to proceed. (1) If the court determines that the defendant lacks fitness to proceed, the proceeding against [him] the defendant shall be suspended, except as provided in section 704-407, and the court shall commit [him] the defendant to the custody of the director of health to be

placed in an appropriate institution for detention, care, and treatment. If the court is satisfied that the defendant may be released on condition without danger to [himself] the defendant or to the person or property of others, the court shall order [his] the defendant's release, which shall continue at the discretion of the court, on [such] conditions [as] the court determines necessary. A copy of the report filed pursuant to section 704-404 shall be attached to the order of commitment or order of conditional release.

(2) When the court, on its own motion or upon the application of the director of health, the prosecuting attorney, or the defendant, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the penal proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment or conditional release of the defendant that it would be unjust to resume the proceeding, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the involuntary hospitalization or conditional release of persons suffering from physical or mental disease, disorder, or defect, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment or order the defendant to be released on [such] conditions [as] the court determines necessary.

(3) Within a reasonable time following any commitment under subsection (1), the director of health shall report to the court on¹ whether [or not] the defendant presents a substantial likelihood of becoming fit to proceed in the future. The court, in addition, may appoint a panel of three qualified examiners to make a report. If, following [such] a report, the court determines that the defendant [will] probably will remain unfit to proceed, the court may dismiss the charge and release the defendant or subject the defendant to involuntary civil commitment procedures.

(4) Within a reasonable time following any conditional release under subsection (1), the court shall appoint a panel of three qualified examiners to report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. If, following the report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and release the defendant or subject the defendant to involuntary civil commitment procedures."

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 7, 1993.)

Note

1. Should be underscored.

ACT 88

H.B. NO. 569

A Bill for an Act Relating to Divorce Proceedings.

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

SECTION 1. Chapter 580, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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"§580- Battered spouses; exemption from mediation in divorce proceedings. In contested divorce proceedings involving allegations of spousal abuse, the court may excuse a party from participating in any component of any mediation program, if the court determines that it is in the best interest of the party to be excused."

SECTION 2. New statutory material is underscored.¹

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

(Approved May 7, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 89

H.B. NO. 790

A Bill for an Act Relating to Probate.

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] gross value of the decedent's estate in this State does not exceed [\$5,000;] \$20,000; except that a motor vehicle registered in the decedent's name may be transferred regardless of value pursuant to this section;
- (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 May 7, 1993.)

ACT 90

H.B. NO. 892

A Bill for an Act Relating to Conservation Law.

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

SECTION 1. Section 183-41, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Enforcement. The department shall prescribe administrative procedures and provide personnel it deems necessary for the enforcement of this section, and any zoning rule adopted in accordance therewith. These rules may be enforced by court order at the suit of the department or of the owner or owners of real estate directly affected by the rules. Any person violating this section or any rule adopted in accordance with this section shall be fined [no] not more than [\$500] \$2,000 in addition to administrative costs and damages to state land. After written notification from the department, wilful violation of this section may incur an additional fine of up to [\$500] \$2,000 per day for each day in which the violation persists.”

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 7, 1993.)

ACT 91

H.B. NO. 1134

A Bill for an Act Relating to Coastal Zone Management.

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

SECTION 1. The legislature finds that the problems of maintaining the quality of Hawaii's coastal areas are unique. Because the State is made up of small islands, it is difficult to distinguish coastal from noncoastal activities. Human and nonhuman activities conducted in inland forest reserves can result in erosion of public lands, nonpoint source water pollution, and siltation in coastal areas.

The legislature finds that there is an urgent need to develop a comprehensive approach to protecting Hawaii's coastal areas from nonpoint source pollution, siltation, and erosion. Extending the inland boundaries by removing the existing exclusion of state forest reserves from the coastal zone management area would allow for greater control over these impacts.

SECTION 2. Section 205A-1, Hawaii Revised Statutes, is amended by amending the definition of “coastal zone management area” to read:

““Coastal zone management area” means all [marine waters extending from the upper reaches of the washes¹ of the waves on shore seaward] lands of the State and the area extending seaward from the shoreline to the limit of the State's police power and management authority, including the United States territorial sea [and all land areas excluding those lands designated as state forest reserves];”

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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 7, 1993.)

Note

1. Prior to amendment "wash" appeared here.

ACT 92

H.B. NO. 1585

A Bill for an Act Relating to Poultry Inspection.

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

SECTION 1. Section 161-2, Hawaii Revised Statutes, is amended to read as follows:

"[§161-2] Findings and declaration of necessity. It is hereby declared that the poultry industry is a paramount agricultural industry of this State and the production and marketing of poultry is an enterprise that is of significant importance to the economy of the State and to the health of the consuming public. It is essential to the public health and welfare of consumers that they be protected by assuring that poultry or poultry products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded poultry or poultry products are injurious to the public health and welfare, destroy markets for wholesome, not adulterated, and properly labeled and packaged poultry or poultry products, and result in sundry losses to poultry producers and processors of poultry as well as injury to consumers. The unwholesome, adulterated, mislabeled, or deceptively packaged articles can be sold at lower prices and compete unfairly with the wholesome, not adulterated, and properly labeled and packaged articles, to the detriment of consumers and the public generally. It is hereby found that regulation by the department of agriculture and cooperation by this State with the United States Department of Agriculture as contemplated by this chapter is appropriate to protect the health and welfare of consumers and otherwise to effectuate the purposes of this chapter.

The 90th Congress enacted Public Law 90-492, entitled "The Wholesome Poultry Products Act" [which is now redesignated as the "Poultry Products Inspection Act"]. The Poultry Products Inspection Act is intended to protect the consuming public from adulterated or misbranded poultry or poultry products and to assist the states in their efforts to accomplish this objective. The Poultry Products Inspection Act authorizes the United States Secretary of Agriculture to furnish financial and related assistance to states for the administration of poultry inspection programs which conform to established federal standards up to fifty per cent of the estimated total cost of the cooperative program. Hawaii's poultry industry is not subject to poultry inspection law or rules and regulations that meet the minimum federal requirement in this area. [The State in] In order to qualify for the cooperative program, the State must demonstrate "progressive action" by July 18, 1970; and, further, all physical facilities must be upgraded in accordance with the established federal standards by July 18, 1971. Failure to comply with the standards prescribed by the Poultry Products Inspection Act will result in [Federal] federal control of the poultry or poultry processing industries of the State. Accordingly, the State of Hawaii deems it to be in the interest of the State's public health and

welfare to take such steps as are necessary to qualify for federal financial and related assistance for the administration of a poultry inspection program which conforms to federal standards prescribed in the [Federal] Poultry Products Inspection Act."

SECTION 2. Section 161-3, Hawaii Revised Statutes, is amended to read as follows:

"[§161-3] Definitions.

[“Animal food manufacturer” means any person engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses, or parts or products of the carcasses, of poultry.

“Board” means the board of agriculture or its designated representative.

“Department” means the department of agriculture.

“Person” means any individual, firm, corporation, association, or partnership, or any organized group of persons whether incorporated or not.

“Wholesaler” means any person who buys or sells poultry or poultry products in trade channels other than retail. For the purpose of this chapter a wholesaler who also has retail operations will be deemed to be a wholesaler.

“Intrastate commerce” means commerce within this State.

“Licensee” means a person issued a license under part III of this chapter.

“Poultry” means any domesticated bird, whether live or dead.

“Poultry product” means any poultry carcass or part thereof, or any food product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the board from definition as poultry food product under such conditions as the board may prescribe to assure that the poultry ingredients in the products are not adulterated and that the products are not represented as poultry products.

“Poultry broker” means any person engaged in the business of buying or selling poultry or poultry products on commission, or who otherwise negotiates the purchase or sale or exchange of such poultry or poultry product other than for the person’s own account or as an employee of another person, firm or corporation.

“Renderer” means any person engaged in the business of rendering carcasses or parts or products of the carcasses of poultry, except rendering conducted under inspection or exemption under this chapter.

“Capable of use as human food” shall apply to any carcass, or part or product of a carcass, of any poultry, unless it is denatured or otherwise identified as required by regulations prescribed by the board to deter its use as human food, or it is naturally inedible by humans.

“Processed” means slaughtered, canned, boned, salted, stuffed, rendered, cut up, or otherwise manufactured or prepared.

“Adulterated” shall apply to any poultry or poultry product under one or more of the following circumstances:

- (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, the poultry or poultry product shall not be considered adulterated under this clause if the quantity of substance in or on such poultry or poultry product does not ordinarily render it injurious to health.
- (2) (A) If it bears or contains by reason of administration of any substance to the live poultry or otherwise any added poisonous or added deleterious substance other than one which is:

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- (i) a pesticide chemical in or on a raw agricultural commodity; or
 - (ii) a food additive; or
 - (iii) a color additive which may, in the judgment of the board make the poultry or poultry product unfit for human consumption.
- (B) If it is, in whole or in part, a raw agricultural commodity and the commodity bears or contains a pesticide chemical which is unsafe under the Federal Food, Drug, and Cosmetic Act or the Hawaii Food, Drug and Cosmetic Act.
- (C) If it bears or contains any food additive which is unsafe under the Federal Food, Drug, and Cosmetic Act or the Hawaii Food, Drug and Cosmetic Act.
- (D) If it bears or contains any color additive which is unsafe under the Federal Food, Drug, and Cosmetic Act or the Hawaii Food, Drug, and Cosmetic Act; provided that poultry or poultry products which are not adulterated under clauses (B), (C), or (D) shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such poultry or poultry products are prohibited by regulations of the board in establishments at which official inspection is maintained under part IV of this chapter.
- (3) If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food.
- (4) If it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.
- (5) If it is, in whole or in part, a product of poultry which has died otherwise than by slaughter.
- (6) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.
- (7) If it has been intentionally or unintentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect under the Federal Food, Drug, and Cosmetic Act or the Hawaii Food, Drug, and Cosmetic Act.
- (8) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part thereof; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

"Misbranded" shall apply to any poultry or poultry product under one or more of the following circumstances:

- (1) If its labeling is false or misleading in any particular;
- (2) If it is offered for sale under the name of another food;
- (3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;
- (4) If its container is so made, formed, or filled as to be misleading;
- (5) If in a package or other container unless it bears a label showing (A) the name and place of business of the manufacturer, packer, or distrib-

- utor; and (B) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that under clause (B) of this subparagraph (5), reasonable variations may be permitted, and exemptions as to small packages may be established, by regulations prescribed by the board;
- (6) If any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuously, as compared with other words, statements, designs, or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
 - (7) If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the board under this chapter unless (A) it conforms to such definition and standard, and (B) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food;
 - (8) If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the board under this chapter, and it falls below the applicable standard of fill of container, unless its label bears, in such manner and form that the regulations specify, a statement that it falls below such standard;
 - (9) If it is not subject to the provisions of subparagraph (7), unless its label bears (A) the common or usual name of the food, if any, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient, except that spices, flavorings, and colorings may when authorized by the board be designated as spices, flavoring, and colorings without naming each; provided that to the extent that compliance with the requirements of clause (B) of this subparagraph (9) is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the board;
 - (10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the board, after consultation with the United States Secretary of Agriculture, determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses;
 - (11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that to the extent that compliance with the requirements of this subparagraph (11) is impracticable, exemptions shall be established by regulations promulgated by the board; or
 - (12) If it fails to bear, directly thereon or on its container, as the board may by regulations prescribe, the inspection legend and, unrestricted by any of the foregoing, such other information as the board may require in regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the poultry or poultry products in a wholesome condition.

"State" means State of Hawaii.

"Container" or **"package"** includes any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover.

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“Label” means a display of written, printed, or graphic matter upon the immediate container, not including package liners, of any poultry or poultry product.

“Labeling” means all labels and other written, printed, or graphic matter (1) upon any poultry or poultry product or any of its containers or wrappers, or (2) accompanying such poultry or poultry product.

“Federal Poultry Products Inspection Act” means the Act so entitled approved August 28, 1957, (Public Law 85-172; 71 Stat. 441, USC 451 et seq.), as amended by the Wholesome Poultry Products Act (Public Law 90-492; 82 Stat. 791), and Acts amendatory thereof or supplementary thereto.

“Federal Food, Drug, and Cosmetic Act” means the Act so entitled, approved June 25, 1938 (Public Law 75-765; 52 Stat. 1040), and Acts amendatory thereof or supplementary thereto.

“Pesticide chemical”, “food additive”, “color additive”, and “raw agricultural commodity” shall have the same meanings for purposes of this chapter as under the Federal Food, Drug and Cosmetic Act.

“Official mark” means the official inspection legend or any other symbol prescribed by regulations of the board to identify the status of any poultry or poultry product under this chapter.

“Official inspection legend” means any symbol prescribed by regulations of the board showing that poultry or poultry products were inspected and passed in accordance with this chapter.

“Official certificate” means any certificate prescribed by regulations of the board for issuance by veterinarians, meat inspectors, or other persons performing official functions under this chapter.

“Official device” means any device described or authorized by the board for use in applying any official mark.

“Official establishment” means any establishment as determined by the board at which inspection of the slaughter of poultry, or the processing of poultry products, is maintained under this chapter.

“Reinspection” means the re-examination of poultry and poultry products previously inspected and the inspection of poultry and poultry products during processing.]

“Adulterated” includes any poultry or poultry product in one or more of the following circumstances:

- (1) It bears or contains any poisonous or deleterious substance which may render it injurious to health; provided that if the substance is not an added substance, the poultry or poultry product shall not be considered adulterated if the quantity of the substance in or on the poultry or poultry product does not ordinarily render it injurious to health.
- (2) (A) It bears or contains by reason of administering any substance to the live poultry, including any added poisonous or added deleterious substance other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive, which may make the poultry or poultry product unfit for human consumption in the judgment of the board.
(B) It is, in whole or in part, a raw agricultural commodity and the commodity bears or contains a pesticide chemical which is unsafe under the Federal Food, Drug, and Cosmetic Act or chapter 328.
(C) It bears or contains any food additive which is unsafe under the Federal Food, Drug, and Cosmetic Act or chapter 328.

- (D) It bears or contains any color additive which is unsafe under the Federal Food, Drug, and Cosmetic Act or chapter 328.
- (E) Poultry or poultry products which are not adulterated under (B), (C) or (D) shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on the poultry or poultry products is prohibited by the board in establishments subject to inspection under part IV.
- (3) It consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthy, unwholesome, or unfit for human consumption.
- (4) It has been prepared, packed, or held under unsanitary conditions, whereby it may be contaminated with filth or whereby it may be injurious to health.
- (5) It is, in whole or in part, a product of poultry that has died other than by slaughter.
- (6) Its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health.
- (7) It has been intentionally or unintentionally subjected to radiation unless the use of the radiation was in conformity with both the Federal Food, Drug, and Cosmetic Act and chapter 328.
- (8) Any valuable constituent has been in whole or in part omitted or abstracted from it; or any substance has been substituted wholly or in part for it; or damage or inferiority has been concealed in any manner; or any substance has been added or mixed into it or packed with it so as to increase its bulk or weight, or to reduce its quality or strength, or to make it appear better or of greater value than it is.

“Board” means the board of agriculture or its designated representative.

“Capable of use as human food” refers to any poultry carcass, poultry part, or poultry product unless it is denatured or identified by rule to deter its use as human food, or unless it is naturally inedible by humans.

“Commercial carrier” means any person owning, controlling, operating, or managing any vehicle, directly or indirectly, for public use in the transportation by land, water, or air of goods or passengers for compensation.

“Department” means the department of agriculture.

“Federal Food, Drug, and Cosmetic Act” means the federal Act so entitled, approved June 25, 1938 (Pub. L. 75-675; 52 Stat. 1040; 21 U.S.C.A. Section 301 et seq.), and all amendments to that Act.

“Intrastate commerce” means commerce within this State.

“Label” means a display of written, printed, or graphic matter upon the immediate container, not including package liners, of any poultry or poultry product.

“Labeling” means all labels and other written, printed, or graphic matter (1) upon any poultry or poultry product or any of its containers or wrappers, or (2) accompanying any poultry or poultry product.

“Licensee” means a person issued a license under part III of this chapter.

“Misbranded” includes any poultry or poultry product in one or more of the following circumstances:

- (1) Its labeling is false or misleading in any particular.
- (2) It is offered for sale under the name of another food.
- (3) It is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word “imitation” and immediately thereafter the name of the food imitated.
- (4) Its container is made, formed, or filled as to be misleading.
- (5) It is in a package or other container unless it bears a label showing:

- (A) The name and place of business of the manufacturer, packer, or distributor; and
- (B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that the board may permit reasonable variations, and may prescribe exemptions for small packages.
- (6) Any word, statement, or other information required by this chapter to appear on the label or other labeling is not prominently placed with adequate conspicuity, as compared with other words, statements, designs, or devices, on the labeling, and in adequate terms to be likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- (7) It purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by the board under this chapter, unless (A) it conforms to that definition and standard, and (B) its label bears the name of the food specified in the definition and standard, and bears the common names of optional ingredients, as may be required, other than spices, flavoring, and coloring, present in the food.
- (8) It purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by the board under this chapter, and it falls below the applicable standard of fill of container, unless its label bears, in the manner and form that the board prescribes, a statement that it falls below that standard.
- (9) It is not subject to item (7), unless its label bears, (A) the common or usual name of the food, if any, and, (B) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient, except that spices, flavorings, and colorings may, when authorized by the board, be designated as spices, flavorings, and colorings without naming each; provided that to the extent that compliance with this requirement is impracticable, or results in deception or unfair competition, exemptions shall be established by the board.
- (10) It purports to be or is represented for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties that the board, after consultation with the United States Secretary of Agriculture, determines to be and prescribes as necessary, in order to fully inform purchasers as to its value for such uses.
- (11) It bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that to the extent that compliance with this requirement is impracticable, exemptions shall be established by the board.
- (12) It fails to bear, directly on it or on its container, as the board may prescribe, the inspection legend and, unrestricted by any of the foregoing, other information as the board may require, to assure that the labeling will not be false or misleading and that the public will be informed of the manner of handling required to maintain the poultry or poultry products in a wholesome condition.

"Official certificate" means any certificate prescribed by the board for issuance by veterinarians, inspectors, or other persons performing official functions under this chapter.

"Official device" means any device prescribed or authorized by the board for use in applying any official mark.

"Official inspection legend" means any symbol prescribed by the board showing that poultry or poultry products were inspected and passed in accordance with this chapter.

"Official mark" means the official inspection legend or any other symbol prescribed by the board to identify the status of any poultry or poultry product under this chapter.

"Person" means any individual, firm, corporation, association, partnership, or any organized group of persons whether incorporated or not.

"Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity" shall have the same meanings for purposes of this chapter as under the Federal Food, Drug, and Cosmetic Act.

"Poultry" means any domesticated bird, whether live or dead.

"Poultry broker" means any person engaged in the business of buying or selling poultry or poultry products on commission, or who otherwise negotiates the purchase, sale, or exchange of poultry or poultry products other than for the person's own account or as an employee of another person, firm, or corporation.

"Poultry product" means any poultry carcass or part thereof, or any food product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the board from definition as poultry food product under conditions as the board may prescribe to assure that the poultry ingredients in the products are not adulterated and that the products are not represented as poultry products.

"Poultry Products Inspection Act" means the federal Act so entitled, approved August 28, 1957 (Pub. L. 85-172; 71 Stat. 441; 21 U.S.C.A. Section 451 et seq.), as amended by the Wholesome Poultry Products Act (Pub. L. 90-492; 82 Stat. 791; 21 U.S.C.A. Section 451 et seq.), and all amendments to those Acts.

"Processed" means slaughtered, canned, boned, salted, stuffed, rendered, cut up, or manufactured or prepared.

"Reinspection" means the re-examination of poultry and poultry products previously inspected and the inspection of poultry and poultry products during processing.

"Renderer" means any person engaged in the business of rendering carcasses, parts, or products of the carcasses of poultry, except rendering conducted under inspection or exemption under this chapter.

"State" means the State of Hawaii.

"Veterinarian" means the state veterinarian or any of the veterinarian's duly authorized representatives.

"Wholesaler" means any person who buys or sells poultry or poultry products in trade channels other than retail. For the purpose of this chapter, a wholesaler who also has retail operations will be deemed to be a wholesaler."

SECTION 3. Section 161-11, Hawaii Revised Statutes, is amended to read as follows:

"[§]161-11[] Certificate of sanitation. The board may issue certificates of sanitation to poultry slaughterhouses[,] and poultry processors[,] which are subject to [the provisions of] this chapter and which meet minimum sanitary specifications required for (1) the slaughtering of poultry for use of the poultry or poultry products in intrastate commerce, and (2) for the processing, transporting, storing, and handling of [such] poultry or poultry products in intrastate commerce. The board may [promulgate and] adopt rules [and regulations,] subject to chapter 91[,] governing the minimum sanitary specifications [required to be met in connection

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therewith] and prescribing forms, requiring reports, and providing for periodic renewals of [such certificates.] certificates of sanitation.

Notwithstanding any requirement under this chapter or the rules [and regulations promulgated hereunder] adopted under this chapter which require the renovation or upgrading of the physical facilities of poultry slaughterhouses or poultry processors in order to obtain a certificate of sanitation, the board [shall], as of July 1, 1970, shall continue to issue certificates of sanitation to poultry slaughterhouses and poultry processors [who are now in business,] now licensed by the State, and shall [otherwise call on] allow them to continue their operations; provided that the facilities of [said] the poultry slaughterhouses and poultry processors shall be sanitary and that the products which emerge from their respective operations are wholesome, not adulterated, and fit for human [and other] consumption; and provided further that upon the sale or transfer of any of the foregoing businesses, the [purchasers] person to whom the business is transferred shall be required to meet all of the requirements [provided herein] of this chapter and the rules [and regulations promulgated hereunder.] adopted under this chapter."

SECTION 4. Section 161-23, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The board, whenever it determines such action is necessary for the protection of the public, may prescribe by rules [and regulations]: (1) the styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling of any poultry or poultry products subject to this chapter; (2) definitions and standards of identity or composition for poultry or poultry products subject to this chapter and standards of fill of container for such poultry or poultry products not inconsistent with any standards established under the Federal Food, Drug, and Cosmetic Act, or under the [Federal] Poultry Products Inspection Act, and there shall be consultation between the board and the United States Secretary of Agriculture prior to the issuance of [such] the standards to avoid inconsistency between [such] those standards and the federal standards."

SECTION 5. Section 161-28, Hawaii Revised Statutes, is amended to read as follows:

"§161-28 Bribery. [Any person or any agent or employee of any person who gives, pays, or offers, directly or indirectly, to any inspector, or any other officer or employee of this State authorized to perform any of the duties prescribed by this chapter or by the rules and regulations of the board, any money or other thing of value, with intent to influence the inspector, or other officer or employee of this State in the discharge of any duty herein provided for in this chapter shall be deemed guilty of a felony, and shall upon conviction thereof, be punished by a fine not more than \$5,000 or imprisoned not more than three years, or both fine and imprisonment; and any inspector, or other officer or employee of this State authorized to perform any of the duties prescribed by this chapter who shall accept any money, gift, or other thing of value from any person engaged in intrastate commerce subject to this chapter, given with or without intent to influence the inspector's, officer's or employee's official action shall be guilty of a felony and shall, upon conviction be summarily discharged from office and shall be fined not more than \$10,000 or imprisoned not more than three years, or both fine and imprisonment.] (a) Any person or employee of any person, who gives, pays, or offers, directly or indirectly, to any inspector, or to any other officer or employee of the State authorized to perform any of the duties prescribed by this chapter or by the rules adopted by the board, any money or other thing of value, with intent to

influence the inspector or other officer or employee of this State in the discharge of any duty shall be guilty of a class C felony. The minimum fine shall be \$5,000.

(b) Any inspector or other officer or employee of this State authorized to perform any of the duties prescribed by this chapter who accepts any money, gift, or other thing of value from any person, officer, agent, or employee of any person, given with intent to influence the state inspector's, officer's, or employee's official actions, shall be discharged from office and shall be guilty of a class C felony. The minimum fine shall be \$1,000.

(c) Notwithstanding subsection (a), any inspector or other officer or employee of this State authorized to perform any of the duties prescribed by this chapter who receives or accepts from any person who is engaged in intrastate commerce and is subject to this chapter any gift, money, or other thing of value given with or without intent to influence the inspector's, officer's, or employee's official actions, shall be discharged from office and shall be guilty of a class C felony. The minimum fine shall be \$1,000."

SECTION 6. Section 161-29, Hawaii Revised Statutes, is amended to read as follows:

"[[§161-29]] Exemptions. (a) The provisions of this chapter requiring inspection of the slaughtering of poultry and the processing of carcasses, parts thereof, and poultry products at establishments conducting [such] those operations shall not apply:

- (1) To the slaughtering by any person of poultry of the person's own raising, and the processing by the person of the carcasses, parts thereof, and poultry products of [such] the poultry exclusively for use by the person and members of the person's household and the person's nonpaying guests and employees; [nor]
- (2) To the slaughtering or processing of poultry or poultry products which are wholesome, unadulterated, and fit for human consumption by a producer on the producer's own premises and of the producer's own raising for sale to a consumer and received directly by the consumer on the producer's premises for exclusive use by [said] the consumer and members of the consumer's household, the consumer's nonpaying guests, and employees; [nor] or
- (3) To the custom slaughter by any person of poultry delivered by the owner thereof or the owner's agent for [such] slaughter, and the processing by [such] the slaughterer of the carcasses, parts thereof, and poultry product of [such] the poultry, exclusively for use in the household of [such] the owner, by the owner, and members of the owner's household and the owner's nonpaying guests and employees; provided that [such] the custom slaughterer does not engage in the business of buying or selling any carcasses, parts thereof, of poultry or poultry products, capable of use [in] as human [foods;] food; and provided further that [such] the slaughter of poultry and processing of poultry or poultry products shall be conducted in accordance with [such] the sanitary conditions, record keeping, registration, and disease control provisions [as the board may by regulation prescribe.] specified by rule.

(b) The transportation by commercial carrier of carcasses, parts thereof, poultry, or poultry products produced without inspection under [the provisions of paragraphs (a)(1), (a)(2), and (a)(3) of this section] subsection (a) is prohibited, except under permit issued by the board.

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(c) The provisions of this chapter requiring inspection of poultry or poultry products shall not apply to operations of a type traditionally and usually conducted at retail stores or restaurants, when conducted at any retail store or restaurant [store or restaurant] or similar retail-type establishment for sale at [such] the establishments [and] in normal retail quantities or service of [such] poultry or poultry products to consumers; provided that:

- (1) The poultry or poultry products have been inspected and passed previously in compliance with this chapter; and [provided that the]
- (2) The processing, handling, and storage of poultry or poultry products shall be conducted in accordance with sanitary conditions [as] the board may [by regulation prescribe.] specify by rule.

(d) In order to accomplish the objectives of this chapter, the board may by [regulations] rule exempt [such other] operations which the board determines would best be exempted to further the purposes of this chapter, to the extent that [such] the exemptions conform to the [Federal] Poultry Products Inspection Act and the [federal] regulations thereunder.

(e) [The board may by order suspend or terminate any exemptions under this section with respect to any person whenever it finds that such action will aid in effectuating the purposes of this chapter.] A person conducting custom exempt operations shall register with the board as a custom exempt operator under this subsection and shall obtain a permit for exemption from the board to conduct those operations. In its discretion, the board may refuse, withdraw, or modify any permit for exemption under this subsection if it determines that the action is necessary to effectuate the purposes of this chapter.

(f) The adulteration and misbranding provisions of this chapter, other than the requirement of the inspection legend, shall apply to poultry or poultry products which are not required to be inspected under this section."

SECTION 7. Section 161-36, Hawaii Revised Statutes, is amended to read as follows:

"[§161-36] Records; subject to examination. (a) For the enforcement of this chapter, the following classes of persons shall keep [such] records, as the board by [regulations] rule may [prescribe,] require, that will fully and correctly disclose all transactions; and all persons subject to [such] these requirements shall, at all reasonable times, upon notice by an authorized representative of the board, afford [such] that representative [and] or any authorized representative of the United States Secretary of Agriculture [accompanied by the representative of the board] access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all [such] those records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

- (1) Any person that is engaged, in or for intrastate commerce, in the business of slaughtering any poultry or processing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any [such] poultry[,] capable of use as human [food,] or animal [food,] food, including any person operating under the exemptions in section 161-29(a)(2) or (3);
- (2) Any person that is engaged in the business of buying or selling, as poultry brokers, wholesalers, or otherwise, or transporting in intrastate commerce, or storing in or for [such] intrastate commerce, any carcasses, or parts or products of carcasses, of any [such] poultry;
- (3) Any person that is engaged in business, in or for intrastate commerce, as renderers, or engaged in the business of buying, selling, or transporting, in [such] intrastate commerce, any dead, dying, disabled, or

diseased poultry, or parts of the carcasses of any such poultry that died otherwise than by slaughter.

(b) Any record required to be maintained by this section shall be maintained for [such] the period [of time as the board may by regulations prescribe.] specified by rule."

SECTION 8. Section 161-37, Hawaii Revised Statutes, is amended to read as follows:

"[§161-37[]] [Inspection and sanitary requirements; sale; transportation.] Articles not intended for human food. [The board may provide by regulations for inspection and sanitary requirements under part IV of] Inspection shall not be made under this chapter at any establishment for the slaughter of poultry or the processing of any carcasses or parts or products of poultry, which are not intended for use as human food, [but such] provided that the poultry or poultry products shall, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, be denatured or otherwise identified as [prescribed] specified by [regulations of the board] rule to deter their use for human food. No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses, parts thereof, poultry, or poultry products of any [such] poultry[,] which are not intended for use as human food unless they are denatured or otherwise identified as required by the [regulations of] rules adopted by the board or are naturally inedible by humans."

SECTION 9. Section 161-38, Hawaii Revised Statutes, is amended to read as follows:

"[§161-38[]] Dead, dying, disabled, or diseased poultry. No person engaged in the business of buying, selling, or transporting in intrastate commerce[,] dead, dying, disabled, or diseased poultry, or any parts [of the] or carcasses of any poultry that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation[,] in [such] intrastate commerce[,] any dead, dying, disabled, or diseased poultry or parts [of the] or carcasses of any [such] poultry that died otherwise than by slaughter, unless [such] the transaction or transportation is made in accordance with [such regulations as] rules that the board may [prescribe] adopt to assure that [such] the poultry, or the unwholesome parts or products thereof, will be prevented from being used for human food purposes."

SECTION 10. Section 161-41, Hawaii Revised Statutes, is amended to read as follows:

"[§161-41[]] Inspection; compensation. All poultry slaughtered by any slaughterhouse licensed under this part shall be inspected by [poultry] inspectors authorized by the department, both before and after slaughtering, and no [such] poultry shall be slaughtered, or after slaughter, be sold, transported, offered for sale or transportation, or received for transportation, in intrastate commerce unless the slaughtering or the use after slaughtering in intrastate commerce is approved by [poultry inspectors.] an inspector.

The management of any processing establishment[,] or slaughterhouse, or the owner of any poultry to be slaughtered requiring the services of [a poultry] an inspector in [any work day, or on Sundays,] excess of eight consecutive hours on any workday, or in excess of forty hours in any work week, or [other] on legal holidays, shall pay to the department [of agriculture] for any overtime inspection

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services[,] the current state overtime rate for each [man-hour] hour of work performed by the inspector.

The department [of agriculture] shall pay the inspector, or inspectors, for all overtime inspection services performed, provided that the party requesting or requiring the overtime inspection services shall, sufficiently in advance of the overtime period, arrange with the department for the services."

SECTION 11. Section 161-47, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Whenever any carcass, part of a carcass, poultry, or poultry product or any product exempted from the definition of a poultry product is found by any authorized representative of the board upon any premises where it is held for purposes of, or during or after distribution in, intrastate commerce and there is reason to believe that any poultry or poultry product is adulterated or misbranded and is capable of use as human food, or that it has not been inspected in violation of this chapter or of the [Federal Wholesome] Poultry Products Inspection Act or [the Hawaii or Federal Food, Drug, and Cosmetic Act.] chapter 328, or that the poultry or poultry product has been or is intended to be distributed in violation of any [such provisions,] of those laws, it may be detained by the representative for a period not to exceed twenty days, pending action or notification of any federal authorities having jurisdiction over the poultry or poultry product, and shall not be moved by any person from the place at which it is located when detained until released by the representative. All official marks may be required by the representative to be removed from the poultry or poultry product before it is released unless it appears to the satisfaction of the board that the poultry or poultry product is eligible to retain the marks.

(b) Any carcass, part of a carcass, poultry, or poultry product, or any dead, dying, disabled, or diseased poultry that is being transported in intrastate commerce or is held for sale in the State after being so transported and that (1) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter, or (2) is capable of use as human food and is adulterated or misbranded, or (3) in any other way is in violation of this chapter, shall be liable to be proceeded against and seized and condemned, at any time, in any [circuit] court within the jurisdiction of which the poultry or poultry product is found. If the poultry or poultry product is condemned, it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees and storage and other proper expenses, shall be paid into the general fund of the State, but the poultry or poultry product shall not be sold contrary to this chapter or the [Federal Wholesome] Poultry Products Inspection Act or the Hawaii or Federal Food, Drug, and Cosmetic Act; provided that upon the execution and delivery of a good and sufficient bond issued on the condition that the poultry or poultry product shall not be sold or otherwise disposed of contrary to this chapter or the laws of the United States, the court may direct that the poultry or poultry product be delivered to the owner thereof subject to supervision by authorized representatives of the board as is necessary to insure compliance with the applicable laws. When a decree of condemnation is entered against the poultry or poultry product and it is released under bond, or destroyed, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the poultry or poultry product."

SECTION 12. Section 161-47, Hawaii Revised Statutes, is amended by amending subsections (d), (e), and (f) to read as follows:

"(d) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person engaged in the performance of official duties under this chapter shall be [fined not more than \$5,000 or imprisoned not more than three years, or both.] guilty of a class C felony.

(e) Any person who violates any provision of this chapter for which no other criminal penalty is provided by this chapter shall be [fined not more than \$1,000 or imprisoned not more than one year, or both,] guilty of a misdemeanor; but if the violation involves intent to defraud or any distribution or attempted distribution of poultry or poultry product that is adulterated, the person shall be [fined not more than \$10,000 or imprisoned not more than three years, or both;] guilty of a class C felony; provided that no person shall be subject to penalties under this section for receiving for transportation any poultry or poultry product in violation of this chapter if the receipt was made in good faith, unless the person refuses to furnish on request of a representative of the board the name and address of the person from whom the poultry or poultry product was received and copies of all documents, if [any there be,] there are any, pertaining to the delivery of the poultry or poultry product.

(f) Nothing in this chapter shall be construed as requiring the board to issue citations and summons or to report for prosecution or injunction proceedings for minor violations of this chapter whenever it believes that the public interest will be adequately served by a suitable written notice of warning. In determining whether the public interest will be adequately served by a written notice of warning, the board shall take into account, among other factors:

- (1) The compliance history of the persons responsible;
- (2) The magnitude of the violation;
- (3) Whether compliance with this chapter would likely result from that notice; and
- (4) Whether the violation is of a minor or technical nature. "

SECTION 13. Section 161-48, Hawaii Revised Statutes, is amended to read as follows:

"§161-48 Construction. The licenses required by this chapter shall be in addition to any other licenses required by law.

The requirements of this chapter shall apply to persons, establishments, poultry, and poultry products regulated under the [Federal] Poultry Products Inspection Act only to the extent provided for in section 23 of the [Federal] Act.

The operation and effect of and provision of this chapter conferring a general power shall not be impaired or qualified by the granting of a specific power or powers. Each provision of this chapter is intended to be construed liberally in light of the declaration stated in section 161-2.

If any of the [foregoing] provisions of this chapter are in conflict with any statute, [regulation] rule, or ordinance, [the provisions of] this chapter shall take precedence."

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 15. This Act shall take effect upon its approval.

(Approved May 7, 1993.)

Note

- I. So in original.

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. Section 235-12, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For taxable years beginning after December 31, 1989, each individual or 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 as follows:

- (1) For wind energy systems that are installed and placed in service after December 31, 1989, but before January 1, 1999, the credit shall be twenty per cent of the actual cost;
- (2) For solar energy systems that are installed and placed in service after December 31, 1989, but before January 1, 1999, on new and existing single family residential buildings, the credit shall be in an amount not to exceed thirty-five per cent or \$1,750, whichever is less, of the actual cost of the solar energy system;
- (3) For solar energy systems that are installed and placed in service after December 31, 1989, but before January 1, 1999, on new and existing multiunit buildings used primarily for residential purposes, the credit shall be in an amount not to exceed thirty-five per cent or \$350 per building unit, whichever is less, of the actual cost of the solar energy system; provided that a [registered,] licensed professional engineer [approves] reviews the design of the system and [certifies] provides a written opinion that the [solar design provides] system, in accordance with recognized engineering practice, is designed to provide not less than eighty per cent of the daily annual average hot water needs of all the occupants of the building;
- (4) For solar energy systems that are installed and placed in service after December 31, 1989, but before January 1, 1999, in new and existing hotel, commercial, and industrial facilities, the credit shall be in an amount not to exceed thirty-five per cent of the actual cost of the solar energy system;
- (5) For heat pumps that are installed and placed in service after December 31, 1989, but before January 1, 1999, in new and existing single-family residential buildings, the credit shall be in an amount not to exceed twenty per cent or \$400, whichever is less, of the actual cost of the heat pump;
- (6) For heat pumps that are installed and placed in service after December 31, 1989, but before January 1, 1999, in new and existing multiunit buildings used primarily for residential purposes, the credit shall be in an amount not to exceed twenty per cent or \$200 per building unit, whichever is less, of the actual cost of the heat pump; provided that a [registered,] licensed professional engineer [approves] reviews the design of the system and [certifies] provides a written opinion that the [heat pump provides] system, in accordance with recognized engineering practice, is designed to provide not less than ninety per cent of the daily annual average hot water needs of all of the occupants of the building;

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- (7) For heat pumps that are installed and placed in service after December 31, 1989, but before January 1, 1999, in new and existing hotel, commercial, and industrial facilities, the credit shall be in an amount not to exceed twenty per cent of the actual cost of the heat pump; and
- (8) For ice storage systems that are installed and placed in service after December 31, 1990, but before January 1, 1999, the credit shall be in an amount not to exceed fifty per cent of the actual cost of the ice storage system.

The per unit of actual cost of a solar energy system or heat pump referred to in subsection (b)(3) and (6) shall be determined by multiplying the actual cost of the solar energy system or heat pump installed and placed in service in the multiunit building by a fraction, the numerator being the total square feet of that unit in the multiunit building, and the denominator being the total square feet of all the units in the multiunit building."

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 7, 1993.)

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S.B. NO. 122

A Bill for an Act Relating to Osteopathy.

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

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The following chapters and sections are hereby repealed effective December 31, 1993:

- (1) Chapter 452 (Board of Massage)
- (2) Chapter 453 (Board of Medical Examiners)
- [3] Chapter 460 (Board of Osteopathic Examiners)
- [4] (3) Chapter 461J (Board of Physical Therapy)
- [5] (4) Chapter 463E (Podiatry)
- [6] (5) Chapter 514E (Time Sharing Plans)
- [7] (6) Sections 804-61 and 804-62"

SECTION 2. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(i) The following chapters are hereby repealed effective December 31, 1999:

- (1) Chapter 436E (Board of Acupuncture)
- (2) Chapter 442 (Board of Chiropractic Examiners)
- (3) Chapter 444 (Contractors License Board)
- (4) Chapter 448E (Board of Electricians and Plumbers)
- (5) Chapter 460 (Board of Osteopathic Examiners)
- [5] (6) Chapter 464 (Professional Engineers, Architects, Surveyors and Landscape Architects)

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- [(6)] (7) Chapter 465 (Board of Psychology)
- [(7)] (8) Chapter 468E (Speech Pathology and Audiology)"

SECTION 3. Section 460-4, Hawaii Revised Statutes, is amended to read as follows:

"§460-4 Board; appointment, powers, and duties. The governor shall appoint a board of osteopathic examiners, consisting of five persons, three of whom shall be osteopathic physicians and surgeons licensed under the laws of this State and two of whom shall be public members. As used in this chapter, "board" means the board of osteopathic examiners.

The board shall examine all applicants for licenses to practice as osteopathic physicians and surgeons. In lieu of the board's written examination, the board will accept the [national board of examiners for osteopathic physicians and surgeons (NBEOPS)] examination of the National Board of Osteopathic Medical Examiners with scores deemed satisfactory by the board and who otherwise meets the requirements of the laws of this State. The board, in its discretion, may accept the federation licensing examination (FLEX) in lieu of its own examination. Subject to chapter 91 and with the approval of the governor and the director of commerce and consumer affairs, the board may adopt, amend, and repeal all necessary rules relating to the enforcement of this chapter and not inconsistent therewith."

SECTION 4. Section 460-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The board, in its discretion, may accept the examination of the [national board of examiners for osteopathic physicians and surgeons] National Board of Osteopathic Medical Examiners in lieu of its own examination and may issue a license to an applicant presenting a certificate from the [national board of examiners for osteopathic physicians and surgeons] National Board of Osteopathic Medical Examiners upon the basis of the examination of the national board; provided the applicant otherwise meets the requirements of the laws of this State."

SECTION 5. Section 460-12, Hawaii Revised Statutes, is amended to read as follows:

"§460-12 Refusal, suspension, and revocation of license. In addition to any other grounds for denial of license or disciplinary action authorized by law, the board may refuse to issue a license, or may suspend or revoke any license at any time in a proceeding before the board for any cause authorized by law, including but not limited to the following:

- (1) Procuring or aiding or abetting in procuring a criminal abortion;
- (2) Employing any person to solicit patients for one's self;
- [3] Wilfully betraying a professional secret;
- (4) [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 osteopathic practice or business;
- [(5)] [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;

- [(6)] (5) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
- [(7)] (6) Procuring a license through fraud, misrepresentation, or deceit or knowingly permitting an unlicensed person to perform activities requiring a license;
- [(8)] (7) Professional misconduct, gross carelessness, or manifest incapacity in the practice of osteopathy;
- [(9)] (8) Negligence or incompetence, including, but not limited to, the consistent use of medical service in osteopathy which is inappropriate or unnecessary;
- [(10)] (9) Conduct or practice contrary to recognized standards of ethics of the osteopathic profession as adopted by the American Osteopathic Association;
- [(11)] (10) Revocation, suspension, or other disciplinary action by another state of a license or certificate for reasons as provided in this section;
- [(12)] (11) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of an osteopathic physician and surgeon, notwithstanding any statutory provision to the contrary;
- [(13)] (12) Violation of chapter 329, the uniform controlled substances law, or any rule adopted thereunder; or
- [(14)] (13) Failure to report to the board by a licensee, in writing, any disciplinary decision issued in another jurisdiction against the licensee within thirty days after the disciplinary decision is issued, or failure to report to the board by an applicant, in writing, any disciplinary decision issued in another jurisdiction against the applicant prior to the application or during the pendency of the application."

SECTION 5.¹ Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6.¹ This Act shall take effect upon its approval.

(Approved May 7, 1993.)

Note

1. So in original.

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S.B. NO. 192

A Bill for an Act Relating to Medical Claim Conciliation.

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

SECTION 1. Section 671-19, Hawaii Revised Statutes, is amended to read as follows:

"§671-19 **Duty to cooperate; assessment of costs and fees.** It shall be the duty of every person who files a claim with the medical claim conciliation panel, every health care provider against whom such claim is made, and every insurance carrier or other person providing medical tort liability insurance for such health care provider, to cooperate with the medical claim conciliation panel for the purpose of achieving a prompt, fair, and just disposition or settlement of such

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claim, provided that such cooperation shall not prejudice the substantive rights of [said] those persons.

[After trial of such claim or after settlement of such claim after suit has been filed, any] Any party may apply to the [court in which the suit was brought] panel to have the costs of the action assessed against any party [or any insurance carrier or other person providing medical tort liability insurance to a party health care provider, or both,] for failure to cooperate with the [medical claim conciliation] panel. The [court] panel may award such costs, or a portion thereof, including attorney's fees, witness fees, including those of expert witnesses, [costs of discovery and transcribing depositions,] and [court] costs of the medical claim conciliation panel hearing to the party applying therefor.

[On application of the director of commerce and consumer affairs, the court may award as a civil penalty against any party or any insurance carrier or other person providing medical tort liability insurance to a party health care provider, or all or any combination of such persons, all or a portion of the costs and expenses of the medical claim conciliation panel attributable to a claim involving such persons, if the court finds that such person or persons failed to cooperate with the medical claim conciliation panel. Such penalty shall be payable to the general fund.]

In determining whether any person has failed to cooperate in good faith, the [court] panel shall consider, but is not limited to, the following:

- (1) The attendance of the persons at the hearing of the medical claim conciliation panel;
- (2) The extent to which representatives of parties and counsel representing parties came to panel hearings with knowledge of the claims and defenses and authority to negotiate a settlement or other disposition of the claim;
- (3) The testimony of members of the panel as to the facts of the person's participation in the panel hearing;
- (4) The extent of the person's cooperation in providing the panel with documents and testimony called for by the panel; and
- (5) The reasons advanced by the person so charged for not fully cooperating or negotiating.

The party against whom costs are awarded may appeal the award to the circuit court. The court may affirm or remand the case with instructions for further proceedings; or it may reverse or modify the award if the substantial rights of the petitioners may have been prejudiced because the award is characterized as abuse of discretion.

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 7, 1993.)

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S.B. NO. 195

A Bill for an Act Relating to Medical Torts.

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 Review by panel required; notice; presentation of claims[.]
request for a more definite statement of the claim.** (a) Effective July 1, 1976, any person or the person's representative claiming that a medical tort has been committed shall submit a statement of 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 in 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.

(b) Within five business days thereafter the panel shall give notice of the claim[,] and the statement 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] shall 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.

(c) If the statement of the claim in the notice is so vague or ambiguous that any party receiving notice of the claim cannot reasonably be required to frame a written response, the party may submit a written request to the director of commerce and consumer affairs for a more definite statement before filing the written response. Copies of the request shall be provided to the panel, the claimant, and other affected parties. The request, which shall be ex parte and stay the proceedings of the panel until notice of the director's decision is given to the panel and all parties, shall specify the defects complained of and the details desired. The director may deny, grant, or modify the request at the director's own discretion, without the necessity of a hearing, although the director may reach a decision after consulting with the panel or the claimant. The director shall provide notice of the decision to the panel, the claimant, and other affected parties. If the request is granted and the claimant fails to provide a more definite statement of the claim within five days after notice of the decision, the panel may make such order as it deems just. This subsection shall not be used as a tactic to delay the proceedings."

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 7, 1993.)

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S.B. NO. 281

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 children are greatly influenced by example and in order to promote good citizenship and facilitate positive role models, children should be encouraged to participate in the electoral process in suitable fashion. The purpose of this Act is to make children feel they are a part of

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every election by permitting them to accompany a parent or adult into the voting booth.

SECTION 2. Section 11-132, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) Admission within the polling place shall be limited to the following:
- (1) Election officials;
 - (2) Watchers, if any, pursuant to section 11-77;
 - (3) Candidates;
 - (4) Any voters actually engaged in voting, going to vote or returning from voting;
 - (5) Any person, designated by a voter who is physically disabled, while the person is assisting the voter; [and]
 - (6) Any person or nonvoter group authorized by the chief election officer or the clerk in county elections to observe the election at designated precincts for educational purposes provided that they conduct themselves so that they do not interfere with the election process[.]; and
 - (7) A child for the purpose of observing the voting process when accompanied by an adult who is voting provided that this activity does not disrupt or interfere with normal voting procedures.”

SECTION 3. Section 11-137, Hawaii Revised Statutes is amended to read as follows:

“**§11-137 Secrecy; removal or exhibition of ballot.** No person shall look at or ask to see the contents of the ballot or the choice of party or nonpartisan ballot of any voter, except as provided in section 11-139[,] and 11-132, nor shall any person within the polling place attempt to influence a voter in regard to whom the voter shall vote for. When a voter is in the voting booth for the purpose of voting, no other person [shall], except as provided in section 11-139[,] and 11-132, shall be allowed to enter the booth or to be in a position from which the person can observe how the voter votes.

No person shall take a ballot out of the polling place except as provided in sections 11-135 and 11-139. After voting the voter shall leave the voting booth and deliver the voter's ballot to the precinct official in charge of the ballot boxes. The precinct official shall make certain that the precinct official has received the correct ballot and no other and then shall deposit the ballot into the ballot box. No person shall look at or ask to see the contents of the unvoted ballots. If any person having received a ballot leaves the polling place without first delivering the ballot to the precinct official as provided above, or wilfully exhibits the person's ballot or the person's unvoted ballots in a special primary or primary election, except as provided in section 11-139[,] and 11-132, after the ballot has been marked, [such] the person shall forfeit the person's right to vote, and the [chairman] chairperson of the precinct officials shall cause a record to be made of the proceeding.”

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 7, 1993.)

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S.B. NO. 353

A Bill for an Act Relating to Pensioners Bonus.

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

SECTION 1. Act 339, Session Laws of Hawaii 1990, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect on July 1, 1990, and shall be repealed as of June 30, 1995; provided that section 88-11, Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the approval of this Act[.]; and provided further that the repeal and reenactment shall not affect entitlement to benefits accruing to any retiree, pensioner, or beneficiary pursuant to this Act prior to July 1, 1995.”

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 7, 1993.)

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S.B. NO. 355

A Bill for an Act Relating to the Employees' Retirement System.

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

SECTION 1. The purpose of this Act is to provide parity to noncontributory members of the employees' retirement system who purchased service prior to July 1, 1989, and who were not eligible for refunds under Act 141, Session Laws of Hawaii 1990.

SECTION 2. Noncontributory members who purchased service after June 30, 1984, but prior to July 1, 1989, shall be refunded the cost of purchases made by December 31, 1993.

SECTION 3. This Act shall take effect on July 1, 1993.

(Approved May 7, 1993.)

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S.B. NO. 1181

A Bill for an Act Relating to Voter Registration.

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

SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“**§11- Duties of all state agencies; voter registration.** Each state agency that deals with the public shall make available to each member of the public

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eighteen years of age or older an application in the form of an affidavit for voter registration pursuant to section 11-15. The application shall be available by mail or in person depending on the manner in which the agency's services are requested by the person. The form of the application may be identical to that described and found in public telephone directories."

SECTION 2. New statutory material is underscored.¹

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

(Approved May 7, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

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S.B. NO. 1393

A Bill for an Act Relating to Parole.

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

SECTION 1. Section 353-64, Hawaii Revised Statutes, is amended to read as follows:

"§353-64 Committed persons paroled. Any committed person confined in any state correctional facility in execution of any sentence imposed upon the committed person, except in cases where the penalty of life imprisonment not subject to parole has been imposed, shall be subject to parole in manner and form as set forth in this part; provided that to be eligible for parole, the committed person, if the person is determined by the department to be suitable for participation, must have been a participant in an academic, vocational education, or prison industry program authorized by the department and must have been involved in or completed the program to the satisfaction of the department; and provided further that this precondition for parole shall not apply if the committed person is in a correctional facility where academic, vocational education, and prison industry programs or facilities are not available. A grant of parole shall not be subject to acceptance by the committed person."

SECTION 2. Section 706-670, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

"(4) Authority's decision; initial minimum term of parole. The authority shall render its decision regarding a prisoner's release on parole within a reasonable time after the parole hearing. A grant of parole shall not be subject to acceptance by the prisoner. If the authority denies parole after the hearing, it shall state its reasons in writing. A verbatim stenographic or mechanical record of the parole hearing shall be made and preserved in transcribed or untranscribed form. The authority may in its discretion order a reconsideration or rehearing of the case at any time. If parole is granted by the authority, the authority shall set the initial minimum length of the parole term."

SECTION 3. New statutory material is underscored.

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

(Approved May 7, 1993.)

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S.B. NO. 1473

A Bill for an Act Relating to Agricultural Parks.

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

SECTION 1. Section 166-3, Hawaii Revised Statutes, is amended to read as follows:

“[[§166-3]] Authority to plan, develop, and manage agricultural parks. [After June 30, 1986, the] The department of agriculture shall plan, develop, and manage agricultural parks in accordance with this chapter, on public lands set aside by the governor for use as agricultural parks pursuant to section 171-11[.]; on other lands with the approval of the board of agriculture as may be subject to a partnership agreement pursuant to sections 166-4 and 166-5; and on lands acquired by the department by way of foreclosure, voluntary surrender, or otherwise pursuant to section 155-4(12).”

SECTION 2. Section 166-5, Hawaii Revised Statutes, is amended to read as follows:

“§166-5 Joint ventures. Any agricultural park developed by the [State] department in partnership with a federal agency, a county, or a private party shall be subject to a partnership agreement approved by the board of agriculture, which agreement shall provide, at a minimum:

- (1) A determination by the board that it is in the public interest to enter into the partnership agreement;
- (2) Long-term assurance that the land will be utilized for agricultural or aquacultural purposes;
- (3) [State] Board approval of the agricultural park development plans and specifications;
- (4) [State selection] Selection and management of lessees[; in a manner approved by the board; and]
- (5) Conditions to ensure a public benefit from any state funds expended for the project.”

SECTION 3. Section 166-6, Hawaii Revised Statutes, is amended to read as follows:

“§166-6 Disposition. (a) Any provision of this chapter to the contrary notwithstanding, the board may by negotiation, drawing of lot, or public auction, directly dispose of public lands and related facilities set aside and designated for use as agricultural parks, and any other lands and facilities under the jurisdiction of the department pursuant to section 166-3 and notwithstanding chapter 171 [by negotiation, drawing of lot, or public auction]. [The] Except as provided by subsection (c), dispositions may be by lease and shall be subject to the requirements set forth in rules adopted by the board in conformity with section 166-9, and subject also to the following limitations:

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- (1) The property shall be disposed of for agricultural or aquacultural purposes only;
- (2) The lessee shall derive the major portion of the lessee's total annual income from the lessee's activities on the premises; provided that this restriction shall not apply if failure to meet the restriction results from mental or physical disability or the loss of a spouse, or if the premises are fully utilized in the production of crops or products for which the disposition was granted;
- (3) The lessee shall comply with all federal and state laws regarding environmental quality control;
- (4) The board shall determine the specific uses for which the disposition is intended; parcel the land into minimum size economic units sufficient for the intended uses; make¹ or require the lessee to make[¹, such] improvements as are required to achieve the intended uses; set the upset price or lease rent based upon fair market value for the intended use of a lot; set the term of the lease, which shall be not less than fifteen years nor more than fifty-five years, including any extension granted for mortgage lending or guarantee purposes; and establish [such] other terms and conditions as it may deem necessary, including but not limited to restrictions against alienation and provisions for withdrawal by the board;
- (5) 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; and
- (6) Any transferee, assignee, or sublessee of an agricultural park lease shall first qualify as an applicant under this chapter. For the purpose of this paragraph, any transfer, assignment, sale, or other disposition of any interest, excluding a security interest, of any legal entity which holds an agricultural park lease shall be treated as a transfer of the agricultural park lease and shall be subject to the approval of the board of agriculture upon [such] reasonable terms and conditions, not inconsistent with this chapter or rules of the board, which the board may deem necessary. No [such] transfer shall be approved by the board if the disposition of the stock, or assets or other interest of the legal entity would result in the failure of the entity to qualify for an agricultural park lease.

(b) The violation of any provision contained in this section shall be sufficient cause for the board, after due notice of breach or default as provided in rules adopted by the board in conformance with section 166-9, to cancel the lease and take possession of the land.

[Further, the] (c) The board of agriculture may issue easements, permits, and rights of entry covering agricultural park lands for [use] uses consistent with the purposes for which the lands were set aside [on the same terms, conditions, and restrictions applicable to the disposition of public lands as provided in chapter 171.] or are otherwise subject to the authority of the department pursuant to section 166-3.²³

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 7, 1993.)

Note

1. Prior to amendment "," appeared here.

ACT 103

S.B. NO. 1798

A Bill for an Act Relating to Geographic Information System Digital Data.

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

SECTION 1. Section 92-21, Hawaii Revised Statutes, is amended to read as follows:

"§92-21 Copies of records; other costs and fees. Except as otherwise provided by law, a copy of any government record, including any map, plan, diagram, photograph, [or] photostat, or geographic information system digital data file, which is open to the inspection of the public shall be furnished to any person applying for the same by the public officer having charge or control thereof upon the payment of the reasonable cost of reproducing such copy[, which amount]. The cost of reproducing any government record, except geographic information system digital data, shall not be less than 25 cents per page, sheet, or fraction thereof. The cost of reproducing geographic information system digital data shall be in accordance with rules adopted by the agency having charge or control of that data. Such reproduction cost shall include, but shall not be limited to, labor cost for search and actual time for reproducing, material cost, including electricity cost, equipment cost, including rental cost, cost for certification, and other related costs. All [such] fees shall be paid in by the public officer receiving or collecting the same to the state director of finance [or], the county director of finance, or to the agency or department by which the officer is employed, as government realizations."

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 7, 1993.)

ACT 104

S.B. NO. 205

A Bill for an Act Relating to Courts.

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

SECTION 1. Section 612-3, Hawaii Revised Statutes, is amended by amending the definition of "court" to read:

"Court" means the circuit and district courts of this State, and includes, when the context requires, any judge of the court. When there is an administrative judge, any administrative powers granted by this chapter may be exercised by that judge or the judge's designee, unless otherwise provided."

SECTION 2. Section 612-8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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“(c) All jurors shall be exempt from any prosecution, penalty, or fine as a result of a parking violation committed in connection with the juror appearing at court for jury duty; provided that the juror shall present any parking citation received during this time to the court clerk of the circuit court or district court or the jury pool clerk, as appropriate, who shall verify that the juror was serving on jury duty at the time the citation was received. The clerk of the circuit court or district court or the jury pool clerk, as appropriate, shall keep an attendance roll in which shall be entered each juror’s name, each date the juror was summoned and appeared for jury duty, and the date the juror was discharged from service. The supreme court shall adopt rules necessary to effect this section.”

SECTION 3. Section 635-26, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) At the trial of any cause requiring a jury[,] in any circuit or district court, the clerk of the court shall draw a jury by lot [such jury], to the number of twelve, from the box containing the names of [such] persons [as] who have been duly summoned to attend as trial jurors[,] and who are not excused from attendance[; and if]. If any of the twelve [be] are challenged and set aside, the clerk shall continue to draw by lot from the box until twelve impartial jurors are obtained, [when they] who then shall be sworn as the jurors for the trial of the cause. If so directed by the court, additional jurors shall be drawn and impaneled to sit as alternate jurors.”

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 17, 1993.)

ACT 105

S.B. NO. 638

A Bill for an Act Relating to Agricultural Cooperative Associations.

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

SECTION 1. Chapter 421, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§421- Mergers and consolidation; procedures; approval by members. (a) Unless otherwise prohibited, any association organized under this chapter may merge or consolidate with another association or with any association incorporated under the laws of another state by complying with this section or the law of the state where the surviving or new association will exist.

(b) The board or a committee selected by the board or the members shall adopt a written plan of merger or consolidation setting forth:

- (1) The names of the associations proposing to merge or consolidate;
- (2) The name of the surviving or new association;
- (3) The manner and basis of converting the stock or membership of each association into stock or membership in the surviving or new association;
- (4) The terms of the merger or consolidation;

(5) The proposed effect of the consolidation or merger on the members of the association; and

(6) For a consolidation, the articles of the new association.

(c) The board of each association shall mail a notice of the proposed merger or consolidation to each member. The notice shall contain the full text of the merger or consolidation plan and the time and place of the meeting at which the plan will be considered. An association with more than two hundred members may publish the notice as provided in section 421-21.

(d) At the meeting, a vote of the members shall be taken on the proposed plan, provided that a quorum of the members is registered as being present or represented by proxy vote at the meeting. The plan shall be approved upon receiving the affirmative vote of:

(1) Two-thirds of the votes cast; or

(2) For an association with articles or bylaws requiring more than two-thirds of the votes cast or other conditions for approval, a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

After the plan has been approved, the chair, vice-chair, president, vice-president, secretary, or assistant secretary of each association merging or consolidating shall sign the articles of merger or consolidation and a statement that the plan was adopted according to this section.

(e) The articles of merger or consolidation shall be filed with the director of commerce and consumer affairs.

(f) For a merger, the articles of the surviving cooperative or association shall be deemed amended to the extent provided in the articles of merger.

(g) The merger or consolidation shall become effective upon the effective date and time of filing the articles of merger or consolidation, or upon date and time subsequent to the filing as set forth in the articles, but not more than thirty days after being filed.

(h) The director of commerce and consumer affairs shall issue a certificate of merger or consolidation.

(i) After the effective date, the associations that are parties to the plan shall become a single association. For a merger, the surviving association shall be the association designated in the plan. For a consolidation, the new cooperative shall be the association provided for in the plan. Except for the surviving or new association, the separate existence of all cooperatives and associations that are parties to the plan shall cease on the effective date of the merger or consolidation.

The surviving or new association shall possess all of the rights and property of each of the merged or consolidated associations, and shall be responsible for all their obligations. The title to property of the merged or consolidated association shall be vested in the surviving or new association without reversion or impairment of the title caused by the merger or consolidation.

(j) The rights of creditors shall not be impaired by the merger or consolidation without the creditors' consent.

(k) The director of commerce and consumer affairs may charge a filing fee for filing the articles."

SECTION 2. Section 421-21.5, Hawaii Revised Statutes, is repealed.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved May 17, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 106

S.B. NO. 799

A Bill for an Act Relating to a Peer Assistance Program for Chemically Dependent Nurses.

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 DIVERSION PROGRAM FOR CHEMICALLY DEPENDENT NURSES"

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

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

The purpose of this chapter is to establish a diversion program for nurses with chemical dependency problems and to place the program under the auspices of the board of nursing for oversight purposes. It is the intent of this chapter that nurses who are abiding by the terms and conditions of the diversion program shall not be subject to further disciplinary action for their chemical dependency problems by the board of nursing.

§ -2 Definitions. As used in this chapter, unless the context requires otherwise:

"Board" means the board of nursing.

"Chemically dependent" means a condition wherein a nurse's cognitive, interpersonal, or psychomotor skills are affected by the habitual or intemperate use of alcohol or drugs, or both.

"Diversion program" means a program administered by professionals to assist chemically dependent nurses in obtaining evaluation, counseling, monitoring, and ongoing support for rehabilitative purposes.

"Nurse" means a person who has been or is currently licensed under chapter 457.

"Peer assistance program" means a program administered by professionals for the purpose of assisting nurses who are chemically dependent in obtaining evaluation, counseling, monitoring of progress, and ongoing support for rehabilitative purposes.

"Professional association" means a national or statewide association or committee of professionals, or a nonprofit organization operated in support of a professional association that is recognized by the board and designated to administer and monitor the diversion program.

§ -3 Diversion program. (a) There is established a diversion program for chemically dependent nurses, which shall be administered and monitored by a professional association.

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

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

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

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

(1) The executive secretary of the board; and

(2) The regulated industries complaints office;

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

§ -4 Civil immunity of third persons. (a) A person, entity, professional association, peer assistance program, diversion program, or employer who, in good faith, reports information or takes action in connection with a diversion program or peer assistance program, shall be immune from civil liability for reporting the information or taking the action.

(b) A person, entity, or organization that employs a chemically dependent nurse in connection with the nurse's rehabilitation shall be entitled to civil immunity under this section while the nurse is participating in the peer assistance program or diversion program unless the person, entity, or organization:

(1) Knows or should have known that the nurse is or was incapable of performing the job functions involved; or

(2) Fails to take reasonable precautions to monitor the nurse's job performance.

(c) Any professional association, person, entity, or employer acting under this chapter shall be presumed to have acted in good faith in actions relating to the peer assistance program or diversion program. A person alleging a lack of good faith shall have the burden of proof on this issue.

(d) The immunity provided by this section shall be in addition to other immunities provided by law and shall be liberally construed to accomplish the purpose of this chapter.

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

(b) All records of a nurse participating in a peer assistance program that do not involve reporting to, or disciplinary action by, the board of nursing or the regulated industries complaints office shall be privileged and shall not be subject to discovery or subpoena."

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

(Approved May 17, 1993.)

ACT 107

S.B. NO. 818

A Bill for an Act Relating to Financial Services Loan Companies.

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

SECTION 1. Section 36-21, Hawaii Revised Statutes, is amended to read as follows:

“§36-21 Short-term investment of state moneys. The director of finance may invest any moneys of the State which in the director's judgment are in excess of the amounts necessary for meeting the immediate requirements of the State and where in the director's judgment the action will not impede or hamper the necessary financial operations of the State in any bonds or interest-bearing notes or obligations of the State (including state director of finance's warrant notes issued pursuant to chapter 40), or of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest, or in federal land bank bonds or joint stock farm loan bonds, or in federally insured savings accounts, or in time certificates of deposit, or in certificates of deposit open account, or in repurchase agreements with federally insured banks [and], savings and loan associations[; and financial services loan companies; provided that the investments are due to mature not more than five years from the date of investment. Income derived therefrom shall be a realization of the general fund.”

SECTION 2. Section 431:6-315, Hawaii Revised Statutes, is amended to read as follows:

“§431:6-315 Banks, savings and loan associations [and], credit unions[.], and financial services loan companies. (a) An insurer may invest or deposit any of its funds in checking or savings accounts, under separate certificates of deposit, or in any other form in solvent banks or trust companies.

(b) An insurer may invest any of its funds in shares or savings accounts in solvent savings and loan associations that are insured by the [federal savings and loan insurance corporation or similar federal agency.] Federal Deposit Insurance Corporation.

(c) An insurer may deposit any of its funds in shares or share draft accounts in solvent state chartered credit unions or federally chartered credit unions.

(d) An insurer may invest or deposit any of its funds in savings accounts, in certificates of deposit, or in any other form in solvent financial services loan companies that are insured by the Federal Deposit Insurance Corporation.”

SECTION 3. Section 431:9-230, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The licensee shall, upon receipt of the funds, either:

- (1) Remit the premiums (less commissions) and return premiums received or held by the licensee to the insurers or the persons entitled to such funds; or

- (2) Maintain the funds at all times in a federally insured account with a bank [or], savings and loan association, or financial services loan company situated in Hawaii, separate from the licensee's own funds or funds held by the licensee in any other capacity, in an amount at least equal to the premiums (net of commissions) and return premiums received by such licensee and unpaid to the insurers or persons entitled to such funds.

The licensee shall not be required to maintain a separate bank account or other account for the funds of each insurer or person entitled to such funds, if and so long as the funds held for the insurer or person entitled to such funds are reasonably ascertainable from the books of account and records of the licensee. Only such additional funds as may be reasonably necessary to pay bank [or], savings and loan association, or financial services loan company charges may be commingled with the premium funds. In the event the bank [or], savings and loan association, or financial services loan company account is an interest earning account, such licensee may not retain the interest earned on such funds to the licensee's own use or benefit without the prior written consent of the insurers or persons entitled to such funds. A premium trustee account shall be designated on the records of the bank [or], savings and loan association, or financial services loan company as a "trustee account established pursuant to section 431:9-230, Hawaii Revised Statutes", or words of similar import."

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 17, 1993.)

ACT 108

S.B. NO. 1218

A Bill for an Act Relating to Natural Disasters.

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

SECTION 1. Chapter 234, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§234- Additional claims commissions. (a) Upon a declaration by the governor of a major natural disaster for the State or a portion of the State pursuant to section 234-2, the governor may establish additional natural disaster claims commissions as may be needed in each county affected, whose membership shall have the same composition, powers, and duties as claims commissions established pursuant to section 234-3.

(b) Notwithstanding section 234-3(c), where the governor determines that there is an insufficient number of persons who are willing or able to serve as members of a commission with respect to a major natural disaster, the governor may appoint any person to a claims commission established pursuant to this section regardless of whether or not the person has an interest in a claim, is related to any claimant by affinity or consanguinity within the third degree, or is employed by, is an agent of, or is connected in business with any one or more of the claimants.

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(c) Members of the commission shall serve without compensation but shall be reimbursed for any reasonable and necessary expenses incurred in the course of their duties as commissioners.

(d) Additional claims commissions established pursuant to this section shall continue in existence until all losses within the particular county are fully determined and certified with respect to the major natural disaster."

SECTION 2. Section 234-1, Hawaii Revised Statutes, is amended to read as follows:

"§234-1 Definitions. As used in this chapter[:], unless the context indicates otherwise:

[1)] "Commission" means [the] a natural disaster claims commission of a county wherein a taxpayer resides, established pursuant to [this chapter.] section 234-3, or an additional natural disaster claims commission established pursuant to section 234-.

[2)] "Director" means the state director of taxation or county director of finance, as appropriate, unless specifically indicated.

"Major natural disaster" means any natural disaster in which the governor determines that the scope of the natural disaster is such that more than five hundred claims will likely be filed pursuant to section 234-4.

[3)] "Natural disaster" means any unfortunate, severe, and extraordinary damages caused by seismic wave, tsunami, hurricane, volcanic eruption, typhoon, earthquake, or prolonged drought declared by the governor pursuant to section 234-2 to have caused losses and suffering of such character and magnitude as to require and justify rehabilitative assistance from the State.

[4)] "Tax benefit" means the product of the income tax rate of the state or federal tax law of the claimant times the amount of deduction allowed for the particular natural disaster by the commission or the federal Internal Revenue Service, as the context so requires."

SECTION 3. Section 234-2, Hawaii Revised Statutes, is amended to read as follows:

"§234-2 Governor's determination. Upon the occurrence of a natural disaster, the governor may make a determination as to whether a natural disaster has occurred and, thereafter [may], declare either a natural disaster or a major natural disaster for the entire State or any portion thereof. In making this determination the governor shall consider whether the effect on the health and living standards of a substantial number of persons and the effect on the economy of the State are of such a nature[,] as to warrant assistance from the state government."

SECTION 4. Section 234-3, Hawaii Revised Statutes, is amended to read as follows:

"§234-3 Claims commission. (a) Whenever, pursuant to section 234-2, the governor has declared that a natural disaster has occurred, there shall be established in each county affected, a natural disaster claims commission as defined in section [234-1(1),] 234-1, whose duties shall be to receive, process, and pass upon the application for tax relief by certification as provided for in this chapter.

(b) The commissions shall be composed of three members each, who may be residents of the county for which the commission is formed. At least one of the members of the commission shall be a qualified appraiser[.], or the commission

shall have available to it the services of a qualified appraiser. The members of the commission shall be appointed by the governor.

(c) No person shall sit as a member of a commission for a particular disaster in which the person has any interest, directly or indirectly, in any type of claim, or who is related to any claimant by affinity or consanguinity within the third degree, or who is employed by, is an agent of, or is connected in business with any one or more of the claimants.

(d) The commission shall continue in existence until all losses within the particular county are fully determined and certified.

(e) The members of the commission shall elect their [chairman] chairperson and [shall] serve without pay, but shall be reimbursed [by the State] for any reasonable and necessary expense incurred in the course of their duties as commissioners.

(f) The members of the commission [shall have the power to] may administer oaths or affirmations with respect to any matter falling within the scope of the duties of the commission.

(g) Each commission established pursuant to this section shall be placed within the department of taxation for [supervision.] administrative purposes."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved May 17, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 109

S.B. NO. 1486

A Bill for an Act Relating to Duration of License Sanction.

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

SECTION 1. Section 92-17, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Notwithstanding any provision to the contrary:

- (1) No license or permit shall be suspended by the board for a period exceeding [two] five years.
- (2) A person whose license or permit has been revoked by the board may not reapply for a license until the expiration of at least [two] five years from the effective date of the revocation of the license or permit.
- (3) A suspended license or permit shall be reinstated at the end of the suspension; provided that the suspension does not carry forward to the next license period, and the person satisfies all licensing requirements and conditions contained in the order of the suspension. If a suspension carries forward to the next license period, the board shall not renew the suspended license or permit during the usual renewal period. At the end of the suspension period, a person whose license or permit was suspended may be reinstated upon filing a reinstatement form provided by the board and payment of the renewal fees, satisfaction of any other renewal requirements, and fulfillment of conditions,

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if any, contained in the order of suspension. If the person fails to [apply] file for reinstatement within thirty days after the end of the suspension, the person's license or permit shall be forfeited."

SECTION 2. Section 436B-20, Hawaii Revised Statutes, is amended to read as follows:

"**§436B-20 Suspended license.** No license shall be suspended by the licensing authority for a period exceeding [two] five years. A person whose license has been suspended may apply for reinstatement of the license to the extent authorized by law and upon complete compliance with any term or condition imposed by the order of suspension. The application for reinstatement shall be accompanied by all applicable fees, including but not limited to reinstatement fees, any compliance resolution fund fees, and any recovery fund assessments."

SECTION 3. Section 436B-21, Hawaii Revised Statutes, is amended to read as follows:

"**§436B-21¹ Revoked license.** A person may apply for a new license after [two] five years from the effective date of the revocation of the license by filing an application and complying with all current requirements for new applicants. The licensing authority may waive any applicable education or examination requirements upon being satisfied that the applicant whose license has been previously revoked, has submitted documentation that the applicant has maintained equivalent knowledge, competence, and qualifications through work experience, training, or education."

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 17, 1993.)

Note

1. So in original.

ACT 110

S.B. NO. 1488

A Bill for an Act Relating to Motor Vehicle Repair Dealer and Mechanic Registration.

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

SECTION 1. Chapter 437B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§437B- Requirements for registration of repair dealer; inspection.**
(a) Before a motor vehicle repair dealer registration is granted by the board, the applicant shall establish that the applicant is or employs a full-time motor vehicle mechanic registered with the board, and has a repair facility and the equipment necessary to properly perform work in the specialty or area of certification in which registration is requested.

(b) The board may inspect an applicant's repair facility and equipment prior to registration, and may conduct subsequent inspections of repair facilities to verify continued compliance with subsection (a)."

SECTION 2. Section 437B-1, Hawaii Revised Statutes, is amended:

1. By amending the definition of "motor vehicle" to read as follows:

"“Motor vehicle” means any passenger car, truck, truck tractor, motorcycle, or motor scooter, as defined in section 286-2[.], and the integral parts thereof.”

2. By amending the definition of “repair of motor vehicles” to read as follows:

"“Repair of motor vehicles” means all maintenance of and modifications and repairs to motor vehicles, including the rebuilding or restoring of rebuilt vehicles as defined in section 286-2, but excluding repairing tires, changing tires, lubricating vehicles, installing light bulbs, batteries, windshield wiper blades, and other minor accessories, cleaning, adjusting, and replacing spark plugs, replacing [fan belts,] oil[,] and air filters, and other minor services, which the board by rule determines may be performed by persons without the skills and knowledge required of motor vehicle mechanics and helpers. No service shall be designated as minor, for purposes of this section, if the board finds that performance of the service requires mechanical expertise, has given rise to a high incidence of fraud or deceptive practices, or involves a part of the vehicle essential to its safe operation.”

SECTION 3. Section 437B-9, Hawaii Revised Statutes, is amended to read as follows:

“§437B-9 Fees: application; biennial renewals; registration[.]; restoration. (a) The fees for each application, original biennial registration, and renewal for the motor vehicle repair dealer and the motor vehicle mechanic shall be as provided in rules adopted by the department pursuant to chapter 91. At the time of registration renewal, each registrant shall submit a completed renewal application and all applicable fees, and shall demonstrate continued compliance with all registration and certification requirements.

(b) Any motor vehicle repair dealer maintaining more than one motor vehicle repair facility shall separately register each repair facility, providing the name of the full-time motor vehicle mechanic for the facility, and pay a fee for each facility.

(c) The renewal fee shall be paid to the board on or before June 30 of each odd-numbered year. Failure, neglect, or refusal of any registrant to pay the biennial renewal fee before the date shall constitute a forfeiture of the registration. Any registration may be restored within one year after the date of forfeiture upon compliance with the renewal requirements and upon written application [therefor] and the payment of the required fee plus an amount equal to fifty per cent thereof. Any registrant who fails to restore registration within one year from the date of forfeiture shall reapply for registration as a new applicant.

[d] Upon written request of a registrant, the board may place that person's active registration on an inactive status. The registrant, upon payment of the inactive registration fee, may continue inactive status for the biennial period. Failure, neglect, or refusal of any registrant on inactive status to pay the inactive registration fee shall constitute a forfeiture of the registration. The registration may be

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reactivated at any time during the biennial period by making written request to the board and by fulfilling all the requirements including payment of the appropriate fees.]”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval; provided that section 1 shall take effect on July 1, 1993.

(Approved May 17, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 111

S.B. NO. 1489

A Bill for an Act Relating to Uniform Land Sales Practices Act.

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

SECTION 1. Section 484-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Unless the method of disposition is adopted for the purpose of evasion of this chapter, or unless the subdivider files in writing with the director that this chapter shall apply to the subdivider’s subdivision, this chapter [does] shall not apply to offers or disposition¹ of an interest in land:

- (1) By a purchaser of subdivided lands for the purchaser’s own account in a single or isolated transaction;
- (2) If fewer than twenty separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve months;
- (3) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct [such] a building on the land within two years from the date of disposition; provided that the obligation to construct shall not be, directly or indirectly, transferred to or otherwise imposed upon the purchaser;
- (4) To persons who are engaged in, and are duly licensed to engage in, the business of construction of buildings for resale, or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage in, and are duly licensed to engage in, the business of construction of buildings for resale; [provided that said persons are legally obligated in writing to construct a residential, commercial, or industrial building on the subdivided land within two years from the date the person acquired an interest in the subdivided land;]
- (5) Pursuant to court order;
- (6) By any government or government agency;
- (7) As cemetery lots or interests; or
- (8) Registered as a condominium property regime pursuant to chapter 514A.”

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, 1993.)

Note

1. Prior to amendment "dispositions" appeared here.

ACT 112

S.B. NO. 1666

A Bill for an Act Relating to Pharmacy Personnel.

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

SECTION 1 Section 461-9, Hawaii Revised Statutes, is amended to read as follows:

"**§461-9 Pharmacist in charge[.]; pharmacy personnel.** (a) A registered pharmacist shall be in personal and immediate charge of the pharmacy and personnel employed in the pharmacy. Temporary absences of the registered pharmacist shall be unlawful except for periods of time and under circumstances as authorized under the rules of the board. During any absence of the registered pharmacist, prescriptions may not be filled, compounded, or received by telephone and no drugs shall be sold; provided that this shall not preclude the sale at [such] those times of things [as] that might be sold were the pharmacy a store not subject to this chapter. No person other than a registered pharmacist or [an assistant] a pharmacy intern under the registered pharmacist's immediate supervision shall fill or compound prescriptions[.] except as provided by subsection (c).

(b) No person shall practice as a pharmacy intern without having first obtained a permit from the board. The board shall adopt rules pursuant to chapter 91 defining the functions of a pharmacy intern, establishing the requirements to be met by an applicant for a pharmacy intern permit, and specifying the duration of the permit and the procedures for the immediate supervision of the pharmacy intern by a registered pharmacist.

[b)] (c) A pharmacy technician may be employed to assist the registered pharmacist under rules adopted by the board pursuant to chapter 91 that define the qualifications and functions of the pharmacy technician and provide the procedures for [their] control and supervision by a registered pharmacist."

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, 1993.)

ACT 113

H.B. NO. 321

A Bill for an Act Relating to Public Access.

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

SECTION 1. Chapter 115, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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"§115- Restricting passage over rights-of-way. A county may restrict passage over a public right-of-way by resolution or ordinance, provided that the resolution or ordinance sets forth criteria for determining that the restriction is in the public interest."

SECTION 2. New statutory material is underscored.¹

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

(Approved May 20, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 114

H.B. NO. 1061

A Bill for an Act Relating to Parking Violations Exemption for Witnesses.

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

SECTION 1. Section 621-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) All witnesses summoned or subpoenaed to appear in any circuit court, family court, or district court case shall be exempt from any prosecution, penalty, or fine as a result of a parking violation for an expired meter committed in connection with the witness appearing in court; provided that the witness shall present any parking citation received during this time to the clerk of the court and the clerk shall verify that the witness was present at the time the citation was received. The supreme court shall adopt rules necessary to effect this section."

SECTION 2. New statutory material is underscored.

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

(Approved May 20, 1993.)

ACT 115

H.B. NO. 1400

A Bill for an Act Relating to the Hawaii Administrative Procedure Act.

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

SECTION 1. Section 91-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate¹ relief is entitled to judicial review thereof under this chapter; but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo, including the right of trial by jury, provided by law. Notwithstanding any other provision of this chapter to the contrary, for the purposes of this section, the term

"person aggrieved" shall include an agency that is a party to a contested case proceeding before that agency or another agency."

SECTION 2. New statutory material is underscored.

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

(Approved May 20, 1993.)

Note

1. Should not be underscored.

ACT 116

H.B. NO. 1411

A Bill for an Act Relating to Housing.

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

SECTION 1. Section 201E-221, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following restrictions shall apply to the transfer of real property developed and sold under this chapter, whether in fee simple or leasehold:

- (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 real property, the corporation shall have the first option to purchase the real property at a price [which] that shall not exceed the sum of:
 - (A) The original cost to the purchaser, as defined in rules adopted by the corporation;
 - (B) The cost of any improvements added by the purchaser, as defined in rules adopted by the corporation; and
 - (C) Simple interest on the original cost and capital improvements to the purchaser at the rate of one per cent a year.

The corporation may purchase the real property 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 ensure that all existing mortgages, liens, and encumbrances are fully paid.

In any purchase by transfer subject to an existing mortgage, the corporation shall agree to assume and pay the seller's obligation on any first mortgage created for the purpose of enabling the purchaser to obtain funds for the purchase of the real property 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 seller 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.]:

- (i) By conveyance free and clear of all mortgages and liens; or
- (ii) By conveyance subject to existing mortgages and liens.

If the real property is conveyed in the manner provided in clause

- (i), it shall be conveyed to the corporation only after all mortgages and liens are released.

If the real property is conveyed in the manner provided in clause (ii), the corporation shall assume the seller's obligation on any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing.

The corporation's interest created by the provisions of this subsection shall constitute a lien on the real property and shall be superior to any other mortgage or lien except for (1) any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller, (2) any mortgage insured or held by a federal housing agency, and (3) any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing. The amount paid by the corporation to the seller shall be the difference, if any, between the purchase price determined by the provisions stated in subsection (a)(1)(A)-(C), and the total of the outstanding principal balances of the mortgages and liens assumed by the corporation.

- (2) A purchaser may refinance real property developed and sold under this chapter provided that the purchaser shall not refinance the real property, within ten years from the date of purchase, for an amount in excess of the purchase price as determined by the provisions of subsection (a)(1)(A)-(C).
- (3) After the end of the tenth year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the real property and sell or assign the property 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 or deferred sales price made by the corporation in the acquisition, development, construction, and sale of the real property, and any other amount expended by the corporation not counted as cost under section 201E-220 but charged to the real property by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs;
 - (C) Interest on the subsidy or deferred sales price, if applicable, and any other amount expended at the rate of seven per cent a year computed as to the subsidy or deferred sales price, if applicable, 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 the agreement of sale, of the real property; 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 real property at a price which shall not exceed the sum as computed under paragraph (1); and
 - (D) The corporation's share of appreciation in the real property as determined under rules adopted pursuant to chapter 91 when applicable.

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[(3)] (4) Notwithstanding any provision above to the contrary, pursuant to rules adopted by the corporation, the subsidy or deferred sales price described in subsection (a)(2)(B) and any interest accrued pursuant to subsection (a)(2)(C) may be paid, in part or in full, at any time."

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

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

(Approved May 20, 1993.)

ACT 117

H.B. NO. 1650

A Bill for an Act Relating to Standards for Admission to Waimano Training School and Hospital.

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

SECTION 1. Section 333F-10, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The director may under special circumstances provide respite care at Waimano training school and hospital[, not to exceed thirty calendar days per client per year,] to eligible clients in the community identified by the interdisciplinary team and whose respite care needs are documented in their individualized service plans. The director shall notify the state protection and advocacy system established pursuant to P.L. 101-496 of every instance of the use of Waimano training school and hospital for respite care. Respite care [at Waimano training school and hospital] shall be limited to individuals with developmental disabilities for whom every reasonable alternative for respite care in community settings has been exhausted and respite care is unavailable. When respite care for any client is expected to exceed thirty days per year, the director shall again notify the state protection and advocacy system. Respite is not to be considered an admission or readmission to the institution."

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 be repealed June 30, 1995.

(Approved May 20, 1993.)

ACT 118

S.B. NO. 689

A Bill for an Act Relating to Parentage.

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

SECTION 1. Section 584-20, Hawaii Revised Statutes, is amended to read as follows:

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“[§]§584-20[] Hearings and records; confidentiality. (a) Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this chapter shall be held in closed court without admittance of any person other than those persons necessary to the action or proceeding. All papers and records[,] pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the department of health or elsewhere, shall be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

(b) Upon paternity being established, the confidentiality requirement shall not extend to the judgment and all subsequently filed documents that are used in good faith for support and medical expenses, insurance, or enforcement purposes, except that the confidentiality requirement shall continue to apply to any references to a non-adjudicated alleged or presumed father.”

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 20, 1993.)

ACT 119

S.B. NO. 690

A Bill for an Act Relating to Parentage.

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

SECTION 1. Section 584-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If it appears to the satisfaction of the court that [an] the natural mother or a man alleged[, known,] or presumed [parent] to be the father of the child is a minor, the court shall also cause notice of the pendency of the proceedings and copies of the pleadings on file to be served upon the legal [parents] parent or guardian who has physical custody of the minor [as parties]. The court may appoint a guardian ad litem to represent the minor in the proceedings. If the legal [parents] parent or guardian of any such minor cannot be found, the notice may be served in such manner as the court may direct pursuant to sections 634-21 to 634-24. The court may align the parties.”

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 20, 1993.)

ACT 120

S.B. NO. 937

A Bill for an Act Relating to Telecommunications Fraud.

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

SECTION 1. The purpose of this Act is to amend the offense of telecommunications service fraud to include the unlawful selling or using of a telephone access device.

SECTION 2. Section 708-8202, Hawaii Revised Statutes, is amended to read as follows:

"§708-8202 Telecommunication service fraud in the first degree. (1) A person commits the offense of telecommunication service fraud in the first degree if the person [knowingly]:

- (a) [Distributes] Knowingly distributes written instructions or plans to make or assemble a telecommunication service device and knows that the written plans or instructions are intended to be used to make or assemble a device to obtain telecommunication service without payment of applicable charges; [or]
- (b) [Distributes] Knowingly distributes a telecommunication service device and knows that the device is intended to be used to obtain telecommunication service without payment of applicable charges[.]; or
- (c) With the intent to defraud another of the lawful charge for any telephone service that is provided for a charge or compensation:
 - (i) Sells, offers for sale, or otherwise makes available, without consent of the holder of the access device, an existing, canceled, or revoked access device;
 - (ii) Uses, without consent of the holder of the access device, an existing, canceled, or revoked access device resulting in obtaining services, the value of which exceeds \$300 in any six-month period; or
 - (iii) Engages in a scheme constituting a systematic and continuing course of conduct to obtain an existing, canceled, or revoked access device from another by false or fraudulent pretenses, representations, or promises and does obtain an existing, canceled, or revoked access device from the other person.

(2) For purposes of this section:

"Access device" means any telephone calling card number, credit card number, account number, or personal identification number that can be used to obtain telephone service.

"Holder of access device" means a person or organization to which an access device has been issued by a telephone service company.

[2] (3) Telecommunication service fraud in the first degree is a class C felony."

SECTION 3. Section 708-8203, Hawaii Revised Statutes, is amended to read as follows:

"[§708-8203] Telecommunication service fraud in the second degree.

(1) A person commits the offense of telecommunication service fraud in the second degree if the person [knowingly]:

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- (a) [Possesses] Knowingly possesses a telecommunication service device with the intent to obtain telecommunication service without payment of applicable charges; [or]
- (b) [Possesses] Knowingly possesses written instructions or plans to make or assemble a telecommunication service device with the intent to use the written plans or instructions to make or assemble a device to obtain telecommunication service without payment of applicable charges[.]; or
- (c) With the intent to defraud another of the lawful charge for any telephone service, that is provided for a charge or compensation, and without consent of the holder of the access device, uses an existing, canceled, or revoked access device resulting in obtaining services, the value of which does not exceed \$300 in any six-month period.

(2) For purposes of this section:

"Access device" means any telephone calling card number, credit card number, account number, or personal identification number that can be used to obtain telephone service.

"Holder of access device" means a person or organization to which an access device has been issued by a telephone service company.

[(2)] (3) Telecommunication service fraud in the second degree is a misdemeanor."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

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

(Approved May 20, 1993.)

ACT 121

S.B. NO. 1143

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 to read as follows:

"§103-22 Advertisement for bids required; exceptions. (a) No expenditure of public money[,] where the sum to be expended is \$15,000 or more shall be made except under contract let, after public advertising for sealed tenders, in the manner provided by law, except [salaries]:

- (1) Salaries or pay of officers or employees[, or permanent];
- (2) Permanent settlements, subsidies, or other claims or objects for which a fixed sum must be paid by law[, or for];
- (3) For other purposes which do not admit of competition[, or for];
- (4) For the purchase of materials or supplies from any other department, bureau, organization, or [municipal or] political subdivision of the federal, state, [municipal] or county governments, other than University of Hawaii bookstores[, or for]; or

(5) For the performance of public work or contracts by any other such department, bureau, organization, or [municipal or] political subdivision of the federal, state, [municipal] or county governments[, where the sum to be expended is \$8,000 or more shall be made except under contract let after public advertisement for sealed tenders, in the manner provided by law].

(b) In all cases of expenditures of public money that is more than [\$4,000] \$10,000 but less than [\$8,000,] \$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; provided that 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] \$10,000 but less than [\$15,000,] \$25,000, a call for informal bids shall be published at least once in a newspaper of general circulation printed and published within the State.

(c) In the case of public works emergency repairs and maintenance of buildings and its appurtenances including essential utilities and services, sewage facilities, and emergency roadway work where the expenditure is more than \$10,000 but less than \$25,000, the expenditure may be made without public advertisement for sealed tenders or a call for informal bids. For purposes of this subsection, "emergency" means work which clearly shows an immediate and compelling need for remedy for purposes of public health, welfare and safety, and preservation of life and property. The cause of the emergency shall be beyond the control of the State or county. A written determination of the emergency and the selection of the contractors shall be made by the head of the department or agency and shall become a part of the contract file.

(d) No expenditures for public purposes shall be so divided or parceled as to defeat or evade this section."

SECTION 2. Section 103-23, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [Expenditures in excess of such sum without so contracting may be made, with the approval of the legislative body, in the case of a county, or of the governor, in the case of the State, or of the board of regents, in the case of the University of Hawaii, or of the board of education, in the case of the department of education, or of its board or other governing authority in the case of any independent board or agency, when the expenditures are for repairs of roads, waterworks, and buildings, or, with such approval, expenditures not in excess of \$15,000 for alterations of buildings, or when the work to be done is of such a nature that its extent and character cannot be known or specified beforehand with reasonable certainty, or when no tender is received in response to an advertisement, or, with such approval, expenditures not in excess of \$15,000 for new roads, waterworks, and buildings, either on behalf of the expending division of government or for the federal or state government or any department thereof may be made, without contract, advertisement, or sealed tenders; and, in the case of such new roads, waterworks, and buildings, expenditures in excess of \$15,000 may be made, with the same approval; provided that the expending division of government shall first advertise for sealed tenders and shall keep a full and true account of the cost of the work, if done by itself, without awarding a contract therefor, and shall, upon the completion of the work, publish a full and true statement of its cost and of the amounts of rejected tenders, if any; and provided further that any governmental agency actually performing the work shall in no case receive more than the actual cost thereof.] Expenditures in the dollar amounts requiring public advertisement for sealed tenders pursuant to section 103-22 may be made without so contracting, with

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the approval of the legislative body, in the case of a county, or of the governor, in the case of the State, or of the board of regents, in the case of the University of Hawaii, or of the board of education, in the case of the department of education, or of its board or other governing authority in the case of any independent board or agency, when:

- (1) The expenditures are for repair and maintenance of roadways, waterworks, and buildings and its appurtenances including essential utilities and services and sewage facilities;
- (2) The expenditures are for alterations of buildings, provided the expenditures do not exceed \$25,000;
- (3) The expenditures are for new roads, waterworks, and buildings, provided the expenditures do not exceed \$25,000;
- (4) The work to be done is of such a nature that its extent and character cannot be known or specified beforehand with reasonable certainty; or
- (5) No tender is received in response to an advertisement.”

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 20, 1993.)

ACT 122

S.B. NO. 1214

A Bill for an Act Relating to the Uniform Simultaneous Death 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 SIMULTANEOUS DEATH ACT

§ -1 Definitions. In this chapter:

“Co-owners with right of survivorship” includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

“Governing instrument” means a deed, will, trust, insurance or annuity policy, account with P.O.D. (“payable on death”) designation, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

“Payor” means a trustee, insurer, business entity, employer, government, governmental agency, subdivision, or instrumentality, or any other person authorized or obligated by law or a governing instrument to make payments.

§ -2 Requirement of survival by one hundred twenty hours under probate code. Except as provided in section -6, if the title to property, the devolution of property, the right to elect an interest in property, or the right to exempt property, homestead, or family allowance depends upon an individual’s

survivorship of the death of another individual, an individual who is not established by clear and convincing evidence to have survived the other individual by one hundred twenty hours is deemed to have predeceased the other individual. This section does not apply if its application would result in a taking of intestate estate by the State.

§ -3 Requirement of survival by one hundred twenty hours under governing instruments. Except as provided in section -6, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by one hundred twenty hours is deemed to have predeceased the event.

§ -4 Co-owners with right of survivorship; requirement of survival by one hundred twenty hours. Except as provided in section -6, if:

- (1) It is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by one hundred twenty hours, one-half of the property passes as if one had survived by one hundred twenty hours and one-half as if the other had survived by one hundred twenty hours; and
- (2) There are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by one hundred twenty hours, the property passes in the proportion that one bears to the whole number of co-owners.

§ -5 Evidence of death or status. In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:

- (1) Death occurs when an individual is determined to be dead under section 327C-1;
- (2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent;
- (3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report;
- (4) In the absence of prima facie evidence of death under paragraph (2) or (3), the fact of death may be established by clear and convincing evidence, including circumstantial evidence;
- (5) An individual whose death is not established under the preceding paragraphs who is absent for a continuous period of five years, during which the individual has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed dead. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier;
- (6) In the absence of evidence disputing the time of death stipulated on a document described in paragraph (2) or (3), a document described in paragraph (2) or (3) that stipulates a time of death one hundred twenty hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by

clear and convincing evidence that the individual survived the other individual by one hundred twenty hours.

§ -6 Exceptions. This chapter does not apply if:

- (1) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;
- (2) The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event for a stated period;
- (3) The imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to be invalid under the rule against perpetuities; or
- (4) The application of this section to multiple governing instruments would result in an unintended failure or duplication of a disposition.

§ -7 Protection of payors, bona fide purchasers, and other third parties; personal liability of recipient. (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a person designated in a governing instrument who, under this chapter, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the person's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this chapter. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this chapter.

Written notice of a claimed lack of entitlement under this subsection shall be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this chapter, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this chapter, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(b) A person who purchases a property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this chapter to return the payment, item of property, or benefit, nor liable under this chapter for the amount of the payment, the value of the item of property, or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this chapter is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment, the value of the item of property or benefit, to the person who is entitled to it under this chapter.

If this chapter or any part of this chapter is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this chapter, a person who, not for value, receives the payment, item of property, or any

other benefit to which the person is not entitled under this chapter is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment, or the value of the item of property, or benefit, to the person who would have been entitled to it were this chapter or part of this chapter not preempted.

§ -8 Short title. This chapter may be cited as the "Uniform Simultaneous Death Act".

SECTION 2. On the effective date of this Act:

- (1) An act done before the effective date in any proceeding, and any accrued right is not impaired by this chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before the effective date, the provisions remain in force with respect to that right; and
- (2) Any rule of construction or presumption provided in this chapter applies to instruments executed and multiple-party accounts opened before the effective date unless there is a clear indication of a contrary intent.

SECTION 3. Chapter 534, Hawaii Revised Statutes, is repealed.

SECTION 4. This Act shall take effect on July 1, 1993.

(Approved May 20, 1993.)

ACT 123

S.B. NO. 1426

A Bill for an Act Relating to Workers' Compensation.

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

SECTION 1. Section 386-154, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) For the calendar year 1974 and for each calendar year thereafter an employing unit shall, except as otherwise provided in section 386-152, pay into the special compensation fund a charge in an amount which is equal to the product derived by multiplying the employing unit's most recent compensation ratio by the most recent anticipated total assessment.

For each calendar year the director [of commerce and consumer affairs] shall determine the amount of the charge to be paid by each employing unit, and shall give notice of such charge to each employing unit by August 15 of the year for which the charge is assessed. The amount of the charge shall be paid to the director on or before September 30 following notification.

The director of finance may withhold the additional charge due from a political subdivision from any moneys due the subdivision from the State if the subdivision has not paid its charge as required by this section and shall deposit the withheld amount in the special compensation fund."

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 May 20, 1993.)

ACT 124

S.B. NO. 1584

A Bill for an Act Relating to Vexatious Litigants.

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 VEXATIOUS LITIGANTS”

§ -1 Definitions. Unless otherwise clear from the context, as used in this chapter:

“Defendant” means a person (including a corporation, association, partnership, firm, or governmental entity) against whom litigation is brought or maintained, or sought to be brought or maintained.

“In propria persona” means on the person’s own behalf acting as plaintiff.

“Litigation” means any civil action or proceeding, commenced, maintained, or pending in any state or federal court of record.

“Plaintiff” means the person who commences, institutes or maintains litigation or causes it to be commenced, instituted, or maintained, including an attorney at law acting on the attorney’s own behalf.

“Security” means an undertaking to assure payment, to the party for whose benefit the undertaking is required to be furnished, of the party’s reasonable expenses, including attorney’s fees, and not limited to taxable costs incurred in or in connection with a litigation instituted, caused to be instituted, or maintained or caused to be maintained by a vexatious litigant.

“Vexatious litigant” means a plaintiff who does any of the following:

- (1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five civil actions other than in a small claims court that have been:
 - (A) Finally determined adversely to the plaintiff; or
 - (B) Unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing;
- (2) After litigation has been finally resolved against the plaintiff, relitigates or attempts to relitigate in propria persona and in bad faith, either:
 - (A) The validity of the determination against the same defendant or defendants as to whom the litigation was finally determined; or
 - (B) The cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined;
- (3) In any litigation while acting in propria persona, files, in bad faith, unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay; or

- (4) Has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

§ -2 Motion for order requiring plaintiff to post security. In any litigation pending in any court of this State, at any time until final judgment is entered, a defendant may move the court, upon notice and hearing, for an order requiring the plaintiff to furnish security. The motion must be based upon the ground, and supported by a showing, that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant.

§ -3 Hearing procedure. At the hearing upon the motion for security the court shall consider material evidence, written or oral, by witnesses or affidavit. No determination made by the court in determining or ruling upon the motion shall be, or be deemed to be, a determination of any issue in the litigation or of the merits of the litigation.

§ -4 Finding; amount of security. If, after hearing the evidence upon the motion, the court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in an amount and within a time as the court shall fix.

§ -5 Dismissal on failure to post security. When security that has been ordered is not furnished, the litigation shall be dismissed with prejudice as to the defendant for whose benefit it was ordered.

§ -6 Motion as stay of proceedings. When a motion pursuant to section -2 is filed prior to trial, the litigation is stayed, and the moving defendant need not plead until ten days after the motion shall have been denied, or if granted, until ten days after the required security has been furnished and the moving defendant has been given written notice. When a motion pursuant to section -2 is made at any time thereafter, the litigation shall be stayed for such period after the denial of the motion or the furnishing of the required security as the court shall determine.

§ -7 Vexatious litigant; prefiling order prohibiting filing of new litigation. (a) In addition to any other relief provided in this chapter, the court, on its own motion or the motion of any party, may enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this State on the litigant's own behalf without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of this order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding judge shall permit the filing of litigation only if it appears, after hearing, that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in section -4.

(c) The clerk shall not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding judge permitting the filing. If the clerk mistakenly files the litigation without an order, any party may file with the clerk and serve on the plaintiff and other parties a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order as set forth in subsection (a). The filing of this notice shall automati-

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cally stay the litigation. The litigation shall be automatically dismissed unless the plaintiff within ten days of the filing of such notice obtains an order from the presiding judge permitting the filing of the litigation as set forth in subsection (b). If the presiding judge issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead until ten days after the defendants are served with a copy of any such order.

(d) The clerk of the court shall provide the supreme court clerk's office a copy of any prefiling orders issued pursuant to subsection (a). The supreme court clerk's office shall maintain a record of vexatious litigants subject to prefiling orders and shall annually disseminate a list of vexatious litigants to the clerks of the courts of this State."

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

(Approved May 20, 1993.)

ACT 125

S.B. NO. 1632

A Bill for an Act Relating to Examination and Prelicensing Requirements.

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

SECTION 1. Section 467-9, Hawaii Revised Statutes, is amended to read as follows:

"§467-9 License and applications. (a) Every applicant for issuance of a real estate license, registration, or certificate under this chapter shall file an application with the [real estate] commission in [such] a form and setting forth [such] the information as may be prescribed or required by the commission, and shall furnish [such] any additional information bearing upon the issuance of the license, registration, and certificate as it requires. Every application shall be sworn to before an officer authorized to administer oaths. In the case of a [copartnership] partnership or corporation, any [member] general partner or officer thereof may sign the application and verify the same on behalf of the applicant. The commission may prescribe deadlines for the submission of applications.

[(b) No broker's license shall be issued under any trade name, corporate name, or copartnership name which contains the name, initials, or nickname of an unlicensed person or real estate salesperson, unless otherwise approved by the commission.]

(b) Unless approved by the commission, no real estate broker's license shall be issued or changed under any trade name, corporate name, or partnership name which contains the name, part of the name, initials, or nickname of:

- (1) An unlicensed person;
- (2) A licensed real estate salesperson; or
- (3) A real estate broker whose real estate license is not associated or employed with the real estate broker applicant.

(c) A real estate broker's license shall be placed on an inactive status unless the real estate broker immediately changes its name, trade name, corporate name, or partnership name that contains the name, part of the name, initials, or nickname of an unlicensed person, licensed real estate salesperson, or real estate broker who is:

- (1) No longer associated with or employed by the subject real estate broker, including any association or employment as a real estate broker or salesperson as defined in section 467-1; or
- (2) No longer a current active real estate licensee due to revocation, termination, forfeiture, or change to inactive status.

The changes shall comply with this chapter and the rules of the commission."

SECTION 2. 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 a citizen of the United States, or an alien who is authorized to work in the United States, and of the age of majority;
- (2) The person applying for the real estate [salesman] salesperson examination has satisfactorily completed a prelicensing course [on] for real estate salesperson candidates which includes 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 prelicensing course for real estate brokers candidates, 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 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 20, 1993.)

Note

1. Prior to amendment "licensed" appeared here.

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S.B. NO. 1672

A Bill for an Act Relating to the State Higher Education Loan Fund.

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

SECTION 1. Section 304-93, Hawaii Revised Statutes, is amended to read as follows:

“§304-93 Repayment of loans. All loans made under this¹ shall bear interest at three per cent simple interest. Repayment of principal and interest charges shall commence nine months after graduation or after a borrower ceases to be enrolled at least half-time in a degree program and shall be paid in periodic installments within a [ten year] ten-year period. The university may charge late fees and all other reasonable costs for the collection of delinquent loans. The board of regents may, upon application by the student and upon a showing of good cause, defer repayment of the loan and commencement of interest. Liability for repayment of a loan shall be [cancelled] canceled upon the death or permanent total disability of the borrower.

The university may spend out of the state higher education loan fund up to one per cent of the total amount of loans [in force] outstanding for the collection of repayments. In addition, all [interest] payments collected shall revert to and be credited to the loan fund.”

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 20, 1993.)

Note

1. Prior to amendment “part” appeared here.

ACT 127

S.B. NO. 1708

A Bill for an Act Relating to Licensing of Engineers, Architects, Surveyors and Landscape Architects.

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

SECTION 1. Section 464-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Every 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 license, shall mail a notice to every person licensed under this section, [giving] informing of the date of expiration and the amount required for the renewal [thereof]. Licenses which have expired for failure to pay renewal fees on or before the date required in this subsection may be restored within [one year] two years of the expiration date upon payment of a fee for each renewal. Any person who fails to restore the person’s license within [one year] two years of the date of its expiration shall reapply for licensure.”

SECTION 2. Section 464-14, Hawaii Revised Statutes, is amended to read as follows:

“§464-14 Unlicensed activity; penalties. (a) 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 acquired a license in accordance with this chapter and without having a valid unexpired license; or who uses or attempts to use as the person’s own the seal, certificate or license of another, or who falsely impersonates any duly licensed practitioner hereunder, or who uses or attempts to use an expired, suspended, or revoked license shall be fined not more than \$500 or imprisoned not more than one year, or both.

(b) Any corporation or copartnership which advertises that it furnishes architectural, engineering, land surveying, or landscape architectural services in the making of plans or specifications or in the construction of any building or other structure, without first complying with section 464-12; or any corporation or copartnership which furnishes or offers to furnish architectural, engineering, land surveying, or landscape architectural services for the construction of any building, structure, project, or utility in the State, without first complying with section 464-12, shall be fined not more than \$1,000. Notwithstanding any law to the contrary, persons, corporations, or copartnerships working on structures exempted in section 464-13 shall not be affected by this subsection.”

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 20, 1993.)

ACT 128

H.B. NO. 747

A Bill for an Act Relating to Driving Under the Influence of Intoxicating Liquor.

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

SECTION 1. It is the intent of the legislature that individuals charged with the offense of driving under the influence of intoxicating liquor as a first time offender shall not be entitled to a jury trial.

The purpose of this Act is to reduce the penalties for first time offenders so that there can be no question that, as to first time offenders, the offense is a “petty offense” in the constitutional sense, to which no right to jury trial attaches. The legislature finds that those offenders who are convicted repeatedly of driving under the influence of intoxicating liquor represent a serious social problem. They have been unwilling to modify their behavior and represent a continuing dangerous presence on the roadways. First time offenders, however, represent less of a threat to society, as most will respond to corrective action.

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The amended penalty provisions for first time offenders shall be retroactive for all pending first time offense cases for driving under the influence of intoxicating liquor.

It is the intent of the legislature that the reduced penalties provided for in the Act apply to all pending first offense cases. The legislature further intends that by making the reduced penalties provided for in this Act retroactive to pending cases, it be made clear that such first offenders are not entitled to a jury trial, as the offense is a "petty offense" in the constitutional sense.

SECTION 2. Section 291-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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 which may require installation of an ignition interlock system as defined in section 286-251]; and
 - (C) Any one or more of the following:
 - (i) Seventy-two hours of community service work;
 - (ii) Not less than forty-eight hours and not more than [thirty] five days 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 but not more than sixty days of imprisonment of which at least forty-eight hours shall be served consecutively; 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 of which at least forty-eight hours shall be served consecutively.

- (4) Notwithstanding any other law to the contrary, any conviction for driving under the influence of intoxicating liquor, shall be considered a prior conviction.
- (5) No license suspension or revocation shall be imposed pursuant to this subsection if the person's license has previously been administratively revoked pursuant to part XIV of chapter 286 for the same offense; provided that, if the administrative revocation is subsequently reversed, the person's license shall be suspended or revoked as provided in this subsection."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

SECTION 5. This Act shall take effect upon its approval; provided that section 2 shall be retroactive for all pending first-offense cases for driving under the influence of intoxicating liquor.

(Approved May 21, 1993.)

ACT 129

H.B. NO. 1154

A Bill for an Act Relating to Taxation.

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

SECTION 1. Chapter 237D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§237D- Iniki exemption. (a) The purpose of this exemption is to encourage and assist the tourist industry and the State's economy in the wake of Hurricane Iniki.

(b) This chapter shall not apply to amounts received by a qualified facility furnishing transient accommodations as defined and taxed under this chapter; provided that the qualified facility is located in a county with a current resident population under 100,000.

(c) The exemption under this section shall apply to amounts received from May 1, 1993, through December 31, 1994.

(d) For the purposes of this section, “qualified facility” means a hotel/hotel-condo as defined in section 486K-1 and is authorized by the director as a qualified facility.

(e) The director may adopt rules according to chapter 91 for the purposes of this section.

(f) This section shall be repealed on January 1, 1995.”

SECTION 2. Section 237-24.7, Hawaii Revised Statutes, is amended to read as follows:

"§237-24.7 Additional amounts not taxable. In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

- (1) 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 paragraph:

"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;

- (2) Amounts received by the operator of a county transportation system operated under an operating contract with a political subdivision, where the political subdivision is the owner of the county transportation system. As used in this paragraph:

"County transportation system" means a mass transit system of motorized buses providing regularly scheduled transportation within a county;

"Operating contract" or "contract" means a contract to operate and manage a political subdivision's county transportation system, which provides that:

- (A) The political subdivision shall exercise substantial control over all aspects of the operator's operation;
- (B) The political subdivision controls the development of transit policy, service planning, routes, and fares; and
- (C) The operator develops in advance a draft budget in the same format as prescribed for agencies of the political subdivision. The budget must be subject to the same constraints and controls regarding the lawful expenditure of public funds as any public sector agency, and deviations from the budget must be subject to approval by the appropriate political subdivision officials involved in the budgetary process.

"Operator" means any person who, pursuant to an operating contract with a political subdivision, operates or manages a county transportation system.

"Owner" means a political subdivision that owns or is the lessee of all the properties and facilities of the county transportation system, (including buses, real estate, parking garages, fuel pumps, maintenance equipment, office supplies, etc.) and that owns all revenues derived therefrom;

- (3) Surcharge taxes on rental motor vehicles imposed by chapter 251 and passed on and collected by persons holding certificates of registration under that chapter;

- (4) Amounts received by the operator of orchard properties from the owner of the orchard property 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 paragraph:

"Employee" means an employee directly engaged in the day to day operations of the orchard properties and employed by the operator.

"Orchard property" means any real property which is used to raise trees with a production life cycle of fifteen years or more producing fruits or nuts having a normal period of development from the initial planting to the first commercially saleable harvest of not less than three years.

"Owner" means a fee owner or lessee under a recorded lease of orchard property.

"Operator" means a producer who, pursuant to a written contract with the owner of the orchard property, operates or manages the orchard property [of] for the owner where the property contains an area sufficient to make the undertaking economically feasible[.]; and

(5) Amounts received under property and casualty insurance policies for damage or loss of inventory used in the conduct of a trade or business located within the State or a portion thereof that is declared a natural disaster area by the governor pursuant to section 209-2."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 4. This Act, upon its approval, shall take effect retroactive to May 1, 1993; provided that section 2 shall be applied retroactively to September 11, 1992.

(Approved May 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 130

S.B. NO. 14

A Bill for an Act Relating to Prostitution.

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

SECTION 1. Section 712-1200, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

"(4) [Notwithstanding any other law to the contrary, a] A person convicted of committing the offense of prostitution shall be sentenced as follows:

- (a) For the first offense, when the court has not deferred further proceedings pursuant to chapter 853, a mandatory fine of \$500 and the person may be sentenced to a term of imprisonment of not more than thirty days; provided, in the event the convicted person defaults in payment of the \$500 fine, and the default was not contumacious, the court may sentence the person to perform services for the community as authorized by section 706-605(1).
- (b) For any subsequent offense, a fine of \$500 and a term of imprisonment of thirty days, without possibility of deferral of further proceedings pursuant to chapter 853 and without possibility of suspension of sentence or probation.

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For the purpose of this subsection, if the court has deferred further proceedings pursuant to chapter 853, and notwithstanding any provision of chapter 853 to the contrary, the defendant shall not be eligible to apply for expungement pursuant to section 831-3.2 until four years following discharge. A plea previously entered by a defendant under section 853-1 for a violation of this section shall be considered a prior offense.

SECTION 2. Section 712-1202, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of promoting prostitution in the first degree if [he] the person knowingly:

- (a) Advances prostitution by compelling a person by criminal coercion to engage in prostitution, or profits from such coercive conduct by another; or
- (b) Advances or profits from prostitution of a person less than [fourteen] sixteen years old.”

SECTION 3. Section 712-1203, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of promoting prostitution in the second degree if [he] the person knowingly:

- (a) Advances or profits from prostitution by managing, supervising, controlling, or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostitutes; or
- (b) Advances or profits from prostitution of a person less than eighteen years old.”

SECTION 4. Section 853-4, Hawaii Revised Statutes, is amended to read as follows:

“§853-4 Chapter not applicable; when. This chapter shall not apply when:

- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
- (2) The offense charged involves the intentional, knowing, or reckless bodily injury or serious bodily injury of another person;
- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
- (4) The offense charged is a class A felony;
- (5) The offense charged is nonprobationable;
- (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct which if perpetrated in this State would be punishable as a felony;
- (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct which if perpetrated in this State would constitute a felony;
- (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
- (9) A firearm was used in the commission of the offense charged;

- (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
- (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, whether or not the period of deferral has already expired;
- (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
- (13) The offense charged is:
 - (A) Escape in the first degree;
 - (B) Escape in the second degree;
 - (C) Promoting prison contraband in the first degree;¹
 - (E) Bail jumping in the first degree;
 - (F) Bail jumping in the second degree;
 - (G) Bribery;
 - (H) Bribery of a witness;
 - (I) Intimidating a witness;
 - (J) Bribery of or by a juror;
 - (K) Intimidating a juror;
 - (L) Jury tampering[.];
 - (M) Promoting prostitution in the first degree;
 - (N) Promoting prostitution in the second degree;
 - (O) Promoting prostitution in the third degree.²

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 1 shall be retroactive for all pending cases.

(Approved May 21, 1993.)

Notes

- 1. Prior to amendment "(D) Promoting prison contraband in the second degree;" appeared here.
- 2. Prior to amendment "The court may by rule adopt other criteria in this area." appeared here.

ACT 131

H.B. NO. 284

A Bill for an Act Relating to Vital Statistics.

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

SECTION 1. Section 338-1, Hawaii Revised Statutes, is amended by deleting the definition of "legitimation":

[““Legitimation” is the process by which a child born out of wedlock assumes the legal status and the rights, privileges, duties, and obligations of a child who is born in wedlock.”]

SECTION 2. Section 338-17.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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"(a) The department of health shall establish, in the following circumstances, a new certificate of birth for a person born in this State who already has a birth certificate filed with the department and who is referred to below as the "birth registrant":

- (1) Upon receipt of [documents showing that the birth registrant has been legitimated pursuant to section 338-21, together with] an affidavit of paternity, a court order establishing paternity, or a certificate of marriage establishing the marriage of the natural parents to each other, together with a request from the birth registrant, or the birth registrant's parent or other person having legal custody of the birth registrant, that a new birth certificate be prepared because previously recorded information has been altered pursuant to law;
- (2) Upon receipt of a certified copy of a final order, judgment, or decree of a court of competent jurisdiction that determined the nonexistence of a parent and child relationship between a person identified as a parent on the birth certificate on file and the birth registrant;
- (3) Upon receipt of a certified copy of a final adoption decree, or of an abstract of the decree, pursuant to sections 338-20 and 578-14;
- (4) Upon receipt of an affidavit of a physician that the physician has examined the birth registrant and has determined the following:
 - (A) The birth registrant's sex designation was entered incorrectly on the birth registrant's birth certificate; or
 - (B) The birth registrant has had a sex change operation and the sex designation on the birth registrant's birth certificate is no longer correct; provided that the director of health may further investigate and require additional information that the director deems necessary; or
- (5) Upon request of a law enforcement agency certifying that a new birth certificate showing different information would provide for the safety of the birth registrant[. Notwithstanding subsection (b), in such instance,]; provided that the new birth certificate shall contain [such] information [as] requested by the law enforcement agency, shall be assigned a new number and filed accordingly, and shall not substitute for the birth registrant's original birth certificate, which shall remain in place."

SECTION 3. Section 338-21, Hawaii Revised Statutes, is amended to read as follows:

"§338-21 [Legitimation.] Children born to parents not married to each other. (a) All children born [out of wedlock,] to parents not married to each other, irrespective of the marriage of either natural parent to another, [become legitimate] (1) on the marriage of the natural parents with each other, (2) on the voluntary, written acknowledgements of paternity under oath signed by the natural father and the natural mother, or (3) on establishment of the parent and child relationship under chapter 584, [and] are entitled to the same rights as those born [in wedlock] to parents married to each other and shall take the name so stipulated by their parents or, if the parents do not agree on the name, shall take the name specified by a court of competent jurisdiction to be the name that is in the best interests of the child. [If legitimization is accomplished before the original certificate of birth is filed with the department of health, the] The original certificate of birth shall contain the name so stipulated. The child or children or the parents thereof may petition the department of health to issue a new original certificate of birth, and not a duplicate of the original certificate that has been amended, altered, or modified, in the new

name of the [legitimated] child, and the department shall issue the new original certificate of birth [upon being satisfied that the child or children has or have been legitimated]. As used in this section "name" includes the first name, middle name, or last name.

(b) The evidence upon which the new original certificate is made, and the superseded original certificate shall be sealed and filed and may be opened only upon order of a court of record.

(c) If[, after a child is legitimated pursuant to subsection (a)(2) or (a)(3) of this section,] the child's natural parents marry each other and desire to change the child's name, the child's name may be changed and a new original certificate of birth prepared [as if a legitimization pursuant to subsection (a)(1) had just occurred].

(d) Nothing in this section shall be construed to limit the power of the courts to order the department [of health] to prepare new certificates of birth under section 584-23."

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

SECTION 5. This Act shall take effect on January 1, 1994.

(Approved May 21, 1993.)

ACT 132

H.B. NO. 888

A Bill for an Act Relating to Public Lands.

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

SECTION 1. Section 171-17, Hawaii Revised Statutes, is amended to read as follows:

"§171-17 Appraisals. (a) [Public auction.] The appraisal of public lands for sale or lease at public auction for the determination of the upset price may be performed by an employee of the board of land and natural resources qualified to appraise lands, or by one but not more than three disinterested appraisers whose services shall be contracted for by the board; provided that the upset price or upset rental shall be determined by disinterested appraisal whenever prudent management so dictates. No such lands shall be sold or leased for a sum less than the value fixed by appraisal; provided that for any sale or lease at public auction, the board may establish the upset sale or rental price at less than the appraisal value set by an employee of the board and the land may be sold or leased at that price. The board shall be reimbursed by the purchaser or lessee for the cost of any appraisal required to be made by a disinterested appraiser or appraisers contracted for by the board.

(b) [Drawing or negotiation.] The sale price or lease rental of lands to be disposed of by drawing or by negotiation shall be no less than the value determined by a disinterested appraiser or appraisers whose services shall be contracted for by the board, and such appraisal, and any further appraisal made at the request of the purchaser and with the approval of the board, shall be at the cost of the purchaser.

(c) [Repurchase.] In the repurchase of any land by the board, the board shall have the option to repurchase the land for the original sale price or the fair market value at the time of repurchase, whichever is the lower. Any improvements affixed to the realty shall be purchased at their fair market value. At the time of the repurchase, the fair market value of the land, and the improvements, if any, shall be

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determined by a qualified appraiser whose services shall be contracted for by the board; provided should the owner fail to agree upon the value, the owner may appoint the owner's own appraiser who together with the board's appraiser shall appoint a third appraiser, and the value shall be determined by arbitration as provided in chapter 658. The owner shall pay for all appraisal costs, except that the cost of the third appraiser shall be borne equally by the purchaser and the board.

(d) [Reopening.] In the event of reopening of the rental to be paid on a lease, the rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the board and the lessee shall be promptly notified of the determination; provided that should the lessee fail to agree upon the fair market rental, the lessee may appoint the lessee's own appraiser who together with the board's appraiser shall appoint a third appraiser and the fair market rental shall be determined by arbitration as provided in chapter 658. The lessee shall pay for the lessee's own appraiser, the board shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the lessee and the board. Any language in present leases to the contrary notwithstanding, the provisions of this subsection, when possible and notwithstanding the six month notice required, shall apply to leases with original lease rental reopening dates effective before and after May 28, 1985.

((e)) Purchase. The appraisal of private property to be acquired by the board may be performed by one but not more than three disinterested appraisers whose services shall be contracted for by the board and no land shall be purchased for a sum greater than the highest value fixed by the appraiser or appraisers; provided that the board may, after a review of the appraisals by the appraiser or appraisers or the attorney general, purchase the property at a value greater than the highest value if the higher value is determined by the appraiser or appraisers or the attorney general to be justified and within the range of market value; provided further that this limitation shall not apply where acquisition is by condemnation.

((f)) (e) Whenever more than one appraiser is appointed each shall prepare and submit an independent appraisal. All appraisal reports shall be available for study by the public."

SECTION 2. 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.

(e) The appraisal of private property to be acquired by the State may be performed by not more than three disinterested appraisers whose services shall be contracted for by the State, and no land shall be purchased for a sum greater than the highest value fixed by the appraiser or appraisals'; provided that the State, after review of the appraisals by the appraiser or appraisers or the attorney general, may purchase the property at a value greater than the highest value if the higher value is determined by the appraiser or appraisers or the attorney general to be justified and within the range of market value; provided further that this limitation shall not apply where acquisition is by condemnation. After the private property has been acquired or the State abandons the acquisition, these appraisal reports shall be available for inspection and copying by the public.'

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 21, 1993.)

Note

1. So in original.

ACT 133

H.B. NO. 1147

A Bill for an Act Relating to Culture and the Arts.

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

SECTION 1. Chapter 9, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§9. Qualifying standards for individual artist fellowships. Any individual applying for a fellowship shall meet all of the following standards:

- (1) The individual has proof of United States citizenship or permanent United States resident alien status and is a resident of the State of Hawaii at the time of application;
- (2) The individual is a recognized professional artist who:
 - (A) Engages in a particular art form or discipline as a result of education, experience, or natural talent; and
 - (B) Is financially compensated for engaging in the art form or discipline as part of the individual's livelihood; and
- (3) The individual is able to provide documentation of having engaged in artistic endeavors for at least five years prior to the time of application.

§9- Requirement for artists receiving an individual artist fellowship. Each artist who, after meeting the qualifications set out in section 9-, receives an individual artist fellowship from the foundation, is required to hold an exhibition or give a performance for the benefit of the people of Hawaii."

SECTION 2. Section 9-3, Hawaii Revised Statutes, is amended to read as follows:

"§9-3 Duties. The foundation shall:

- (1) Assist in coordinating the plans, programs, and activities of individuals, associations, corporations, and agencies concerned with the preservation and furtherance of culture and the arts and history and the humanities;
- (2) [To establish] Establish written standards and criteria by which grant contracts shall be evaluated;
- (3) Appraise the availability, adequacy, and accessibility of culture and the arts and history and the humanities to all persons throughout the State and devise programs whereby culture and the arts and history and the humanities can be brought to those who would otherwise not have the opportunity to participate;
- (4) Stimulate, guide, and promote culture and the arts and history and the humanities throughout the State;
- (5) Devise and recommend legislative and administrative action for the preservation and furtherance of culture and the arts and history and the humanities;
- (6) Study the availability of private and governmental grants for the promotion and furtherance of culture and the arts and history and the humanities;
- (7) Through its chairperson:
 - (A) Administer funds allocated by grant, gift, or bequest to the foundation; accept, hold, disburse, and allocate funds which may become available from other governmental and private sources; provided that all those funds shall be disbursed or allocated in compliance with any specific designation stated by the donor and in the absence of any designation, the funds shall be disbursed or allocated for the promotion and furtherance of culture and the arts and history and the humanities; and
 - (B) Accept, hold, disburse, and allocate public funds that are made available to the foundation by the legislature for disbursement or allocation, pursuant to the standards and procedures established in part II, for the promotion and furtherance of culture and the arts and history and the humanities;
- (8) Select and employ a director to serve on a part-time or full-time basis who shall be a person who by reason of education or extensive experience is generally recognized as being professionally qualified in the administration of programs in the fields of culture and the arts and history and the humanities, who is familiar with the peoples and cultures of Hawaii, and who shall be exempt from chapters 76 and 77 and select necessary additional staff subject to chapters 76 and 77, within available appropriations;
- (9) Submit an annual report with recommendations to the governor and legislature, prior to February 1, of each year. Annual reports shall include the total number and amount of gifts received, payroll

- disbursements, contracts entered into, and progress and accomplishments made during the year;
- (10) Display student art works in public buildings, sponsor student art displays, and in other ways encourage the development of creative talent among the young people of Hawaii;
 - (11) In cooperation with qualified organizations conduct research, studies, and investigations in the fields of ethnohistory and the humanities; make, publish, and distribute works documenting the contributions of individual ethnic groups in their relationship to one another and to the whole population of Hawaii; place ethnohistorical and cultural materials developed by the foundation or received by the foundation as gifts and donations in public archives, libraries, and other suitable institutions accessible to the public; and maintain a register of the location of such materials; [and]
 - (12) Cooperate with and assist the department of land and natural resources and other state agencies in developing and implementing programs relating to historic preservation, research, restoration, and presentation, as well as museum activities[.]; and
 - (13) Establish an individual artist fellowship program to encourage artists to remain and work in Hawaii and to reaffirm the importance of Hawaii's artists and their cultural and economic contributions to the State by:
 - (A) Recognizing and honoring Hawaii's exceptionally talented visual and performing artists for their outstanding work and commitment in the arts; and
 - (B) Enabling these artists to further their artistic goals."

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

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

(Approved May 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 134

H.B. NO. 1364

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

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

SECTION 1. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§304- Conference center revolving fund. (a) As used in this section, “dean” means the dean of the college of continuing education and community service. There is established a revolving fund for the conference center program in

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the college of continuing education and community service of the University of Hawaii, Hilo campus. All fees, charges, and other moneys collected in conjunction with the conference center program shall be deposited in the revolving fund. The dean is authorized to expend funds from the revolving fund for all costs associated with conducting conferences, seminars, and courses by the conference center program, including but not limited to, expenses for honoraria, hotel and room rentals, food and refreshment, printing and mailing, airfare and per diem, leis, rental of audio-visual equipment, and conference supplies and materials, without regard to sections 103-22 and 103-42.

(b) The dean shall prepare an annual report to the legislature accounting for all income and expenditures of the revolving fund."

SECTION 2. New statutory material is underscored.¹

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

(Approved May 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 135

H.B. NO. 1538

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 part to be appropriately designated and to read as follows:

"PART . . . NONRESIDENT VIOLATOR COMPACT

§291- Enactment of compact. The Nonresident Violator Compact is hereby enacted into law and entered into with all other jurisdictions legally joining herein in the form substantially as follows:

NONRESIDENT VIOLATOR COMPACT

ARTICLE I. FINDINGS AND DECLARATION OF POLICY

(a) The party states find that:

- (1) Under present procedures, a nonresident motorist who is arrested in a state other than the nonresident's home state must either post collateral or bond to secure appearance for trial at some later date, or, if unable to post such collateral or bond, the nonresident is taken into custody until collateral or bond is posted or taken directly to court for arraignment to be held. The purpose of this requirement is to obviate the difficulty of ensuring compliance with the terms of a traffic citation by the nonresident who, if permitted to continue on the nonresident's way after receiving such citation, could return to the nonresident's home state and disregard with impunity the nonresident's duty under the terms of the citation.
- (2) A motorist receiving a traffic citation in the motorist's home state is permitted, except for certain violations, to accept the citation from the

officer at the scene of the violation and to immediately continue on the motorist's way after being instructed to comply with the terms of the citation.

- (3) The practice described in paragraph (1) causes unnecessary inconvenience and, at times, causes a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine and thus is compelled to remain in custody until some arrangement can be made.
- (4) The arrest of a nonresident motorist for a motor vehicle violation is presently consuming an undue amount of law enforcement time.
- (b) It is the policy of each of the party states to:
 - (1) Promote compliance with the laws, ordinances, and administrative rules relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.
 - (2) Make the reciprocal recognition of the right of motorists of the party states to accept a citation without delay in all traffic violation cases in which such procedure is permitted whether the motorist is a resident or a nonresident of the state in which the arrest was made.
 - (3) Maximize effective utilization of law enforcement personnel and assist the court systems in the efficient disposition of traffic violations.
 - (4) Consider an operator who ignores or refuses a citation from a party state to be an unfit or irresponsible person to hold a license to drive.

ARTICLE II. DEFINITIONS

As used in this compact:

- (a) "Citation" means any citation, summons, ticket, or other document issued by a police officer for violation of a traffic law, ordinance, rule, or regulation which requires the motorist to respond.
- (b) "Collateral" means any bond, cash, or other security deposited to secure an appearance for trial following the issuance by an arresting officer of a citation for a traffic violation.
- (c) "Compact administrator" means the administrator of the traffic violations bureau of the judiciary.
- (d) "Driver's license" means any license to operate a motor vehicle issued under the laws of the home state.
- (e) "Home state" means the state that has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.
- (f) "Issuing state" means the state in which the traffic citation was issued to the motorist.
- (g) "Licensing authority" means the administrator of the traffic violations bureau of the judiciary.
- (h) "Motorist" means the driver of a motor vehicle operating in a party state other than the home state.
- (i) "Nonresident" means a driver who holds a license issued by a party state other than the state in which the citation was issued.
- (j) "Personal recognizance" means a signed agreement by a nonresident that the nonresident will comply with the terms of the citation issued to the nonresident.
- (k) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, Provinces of Canada, or other countries.

ARTICLE III. PROCEDURE FOR ISSUING STATE

(a) An officer making an arrest or citing a nonresident for a traffic violation shall issue a citation as appropriate to all motorists who are residents of the party states and shall not, subject to the exceptions noted in subsection (b) of this Article, require such motorist to post collateral or bond to secure appearance for trial, but may accept such motorist's personal recognizance that the motorist will comply with the terms of the citation.

(b) No motorist shall be entitled to receive a citation under the terms of subsection (a) of this Article, nor shall any police officer issue such citation under the same terms, in the event the offense for which the citation is issued shall be one of the following:

- (1) An offense for which the issuance of a citation in lieu of a hearing or the posting of collateral, bail, or bond is prohibited by law or court policy; or
- (2) An offense, for which the revocation of the motorist's license would be required upon conviction or forfeiture of collateral.

(c) Upon the failure of any nonresident to comply with the terms of a traffic citation, the arresting officer or other appropriate official may obtain a warrant for arrest or summons for appearance in court and shall report the failure to the licensing authority of the state in which the arrest was made or the citation for a traffic violation was issued. If the State of Hawaii is the issuing state, the arresting officer or other appropriate official shall report this failure to the compact administrator. The report shall clearly identify the person arrested or cited; describe the violation, specifying the section of the traffic law, ordinance, rule, or regulation violated; indicate the location of the offense; and describe the vehicle, and its license number. The report shall be signed by the arresting officer or other appropriate official.

ARTICLE IV. PROCEDURE FOR HOME STATE

(a) Upon receipt of the report as described in Article III, the licensing authority of the state in which the arrest was made or a citation for a traffic violation was issued shall transmit an official copy of the record of the report to the licensing authority of the home state. If the State of Hawaii is the home state, the licensing authority of the state in which the arrest was made or a citation for a traffic violation was issued shall transmit an official copy of the record of the report to the compact administrator. If the State of Hawaii is the issuing state, the compact administrator shall transmit an official copy of the record of the report to the licensing authority of the home state.

(b) Upon receipt of a certification of noncompliance from the state in which the arrest was made or a citation for a traffic violation was issued, the licensing authority of the home state shall notify the motorist and immediately initiate license suspension proceedings against such motorist. The order of suspension shall indicate the reason for the order and shall notify the motorist that his license shall remain suspended until satisfactory evidence has been furnished to the authority issuing such order of compliance with the terms of the citation.

(c) A copy of any suspension order issued under this Article shall be furnished to the licensing authority of the state in which the arrest was made or a citation for a traffic violation was issued. If the State of Hawaii is the issuing state, a copy of any suspension order issued under this Article shall be furnished to the compact administrator.

(d) If the laws of a home state do not provide for offenses or violations denominated or described in precisely the words employed in the state from which a certification of noncompliance is received, the home state shall construe the

denomination and descriptions appearing in the laws of such state as being applicable to and identifying those offenses or violations of a substantially similar nature.

ARTICLE V. APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to the licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

ARTICLE VI. COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION

(a) The motor vehicle administrator of each party state shall be the administrator of this compact for their state. For the State of Hawaii, the administrator of the traffic violations bureau of the judiciary shall be the administrator of this compact. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VII. ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction prior to the withdrawal.

ARTICLE VIII. EXCEPTIONS

The provisions of this compact shall not apply to parking violations, highway weight limit violations, and violations of law governing the transportation of hazardous materials.

ARTICLE IX. CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

SECTION 2. Section 287-3, Hawaii Revised Statutes, is amended to read as follows:

"§287-3 Furnishing of operating records. (a) The traffic violations bureau of the district courts shall upon request furnish any person a certified abstract of the bureau's record, if any, of any person relating to all alleged moving violations, as well as any convictions resulting therefrom, arising from the operation of a motor vehicle and any administrative license revocation pursuant to chapter 286, part XIV. The traffic violations bureau may collect a fee, to be a realization of the general fund, of not in excess of \$2 for any such certificate.

(b) Notwithstanding any provision to the contrary, all alleged moving violations as well as any convictions resulting therefrom or any administrative license suspension pursuant to Part Nonresident Violator Compact shall not be included in a certified abstract of the bureau's record."

SECTION 3. Section 287-20, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Whenever a driver's license has been suspended or revoked pursuant to part XIV of chapter 286, or upon a conviction of any offense pursuant to law, or in the case of minors, suspended or revoked pursuant to part V of chapter 571, the license shall not at any time thereafter be issued to the person whose license has been suspended or revoked, nor shall the person thereafter operate a motor vehicle, unless and until the person has furnished and thereafter maintains proof of financial responsibility[.]; provided that this section shall not apply to any conviction of a moving violation or any administrative license suspension pursuant to Part Nonresident Violator Compact. Whenever by reason of a conviction of, or adjudication under part V of chapter 571 by reason of, any of the offenses listed in this section, under the laws of the State or ordinances of any political subdivision, a court of competent jurisdiction has discretion to revoke or suspend a driver's license but does not revoke or suspend the license, the administrator shall nevertheless after the expiration of thirty days from the date of conviction or adjudication suspend the license and shall keep the same suspended, and the person so convicted or adjudicated shall not thereafter operate a motor vehicle, unless and until the person so convicted or adjudicated furnishes and thereafter maintains proof of financial responsibility. The offenses referred to are:

- (1) Reckless or inattentive driving, driving while under the influence of intoxicating liquor, driving while under the influence of drugs, and driving while that person's license has been suspended or revoked;
- (2) Conviction or adjudication under part V of chapter 571 by reason of any moving violation offense involving a motor vehicle if the motor vehicle is in any manner involved in an accident in which any person is killed or injured, or in which damage to property results to an apparent extent in excess of \$1,000 and there are reasonable grounds for the administrator to believe that the defendant is at fault; and
- (3) Failure to have an effective no-fault insurance policy."

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 21, 1993.)

ACT 136

H.B. NO. 1603

A Bill for an Act Relating to the Hawaii Community Development Authority.

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

SECTION 1. Section 206E-22, Hawaii Revised Statutes, is amended to read as follows:

"[§206E-22] Violations and penalty. (a) The authority may set, charge, and collect reasonable fines for violation of this chapter or any rule adopted pursuant to chapter 91. Any person violating any of the provisions of this chapter or any rule adopted pursuant to chapter 91, 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 authority.

[(a)] (b) The authority may maintain an action for an injunction to restrain any violation of the provisions of this chapter and may take any other lawful action to prevent or remedy any violation.

[(b)] (c) Any person violating any provision of this chapter shall, upon conviction, be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding thirty days, or both. The continuance of a violation after conviction shall be deemed a new offense for each day of such continuance."

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 21, 1993.)

ACT 137

H.B. NO. 1626

A Bill for an Act Relating to Ordinary Disability Retirement Under the Employees' Retirement System.

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

SECTION 1. Section 88-76, Hawaii Revised Statutes, is amended to read as follows:

"§88-76 Allowance on ordinary disability retirement. Upon retirement for ordinary disability, a [member shall receive a service retirement allowance if the member has attained the age of fifty-five years, otherwise, the] member shall receive a retirement allowance of one and three-fourths per cent of the member's average final compensation for each full year of credited service; except that for each year of credited service as¹ judge, an elective officer, or the chief clerk, assistant clerk, sergeant at arms, or assistant sergeant at arms of [both houses] a house of the legislature, the member shall receive a retirement allowance computed as provided in section 88-74(3)(A). The minimum retirement allowance payable under this section shall be [an allowance of] thirty per cent of the member's average final compensation."

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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 upon its approval.

(Approved May 21, 1993.)

Note

1. Prior to amendment "a" appeared here.

ACT 138

H.B. NO. 1646

A Bill for an Act Relating to Public Assistance.

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

SECTION 1. Section 40-85, Hawaii Revised Statutes, is amended to read as follows:

"§40-85 Imprest fund for immediate welfare payments, emergency assistance [funds], and work-related expenses. (a) In addition to the petty cash funds authorized by section 40-84 [and], emergency assistance funds under subsection (b), work-related expenses under subsection (c), and, upon approval by the comptroller, the amount necessary and sufficient to enable the department of human services to make immediate welfare money payments to eligible recipients shall be advanced from the general fund of the State to be used by the department of human services on an imprest basis in those cases only which require more immediate payment than that possible under the usual procedure for disbursing state funds provided in section 40-51. [In granting approval, the comptroller may impose such conditions as the comptroller may deem necessary for the proper administration and accountability of the fund.]

The welfare imprest fund shall be replenished at the end of each quarter and may be replenished at other times as required by the usage of the fund. In no case, however, may welfare disbursements, from the welfare imprest fund and under the usual procedure for disbursing state funds, exceed the amounts appropriated and allotted for a fiscal period.]

(b) Amounts necessary and sufficient to enable the department of human services to make immediate emergency assistance grants shall be advanced from the general fund of the State to be used by the department as provided under section 346-65. [The comptroller may impose conditions as deemed necessary for the proper administration and accountability of the funds advanced.]

Emergency assistance funds shall be replenished at the end of each quarter and may be replenished at other times as required by the usage of the funds; provided that the amount advanced or expended in a fiscal period shall not exceed the amount appropriated and allotted for that fiscal period.]

(c) Amounts necessary and sufficient to enable the department of human services to provide cash assistance to eligible applicants and recipients of education, training, and employment programs, shall be advanced from the general fund of the State to be used by the department as provided under section 346-270.

The imprest fund for work-related expenses shall be used to assist applicants and recipients enrolled in employment training programs with extraordinary work-related expenses related to education, training, and employment activities or with emergency cash assistance during family crises.

(d) In granting approval, the comptroller may impose such conditions as the comptroller may deem necessary for the proper administration and accountability of the fund and of the funds advanced.

(e) The imprest fund shall be replenished at the end of each quarter and may be replenished at other times as required by the usage of the fund. In no case, however, may disbursements, from the imprest fund and under the usual procedure for disbursing state funds, exceed the amounts appropriated and allotted for a fiscal 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 May 21, 1993.)

ACT 139

H.B. NO. 1647

A Bill for an Act Relating to Substance Abuse Testing.

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

SECTION 1. Section 329B-4, Hawaii Revised Statutes, is amended to read as follows:

"[§329B-4] Laboratory requirements. (a) Testing pursuant to subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 Federal Register 11986) is exempt from the provisions of this chapter.

(b) All substance abuse testing performed in the State shall be performed by a testing laboratory licensed by the department for that purpose[.], or certified for substance abuse testing by the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services, and approved by the director.

(c) Testing of samples from this State performed in another state [may] shall be performed only by laboratories [licensed by that state to conduct substance abuse testing, and whose standards are comparable to those contained in this [chapter]¹, and approved by the director.] certified for substance abuse testing by the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services, and approved by the director.
No laboratory located outside of the State [may] shall be licensed by the department to perform substance abuse testing.

[(b)] (d) The director shall adopt rules governing:

- (1) Standards for approval and licensure of qualified testing laboratories, and suspension and revocation of a license;**
- (2) Qualifications of laboratory personnel;**
- (3) Body component samples that are appropriate for substance abuse testing;**
- (4) [The selection] Selection of [the] medical review officers determined to be qualified by the department, and procedures to be followed by medical review officers in the reception, review, and interpretation of the results of laboratory tests requested by [the] a third party;**
- (5) Procedures for taking [of] samples that ensure privacy to the individuals tested and prevent or detect tampering with the sample;**

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- (6) Methods of analysis and procedures to ensure reliable testing results, including standards for initial screening and confirmatory tests[. Confirmatory]; provided that confirmatory tests for drugs or [the] metabolites of drugs shall utilize a gas chromatograph with a mass spectrometer detector or other reliable methods approved by the director;
- (7) Cutoff levels of alcohol, drugs, or the metabolites of drugs;
- (8) Chain of custody procedures to ensure proper identification, labeling, and handling of the samples to be tested;
- (9) Retention and storage procedures and durations to ensure availability of samples for retesting when necessary;
- (10) Establishing fees for licensing of laboratories;
- (11) Retention of substance abuse test information by the laboratory; and
- (12) Procedures to ensure confidentiality of the substance abuse testing procedures and substance abuse test information.

[(c)] [e) No laboratory [may] shall be licensed to perform substance abuse testing in the State unless the laboratory participates in and continues to demonstrate satisfactory performance in drug proficiency testing as determined by the director.”

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 21, 1993.)

Note

- 1. So in original.

ACT 140

H.B. NO. 1667

A Bill for an Act Relating to Real Estate Transactions.

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

SECTION 1. Section 515-4, Hawaii Revised Statutes, is amended to read as follows:

“§515-4 Exemptions. (a) Section 515-3 does not apply:

- (1) To the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other if the lessor resides in one of the housing accommodations; or
 - (2) To the rental of a room or up to four rooms in a housing accommodation by an individual if the individual resides therein.
- (b) Nothing in this chapter regarding familial status or age shall apply to housing for older persons as defined by 42 United States Code section 3607(b)(2)."

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 salesperson, because of race, sex, color, religion, marital status, familial status, ancestry, disability, age, 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, or to steer a person seeking to engage in a real estate transaction;
- (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;
- (8) To refuse to engage in a real estate transaction with a person due to a disability because the person uses the services of a certified guide, signal, or service 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 a rigid handle grasped by the person;

“Reasonable restriction” shall not include any restriction that allows any owner or person to refuse to negotiate or refuse to engage in a real estate transaction; provided that as used in this paragraph, the “reasonableness” of a restriction shall be examined by giving due consideration to the needs of a reasonable prudent person in the same or similar circumstances. Depending on the circumstances, a “reasonable restriction” may require the owner of the service, guide, or signal dog to comply with one or more of the following:

- (A) Provide proof that the animal is a service, guide, or signal dog;
- (B) Observe applicable laws including leash laws and pick-up laws;
- (C) Assume responsibility for damage caused by the dog; or
- (D) 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;

“Service dog” means any dog individually trained and certified by a nationally recognized service dog organization to assist a person with a disability in performing essential activities of daily living;

- “Signal dog” means any dog individually trained and certified by a nationally recognized signal dog organization to alert a deaf person to intruders or sounds;
- (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);
- (10) To refuse to permit, at the expense of a person with a disability, reasonable modifications to existing premises occupied or to be occupied by the person if modifications may be necessary to afford the person full enjoyment of the premises. A real estate broker or salesperson, where it is reasonable to do so, may condition permission for a modification on the person agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;
- (11) To refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation;
- (12) In connection with the design and construction of covered multifamily housing accommodations for first occupancy after March 13, 1991, to fail to design and construct housing accommodations in such a manner that:
- (A) The housing accommodations have at least one accessible entrance, unless it is impractical to do so because of the terrain or unusual characteristics of the site; and
- (B) With respect to housing accommodations with an accessible building entrance:
- (i) The public use and common use portions of the housing accommodations are accessible to and usable by [handicapped] disabled persons;
- (ii) Doors allow passage by persons in wheelchairs; and
- (iii) All premises within covered multifamily housing accommodations contain an accessible route into and through the housing accommodations; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; reinforcements in the bathroom walls allow installation of grab bars; and kitchens and bathrooms are accessible by wheelchair; or
- (13) To discriminate against or deny a person access to, or membership or participation in any multiple listing service, real estate broker's organization, or other service, organization, or facility involved either directly or indirectly in real estate transactions, or to discriminate against any person in the terms or conditions of such access, membership, or participation.”

SECTION 3. 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, threaten, or discriminate against a person because of the exercise or enjoyment of any right granted or protected by this chapter, or 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) To interfere with any person in the exercise or enjoyment of any right granted or protected by this chapter or with the performance of a duty or the exercise of a power by the commission;
- (4) To obstruct or prevent a person from complying with this chapter or an order issued thereunder;
- (5) To intimidate or threaten any person engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise rights granted or protected by this chapter; or
- (6) To threaten, intimidate or interfere with persons in their enjoyment of a housing accommodation because of the race, sex, color, religion, marital status, familial status, ancestry, [handicapped status] disability, age, or HIV infection of such persons, or of visitors or associates of such persons."

SECTION 4. New statutory material is underscored.¹

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

(Approved May 21, 1993.)

Note

1. So in original.

ACT 141

H.B. NO. 1677

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- Rules. The department of land and natural resources may adopt rules pursuant to chapter 91 necessary for the purposes of this chapter."

SECTION 2. Section 501-218, Hawaii Revised Statutes, is amended to read as follows:

"§501-218 Schedule of fees. (a) Except where otherwise provided by the supreme court of the State of Hawaii [which] that shall be empowered to amend or add to the schedule from time to time, or [as to paragraphs (3), (20), (21), (22), (23), (25), (30) and (31) hereof] fees for services by the bureau of conveyances set by rules adopted by the department of land and natural resources, pursuant to chapter 91, the fees payable under this chapter are as follows:

- (1) For every application filed pursuant to this chapter, including indexing and recording the [same,] application, 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, \$1.

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- (4)] (3) 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] land as determined under section 501-211 when the land was not separately assessed.
- [5)] (4) 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)] (5) For checking survey and map as to form and mathematical correctness, but not on the ground, \$3 an hour.
- [7)] (6) For approving subdivision of registered land, and for checking [same as to] the form and mathematical correctness, but not on the ground, \$3 an hour.
- [8)] (7) 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] each service.
- [9)] (8) For each instrument affecting a title not reported in applicant's filed abstract of title, \$2.
- [10)] (9) For filing an amended application, \$1.
- [11)] (10) For each notice by publication, 25 cents.
- [12)] (11) For entering any general default, \$1.
- [13)] (12) For filing any answer, \$1, to be paid by the party filing the [same] answer.
- [14)] (13) For every subpoena, \$1.
- [15)] (14) For swearing each witness, 10 cents.
- [16)] (15) For entering any discontinuance, \$1.
- [17)] (16) For filing notice of appeal, \$30.
- [18)] (17) For entry of order dismissing application, or decree of registration, and sending memorandum to assistant registrar, \$1.
- [19)] (18) 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 or recording of every instrument, including entering, indexing, filing or recording, attesting registration, and making and attesting memorandum on certificates not in excess of four, \$20, except where herein otherwise provided, and \$1 for each additional memorandum on certificates in excess of four required by any one instrument.
- (23) For a copy of any instrument, 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, \$20.
- (25) For recording of an order for a suggestion of death, fact of marriage, divorce, subdivision, or notice of issue of an order in bankruptcy, \$20.
- (26)] (19) For filing any petition after original registration, \$1; an addition of 25 cents for each exhibit attached.

- [(27)] (20) For filing any order after original registration, \$5.
 - [(28)] (21) 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)] (22) For any application made by or in the name of the State, or any political subdivision [thereof,] of the State, any proceedings [had] upon [such] the application or any dealing with registered land by the State, or any political subdivision [thereof,] of the State, 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 plus hookup and per minute charges.]
- (b) For recordation of the document of which the United States, State of Hawaii, or any county of the State of Hawaii, is the grantee, no fees shall be charged."

SECTION 3. Section 502-25, Hawaii Revised Statutes, is amended to read as follows:

"§502-25 Fees. (a) [Unless] Except when otherwise provided, fees for services rendered under this chapter shall be established by rules adopted 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 or recording 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, \$20;
 - (2) For taking any acknowledgment preparatory to registry or recording, \$4 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, when personnel is available for searching, and giving the certificate required by law, \$25 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;
 - (8) For the registrar's certificate pursuant to the Uniform Commercial Code, section 490:9-407, \$25 plus \$5 for each financing statement and for each statement of assignment reported therein.
- (b) All fees collected under this section shall be deposited in the state treasury to the credit of the general fund].
- (b) For recordation of the document of which the United States, State of Hawaii, or any county of the State of Hawaii, is the grantee, no fees shall be charged."

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SECTION 4. Section 502-26, Hawaii Revised Statutes, is amended to read as follows:

"§502-26 Copies of instruments, certificates. The registrar [shall], when applied to [therefor], shall furnish an attested copy of any instrument or document recorded in the registrar's office, or of any fact appearing upon the registrar's records. The registrar may also issue nonattested portions of any instrument or document recorded in the registrar's office. The registrar may issue certificates of search or incumbrance when personnel is available for the making [thereof.] of the certificate. [The fees specified in section 502-25 shall be collected.]"

SECTION 5. Section 502-51, Hawaii Revised Statutes, is amended to read as follows:

"§502-51 Exemption of instruments offered on behalf of United States. In the case of any deed, lease, mortgage, lien, notice, agreement, or other instrument offered for recordation by any judicial, executive, or administrative officer of the United States, acting in the officer's official capacity, or by any duly authorized officer or agent of any agency or instrumentality of the United States created by or under [the laws thereof,] federal or state law, acting in the officer's or agent's official capacity, it shall not be necessary that [such] the instrument, where the [same] instrument is required to be signed by [any such] the officer or agent, be acknowledged before a notary public by [such] the officer or agent, and the registrar of conveyances shall accept the instrument for recordation, when the signature of the duly authorized officer or agent [thereunto duly authorized], together with the official seal, if any, is attached [thereto].

No fees shall be charged by the registrar for the recordation of any instrument offered for recordation by any officer of the United States, acting in the officer's official capacity, or by any officer or agent of any agency or instrumentality of the United States created by or under the laws thereof, acting in the officer's or agent's official capacity.] to the instrument for recordation."

SECTION 6. Section 502-101, Hawaii Revised Statutes, is amended to read as follows:

"§502-101 Veterans certificates[; photographing of]. The bureau of conveyances, upon request of a veteran, resident in Hawaii, or the veteran's next of kin, shall [photograph] record any honorable discharge certificate or other separation or discharge document from the military or naval service of the United States of [such] the veteran [and establish and maintain a record and an index of photographic copies of all certificates and documents of which such photographs may be made].

No charge shall be made for [such photographing but no certificate shall be photographed more than once. The person requesting the photograph shall be furnished with such copies of such photograph, at a charge of 25 cents per copy, as shall be requested and paid for by such person at the time of the request for photographing.] the recording."

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on July 1, 1993.

(Approved May 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 142

H.B. NO. 1703

A Bill for an Act Relating to the State Higher Education Loan Fund.

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

SECTION 1. Section 304-92, Hawaii Revised Statutes, is amended to read as follows:

"§304-92 Eligibility for loans; amounts. Eligibility for loans from the loan fund [is] shall be limited to students at the University of Hawaii or the community colleges of the State who have been residents of the State for at least one year and are enrolled at least half-time in a [full-time] program [which] that culminates in the award of a degree. The amount to be loaned to a student shall be determined by the board of regents based on need for financial aid, academic promise, and deportment. The maximum amount of loans that a student may receive under this program shall be an aggregate amount [of no more than \$5,000 for all undergraduate study and \$10,000 for all combined undergraduate and graduate study, or amounts] equivalent to those amounts established for the [National] Perkins Loan Program (formerly known as the "National Direct Student Loan [Program] Program") authorized under Title IV, Part E, of the Higher Education Act of 1965, as amended[, whichever is greater]."

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 21, 1993.)

ACT 143

H.B. NO. 1740

A Bill for an Act Relating to Fishing.

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

SECTION 1. Chapter 187A, Hawaii Revised Statutes, is amended by adding to part I a new section to be appropriately designated and to read as follows:

"§187A- Sport fish special fund. (a) There is established in the department a sport fish special fund.

(b) The following proceeds shall be retained by or transmitted to the department for deposit into the sport fish special fund:

- (1) Moneys collected as fees for sport fishing licenses and permits, attendance of aquatic resources education programs, use of public fishing areas or other fishing grounds for sport fishing purposes, and use of sport fisheries-related facilities;
- (2) Moneys collected under the provision of any law or rule relating to the importation, taking, catching, or killing of any sport fish;

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- (3) Moneys, other than informers' fees authorized under section 187A-14, collected as fines or bail forfeitures for sport fishing violations of this chapter and chapters 188, 189, and 190;
 - (4) Moneys collected from the sale of any article purchased from the department related to sport fish or sport fishing;
 - (5) Any monetary contributions or moneys collected from the sale of non-monetary gifts to benefit sport fish or sport fishing; and
 - (6) Moneys derived from interest, dividend, or other income from the above sources.
- (c) Expenditures from the sport fish special fund shall be limited to the following:
- (1) For programs and activities to implement title 12, subtitle 5, including the provision of state funds to match federal grants under the Federal Aid in Sport Fish Restoration (Dingell-Johnson/Wallop-Breaux) Act (64 Stat. 430, 16 U.S.C. §777), as amended, for projects concerning sport fish;
 - (2) For acquisition of the use, development, or maintenance of trails and accessways into public fishing areas, fishery management areas, marine life conservation districts, or private lands where public sport fishing is authorized; and
 - (3) For research programs and activities concerning sport fish conservation and management. Research programs and activities conducted under this paragraph may be conducted by personnel of the department or through grants-in-aid to or contracts with the University of Hawaii or other qualified organizations or individuals.
- (d) The proceeds of the sport fish special fund shall not be used as security for, or pledged to the payment of principal or interest on, any bonds or instruments of indebtedness.
- (e) In addition to subsection (c), the department may use moneys in the sport fish special fund for the importation into, and the management, preservation, propagation, and protection of sport fishes in, the State; provided that the department, prior to authorizing expenditures or expending funds from the sport fish special fund, first shall attempt to use those funds to maximize the State's participation to secure federal funds under the Federal Aid in Sport Fish Restoration (Dingell-Johnson/Wallop-Breaux) Act, as amended.
- (f) Nothing in this section shall be construed as prohibiting the funding with general funds or other funds of programs and activities to implement or enforce title 12, subtitle 5, concerning sport fish management and conservation."

SECTION 2. Section 187A-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) To further the purposes of title 12, the department may:

- (1) Use lands set apart for the department's use by the governor; and
- (2) Accept gifts and contributions or enter into contracts. Gifts and contributions may be accepted from, or contracts entered into with, public or private agencies or individuals. Any gifts and contributions accepted under this section to benefit sport fish or sport fishing shall be subject to the requirements specified under section 187A- ."

SECTION 3. Section 187A-9, Hawaii Revised Statutes, is amended to read as follows:

"§187A-9 Federal aid in sport fish restoration. The State hereby assents to the provisions of the [Dingell-Johnson] Federal Aid in Sport Fish Restoration (Dingell-Johnson/Wallop-Breaux) Act (64 Stat. 430, 16 U.S.C. §777), as amended. The department shall perform those acts as may be necessary to the conduct and establishment of cooperative aquatic life restoration [and], management, development, aquatic education, and recreational boating access projects, as defined in the Act of Congress and in compliance with the Act and [rules and] regulations adopted by the Secretary of the Interior thereunder; provided that federal aid funds granted under the Act shall be used for the purposes of approved projects, and no funds accruing to the State from license fees paid by sport fishers, including any interest, dividend, or other income earned from the license fees, shall be diverted for any purpose other than as provided for in the Act and [rules and] regulations adopted pursuant thereto."

SECTION 4. Section 187A-11, Hawaii Revised Statutes, is amended to read as follows:

"§187A-11 Disposition of revenues. All moneys collected each month as fees for [fishing permits or licenses, and all fees for] commercial marine activities, including commercial marine licenses, marine product licenses, and all other moneys collected under the provisions of any law relating to the importation, taking, catching, or killing of aquatic life, and products thereof, except sport fish, shall be deposited with the director of finance to the credit of the general fund. The moneys collected shall be available for expenditure only for the department in accordance with appropriations authorized by the legislature and shall be expended by the department for the importation, management, preservation, propagation, and protection of aquatic life into or in the State, and for the payment of expenses incurred in the prosecution of offenders against the aquatic resource laws of the State, and for the conservation of commercial fisheries and all phases of the work pertaining thereto and all expenses connected therewith, which the department deems expedient."

SECTION 5. Should any provision of this Act or the application thereof be in conflict with the Federal Aid in Sport Fish Restoration (Dingell-Johnson/Wallop Breaux) Act, and regulations thereof, as amended, to the extent that the receipt of funds from the subject Federal Aid program are jeopardized, the terms and provisions required by the Federal Aid Act and regulations shall govern and be applicable, and any expenditure of funds shall conform with the requirements of the Federal Aid Act and regulations, any other law or laws of the states to the contrary notwithstanding. The provisions of this Act shall be liberally construed so as not to hinder or impede the department in obtaining financial aid under the Federal Aid in Sport Fish Restoration (Dingell-Johnson/Wallop-Breaux) Act.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved May 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

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ACT 144

H.B. NO. 1896

A Bill for an Act Relating to Actuarial Assumptions of 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, 1991 and 1992,] June 30, 1993, and June 30, 1994, shall be based on an eight per cent investment yield rate and [such] the 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 May 21, 1993.)

ACT 145

H.B. NO. 2017

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 213, Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

"§213. Funds and accounts. (a) There are established in the treasury of the State two revolving funds, to be known respectively as the Hawaiian home loan fund and the Hawaiian home general loan fund.

[(1)] (b) Hawaiian home loan fund. The moneys in this fund shall be available for the purposes enumerated in section 214 [of this Act] and for payments provided in section 209 and shall not be expended for any other purpose except as provided in subsection [(b)(1).] (e).

Any interest or other earnings arising out of investments from this fund shall be credited to and deposited into the Hawaiian home operating fund.

[(2)] (c) Hawaiian home general loan fund. Moneys appropriated by the legislature for the construction of homes but not otherwise set aside for a particular fund, for construction of replacement homes, for home repairs or additions, or for the development and operation of a farm, ranch, or aquaculture operation; moneys transferred from other funds; and installments of principal paid by the lessees upon loans made to them from this fund, or as payments representing reimbursements on account of advances, but not including interest on such loans or advances, shall be deposited into this fund. The moneys in the fund shall be used for purposes enumerated in section 214 [of this Act] and for payments provided in section 209; [provided that loans to lessees for repairs to their existing homes and for additions to such homes shall not be in excess of \$15,000;] provided [further] that, in

addition to the conditions enumerated in section 215, farm loans shall be subject to the following conditions: [to]

- (1) To be eligible for a farm loan the applicant shall derive, or present an acceptable plan to derive, a major portion of the applicant's income from farming; [farm]
- (2) Farm loans made for the purpose of soil and water conservation shall not exceed \$20,000 and shall be for a term not to exceed ten years[.];
- (3) Subsidies and grants or cost-sharing funds entitled and received by the lessee for soil and water conservation purposes shall be assigned to the department for the repayment of the outstanding farm indebtedness; and [the]
- (4) The lessee shall carry out recommended farm management practices approved by a qualified agricultural agency.

[(A)] The department may create an account within this fund to support the guarantee of repayment of loans made by government agencies or private lending institutions to a holder of a lease under section 207(a) [of this Act] or license issued under section 207(c)(1)(B) [of this Act].

[(B)] The department may create an account within this fund for moneys borrowed from government agencies or private lending institutions to be used for any of the purposes enumerated in section 214 [of this Act]. Installments of principal and that part of the interest equal to the interest charged to the department by the lender paid by the lessees on the loans made to them from this account shall be deposited into the same account[; any]. Any additional interest or other earnings arising out of investments from this account shall be credited to and deposited into the Hawaiian home receipts fund.

[(b)] (d) There are established in the treasury of the State five special funds, to be known respectively as the Hawaiian home operating fund, the Hawaiian home administration account, the Hawaiian home receipts fund, the Hawaiian home trust fund, and the native Hawaiian rehabilitation fund.

[(1)] (e) Hawaiian home operating fund. The interest transferred from the Hawaiian home loan fund, all moneys received by the department from any other source, and moneys transferred from the Hawaiian home receipts fund, shall be deposited into the Hawaiian home operating fund. The moneys in this fund, without the prior written approval of the governor, shall be available:

- [(A)] (1) For construction and reconstruction of revenue-producing improvements intended to serve principally occupants of Hawaiian home lands, including acquisition or lease therefor of real property and interests therein, such as water rights or other interests;
- [(B)] (2) For payment into the treasury of the State of such amounts as are necessary to meet the interest and principal charges for state bonds issued for such revenue-producing improvements;
- [(C)] (3) For operation and maintenance of such improvements constructed from such funds or other funds;
- [(D)] (4) For the purchase of water or other utilities, goods, commodities, supplies, or equipment needed for services, or to be resold, rented, or furnished on a charge basis to occupants of Hawaiian home lands; and
- [(E)] (5) For appraisals, studies, consultants (including architects[,] and engineers), or any other staff services including those in section 202(b) required to plan, implement, develop, or operate these projects.

The moneys in this fund may be supplemented by other funds available for or appropriated by the legislature for the same purposes. In addition to such moneys, this fund, with the approval of the governor, may be supplemented by transfers, made on a loan basis from the Hawaiian home loan fund for a period not

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exceeding ten years; provided that the aggregate amount of such transfers outstanding at any one time shall not exceed \$500,000.

In addition, moneys of this fund shall be made available with the prior written approval of the governor for offsite improvements and development necessary to serve present and future occupants of Hawaiian home lands; for improvements, additions, and repairs to all assets owned or leased by the department excluding structures or improvements that the department is obligated to acquire under section 209 [of this Act]; for engineering, architectural, and planning services to maintain and develop properties; for such consultant services as may be contracted for under this Act; for purchase or lease of necessary equipment; for acquisition or lease of real property and interest therein; and for improvements constructed for the benefit of beneficiaries of this Act and not otherwise permitted in the various loan funds or the administration account.

[(2)] [f] Hawaiian home administration account. The entire receipts derived from any leasing or other disposition of the available lands [defined in] pursuant to section [204 of this Act] 204(2) and transfers from the Hawaiian home receipts fund shall be deposited into this account. Any interest or other earnings arising out of investments from this fund shall be credited to and deposited into this fund. The moneys in this account shall be expended by the department for salaries and [all] other administration expenses of the department in conformity with general law applicable to all departments of the State, and no sums shall be expended for structures and other permanent improvements. This account shall be subject to the following conditions and requirements:

[(A)] [1] The department [shall], when required by the governor but not later than November 15 preceding each regular session of the legislature, shall submit to the state director of finance its budget estimates of expenditures for the next fiscal period in the manner required by general law[.].

[(B)] [2] The department's budget as approved by the governor shall be included in the governor's budget report and shall be transmitted to the legislature for its approval[.].

[(C)] [3] Upon legislative approval of a budget, the amount appropriated shall be made available to the department. If no budget is approved by the legislature prior to its adjournment, sums accruing to this account shall not be expended for any other purpose but shall remain available for future use. Any amount in this account which is in excess of the amount approved by the legislature or made available for the fiscal period may be transferred to the Hawaiian home operating fund.

[(3)] [g] Hawaiian home receipts fund. All interest moneys from loans or investments received by the department from any fund except as provided for in each respective fund, shall be deposited into this fund. At the end of each quarter, all moneys in this fund may be transferred to the Hawaiian home operating fund, the Hawaiian home administration account, the Hawaiian home trust fund, and any loan fund in accordance with rules adopted by the department.

[(4)] [h] Hawaiian home trust fund. [All] Except for gifts, bequests, and other moneys given for designated purposes, moneys deposited into this fund shall be available for transfers into any other fund or account authorized by the Act or for any public purpose deemed by the commission to further the purposes of the Act. Public purpose, as used herein, includes the formation of an account within the Hawaiian home trust fund as a reserve for loans insured or guaranteed by the Federal Housing Administration, Department of Veterans [Administration,] Affairs, or any other federal agency and their respective successors and assigns, which are authorized to insure or guarantee loans. Notwithstanding any other law to

the contrary, the department is expressly authorized to deposit the reserve for loans in any duly organized bank in the State or elsewhere in the United States with automatic fund transfer capabilities and at such reserve amounts as shall be reasonably required by the federal agencies as a condition for participation in their respective insurance or guarantee programs.

[(5)] (i) Native Hawaiian rehabilitation fund. [(A)] Pursuant to Article XII, Section 1, of the State Constitution, thirty per cent of the state receipts, derived from lands previously cultivated as sugarcane lands under any other provision of law and from water licenses, shall be deposited into this fund. The department shall use this money solely for the rehabilitation of native Hawaiians which shall include, but not be limited to, the educational, economic, political, social, and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved and perpetuated.

[(B)] Any payment of principal, interest, or other earnings arising out of the loan or investment of money from this fund shall be credited to and deposited into this fund.

[(C)] Sections 214, 215, 216, and 217 [of this Act] shall not apply to administration of this fund. The department is authorized to adopt rules under chapter 91 necessary to administer and carry out the purposes of this fund."

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 21, 1993.)

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H.B. NO. 2019

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 220.5, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (d) to read as follows:

"(d) Any project developer agreement entered into pursuant to this section may provide for options for renewal of the term of the project developer agreement; provided that [the]:

(1) The term of any one project developer agreement shall not exceed sixty-five years; [and provided further that any];¹

(2) Any lands disposed of under a project developer agreement shall be subject to withdrawal at any time during the term of the agreement, with reasonable notice; and [provided that the]

(3) The rental shall be reduced in proportion to the value of the portion withdrawn and the developer shall be entitled to receive from the department the proportionate value of the developer's permanent improvements so taken in the proportion that they bear to the unexpired term of the agreement, with the value of the permanent improvements determined on the basis of fair market value or depreciated value, whichever is less; or the developer, in the alternative, may remove and

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relocate the developer's improvements to the remainder of the lands occupied by the developer."

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 21, 1993.)

Note

1. So in original.

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H.B. NO. 2020

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 209, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (a) to read as follows:

"(a) Upon the death of the lessee, the lessee's interest in the tract or tracts and the improvements thereon, including growing crops and aquacultural stock (either on the tract or in any collective contract or program to which the lessee is a party by virtue of the lessee's interest in the tract or tracts), shall vest in the relatives of the decedent as provided in this paragraph. From the following relatives of the lessee who are (1) at least one-quarter Hawaiian, husband, wife, or children, or (2) native Hawaiian, father and mother, widows or widowers of the children, grandchildren, brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews,—the lessee shall designate the person or persons to whom the lessee directs the lessee's interest in the tract or tracts to vest upon the lessee's death. The Hawaiian blood requirements shall not apply to the descendants of those who are not native Hawaiians but who were entitled to the leased lands or¹ under section 3 of the Act of May 16, 1934 (48 Stat. 777, 779), as amended, or under section 3 of the Act of July 9, 1952 (66 Stat. 511, 513). In all cases [such] that person or persons need not be eighteen years of age. [Such] The designation shall be in writing, may be specified at the time of execution of [such] the lease with a right in [such] the lessee in similar manner to change [such] the beneficiary at any time and shall be filed with the department and approved by the department in order to be effective to vest [such] the interests in the successor or successors so named.

In case of the death of any lessee, except as hereinabove provided, who has failed to specify a successor or successors as approved by the department, the department may select from only the following qualified relatives of the decedent:

- (1) Husband or wife; or
- (2) If there is no husband or wife, then the children[.]; or
- (3) If there is no husband, wife, or child, then from the following relatives of the lessee who are native Hawaiian: father and mother, widows or widowers of the children, grandchildren, brothers and sisters, widows or widowers of the brothers and sisters, or nieces and nephews.

The rights to the use and occupancy of the tract or tracts may be made effective as of the date of the death of [such] the lessee.

In the case of the death of a lessee leaving no designated successor or successors, husband, wife, [or] children, or relative qualified to be a lessee of

Hawaiian home lands, the land subject to the lease shall resume its status as unleased Hawaiian home lands and the department is authorized to lease [such] the land to a native Hawaiian as provided in this Act.

Upon the death of a lessee who has not designated a successor and who leaves a spouse not qualified to succeed to the lease or children not qualified to succeed to the lease, or upon the death of a lessee leaving no [such] 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 appraise the value of all [such] the improvements and growing crops or improvements and aquacultural stock, as the case may be, and shall pay to the nonqualified spouse or the nonqualified children as the lessee shall have designated prior to the lessee's death, or to the legal representative of the deceased lessee, or to the previous lessee, as the case may be, the value thereof, less any indebtedness to the department, or for taxes, or for any other indebtedness the payment of which has been assured by the department, owed by the deceased lessee or the previous lessee. [Such] These payments shall be made out of the Hawaiian home loan fund and shall be considered an advance therefrom and shall be repaid by the successor or successors to the tract involved. If available cash in the Hawaiian home loan fund is insufficient to make [such] these payments, payments may be advanced from the Hawaiian home general loan fund and shall be repaid by the successor or successors to the tract involved; provided that any repayment for advances made from the Hawaiian home general loan fund shall be at the interest rate established by the department for loans made from the Hawaiian home general loan fund.

[Such] The appraisal shall be made by three appraisers, one of whom shall be named by the department, one by the previous lessee or the legal representative of the deceased lessee, as the case may be, and the third shall be selected by the two appraisers aforementioned."

SECTION 2. 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 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 21, 1993.)

Note

1. Should be underscored.

A Bill for an Act Relating to Homeless Persons.

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

SECTION 1. Chapter 358D, Hawaii Revised Statutes, is amended to read as follows:

**"[]CHAPTER 358D[]
HOMELESS [FAMILIES] ASSISTANCE ACT**

[]§358D-1[] Title. This chapter shall be known as the Homeless [Families] Assistance Act.

[]§358D-2[] Purposes. The purposes of this chapter are to:

- (1) Provide a timely and appropriate response to homelessness;
- (2) Respond to the growing number of homeless families and individuals who are unable to find affordable units to rent; and
- (3) Establish and govern the services and benefits that the [director] authority may provide for the homeless through homeless facilities.

[]§358D-3[] Definitions. As used in this chapter:

"Authority" means the Hawaii housing authority.

["Conventional home" means a customary dwelling unit.

"Department" means the department of human services.

"Director" means the director of human services.]

"Donor" means any individual, partnership, corporation, joint-stock company, unincorporated organization, foundation, estate, trust, or any other person or firm that donates money, real property, goods, or services to a homeless facility, or any other program for the homeless authorized by this chapter, including board members, trustees, officers, partners, principals, stockholders, members, managers, employees, contractors, agents of these entities, or any person who was involved with the donation.

"Emergency shelter" means a [shelter] homeless facility designed to provide [emergency] temporary shelter and appropriate and available services to [the] homeless families or individuals for up to six weeks.

["Homeless family" means a household with at least one dependent child under eighteen years of age that does not have a conventional home or is at risk of becoming homeless and has been determined eligible for shelter, or any other program for the homeless authorized by this chapter, pursuant to standards and criteria established by rule for eligibility, need, and priority; provided that the director may establish by rule exceptions to these eligibility requirements based on special circumstances; and that:

- (1) Is receiving assistance through any state or federal assistance program;
- (2) Is unable to find an affordable unit to rent; or
- (3) Has a sponsoring human service agency or provider agency that states verbally or in writing that the household does not have a conventional home or is at risk of becoming homeless.]

"Homeless" means:

- (1) An individual or family who lacks a fixed, regular, and adequate nighttime residence; or
- (2) An individual or family who has a primary nighttime residence that is:
 - (A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations;
 - (B) An institution that provides temporary residence for individuals intended to be institutionalized; or
 - (C) A public or private place not designed for or ordinarily used as sleeping accommodations for human beings, pursuant to standards and criteria established by rule for eligibility, need, and priority for each program; provided that the authority may establish by rule exceptions to these eligibility requirements based on special circumstances.

"Homeless facility" means a development designed to provide shelter for homeless families or individuals pursuant to this chapter, or to facilitate any other homeless program authorized by this chapter, and may include emergency[,] or transitional[, or permanent] shelters.

"Homeless shelter stipend" means a payment to a provider agency or to the authority on behalf of a homeless family or individual to assist with the costs of operating a homeless facility and providing appropriate services.

"Permanent shelter" means a housing development designed to provide long-term shelter to households.]

"Provider agency" means an organization, including its board and officers and any employees, contractors, or agents, contracted by the [director] authority to provide labor and services to any homeless facility, or any other program for the homeless authorized by this chapter, that [has been:

- (1) Qualified as a charitable organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and
- (2) Qualified by the director to operate and manage a homeless facility, or any other program for the homeless authorized by this chapter, pursuant to standards and criteria established by duly adopted rules for eligibility and classification.] is:
 - (1) A profit organization incorporated under the laws of the State or a nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax; or
 - (2) A nonprofit organization, with a governing board whose members have no material conflict of interest and serve without compensation with bylaws or policies that describe the manner in which business is conducted and policies that relate to nepotism and management of potential conflict of interest situations.

In addition, the organization shall be qualified by the authority to operate and manage a homeless facility, or any other program for the homeless authorized by this chapter, pursuant to standards and criteria established by duly adopted rules for eligibility.

"Transitional shelter" means a [shelter] homeless facility designed to provide [transitional] temporary shelter and appropriate and available services to homeless families or individuals for up to [eighteen] twenty-four months, pursuant to rule.

[[§358D-4]] Administration. The [director] authority shall administer this chapter [through the department]. The [director] authority may delegate to any person such power and authority vested in the [director] authority by this chapter as the [director] authority deems reasonable and proper for the effective administration of this chapter, except for the power to adopt rules.

[[§358D-5]] Duties; rules. (a) In addition to any other power or duty prescribed by law, the [director] authority shall administer and operate homeless facilities and any other program for the homeless authorized by this chapter; [enter into agreements with other state agencies or private providers necessary to assist the homeless;] establish programs for the homeless; and take any other actions necessary to effectuate the purposes of this chapter.

(b) The [director] authority shall adopt rules pursuant to chapter 91 for the purposes of this chapter; provided these rules, or any rules relating directly to homelessness authorized by any statute, shall be exempt from the public notice and public hearing requirements of chapter 91, and shall take effect immediately upon filing with the office of the lieutenant governor.

[[§358D-6[]] Exception to liability for donors. (a) Any donor who gives money to a provider agency, to a homeless facility, to or through the authority, or for any other program for the homeless authorized by this chapter, shall not be liable for any civil damages resulting from the donation.

(b) Any donor who gives land and improvements, or who leases land and improvements at a nominal consideration, to a provider agency, to a homeless facility, to or through the authority, or for any other program for the homeless authorized by this chapter, shall not be liable for any civil damages resulting from the donation except as may result from the donor's gross negligence or wanton acts or omissions; provided that, if the donor at the time of donation gave the [director] authority a full accounting of all the dangers concerning the land and improvements known to the donor, then the donor shall not be liable for any civil damages resulting from the donation.

(c) Any donor who provides services or materials used to build and construct a homeless facility shall not be liable for any civil damages resulting from the donor's acts or omissions, except for damages resulting from the donor's gross negligence relating to the donation.

(d) The [director] authority shall be responsible for inspecting, reviewing, analyzing, qualifying, and determining that the land, structures, materials, or services donated to or through the authority for the homeless facilities, or other programs for the homeless, are reasonably safe for public use.

[[§358D-7[]] Contract or conveyance to [provider agencies.] the authority. [(a) A state agency holding lands and improvements suitable for use or development for use as a homeless facility provided for under this chapter, may contract or otherwise convey such land and improvements, or the management, operation, and administrative responsibility over the land and improvements, to a provider agency, subject to terms authorized by this section, but only if petitioned to do so by the director.

(b)] Notwithstanding any other law to the contrary, the board of land and natural resources or other state agency holding such lands and improvements, for purposes of this chapter, may contract or otherwise convey at a nominal consideration, by direct negotiation and without recourse to public auction, the land and improvements, or the management, operation, and administrative responsibility over the land and improvements, to [a provider agency.] the authority or its designee. The land and improvements shall be used by the [provider agency] authority or its designee for homeless facilities, or for any other program for the homeless authorized by this chapter.

[(c) The terms of any of the contract or conveyance shall allow for cancellation of the contract or conveyance should the director find the provider agency in default on any homeless services contract.]

[[§358D-8[]] Program administration. To the extent that appropriations are made available, the [director shall contract one or more provider agencies] authority may contract with a provider agency to administer homeless facilities, or any other program for the homeless created by this chapter. [Shelter, or assistance through any other program for the homeless authorized by this chapter, shall be available only in areas where there is a provider agency, qualified by the director, available and willing to manage and operate an available homeless facility, or any other program for the homeless authorized under this chapter.] The selection of provider agencies to operate and manage state-owned homeless facilities shall not be subject to chapters 42D, 102, and 103. The selection of provider agencies shall be subject to qualifying standards and criteria established by rule.

[[§358D-9]] Time limits. To the extent that appropriations are made available, a provider agency shall provide shelter or any other program assistance authorized by this chapter to eligible homeless families and homeless individuals not later than two days, or such time as is set by rule which shall not be later than seven days, after they apply for the shelter or other program assistance.

[[§358D-10]] Determination of eligibility and need. (a) The provider agency operating and managing a homeless facility, or any other program for the homeless authorized by this chapter, or the authority operating and managing its own homeless facility, shall be responsible for [deciding] determining if an applicant is eligible for shelter or other services at the homeless facility or through any other program for the homeless, pursuant to standards and criteria established by rule.

(b) The provider agency or the authority operating and managing its own homeless facility shall determine the degree of need for each homeless family[,] or individual and in its determination shall consider the resources available and the number of potential eligible applicants in the area served by the [provider agency.] homeless facility or other program for the homeless authorized by this chapter.

[[§358D-11]] Abuse of assistance. (a) The provider agency operating and managing a homeless facility, or any other program for the homeless authorized by this chapter, or the authority operating and managing its own homeless facility, shall be responsible for [deciding] determining if a participant is no longer eligible for shelter or other services at the homeless facility or through any other program for the homeless, pursuant to standards and criteria established by rule.

(b) Pursuant to rule and the right of due process, the authority or its designee, or provider agencies [and the director] together with the authority, may act [collectively in barring] to bar homeless families or individuals from participating further in any homeless facility, [or through any other program for the homeless authorized by this chapter,] may issue a writ of possession, and take such other actions as provided by rule.

The enforcement of a writ of possession shall be effected either by an officer appointed by the authority, who shall have all of the powers of a police officer for all action in connection with the enforcement of the writ, or any other law enforcement officer of the State or any county, whose duty it shall be to enforce the writ. The person enforcing the writ shall remove all persons from the premises and put the authority or its designee, or the provider agency designated by the authority, in full possession thereof.

Upon eviction, the household goods and personal effects of the person against whom the writ is entered, and those of any persons using the premises incident to the person's holding, may be removed from the premises immediately and sold or otherwise disposed of by the authority or its designee, or the provider agency. If the action is taken, the authority or its designee, or the provider agency, shall have a lien on the property so removed for the expenses incurred by it in moving the property.

(c) Any person who enters or remains unlawfully in or upon the premises or living quarters of any homeless facility, or any other program for the homeless authorized by this chapter, after reasonable warning or request to leave by that provider agency's authorities, the authority or its designee, or a police officer, shall be guilty of a misdemeanor[.]; provided that the offense in this subsection shall be in addition to any other applicable offense in the Hawaii Penal Code. A warning or request shall only be issued if the person has engaged in unlawful conduct or has violated house rules and regulations; provided that the warning or request for violation of house rules and regulations shall be issued only if that provider agency,

or the authority or its designee, has filed a copy of its current house rules and regulations governing tenancy or participation at the shelter, facility, or program, and any changes thereto, with the director of commerce and consumer affairs. The house rules and regulations shall be reasonable and a copy shall be provided to each tenant or participant. The warning or request shall supersede any invitation by a tenant or participant at the shelter, facility, or program to that person to visit the premises or living quarters.

[§358D-12[]] Exemptions. (a) Any compensation received by a provider agency for services rendered to homeless families or individuals, or in operating or managing a homeless facility authorized by this chapter, is exempt from taxes under chapter 237.

(b) Any county mayor may exempt by executive order, donors and homeless provider agencies from real property taxes, water and sewer development fees, rates collected for water supplied to consumers and for use of sewers, and any other county taxes, charges, or fees; provided that any county may enact ordinances to regulate the exemptions granted by this subsection.

(c) Any provider agency operating or managing a homeless facility, or any other program for the homeless authorized by this chapter, is exempt, for purposes of those facilities or programs, from any requirements contained in part VIII of chapter 346, chapter 467, and chapter 521.

[§358D-13[]] Emergency/transitional shelter volunteers exempted. (a) For the purposes of this section, "emergency/transitional shelter volunteer" means an individual who:

- (1) Is a tenant at an emergency or transitional shelter administered pursuant to this chapter;
- (2) Is not an employee of the provider agency operating or managing the shelter;
- (3) Is under the direction of the provider agency operating or managing the shelter and not the [director] authority or State; and
- (4) Provides up to eighty hours of volunteer labor or services per month to the provider agency operating or managing the shelter, notwithstanding payment of stipends or credits for such labor and services.

(b) Provider agencies may accept labor and services from emergency/transitional shelter volunteers.

(c) In addition to any exemptions granted to nonpaid labor, emergency/transitional shelter volunteers who acknowledge in writing that they are emergency/transitional shelter volunteers, shall not be construed to be in the employ of the provider agency operating or managing the shelter. The volunteers' labor and services provided to the provider agency operating or managing the shelter shall not be construed to constitute employment, and the volunteers shall not be construed to be employees of the provider agency operating or managing the shelter, under [title 21 or] any [other] labor law.

[§358D-14[]] Annual program audits. (a) The [director] authority shall ensure that a compliance audit, paid for by the [department,] authority, by an independent auditing agency is carried out expeditiously for each fiscal year during which any provider agency dispensed shelter or assistance for any homeless facility or any other program for the homeless authorized by this chapter. The audit shall address all provider agencies for that type of facility or program and shall include recommendations to address any problems found. The auditing agency shall include a representative number of interviews with recipients of the shelter or other form of assistance as part of its compliance audit.

(b) Copies of each audit shall be submitted to the [director,] authority, the director of finance, the president of the senate, and the speaker of the house of representatives.

(c) Continuing contracts with provider agencies to participate in any program for the homeless authorized by this chapter shall contain a requirement that the provider agency shall address the recommendations made by the auditing agency, subject to exceptions as set by the [director,] authority.

(d) Failure to carry out the recommendations made by the auditing agency may be grounds for the [director] authority to bar a provider agency from further contracts for programs authorized by this chapter until the barred provider agency has addressed all deficiencies.

[[]§358D-15[]] Provider agency and donor cooperation are not in restraint of trade. No provider agency or [agencies,] any other agency, or donor or donors, or method or act thereof that complies with this chapter, shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily, or the creation of a combination or pool, or to accomplish any improper or illegal purpose. Any cooperation or agreement established pursuant to rule shall not be considered as illegal, in restraint of trade, or as part of a conspiracy or combination to accomplish an illegal purpose or act.

[[]§358D-16[]] Construction of chapter. If there is any conflict between this chapter and any other law, [the provisions of] this chapter shall control.

§358D-17 Homeless shelter stipends. (a) Prior to July 1, 1992, homeless shelter stipends at transitional shelters shall not exceed \$350 per shelter unit housing a homeless family of four members per month. Prior to July 1, 1992, the stipend for emergency shelters shall not exceed \$10 per shelter bed per night. The stipend limits shall be adjusted by the authority on July 1, 1992, and each first day of July thereafter, based on the change in the consumer price index for Honolulu for the preceding calendar year, rounded off to the nearest dollar. The authority may adopt rules under chapter 91 to establish exceptions to the stipend limits based on special circumstances.

(b) The authority may make or may contract to make homeless shelter stipend payments on behalf of one or more homeless families or individuals to a provider agency operating or managing an emergency or transitional shelter or, in the case that the authority itself operates and manages a homeless facility, to the authority in such amounts and under such circumstances as provided by rule. The contract may specify a minimum total amount of homeless shelter stipends to be received by a provider agency for making its shelter and services available to eligible homeless families or individuals, pursuant to rule.

(c) In making homeless shelter stipend payments to a provider agency the authority may establish minimal services to be provided by the provider agency to homeless families or individuals at the agency's shelter. The authority may also direct provider agencies to establish and manage a savings account program as described in subsection (d). Additionally, the authority may direct provider agencies to subcontract for outreach services from other private agencies specializing in programs for the unsheltered homeless.

(d) Provider agencies and the authority may establish and collect shelter and services payments from homeless families or individuals in addition to the amount received in homeless shelter stipend payments pursuant to rule. Provider agencies and the authority may also set aside a portion of the payments in a savings account

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to be made available to homeless families or individuals when these families and individuals vacate the shelter.

(e) Selection of provider agencies to receive homeless shelter stipends shall not be subject to chapters 42D, 102, or 103; provided that the selection of provider agencies receiving homeless shelter stipends shall be subject to rules adopted under chapter 91, which ensure compliance with Article VII, section 4, of the Constitution of the State of Hawaii."

SECTION 2. Section 346-53.5, Hawaii Revised Statutes, is repealed.

SECTION 3. Act 279, Session Laws of Hawaii 1992, is amended by amending sections 1, 2, and 3 to read as follows:

"SECTION 1. The legislature finds that the issue of homelessness in Hawaii is a public issue and should be regarded as one of the most significant social problems facing the people of the State today. The severity of the problem is visible in every area of the State, and signs that the problem is growing progressively worse are becoming more and more prevalent. Without exception, the problem of homelessness affects the lives of every person in the State, and the burden of rectifying this problem should be approached as a collective responsibility. While there are no easy solutions to the problem, it is clear that community involvement in the fight against homelessness is the key toward the development of an effective and workable system.

The purpose of this Act is to conduct a [two-year] five-year homeless assistance pilot project known as the "Hale Kokua" project which would authorize the payment of a state grant and a monthly rent supplement to any interested property owner who sets aside any existing rental space or undertakes the improvement or construction of any adjoining or separate dwelling unit for the purpose of renting the unit to any family or individual classified as employed but homeless under the program for a period of five years. Participation in the Hale Kokua project will be strictly voluntary.

The project, [which initially, will be limited in scope to the city and county of Honolulu,] will preliminarily place a priority on placing homeless families who have been homeless in the State the longest and have been living in transitional shelters, parks, cars, the streets, or other public areas in rental housing made available under the program. To ensure that no particular district or community of the [city and county] State is unduly burdened by the sudden influx of homeless families holding rental contracts with qualified homeowners under the project, the number of homeowners authorized to take part in the Hale Kokua project will be limited to five per census tract. [With approximately one hundred ninety-six census tracts throughout the city and county of Honolulu, the project will carry the potential of making nine hundred eighty units available to homeless families on Oahu. With an average of two and one-half members per homeless family, the program may ultimately provide homes for 2,450 people during the initial phase of the program alone. Over the long term, the purpose of the Hale Kokua project will be to develop the framework to implement the system statewide.]

The Hale Kokua project will assist homeless families and individuals willing to engage in self-improvement programs and regular employment with an alternative to living in homeless shelters where homeless families as well as the special needs homeless are indiscriminately grouped together. Accordingly, the project will allow other available programs to focus more intently on the problems of the special needs homeless. This Act also calls for the establishment of a cooperative effort between the State, the counties, and the federal government to provide the community and the Hale Kokua project with the resources and the

incentives to eliminate the condition of homelessness. Because the Hale Kokua project shares the capital development costs of building rental units between the public and private sector, the cost of implementing this program will be far less than the cost of building new homeless shelter facilities.

Because the project has the potential to drastically reduce the actual number of homeless families and individuals living in public areas, full and free access to Hawaii's malls, streets, parks, and camp grounds will be restored, enabling stricter enforcement of the State's public access laws by the law enforcement community. As a result, the overall quality of life for all of the people will be enriched and Hawaii's reputation as one of the most beautiful areas in the world to visit will be enhanced.

SECTION 2. There is established, within the Hawaii housing authority, a [two-year] five-year homeless assistance pilot project to be known as the "Hale Kokua" project to provide incentives and assistance to private homeowners in the [city and county of Honolulu] State who set aside existing dwelling units, or construct new or improve existing dwelling units, for rental for a period of five years by families or individuals classified as employed but homeless under the project. The project shall be headed by the state homeless programs coordinator with the assistance of the homeless assistance coordinating committee. The executive director of the Hawaii housing authority shall administer the Hale Kokua project and adopt the standards and the framework necessary to implement the project statewide after the initial phase of the project.

SECTION 3. The executive director of the Hawaii housing authority shall appoint a state homeless programs coordinator to carry out the purposes of this Act and to coordinate all programs and responses of state agencies as to the problem of homelessness. The coordinator may be assisted by an administrative assistant and one clerical position, both appointed by the executive director without regard to chapters 76 and 77, Hawaii Revised Statutes. The coordinator, with approval of the executive director, may contract with private services to carry out the duties and responsibilities of the project.

Under the supervision of the executive director, the duties of the coordinator shall include:

- (1) Carrying out the requirements of the Hale Kokua project under this Act;
- (2) Developing and adopting the requirements, qualifications, registration, background check, initial screening procedures, and follow-up after placement, to determine the ability to make rental payments and the need for social services and referrals for homeless families and individuals to qualify them as tenants under this project. The coordinator shall place a priority on arranging the placement of homeless families living in transitional shelters, parks, cars, camp grounds, on the streets, or other public areas, into rental units under this project;
- (3) Developing and adopting the requirements, qualifications, and the registration procedures for property owners who provide rental housing to qualified homeless tenants, provided that priority shall be given to those not requesting construction grants;
- (4) Developing appropriate waivers of liability; and adopting the procedures to place qualified homeless tenants with property owners participating in the project. Participating property owners shall be given the opportunity to conduct interviews and make the final tenant selection from lists of prospective tenants compiled by the coordinator;

- (5) Establishing the procedures and requirements for the disbursement of building improvement grants and rental subsidies and the amounts thereof to property owners participating in the project;
- (6) Working with the counties to develop and propose uniform incentives to encourage and facilitate the participation of property owners, including real property tax waivers or reductions, and exemptions in zoning or building code requirements;
- (7) Monitoring the financial status and progress of recovery of the homeless tenants and cooperating with other agencies in establishing and coordinating self-help, job training, and other self-improvement programs for the homeless;
- (8) Promoting and assisting in the development of employer-employee relationships between homeless tenants and participating property owners, including but not limited to tenant caretaker, housekeeper, or groundskeeper employment situations;
- (9) Assisting homeless families and individuals wishing to return or relocate to out-of-state locations to carry out their relocation;
- (10) Securing financial, in-kind, and administrative assistance from law enforcement and other state and county agencies and the private sector to implement the project;
- (11) Securing funding assistance from federal agencies and programs involved in housing development, job-training, or homeless assistance;
- (12) Adopting rules under chapter 91, Hawaii Revised Statutes; provided that any rules adopted within one year after the effective date of this Act shall be exempt from the public notice and public hearing requirements of chapter 91;
- (13) Reporting monthly to the homeless programs coordinating committee;
- (14) Monitoring the progress of the Hale Kokua project, and collecting annual statistics showing the numbers of homeless people, homeless families, and homeless children, using measurement systems with a view to uniformity with national surveys on homelessness;
- (15) Preparing [an] annual interim [report] reports on the status of the Hale Kokua project during [the first] each year of its operation, for submittal to the [1993] legislature by the authority, which shall include the statistics listed above and other relevant information; and
- (16) Preparing a final report for submittal to the [1994] 1997 legislature by the authority at the end of the Hale Kokua project pilot period containing findings, the framework to implement the project statewide, and recommendations, which shall include means of encouraging participating property owners to sign up for additional terms."

SECTION 4. Act 279, Session Laws of Hawaii 1992, is amended by amending sections 5 and 6 to read as follows:

"SECTION 5. The coordinator shall permit the participation of a maximum number of five property owners in the Hale Kokua project within each census tract at any given period in time, without regard to the existence or operation of shelters and other facilities to aid the homeless in the tract. The coordinator shall notify prospective participants registered on the waiting list in each census tract of the opportunity to participate in the project as these opportunities may arise in each tract.

Assistance to any qualified property owner providing rental housing to any homeless tenant under this Act for a period of five years shall include, but not be limited to, at least one of the following:

- (1) The payment of up to \$7,500 as a state grant to offset the cost of renovating, improving, building any adjoining addition, or constructing any separate structure upon the premises of the owner's property in preparation for its use as a homeless assistance unit under the project;
- (2) The payment of up to a \$300 monthly state rent subsidy to supplement the monthly rental payments made by the homeless tenant;
- (3) Real property tax rate waivers or reductions proposed by the coordinator and approved by the council of the county in which the property is located;
- (4) Zoning and building code exemptions applicable to the construction of adjoining or separate dwelling units on the owner's property, provided that the county, by ordinance, may establish minimum development and construction standards for these units and procedures for approval thereto; and
- (5) Other incentives consistent with the purposes of this Act to assist in the participation of property owners under the project that are adopted by the state homeless programs coordinator.

SECTION 6. (a) Any property owner who withdraws from the Hale Kokua project prior to the expiration of five years shall return the state grant for construction improvements within ninety days of the date of withdrawal. The coordinator shall effect the recovery of the grant, including but not limited to the filing of liens against the real property of withdrawing property owners. In any action brought to enforce this Act, the coordinator shall be awarded reasonable attorneys' fees and costs as determined by the court.

(b) The respective county government whose jurisdiction includes the site shall determine the disposition of the additional unit constructed with the grant."

SECTION 5. Act 279, Session Laws of Hawaii 1992, is amended by amending section 8 to read as follows:

"**SECTION 8.** This Act shall take effect upon its approval¹ and shall be repealed on July 1, [1994;] 1997; provided that the repeal of this Act shall not affect the right to recover grants, attorneys' fees, and other costs under section 6."

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

SECTION 8. This Act shall take effect upon its approval.

(Approved May 21, 1993.)

Note

1. Prior to amendment "," appeared here.

A Bill for an Act Relating to State Planning.

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

SECTION 1. Section 226-17, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Planning for the State's facility systems with regard to transportation shall be directed towards the achievement of the following objectives:

- (1) An integrated multi-modal transportation system that services statewide needs and promotes the efficient, economical, safe, and convenient movement of people and goods.
- (2) A statewide transportation system that is consistent with and will accommodate planned growth objectives throughout the State.

(b) To achieve the transportation objectives, it shall be the policy of this State to:

- (1) Design, program, and develop a multi-modal system in conformance with desired growth and physical development as stated in this chapter.
- (2) Coordinate state, county, federal, and private transportation activities and programs toward the achievement of statewide objectives.
- (3) Encourage a reasonable distribution of financial responsibilities for transportation among participating governmental and private parties.
- (4) Provide for improved accessibility to shipping, docking, and storage facilities.
- (5) Promote a reasonable level and variety of mass transportation services that adequately meet statewide and community needs.
- (6) Encourage transportation systems that serve to accommodate present and future development needs of communities.
- (7) Encourage a variety of carriers to offer increased opportunities and advantages to interisland movement of people and goods.
- (8) Increase the capacities of airport and harbor systems and support facilities to effectively accommodate transshipment and storage needs.
- (9) Encourage the development of transportation systems and programs which would assist statewide economic growth and diversification.
- (10) Encourage the design and development of transportation systems sensitive to the needs of affected communities and the quality of Hawaii's natural environment.
- (11) Encourage safe and convenient use of low-cost, energy-efficient, non-polluting means of transportation.
- (12) Coordinate intergovernmental land use and transportation planning activities to ensure the timely delivery of supporting transportation infrastructure in order to accommodate planned growth objectives."

SECTION 2. New statutory material is underscored.

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

(Approved May 21, 1993.)

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S.B. NO. 126

A Bill for an Act Relating to Physical Therapy.

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

SECTION 1. Chapter 461J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§461J- Prohibited practices. A physical therapist shall not use invasive procedures. For purposes of this section, an invasive procedure is the breaking or puncturing of a person's good skin integrity, for example, through surgery or injections."

SECTION 2. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The following chapters and sections are hereby repealed effective December 31, 1993:

- (1) Chapter 452 (Board of Massage)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 460 (Board of Osteopathic Examiners)
- (4) [Chapter 461J (Board of Physical Therapy)]
- (5) Chapter 463E (Podiatry)
- [6] (5) Chapter 514E (Time Sharing Plans)
- [7] (6) Sections 804-61 and 804-62"

SECTION 3. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(i) The following chapters are hereby repealed effective December 31, 1999:

- (1) Chapter 436E (Board of Acupuncture)
- (2) Chapter 442 (Board of Chiropractic Examiners)
- (3) Chapter 444 (Contractors License Board)
- (4) Chapter 448E (Board of Electricians and Plumbers)
- (5) Chapter 461J (Board of Physical Therapy)
- (6) Chapter 464 (Professional Engineers, Architects, Surveyors and Landscape Architects)
- [6] (7) Chapter 465 (Board of Psychology)
- [7] (8) Chapter 468E (Speech Pathology and Audiology)"

SECTION 4. Section 461J-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established within the department of commerce and consumer affairs for administrative purposes the board of physical therapy. The board shall consist of [five] seven members. [Three] Four members shall be physical therapists[. The fourth member shall be a consumer who has demonstrated interest in community health concerns prior to appointment. The fifth], one member shall be a physician or surgeon with a permanent license under chapter 453 or 460, or a dentist with a permanent license under chapter 448[.], and two members shall be consumers. All members shall be at least eighteen years of age and residents of the State."

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SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved May 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 151

S.B. NO. 535

A Bill for an Act Relating to Motor Vehicles.

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

SECTION 1. Section 249-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any tax imposed by sections 249-1 to 249-13 for any year and not paid [before April 1 of that year, or at any subsequent date] when due, shall become delinquent and a penalty shall be added to, and become part of, the delinquent tax. The amount of the delinquency penalty shall be established by the county's legislative body. The director of finance may require the payment of any delinquent tax and penalty as a condition precedent to the registration, renewal, or transfer of ownership of such vehicle. Any vehicle not having the number plates required by sections 249-1 to 249-13, or any vehicle upon which taxes are delinquent as 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.”

SECTION 2. Section 286-46, Hawaii Revised Statutes, is amended to read as follows:

“§286-46 Tax lien and encumbrance record. (a) The director of finance shall keep a book or record to be known as the “tax lien and encumbrance record” in which the following information shall be entered:

- (1) Notices of liens for internal revenue taxes payable to the United States and certificates of release thereof;
- (2) Notices of liens or taxes payable to the State and certificates of release thereof;
- (3) Notices of seizure in accordance with law of any registered motor vehicle upon any writ of attachment, execution, or other process issued under authority of law;
- (4) Notices of restraining order or other order affecting the registration of any registered motor vehicle;
- (5) Notice of any proceeding or action affecting the title of a registered motor vehicle or the interest of the owner or legal owner thereof; and

(6) Notice of release of any of the foregoing.

[The] (b) With the exception of delinquent taxes and penalties imposed by section 249-10, the record shall show the year, month, day, hour, and minute at which the notice has been filed with the director of finance, shall show the nature and kind of lien or encumbrance claimed, the amount of tax or other claim, with interest, penalties, and costs, and shall identify the registered motor vehicles affected by the lien or encumbrance, and shall contain such further information as the director of finance may require. The record shall be a public record and may be arranged in such manner as the director of finance determines.

The interest of the owner or the legal owner in the motor vehicle shall not be deemed to be affected until the notice referred to in [items] paragraphs (1) to (5) has been filed with the director of finance in such form as the director of finance shall prescribe for entry in the tax lien and encumbrance record[.]; provided the director of finance may require the payment of delinquent taxes and penalties as a condition precedent to the vehicle's renewal, registration, or transfer of ownership. The director of finance shall charge a fee of 50 cents for each entry made in the tax lien and encumbrance record, which [fee] shall be deposited in the general fund; provided [however,] that the fee shall not be charged for entries filed by or on behalf of the United States of America or its wholly owned agencies or instrumentalities, the State of Hawaii, or [a political subdivision thereof,] any county, or wholly owned agencies or instrumentalities of the State or [of a political subdivision of the State.] any county.

Nothing [herein] in this section shall be deemed to alter or amend any statute relating to tax liens or the enforcement thereof."

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 21, 1993.)

ACT 152

S.B. NO. 1422

A Bill for an Act Relating to Family Leave.

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

SECTION 1. Chapter 398, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§398- Rules.** Subject to chapter 91, the director may adopt rules necessary for the enforcement and administration of this chapter. The rules shall have the force and effect of law."

SECTION 2. Section 5 of Act 328, Session Laws of Hawaii 1991, is amended to read as follows:

"SECTION 5. This Act shall take effect on January 1, 1992; provided that the Act shall not apply to employees of private sector employers as defined in this Act until [January] July 1, 1994."

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SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved May 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 153

S.B. NO. 1706

A Bill for an Act Relating to Professional Engineering Employees of the Hawaii Public Broadcasting Authority.

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

SECTION 1. 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. The salary of the executive director shall be set by the board and the director of commerce and consumer affairs and shall not exceed that of a second deputy under section 26-53. The executive director may appoint a chief engineer and an assistant chief engineer who shall not be subject to chapters 76 and 77, but shall be eligible for the state employees' retirement system and for other benefits generally applicable to officers and employees of the State. Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on the effective date of this Act.”

SECTION 2. Section 314-15, Hawaii Revised Statutes, is amended to read as follows:

“§314-15 Personnel categories. Except as provided in section 314-13.5[,] and except for the chief engineer and assistant chief engineer appointed by the executive director, personnel transferred to, assigned to, or hired by the Hawaii public broadcasting authority shall be placed in one of the following categories subject to review and approval by the director of personnel services:

- (1) Category (a) - Clerical, nonprofessional, and nontechnical;
- (2) Category (b) - Professional and technical; and
- (3) Category (c) - Student help.”

SECTION 3. Section 314-16, Hawaii Revised Statutes, is amended to read as follows:

“[§314-16] Employment status. [All] Except for the chief engineer and assistant chief engineer appointed by the executive director, all employees of the Hawaii public broadcasting authority shall be employed in their respective categories as follows:

- (1) Category (a) - clerical, nonprofessional, and nontechnical. All employees in this category shall be subject to chapters 76 and 77, provided that nonprofessional and nontechnical employees, except those in cat-

- egory (c) who were employed prior to July 1, 1973 shall receive appropriate civil service status without necessity of examination.
- (2) Category (b) - professional and technical. All employees in this category shall be exempt from chapters 76 and 77, provided that such exempt employment shall be subject to review by the director of personnel services on a periodic basis to determine the propriety of continued exemption[, such a review to be accomplished by December 31, 1973]. [Should this review indicate that continuance of exempt status is warranted, such employment shall be subject to subsequent reviews on a periodic basis.] Whenever employees are to be hired in this category, they shall be subject to review and approval of the director of personnel services in accordance with procedures concerning exempt hiring.

If the director of personnel services determines that exempt status is not appropriate, such employees shall be subject to chapters 76 and 77, provided that such employees who were employed prior to July 1, 1973 and still so employed shall receive appropriate civil service status without necessity of examination.

All full time employees in this exempt category shall be hired on annual contract and shall be eligible for the [State] state employees' retirement system and for other benefits generally applicable to officers and employees of the State. Contracts with such employees shall contain a clause providing for notification to the employee of renewal or nonrenewal ninety days prior to the expiration of the contract. Nonrenewals of such contracts shall be subject to review by the board of public broadcasting.

- (3) Category (c) - student help. All employees in this category shall be exempt from chapters 76 and 77, provided that employment in this category shall be subject to review and approval by the director of personnel services."

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 21, 1993.)

ACT 154

H.B. NO. 1121

A Bill for an Act Relating to Tax Relief for Natural Disaster Losses.

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

SECTION 1. Section 234-4, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The claimant, on or before December 31, of the year in which the disaster occurred or such other date as may be prescribed by the commission, but not to exceed six months from the date of occurrence of the natural disaster, shall file a claim[,] under oath with the commission setting forth the amount of the claimant's losses. The commission shall thereupon investigate the claim and determine the total loss suffered by reason of the damage or destruction of the real or

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personal property based on the market value on the date of the natural disaster. The total loss shall be determined by taking the difference between the market value immediately prior to the date of the natural disaster and the market value immediately after the date of the natural disaster. The losses to be certified to the director of taxation from the total losses recognized by the commission shall be computed by the commission by deducting:

- (1) All insurance benefits received or to be received by the claimant by reason of the damage or destruction of the property as a result of the natural disaster;
- (2) The portion of the losses resulting from insurable property in excess of \$100,000;
- (3) Tax benefits from the [Federal] federal Internal Revenue Service; [and]
- (4) Any federal grant or loan received by the claimant as a result of the natural disaster;
- (5) Any state grant or loan received by the claimant as a result of the natural disaster; and
- [4)] (6) Any other recoveries.

The balance remaining after the foregoing have been deducted from the total losses recognized shall be the loss certified to the director of taxation.

The finding of the commission shall be final, unless within thirty days after receipt of a copy of the commission's certification to the director of taxation, the claimant files a notice of appeal to the circuit court in the county for which the commission was appointed. In all appeals, the commission and the director of taxation shall be notified of the pendency thereof by the clerk of the court. On appeal to the circuit court, the claimant shall be entitled to trial by jury. The right to trial by jury shall be deemed to be waived unless claimed within ten days from the date the notice of appeal is filed. The court, by proper rules, may prescribe the procedure to be followed in these appeals, and shall give these appeals precedence over all other civil cases. Upon determination of the appeal, the court shall enter judgment as to the amount of the claimant's loss, which judgment shall be final. The clerk of the court shall certify the judgment of the court to the director of taxation.

The finding of the commission or the judgment of the court as to the amount of the loss suffered by the claimant shall be final for the purposes of chapters 235 and 237 notwithstanding section 235-7 or any real property tax ordinance.

Whenever the market value for the purpose of the total losses of any real property is determined under this subsection, the market value utilized as the value of the property immediately after the disaster shall be *prima facie* evidence of the value of that real property as of the time immediately after the natural disaster whenever the real property is thereafter condemned, exchanged, or purchased by the State or any county.

(c) Upon receipt of the certification from the commission or the clerk of the circuit court, the director shall remit or refund from the current general revenues of the [State] county or of the [county,] State, as appropriate, or forgive[.]:

- (1) First, real property taxes for that year and thereafter due from the claimant on account of any real property located on the island on which the losses were incurred under the county real property tax ordinance; provided that, for each year after the first year, no real property tax remittance or refund may be claimed unless a claim for general excise tax remittance or refund, if applicable, was previously made; and

- (2) Second, taxes due from the claimant under chapter 237 on account of any trade or business conducted by the claimant on the island on which the losses were incurred for the year in which the disaster occurred and thereafter;

for a period not to exceed five consecutive years commencing January 1 of the year in which the disaster occurred, until the amount of the loss certified or adjudged is recovered up to but not in excess of the limits provided in section 234-8 or until the claimant recovers the full amount of the claimant's certified or adjudged loss, or until the expiration of the five year period, whichever shall first occur:

- (1) Real property taxes for that year and thereafter as provided above, due from the claimant on account of any real property located on the island on which the losses were incurred under the county real property tax ordinance, and
- (2) Taxes due from the claimant under chapter 237 on account of any trade or business conducted by the claimant on the island on which the losses were incurred for the year in which the disaster occurred and thereafter as provided above].

In no event shall taxes due and payable under chapter 235 by a public utility as defined in section 269-1, be remitted, refunded, or forgiven."

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

SECTION 3. This Act, upon its approval, shall take effect retroactive to September 1, 1992.

(Approved June 9, 1993.)

ACT 155

H.B. NO. 25

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-21, Hawaii Revised Statutes, is amended to read as follows:

"§514A-21 Removal from provisions of this chapter. (a) If:

- (1) Apartment owners owning not less than eighty per cent in number of apartments in the aggregate, and owning apartments to which are appurtenant not less than eighty per cent of the common interests, execute and record an instrument to the effect that they desire to remove the property from this chapter, and the holders of all liens affecting any of the apartments of the apartment owners executing such instrument consent thereto by instruments duly recorded, or
- (2) The common elements suffer substantial damage or destruction and such damage or destruction has not been rebuilt, repaired, or restored within a reasonable time after the occurrence thereof or the apartment owners have earlier determined as provided in the declaration that such damage or destruction shall not be rebuilt, repaired, or restored, then, and in either event, the property shall be subject to an action for partition by any apartment owner or lienor as if owned in common, in which event the sale of the property shall be ordered by the court and the net proceeds of sale, together

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with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the apartment owners in proportion to their respective common interests, provided that no payment shall be made to an apartment owner until there has first been paid off out of the owner's share of such net proceeds all liens on the owner's apartment. Upon such sale, the property ceases to be the subject of a condominium property regime or subject to this chapter.

(b) All of the apartment owners may remove a property, or a part of a property, from this chapter by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the apartments consent thereto, by instruments duly recorded. Upon such removal from this chapter, the property, or the part of the property designated in the instrument, ceases to be the subject of a condominium property regime or subject to this chapter, and is deemed to be owned in common by the apartment owners in proportion to their respective common interests.

(c) Notwithstanding subsections (a) and (b); if the apartment leases for a leasehold project (including condominium conveyance documents, ground leases, or similar instruments creating a leasehold interest in the land) provide that:

- (1) The estate and interest of the apartment owner shall cease and determine upon the acquisition, by an authority with power of eminent domain of title and right to possession of any part of the project;
- (2) The apartment owner shall not by reason of the acquisition or right to possession be entitled to any claim against the lessor or others for compensation or indemnity for the apartment owner's leasehold interest;
- (3) All compensation and damages for or on account of any land shall be payable to and become the sole property of the lessor;
- (4) All compensation and damages for or on account of any buildings or improvements on the demised land shall be payable to and become the sole property of the apartment owners of the buildings and improvements in accordance with their interests; and
- (5) The apartment lease rents are reduced in proportion to the land so acquired or possessed;

then, the lessor and the declarant shall file an amendment to the declaration to reflect any acquisition or right to possession. The consent or joinder of the apartment owners or their respective mortgagees shall not be required, if the land so acquired or possessed constitutes no more than five per cent of the total land of the project. Upon the filing of the amendment, the land acquired or possessed shall cease to be the subject of a condominium property regime or this chapter. The lessor shall notify each apartment owner in writing of the filing of the amendment and the rent abatement to which the apartment owner is entitled. The lessor shall provide the association of apartment owners, through its board of directors, with a copy of the amendment.

For purposes of this subsection, the acquisition or right to possession may be effected:

- (1) By a taking or condemnation of property by the State or a county pursuant to chapter 101;
- (2) By the conveyance of property to the State or county under threat of condemnation; or
- (3) By the dedication of property to the State or county if the dedication is required by state law or county ordinance."

SECTION 2. Section 514A-83.4, Hawaii Revised Statutes, is amended to read as follows:

"§514A-83.4 Meeting minutes. (a) Minutes of meetings of the board of directors and association of apartment owners shall include the recorded vote of each board member on all motions except motions voted on in executive session.

(b) Minutes of meetings of the board of directors and association of apartment owners shall be approved at the next succeeding meeting; provided that for board of directors meetings, no later than the second succeeding meeting.

(c) Minutes of all meetings shall be available within seven calendar days after approval and unapproved final drafts of the minutes of a meeting shall be available within sixty days after the meeting; provided that the minutes of any executive session may be withheld if their publication would defeat the lawful purpose of the executive session."

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 9, 1993.)

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H.B. NO. 182

A Bill for an Act Relating to Cultural Landscapes.

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

SECTION 1. The legislature finds that Article IX, section 7, of the Constitution of the State of Hawaii gives the State the power to conserve and develop objects and places of historic or cultural interest and provide for public sightliness and physical good order.

Section 6E-1, Hawaii Revised Statutes, states that:

- (1) The historic and cultural heritage of the State is among its most important assets and that the rapid social and economic developments of contemporary society threaten to destroy the remaining vestiges of this heritage;
- (2) It is in the public interest to engage in a comprehensive program of historic preservation at all levels of government to promote the use and conservation of historic and cultural property for the education, inspiration, pleasure, and enrichment of the State's citizens; and
- (3) It is the public policy of this State to provide leadership in preserving, restoring, and maintaining historic and cultural property, to ensure the administration of historic and cultural property in a spirit of stewardship and trusteeship for future generations, and to conduct activities, plans, and programs in a manner consistent with the preservation and enhancement of historic and cultural property.

Section 226-12, Hawaii Revised Statutes, requires that planning for the State's physical environment be directed toward achievement of the objective of enhancement of Hawaii's scenic assets, natural beauty, and multi-cultural/historical resources. To achieve the scenic, natural beauty, and historic resources objective, it is the policy of this State to:

- (1) Promote the preservation and restoration of significant natural and historic resources;
- (2) Provide incentives to maintain and enhance historic, cultural, and scenic amenities;

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- (3) Promote the preservation of views and vistas to enhance the visual and aesthetic enjoyment of mountains, oceans, scenic landscapes, and other natural features;
- (4) Protect those special areas, structures, and elements that are an integral and functional part of Hawaii's ethnic and cultural heritage; and
- (5) Encourage the design of developments and activities that complement the natural beauty of the islands.

Section 226-25, Hawaii Revised Statutes, requires that planning for the State's socio-cultural advancement with regard to culture be directed toward the achievement of the objective of enhancement of cultural identities, traditions, values, customs, and arts of Hawaii's people. To achieve the culture objective, it is the policy of this State to:

- (1) Foster increased knowledge and understanding of Hawaii's ethnic and cultural heritages and the history of Hawaii;
- (2) Support activities and conditions that promote cultural values, customs, and arts that enrich the lifestyles of Hawaii's people and which are sensitive and responsive to family and community needs;
- (3) Encourage increased awareness of the effects of proposed public and private actions on the integrity and quality of cultural and community lifestyles in Hawaii; and
- (4) Encourage the essence of the Aloha spirit in people's daily activities to promote harmonious relationships among Hawaii's people and visitors.

Although the legislature approved the state functional plan on historic preservation in 1984, the plan adds little in the way of additional regulatory controls with respect to historic sites since most of the plan's objectives and policies are directed toward the compilation of records, the taking of inventories, the preservation of records, skills, and oral histories, and streamlining the existing system of nominating and listing properties on the Hawaii Register of Historic Places.

While the State has turned much responsibility for historic site protection over to the counties, and each of the State's four counties have enacted historic preservation zoning schemes offering various degrees of protection to historic sites within a historic or scenic district, the administration of historic site protection by the counties is inconsistent and varies greatly in effectiveness.

The legislature believes that the feasibility of establishing regulatory controls to protect and preserve cultural landscapes or those districts, sites, buildings, structures, and objects of state or community importance that possess integrity of location, design, setting, materials, construction, feeling, and association, and:

- (1) That are associated with the culture of a people who have made a significant contribution to the broad patterns of the State's or a community's cultural heritage;
- (2) That are associated with the culture of a people significant in the State's or a community's past;
- (3) That embody the distinctive characteristics of a type, period, or culture of a particular people, or that represent the works of a particular people, or represent a significant and distinguishable people whose works may lack individual distinction; or
- (4) That have yielded, or may likely yield information important to the State's or a community's cultural heritage;

should be assessed in order to ensure the uniform administration of cultural landscape preservation by the State and counties.

To loosely paraphrase the National Trust for Historic Preservation, to preserve Father Damien De Veuster's church is to preserve a building. To preserve the

town of Kalaupapa where he lived and died is to preserve a cultural landscape. Buildings form only part of the human environment; the land, the space between buildings, the trees and plants, the patterns of the land—the infinite ways that people impact the world—are also part of our historical legacy. The National Park Service, which defines landscapes for the National Register of Historic Places, utilizes five cultural landscape types: ethnographic landscapes, historic scenes, historic sites, historic vernacular landscapes, and historic designed landscapes.

“Ethnographic landscapes” are those landscapes imbued with such important intangible meanings that they continue to be deemed significant or even sacred by contemporary peoples who have continuous ties to the site or area. In this State, these landscapes could include Kilauea Crater (ka lua o Pele or the pit of Pele).

“Historic scenes” are those scenes that aid in understanding and interpreting significant cultural and historical developments. In this State, these scenes could include the Nuuanu Pali lookout (the cliffs where Kamehameha I drove many Oahu warriors to their deaths in the famous battle of Nuuanu in 1795).

“Historic sites” are those sites where an important event or activity transpired, or where a person of note is identified with the entire landscape ensemble. In this State, these sites could include the Iolani Palace (the site where Queen Liliuokalani was deposed on January 17, 1893).

“Historic vernacular landscapes” are those landscapes where contemporary development activities have not yet altered local historical integrity. In this State, these landscapes could include Waipio Valley on the island of Hawaii (the site of taro farming).

“Historic designed landscapes” are those landscapes with noticeable form or design features. In this State, these landscapes could include the National Memorial Cemetery of the Pacific.

SECTION 2. (a) There is established within the department of land and natural resources for administrative purposes, a temporary state, county, and Office of Hawaiian Affairs task force to:

- (1) Develop specific criteria for designating certain sites, scenes, and landscapes as cultural landscape districts;
 - (2) Specify activities and uses that are consistent with the designation of certain sites, scenes, and landscapes as cultural landscape districts; and
 - (3) Develop specific procedures to define certain sites, scenes, and landscapes as cultural landscape districts and to establish their boundaries.
- (b) The task force shall be composed of:
- (1) The chairperson of the board of land and natural resources or the chairperson's designated representative;
 - (2) The chairperson of the board of agriculture or the chairperson's designated representative;
 - (3) The chairperson of the land use commission or the chairperson's designated representative;
 - (4) The chairperson of the board of trustees of the Office of Hawaiian Affairs or the chairperson's designated representative;
 - (5) The planning director of the county of Kauai or the planning director's designated representative;
 - (6) The chief planning officer of the city and county of Honolulu or the chief planning officer's designated representative;
 - (7) The planning director of the county of Maui or the planning director's designated representative;
 - (8) The planning director of the county of Hawaii or the planning director's designated representative;

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- (9) The director of the office of state planning or the director's designated representative;
 - (10) Representatives of appropriate Hawaiian organizations; and
 - (11) Representatives of major or affected large property owners.
- (c) The chairperson of the department of land and natural resources, or the chairperson's designated representative, shall serve as the chairperson of the task force, and shall provide such technical and administrative staff support as may be required to carry out the purposes of this Act.
- (d) The members of the task force shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.
- (e) The task force shall report its findings and recommendations to the legislature not less than twenty days prior to the convening of the regular session of 1994, and shall cease to exist on June 30, 1994.

SECTION 3. This Act shall take effect on July 1, 1993.

(Approved June 9, 1993.)

ACT 157

H.B. NO. 187

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 family is a fundamental building block of our society. Unfortunately, because of the high cost of living, most able family members must work to provide the basic necessities for their families. As a result, when a family member suffers a debilitating illness or injury, and is required to be on sick leave for an extended period of time, this jeopardizes that individual's ability to support the family.

The legislature finds that public employees in the State have historically joined together to help their fellow workers who suffer from an extraordinary situation, such as severe illness, injury, impairment, physical, or mental condition, that prevents the individual from working and causes great economic and emotional distress to the employee and the employee's family.

The purpose of this Act is to allow leave sharing programs for state and county employees to be established to ease the burdens of public employees who may need to take time to recover from a serious personal illness or injury.

SECTION 2. Chapter 79, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§79- Leave sharing program. (a) The chief executive of the State or a county may establish a program to allow employees to donate accumulated vacation leave credits to another employee within the same jurisdiction who has a serious personal illness or injury. The program shall allow employees who are not entitled to vacation leave to donate accumulated sick leave credits.

(b) The director of personnel services of a jurisdiction desiring to establish a leave sharing program shall adopt rules pursuant to chapter 91 governing donors, recipients, and an approval process that ensures fair treatment and freedom from coercion of employees and imposes no undue hardship on the employer's operations. At a minimum, the rules shall require that an eligible recipient must have:

- (1) No less than six months of service within the respective jurisdiction;
- (2) Exhausted or is about to exhaust all vacation leave, sick leave, and compensatory time credits;
- (3) A personal illness or injury certified by a competent medical examiner as being serious and the cause of the recipient's inability to work; provided that, the illness or injury is not covered under chapter 386 or, if covered, all benefits under chapter 386 have been exhausted; and
- (4) No disciplinary record of sick leave abuse within the past two years."

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval and be repealed on June 30, 1996.

(Approved June 9, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

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H.B. NO. 199

A Bill for an Act Relating to Substance Abuse Tests.

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

SECTION 1. Chapter 329B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§329B- Exemptions. This chapter does not apply to:

- (1) Toxicology tests used in the direct clinical management of patients;
- (2) Tests for alcohol under chapter 286 or chapter 291;
- (3) Tests made pursuant to subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 Federal Register 11986); and
- (4) Substance abuse testing of individuals under the supervision or custody of the judiciary, the department of public safety, the Hawaii paroling authority, and the office of youth services. However, these state governmental entities shall establish chain of custody procedures which require that all specimens be sealed and coded in the presence of the individual being tested and that the individual shall sign an approved form acknowledging that the specimen has been sealed and coded in the individual's presence. The procedure shall include a tracking form documenting the handling and storage of the specimen from collection to final disposition of the specimen. The individual also shall be afforded the option of a confirmatory test by a licensed, certified laboratory. The cost of the confirmatory test shall be paid for by the State; provided that in those instances where a positive test result is confirmed, the individual shall be charged with the cost of the confirmation test. Test results shall not require review by a medical review officer. Positive test results of substance abuse testing and the availability of a confirmatory test shall be provided to the individual in writing. A positive test result from a substance abuse test that fails to meet the requirements of this section shall not be reported or recorded."

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SECTION 2. Section 329B-2, Hawaii Revised Statutes, is amended by amending the definition of "substance abuse test" to read as follows:

"Substance abuse test" means any testing procedure[, excluding toxicology tests used in the direct clinical management of patients, tests for alcohol related to chapters 286 and 291, and substance abuse testing of individuals under the custody and care of the department of public safety] designed to take and analyze body fluids or materials from the body for the purpose of measuring the amount of drugs, alcohol, or the metabolites of drugs in the sample tested."

SECTION 3. Section 329B-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [Testing pursuant to subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 Federal Register 11986) is exempt from the provisions of this chapter.] All substance abuse testing performed in the State shall be performed by a testing laboratory licensed by the department for that purpose. Testing performed in another state may be performed only by laboratories licensed by that state to conduct substance abuse testing, and whose standards are comparable to those contained in this [chapter[]], and approved by the director. No laboratory located outside of the State may be licensed by the department to perform substance abuse testing."

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 9, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 159

H.B. NO. 200

A Bill for an Act Relating to Courts.

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

SECTION 1. Section 612-15, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Every year the clerk of each circuit shall make and file, not later than January 5, one or more certified lists of the names and addresses of fifty citizens, or such greater number as the court may order, subject to serve as grand jurors during the ensuing year from and after January 15. [At the same time] Every year the clerk of each circuit shall likewise make and file, not later than December 20, a separate certified list of the names and addresses of citizens subject to serve as trial jurors during the ensuing year, from and after January [15.] 1, the number for each circuit to be such as the clerk considers necessary. The certified lists of grand jurors and trial jurors shall be compiled from names drawn at random from the qualified jury wheel, and shall be prepared in alphabetical sequence. Upon the order of the court, from time to time, additional lists of persons subject to serve as grand jurors shall be compiled and filed, and additional names shall be added to a grand or trial jury

list; provided that all such additions shall be made by drawing from the qualified jury wheel for the appropriate year. When more than one grand jury list has been compiled, the sequence in which the lists are to be used shall be designated by the clerk according to the sequence of drawing. The names on the certified lists shall be open to public inspection, subject to orders of the court.

(b) In the second, third, and fifth circuits any circuit judge, and in the first circuit a majority of the circuit judges, at any time, for reasons appearing sufficient to the judge or them, may order the dissolution of any certified list of grand or trial jurors and order the clerk to make and file a new list, which may include any of the persons so discharged, to serve for the remainder of the year. The new list shall be compiled in the manner prescribed by the court. Until the new list is filed, grand or trial jurors may be drawn from a list thereof compiled and filed by the judge or judges making the order or one or more of them designated by the remainder, which list shall expire not later than thirty days after the filing thereof unless the period is extended, except that [any] trial [jury panel] jurors may sit beyond the end of the period prescribed in this subsection and after the filing of a new list by the clerk, for the trial of any case in which the selection of the jury has already commenced."

SECTION 2. Section 612-17, Hawaii Revised Statutes, is amended by amending subsections (b), (c) and (d) to read as follows:

"(b) Not later than January [15] 1 of each year, the clerk shall draw at random from the names on the certified list of trial jurors such number of trial [jury panels] jurors as is deemed sufficient for the ensuing year[, each panel to consist of eighteen names]. When directed by the court, additional [panels] jurors shall be drawn. The names and juror qualification forms for the prospective jurors [on each panel] shall be [sealed] secured in envelopes[, one envelope for each panel]. The envelopes shall remain [sealed] secured and in the custody of the clerk.

(c) Whenever a judge requires the services of a trial jury for use in proceedings before the judge or any other judge of the circuit, the judge may order the required number of [panels] jurors from the clerk. Upon receipt by the judge of the envelopes containing the [panels, the contents thereof] juror qualification forms, they shall be made available to the litigants concerned.

(d) [The whole or any] Any number of [the] jurors [from a panel or panels] ordered by a judge may be required to attend and serve. The names of those summoned and present, and not disqualified, excused or exempted, shall be placed in an appropriate container, from which here shall be drawn a sufficient number of names to constitute a trial jury. The drawing shall be by lot in open court under the supervision of the judge. There is no requirement that all names [on a particular panel] ordered by a judge be exhausted before [those on another panel] other names may be used in the drawing, and the names of jurors [on different panels] which have been transmitted to the judge may be mixed with each other in the container during the drawing. If a jury cannot be chosen for the trial of a case from the names placed in the container before the drawing commenced, additional names may be placed in the container. For this purpose additional [panels] names may be ordered and the prospective jurors summoned. The judge may summon [jurymen] jurors from among bystanders on consent of all parties."

SECTION 3. Section 612-17, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Each [panel] juror ordered by a judge shall serve for a period of one day, commencing from the first day the [panel] juror is required to appear for

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service; provided that any juror may be required to serve beyond the one day period for the trial of any case in which the selection of the jury commenced within that period. Upon completion of service by all [members of a panel,] jurors ordered by the judge to serve, the [panel] jurors shall be returned to the clerk, who shall not transmit the [panel] jurors again to any judge until all other [panels] jurors have been exhausted and other [panels] jurors which served at a more remote time have been first transmitted for service.”

SECTION 4. Section 612-18, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) If no order is made under subsection (a) in a particular circuit, the judge (or judges, if there are more than one) of that circuit may order a system of jury selection from the certified list of trial jurors which is not contrary to the general purposes of this chapter. In no case shall the trial [jury panel or panels] jurors be chosen other than by lot, nor shall the trial jury be selected from the [jury panel or panels] jurors other than by lot in open court. In selecting the trial jury there is no requirement that all the names [on a particular panel] ordered by a judge be exhausted before [those on another panel] other names may be used in the drawing, and the names of jurors [on different panels] may be mixed with each other for the drawing.

(c) The names of prospective jurors [on a trial jury panel which is] to be summoned[,] to sit as a jury, and the contents of juror qualification forms completed by those jurors, shall be made available to the litigants concerned.”

SECTION 5. Section 612-22, Hawaii Revised Statutes, is amended to read as follows:

“§612-22 Trial jurors subject to one year of service; one day or one trial requirement. The persons whose names are placed on the certified lists filed by the clerk shall be subject to service for one year from and after January [15] 1 and until the filing of new certified lists; provided that trial jurors shall serve only one day or one trial during the year. Prospective jurors who are challenged at voir dire and excused, excused for cause, summoned but not called to a courtroom, or called to a courtroom but later excused shall return to the juror pool to await reassignment to another trial. Jurors in the juror pool awaiting reassignment to another trial shall be discharged after it has been determined that their services will not be needed. Jurors who are discharged from the juror pool shall be dismissed from service for the year. Jurors who are accepted to serve on a jury shall complete the duration of the trial and shall be dismissed from service for the year.”

SECTION 6. Section 612-26, Hawaii Revised Statutes, is amended to read as follows:

“[§612-26] Use of electronic or electromechanical devices for drawing grand and trial juries. Selections of citizens who are subject to jury duty and drawings of jury lists [and panels], may be made by means of electronic or electromechanical devices commonly designated as data processing equipment such as punch cards, electronic tape, random access files, and other solid state devices when the same are available for their use and the court so orders.”

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

SECTION 8. This Act shall take effect on January 15, 1994.

(Approved June 9, 1993.)

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H.B. NO. 210

A Bill for an Act Relating to Adoptions.

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

SECTION 1. Section 578-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) [[Amendment effective January 1, 1993.]] Persons as to whom consent not required or whose consent may be dispensed with by order of the court.

- (1) Persons as to whom consent not required:
 - (A) A parent who has deserted a child without affording means of identification for a period of ninety days;
 - (B) A parent who has voluntarily surrendered the care and custody of the child to another for a period of two years;
 - (C) A parent of the child in the custody of another, if the parent for a period of at least one year has failed to communicate with the child when able to do so;
 - (D) A parent of a child in the custody of another, if the parent for a period of at least one year has failed to provide for the care and support of the child when able to do so;
 - (E) A natural father who was not married to the child's mother at the time of the child's conception or birth and who does not fall within the provisions of subsection (a)(3), (4), or (5);
 - (F) A parent whose parental rights have been judicially terminated under the provisions of sections 571-61 to 571-63, or under the provisions of any other state or other law by a court or other agency having jurisdiction to take the action;
 - (G) A parent judicially declared mentally ill or mentally retarded and who is found by the court to be incapacitated from giving consent to the adoption of the child;
 - (H) Any legal guardian or legal custodian of the child sought to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of sixty days or who, after examination of the person's written reasons for withholding consent, is found by the court to be withholding the person's consent unreasonably;
 - (I) A parent of a child who has been in the custody of a petitioner under this chapter for a period of at least one year and who entered the United States of America as a consequence of extraordinary circumstances in the child's country of origin, by reason of which extraordinary circumstances the existence, identity, or whereabouts of the child's parents is not reasonably ascertainable or there is no reasonable means of obtaining suitable evidence of the child's identity or availability for adoption;
 - (J) Any parent of the individual to be adopted, if the individual is an adult eligible for adoption under subsection (b); and

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- (K) A parent whose parental and custodial duties and rights have been divested by an award of permanent custody pursuant to section 587-73.
- (2) Persons whose consent may be dispensed with by order of the court. The court may dispense with the consent of a parent who comes within subsection (a)(3), (4), or (5) herein, upon finding that:
 - (A) The petitioner is the stepfather of the child and the child has lived with the child's legal mother and the petitioning stepfather for a period of at least one year;
 - (B) The [adjudicated, presumed or concerned] father is a concerned father as provided by subsection (a)(5), herein, and has not filed a petition to adopt the child, or the petition to adopt the child filed by the father has been denied; or
 - (C) The father is an adjudicated, presumed, or concerned father as provided by subsections (a)(3), (4), or (5), herein, and is not a fit and proper person or is not financially or otherwise able to give the child a proper home and education."

SECTION 2. Section 571-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Involuntary termination.

- (1) The family courts may terminate the parental rights in respect to any child as to any legal parent:
 - (A) Who has deserted the child without affording means of identification for a period of at least ninety days;
 - (B) Who has voluntarily surrendered the care and custody of the child to another for a period of at least two years;
 - (C) Who, when the child is in the custody of another, has failed to communicate with the child when able to do so for a period of at least one year;
 - (D) Who, when the child is in the custody of another, has failed to provide for care and support of the child when able to do so for a period of at least one year;
 - (E) Whose child has been removed from the parent's physical custody pursuant to legally authorized judicial action under section 571-11(9), and who is found to be unable to provide now and in the foreseeable future the care necessary for the well-being of the child;
 - (F) Who is found by the court to be mentally ill or mentally retarded and incapacitated from giving consent to the adoption of or from providing now and in the foreseeable future the care necessary for the well-being of the child;
 - (G) Who is found not to be the child's natural or adoptive father.
- (2) The family courts may terminate the parental rights in respect to any minor of any natural but not legal father who is an adjudicated, presumed or concerned father under chapter 578, or who is named as the father on the child's birth certificate:
 - (A) Who falls within subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (1);
 - (B) Whose child is sought to be adopted by the child's stepfather and the stepfather has lived with the child and the child's legal mother for a period of at least one year;

- (C) Who is only a concerned father who has failed to file a petition for the adoption of the child or whose petition for the adoption of the child has been denied; or
- (D) Who is found to be an unfit or improper parent or to be financially or otherwise unable to give the child a proper home and education.
- (3) In respect to any proceedings under paragraphs (1) and (2), the authority to terminate parental rights may be exercised by the court only when a verified petition, substantially in the form above prescribed, has been filed by some responsible adult person on behalf of the child in the family court of the circuit in which the parent resides or the child resides or was born and the court has conducted a hearing of the petition. A copy of the petition, together with notice of the time and place of the hearing thereof, shall be personally served at least twenty days prior to the hearing upon the parent whose rights are sought to be terminated. If personal service cannot be effected within the State, service of the notice may be made as provided in section 634-23 or 634-24.
- (4) The family courts may terminate the parental rights in respect to any child as to any natural father who is not the child's legal, adjudicated, presumed or concerned father under chapter 578.

Such authority may be exercised under this chapter only when a verified petition, substantially in the form above prescribed, has been filed by some responsible adult person on behalf of the child in the family court of the circuit in which the parent resides or the child resides or was born, and the court has conducted a hearing of the petition.

If the mother of the child files with the petition an affidavit representing that the identity or whereabouts of the child's father is unknown to her or not ascertainable by her or that other good cause exists why notice cannot or should not be given to the father, the court shall conduct a hearing to determine whether notice is required.

If the court finds that good cause exists why notice cannot or should not be given to the child's father, and that the father is neither the legal nor adjudicated nor presumed father of the child, nor has he demonstrated a reasonable degree of interest, concern, or responsibility as to the existence or welfare of the child, the court may enter an order authorizing the termination of the father's parental rights and the subsequent adoption of the child without notice to the father."

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

SECTION 4. This Act shall take effect upon approval.

(Approved June 9, 1993.)

ACT 161

H.B. NO. 220

A Bill for an Act Relating to the Firefighter's Contingency Fund.

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

SECTION 1. Section 185-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

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“(d) There shall be [a firefighter’s contingency fund] established under the control of the department of land and natural resources [and the amount of \$250,000 shall be appropriated each fiscal year to this fund. Any unused portion shall lapse at the end of the fiscal year.] a firefighter’s contingency fund into which shall be deposited appropriations made by the legislature.”

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, 1993.)

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H.B. NO. 251

A Bill for an Act Relating to the Right to Farm.

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

SECTION 1. Chapter 165, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§165- Frivolous lawsuits. Any nuisance action, found to be frivolous by the court, in which a farming operation is alleged to be a nuisance as defined in section 165-2, shall be governed by section 607-14.5.

§165- Liberal construction. This chapter is remedial in nature and shall be liberally construed to effectuate its purposes.”

SECTION 2. Section 165-2, Hawaii Revised Statutes, is amended to read as follows:

“§165-2 Definitions. As used in this chapter, unless the context otherwise requires:

“Established date of operation” means the date on which the [farming operation commenced operation. If the farming operation’s facilities, whether land or improvements, are subsequently expanded, and a complaint arises out of that expansion, the date of commencement of the expansion shall be deemed to be the relevant established date of operation for the purposes of that complaint. When claims arise out of several portions of a farming operation, the established date of operation for each claim shall be the established date of operation of the portion of the farming operation giving rise to the particular claim, which established date shall be a separate and independent established date of operation. The commencement of any expansion of an operation shall not divest the farming operation of a previously established date of operation, which shall remain applicable to operations commenced as of that previously established date of operation.] original farming operation first commenced operation. If the physical facilities of the farming operation are subsequently expanded or new technology adopted, the established date of operation for each change shall be the same as the established date of operation for the original operation, provided that this does not violate existing state law or county ordinances.

“Expansion” includes any increase in land or aquatic environment used by the farming operation for any of the operations listed under the definition of

“farming operation” or any increase in buildings, equipment that is fixed in place, or other permanent structures that results in the alleged nuisance.

“Expansion” does not include:

- (1) Additions of or increases in movable equipment, including but not limited to tractors, trucks, trailers, barges, airplanes, helicopters, and boats; or
- (2) A change in or addition to the type of livestock, poultry, apiary, horticultural, or floricultural product or crop produced by a farming operation, unless such change or addition results in:
 - (A) The creation of a nuisance that continues beyond the period of transition during which the change is implemented or the addition made; or
 - (B) A substantial increase in the gravity of a previously present nuisance; provided that such increase extends beyond the period of transition.]

“Farming operation” means a commercial agricultural or aquacultural facility or pursuit conducted, in whole or in part, [in an area zoned by the county for agricultural use,] including the care and production of livestock and livestock products, poultry and poultry products, and apiary, horticultural, or floricultural products; the planting, cultivating, and harvesting and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment. “Farming operation” also includes, but shall not be limited to, marketed produce at roadside stands or farm markets; noises, odors, dust, and fumes emanating from a commercial agricultural or an aquacultural facility or pursuit; operation of machinery and irrigation pumps; ground and aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor. A farming operation that conducts processing operations or salt, brackish, or freshwater aquaculture operations on land that is zoned for industrial, commercial, or other nonagricultural use shall not, by reason of [such] that zoning, fall beyond the scope of this definition; provided that [such] those processing operations form an integral part of operations that otherwise meet the requirements of this definition.

“Nuisance” means any interference with reasonable use and enjoyment of land, including but not limited to smoke, odors, dust, noise, or vibration; provided that nothing in this chapter shall in any way restrict or impede the authority of the State to protect the public health, safety, and welfare. “Nuisance” as used in this chapter includes all claims that meet the requirements of this definition regardless of whether a complainant designates such claims as brought in nuisance, negligence, trespass, or any other area of law or equity; provided that nuisance as used in this chapter does not include an alleged nuisance that involves water pollution or flooding.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved June 9, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 163

H.B. NO. 433

A Bill for an Act Relating to Medicine and Surgery.

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

SECTION 1. Section 453-2, Hawaii Revised Statutes, is amended to read as follows:

"§453-2 License required; exceptions. (a) Except as otherwise provided by law, no person shall practice medicine or surgery in the State either gratuitously or for pay, or shall offer to so practice, or shall advertise or announce one's self, either publicly or privately, as prepared or qualified to so practice, or shall append the letters "DR." or "M.D." to one's name, with the intent thereby to imply that the individual is a practitioner of medicine or surgery, without having a valid unrevoked license or a limited and temporary license, obtained from the board of medical examiners, in form and manner substantially as hereinafter set forth.

(b) Nothing herein shall:

- (1) Apply to so-called Christian Scientists so long as they merely practice the religious tenets of their church without pretending a knowledge of medicine or surgery;
- (2) Prohibit service in the case of emergency or the domestic administration of family remedies;
- (3) Apply to any commissioned medical officer in the United States armed forces or public health service, engaged in the discharge of one's official duty, nor to any practitioner of medicine and surgery from another state when in actual consultation with a licensed practitioner of this State if the practitioner from another state, at the time of such consultation, is licensed to practice in the state in which the practitioner resides; provided that the practitioner from another state shall not open an office, or appoint a place to meet patients, or receive calls within the limits of the State; and provided further that the laws and regulations relating to contagious diseases are not violated; [or]
- (4) Prohibit services rendered by any person certified under part II of this chapter to provide emergency medical services or any physician assistant when [such] the services are rendered under the direction and control of a physician licensed in this State except for final refraction resulting in a prescription for spectacles, contact lenses, or visual training as performed by an oculist or optometrist duly licensed by the State. [Such] The direction and control shall not be construed in every case to require the personal presence of the supervising and controlling physician. Any physician who employs or directs a person certified under part II of this chapter to provide emergency medical services or physician assistant shall retain full professional and personal responsibility for any act which constitutes the practice of medicine when performed by such person or physician assistant[.]; or
- (5) Prohibit automatic defibrillation by any first responder personnel certified by the department of health to provide automatic defibrillation when it is rendered under the medical oversight of a physician licensed in this 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 9, 1993.)

ACT 164

H.B. NO. 446

A Bill for an Act Relating to Medical Physician Licensure Examinations.

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

SECTION 1. Section 453-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) [Diplomates of the National Board of Medical Examiners or those who have passed the federation licensing examination (FLEX)] Applicants who have passed the National Board of Medical Examiners examination (NBME), the Federation Licensing Examination (FLEX), or the United States Medical Licensing Examination (USMLE), or a combination of these examinations as approved by the board, with scores deemed satisfactory by the board, and who meet the requirements of subsection (b) shall be licensed without the necessity of any further examination; provided that with respect to any applicant, the board may require letters of evaluation, professional evaluation forms, and interviews with chiefs of service or attending physicians who have been associated with an applicant, or chief residents on a service who have been associated with an applicant during the applicant’s training or practice, to be used by the board in assessing the applicant’s qualifications to practice medicine.”

SECTION 2. Section 453-4.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§453-4.5]] **Foreign medical graduates; alternative qualifications.** Notwithstanding section 453-4(b)(2)(B), a graduate of a foreign medical school who has passed the [federation licensing] Federation Licensing examination (FLEX) or the United States Medical Licensing examination (USMLE), or a combination of these examinations as approved by the board, with scores deemed satisfactory to the board, passed the qualifying examination of the Educational Commission for Foreign Medical Graduates prior to 1984, and has at least three years of medical training or experience in a hospital approved by the Council on Medical Education and Hospitals of the American Medical Association for internship or residency may be licensed by the board of medical examiners under section 453-4(c).”

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 9, 1993.)

ACT 165

ACT 165

H.B. NO. 773

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431:15-323, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“§431:15-323 Recovery of premiums owed.¹ (a) [(1)] An agent, broker, premium finance company, or any other person, other than the insured, responsible for the payment of a premium shall be obligated to pay any unpaid collected premium [for the full policy term due the insurer] held by such person at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. An agent, broker, premium finance company, or any other person shall have no obligation to pay an uncollected unpaid unearned premium to the liquidator. The liquidator shall also have the right to recover from such person any part of an unearned premium that represents commission [of] actually paid or credited to such person. Credits or setoffs or both shall not be allowed to an agent, broker, or premium finance company for any amounts advanced to the insurer by the agent, broker, or premium finance company on behalf of, but in the absence of a payment by, the insured. [(2)] An insured shall be obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency as shown on the records of the insurer.”

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, 1993.)

Note

1. So in original.

ACT 166

H.B. NO. 782

A Bill for an Act Relating to Visitation Rights.

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

SECTION 1. Chapter 571, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§571- Grandparents’ visitation rights; petition; notice; order. A grandparent or the grandparents of a minor child may file a petition with the court for an order of reasonable visitation rights. The court may award reasonable visitation rights provided that the following criteria are met:

- (1) This State is the home state of the child at the time of the commencement of the proceeding;
- (2) Reasonable visitation rights are in the best interests of the child; and
- (3) Either or both of the child’s parents are deceased, or the child’s parents are divorced or residing separate and apart.

No hearing for an order of reasonable visitation rights under this section shall be had unless each of the living parents and the child's custodians shall have had due notice, actual or constructive, of the allegations of the petition and of the time and place of the hearing thereof.

An order made pursuant to this section shall be enforceable by the court, and the court may issue other orders to carry out these enforcement powers if in the best interests of the child."

SECTION 2. New statutory material is underscored.¹

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

(Approved June 9, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 167

H.B. NO. 788

A Bill for an Act Relating to the Probate Code.

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

SECTION 1. Section 560:3-801, Hawaii Revised Statutes, is amended to read as follows:

"§560:3-801 Notice to creditors; transfer of claims. (a) Unless notice has already been given under this section, a person applying or petitioning for appointment of a personal representative shall publish a notice once a week for three successive weeks in a newspaper of general circulation in the judicial circuit in which the application or petition is filed announcing the person's application or petition, the name of the person nominated as personal representative, and notifying creditors of the estate to present their claims as provided in section 560:3-804 [within] no later than four months after the date of the first publication of the notice or be forever barred. The notice may be combined with any published notice of the pendency of the probate proceedings.

(b) After appointment, the personal representative shall give written notice by mail or other delivery to each known creditor notifying the creditor to present the creditor's claim no later than four months after the date of the first publication of the published notice, or no later than sixty days after the mailing or other delivery of the notice, whichever period expires later, or be forever barred. Written notice must contain the same information required for the notice described in subsection (a).

(c) The personal representative shall undertake reasonable review of the decedent's records to ascertain the decedent's creditors.

(d) The personal representative is not liable to a creditor of the decedent for giving or failing to give notice under this section.

[(b)] (e) If [the application or petition is denied,] a person other than the original nominee is appointed special administrator or personal representative, the original nominee shall promptly deliver all claims to the person who is appointed. Failure to deliver shall render the original nominee liable for any damages suffered by the claimants."

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SECTION 2. Section 560:3-803, Hawaii Revised Statutes, is amended to read as follows:

"§560:3-803 Limitations on presentation of claims. (a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

- (1) Within four months after the date of the first publication of notice to creditors if notice is given in compliance with section 560:3-801; provided claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this State are also barred in this State.]

- (1) No later than:

(i) Four months after the date of the first publication of notice to creditors if notice is given in compliance with section 560:3-801(a); or

(ii) Sixty days after the mailing or other delivery of written notice, as provided in section 560:3-801(b); whichever period (i) or (ii) expires later; or

- (2) Within three years after the decedent's death, if notice to creditors has not been published[.] as provided in section 560:3-801(a) or delivered as provided in section 560:3-801(b).

(b) A claim described in subsection (a) which is barred by the non-claim statute of the decedent's domicile before the giving of notice to creditors in this State is barred in this State.

[(b)] (c) All claims against the decedent's estate which arise at or after the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

- (1) A claim based on a contract with the personal representative, within four months after performance by the personal representative is due; or

- (2) Any other claim, within four months after it arises.

- [c] (d) Nothing in this section affects or prevents:

- (1) Any proceeding to enforce any mortgage, pledge, lien, or other secured interest upon property of the estate; or

- (2) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which the personal representative is protected by liability insurance, but any such proceeding must be commenced within the later of the time specified in subsection (a) or (b) above, as appropriate, or two years of the occurrence of the event insurance against[.]; or

- (3) Collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate."

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 9, 1993.)

ACT 168

H.B. NO. 975

A Bill for an Act Relating to County Civil Fines.

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] that may be obstructions or hazards to aerial navigation, so far as may be necessary or proper for the protection and safeguarding of life, health, and property.
- (3) Each county shall have the power to enforce all claims on behalf of the county and approve all lawful claims against the county, but shall be prohibited from entering into, granting, or making in any manner any contract, authorization, allowance payment, or liability contrary to the provisions of any county charter or general law.
- (4) Each county shall have the power to make contracts and to do all things necessary and proper to carry into execution all powers vested in the county or any county officer.
- (5) Each county shall have the power to 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] that 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 also 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 seasonable [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).

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- (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 in any manner 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 to compel the clearing of refuse and uncultivated undergrowth from unoccupied lots, and in these connections, to 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 to preserve the order and security of the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute, provided also that the ordinance does not disclose or express an implied intent that the ordinance 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; all matters of sanitation; all matters of inspection of buildings; all matters of condemnation of unsafe structures, plumbing, sewers, dairies, milk, fish, and morgues; all matters of the collection and disposition of rubbish and garbage; and to provide exemptions for homeless facilities[,] and any other program for the homeless authorized by chapter 358D, for all matters under this paragraph; and 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] violation of any ordinance, which penalty may be a misdemeanor, petty misdemeanor, or violation as defined by general law.
- (15) Each county shall have the power to provide public pounds, to regulate the impounding of stray animals and fowl, and their disposition, and to provide for the appointment, powers, duties, and fees of animal control officers.

- (16) Each county shall have the power to purchase and otherwise acquire, lease, and hold real and personal property within the defined boundaries of the county and to dispose of the real and personal property as the interests of the inhabitants of the county may require, except that 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 off[.]; 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;
 - (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 waterworks and sewer works; to collect rates for water supplied to consumers and for the use of sewers; to install water meters whenever deemed expedient; provided that owners of premises having vested water rights under existing laws appurtenant to the premises shall not be charged for the installation or use of the water meters on the premises; to take over from the State existing waterworks systems, including water rights, pipelines, and other appurtenances belonging

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- thereto, and sewer systems, and to enlarge, develop, and improve the same.
- (24) (A) Each county may impose civil fines, in addition to criminal penalties, for any violation of county ordinances or rules after reasonable notice and requests to correct or cease the violation have been made upon the violator. Any civil fine may be administratively imposed after an opportunity for a hearing under chapter 91. Such a proceeding shall not be a prerequisite for any civil fine or injunctive relief ordered by the circuit court.
- (B) Each county by ordinance may provide for the addition of any unpaid civil fines, ordered by any court of competent jurisdiction, to any taxes, fees, or charges collected by the county. Each county by ordinance may also provide for the addition of any unpaid administratively imposed civil fines, which remain due after all judicial review rights under section 91-14 are exhausted, to any taxes, fees, or charges collected by the county. The ordinance shall specify the administrative procedures for the addition of the unpaid civil fines to the taxes, fees, or charges and may require hearings or other proceedings. After the unpaid civil fines are added to the taxes, fees, or charges as specified by county ordinance, the unpaid civil fines shall be deemed immediately due, owing and delinquent and may be collected in the same manner as the taxes, fees, or charges. The procedure for collection of unpaid civil fines authorized in this paragraph shall be in addition to any other procedures for collection available to the State and county by law or rules of the courts.
- (25) Any law to the contrary notwithstanding, any county mayor may exempt by executive order donors, provider agencies, homeless facilities, and any other program for the homeless under chapter 358D[,] from real property taxes, water and sewer development fees, rates collected for water supplied to consumers and for use of sewers, and any other county taxes, charges, or fees; provided that any county may enact ordinances to regulate and grant exemptions granted by this paragraph."

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. Each county shall submit a report describing county use, collection procedures, and experience with civil fines to the legislature twenty days prior to the convening of the 1995 regular session.

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

SECTION 5. This Act shall take effect upon its approval; provided that on June 30, 1996, this Act shall be repealed and section 46-1.5, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.

(Approved June 9, 1993.)

Note

1. Prior to amendment "the" appeared here.

ACT 169

H.B. NO. 1082

A Bill for an Act Relating to Counties.

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

SECTION 1. Section 46-41, Hawaii Revised Statutes, is amended to read as follows:

"§46-41 Budgets [and]; financial records on fiscal year basis. [Any law to the contrary notwithstanding.] Except as otherwise provided in this chapter, all counties shall [prepare budgets and] maintain accounting and financial records on a fiscal year basis, beginning on July 1 of one calendar year and ending on June 30 of the next succeeding calendar year. Counties may prepare a budget for a one- or two-year period; provided that accounting and financial records are maintained on a fiscal year basis as described above."

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, 1993.)

ACT 170

H.B. NO. 1330

A Bill for an Act Relating to a Revolving Loan Program for Business Opportunities on Molokai.

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

SECTION 1. The legislature finds that Act 384, Session Laws of Hawaii 1988, was enacted to establish a revolving loan program for business opportunities on Molokai. The legislature further finds that Act 384 shall be repealed on June 30, 1993.

In view of the present adverse economic conditions in the State, as well as the combined demise of the agricultural and livestock industries and the high unemployment rate on Molokai, the legislature believes that the extension of the loan program for an additional two years will assist in stimulating business development and the growth of small businesses on Molokai.

The purposes of this Act are to:

- (1) Extend the revolving loan program for business opportunities on Molokai until June 30, 1995;
- (2) Allow the department of business, economic development, and tourism to transfer moneys from the revolving loan program to the general fund; and
- (3) Require the department of business, economic development, and tourism to develop and adopt an action plan for administering the revolving loan program.

SECTION 2. Act 384, Session Laws of Hawaii 1988, is amended as follows:

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1. By amending section 2 to read:

"SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000, or so much thereof as may be necessary for fiscal year 1988-1989, for the establishment of a revolving loan program to provide financing opportunities for small business ventures on Molokai. The sum appropriated shall be expended by the department of business, [and] economic development, and tourism for the purposes of this Act. All sums appropriated under this section which are not expended or encumbered by June 30, 1995, shall lapse into the general fund."

2. By amending subsection (a) of section 3 to read:

"(a) The department of business, [and] economic development, and tourism shall establish a temporary revolving loan program to provide financing opportunities for small business ventures on Molokai. To carry out the loan program, the department shall establish a revolving fund from which moneys shall be loaned in accordance with this Act and into which all payments, interest, and fees collected by the department on such loans shall be deposited. The department may transfer moneys from the revolving loan program established by this Act to the general fund. For the purposes of this section, "small business" means those businesses that have no more than ten employees."

3. By amending section 6 to read:

"SECTION 6. This Act shall take effect on July 1, 1988, and shall be repealed on June 30, [1993.] 1995."

SECTION 3. The department of business, economic development, and tourism shall develop and adopt an action plan for administering the revolving loan program which:

- (1) Publicizes the existence and purpose of the revolving loan program;
- (2) Considers holding informational briefings within the community;
- (3) Aids businesses in developing their own business plans;
- (4) Provides for follow up assistance in running a successful business;
- (5) Informs the community of other available forms of financing for their businesses;
- (6) Develops a relationship with private sector financial institutions for the purpose of referring businesses to the program; and
- (7) Targets new and existing businesses.

The department shall submit a report to the Legislature on the adoption of the plan, including its provisions, before the 1994 Regular Session.

SECTION 4. Session law material to be repealed is bracketed. New session law material is underscored.

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

(Approved June 9, 1993.)

ACT 171

H.B. NO. 1405

A Bill for an Act Relating to Tax Relief for Natural Disaster Losses.

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

SECTION 1. During the time since chapter 234, Hawaii Revised Statutes, was enacted in 1961, many new natural disaster relief benefits have become available. Hurricane Iniki, the extended damage caused by it, and the extensive payout under chapter 234, Hawaii Revised Statutes, particularly by Kauai (of which part or all may have been underwritten by the State) call the present flexibility of chapter 234 into question. In light of current relief available at the federal, state, and county level, chapter 234 should be reviewed.

The purpose of this Act is to require the legislative reference bureau to review chapter 234, Hawaii Revised Statutes.

SECTION 2. The legislative reference bureau shall study chapter 234, Hawaii Revised Statutes, and present its findings and recommendations to the legislature twenty days before the convening of the 1994 regular session. The study shall review the reason for the enactment and legislative history of chapter 234. It shall review, compare, and set forth the federal, state, and county tax, loan, and other benefits available when chapter 234, Hawaii Revised Statutes, was enacted and in 1993. The study shall set forth the natural disaster relief provided by other states. The study shall make recommendations concerning whether chapter 234, Hawaii Revised Statutes, should be repealed, or amended, and if so, in what manner.

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

(Approved June 9, 1993.)

ACT 172

H.B. NO. 1505

A Bill for an Act Relating to Person Dispossessed or Displaced by Volcanic Eruptions.

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

SECTION 1. Act 314, Session Laws of Hawaii 1991, is amended by amending section 5 to read as follows:

“**SECTION 5.** Notwithstanding any other law to the contrary, including chapter 171, Hawaii Revised Statutes, the department of land and natural resources is authorized to negotiate and enter into lease arrangements 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 this Act; or
- (2) On [January 1, 1994;] December 31, 1994; whichever occurs first.”

SECTION 2. Session law material to be repealed is bracketed. New session law material is underscored.

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

(Approved June 9, 1993.)

ACT 173

H.B. NO. 1631

A Bill for an Act Relating to the Power and Authority of Investigators.

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

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

“(j) In the course of an investigation of matters affecting the interest of consumers, depositors, or investors or of any other matter within the jurisdiction of the department, the director shall have the power to subpoena witnesses, examine them under oath, and require the production of books, papers, documents, or objects which the director deems relevant or material to the inquiry. Upon application by the director, obedience to the subpoena may be enforced by the circuit court in the county where the person subpoenaed resides or is found in the same manner as a subpoena issued by the clerk of a circuit court.

The director shall appoint and commission one or more investigators [to serve subpoenas] as the exigencies of the public service may require. [Subpoenas served by persons appointed and commissioned by the director shall have the same force and effect as subpoenas served by police officers or deputy sheriffs.] Persons appointed and commissioned under this section may serve subpoenas and serve process and orders pursuant to section 634-21. Nothing in this subsection shall be construed to entitle persons [commissioned and] appointed and commissioned by the director to retirement benefits applicable to police officers under chapter 88.”

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, some other person specially appointed by the court for the purpose, any investigator appointed and commissioned by the director of commerce and consumer affairs pursuant to section 26-9(j), or a process server licensed pursuant to chapter 634D.”

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[,] or any investigator appointed and commissioned by the director of commerce and consumer affairs pursuant to section 26-9(j), 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, 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 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 634D-1 Hawaii Revised Statutes, is amended to read as follows:

“~~[§634D-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) Any investigator appointed and commissioned by the director of commerce and consumer affairs pursuant to section 26-9(j); or
- (5) Other persons appointed by the court to serve process.”

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 9, 1993.)

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H.B. NO. 1638

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Section 415-141, Hawaii Revised Statutes, is amended to read as follows:

“**§415-141 Certificates and certified copies to be received in evidence.** All certificates issued by the director [in accordance with the provisions of] pursuant to this chapter, and all copies of documents filed in the director's office [in accordance with the provisions of] pursuant to this chapter when certified by the director, shall be taken and received in all courts, public offices, and official bodies as *prima facie* evidence of the facts therein stated. A certificate by the director, under the [great] seal of [this State,] the department, as to the existence or nonexistence of the facts relating to corporations, shall be taken and received in all courts, public offices, and official bodies as *prima facie* evidence of the existence or nonexistence of the facts therein stated.”

SECTION 2. Section 415-172, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Within five days after receipt of an information statement pursuant to subsection (c), a special meeting of the shareholders of the issuing public corporation shall be called pursuant to section [416-73,] 415-28, to vote on the proposed control share acquisition. The meeting shall be held [no]:

- (1) No later than fifty-five days after receipt of the information statement, unless the acquiring person agrees to a later date[,]; and [no]
- (2) No sooner than thirty days after receipt of the information statement, unless the acquiring person so requests in writing when delivering the information statement.

The notice of the meeting shall at a minimum be accompanied by a copy of the information statement, and a statement disclosing that the issuing public company recommends [acceptance]:

- (1) Acceptance of[, expresses];
- (2) Expresses no opinion and is remaining neutral toward[,]; or [is]
- (3) Is unable to take a position with respect to the proposed control share acquisition.

The notice of meeting shall be given within twenty-five days after receipt of the information statement.

Notwithstanding any contrary provision of this chapter, a proxy relating to a meeting of shareholders required under this subsection[, must]:

- (1) Must be solicited separately from the offer to purchase or solicitation of an offer to sell shares of the issuing public corporation; and [must]
- (2) Must not be solicited sooner than thirty days before the meeting unless otherwise agreed in writing by the acquiring person and the issuing public corporation."

SECTION 3. Section 415B-9, Hawaii Revised Statutes, is amended to read as follows:

"§415B-9 Service of process on corporation. (a) Service of any notice or process authorized by law issued against any corporation, whether domestic or foreign, by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any officer or director of the corporation who is found within the jurisdiction of the court, officer, or board; and in the event of failure to find any such officer or director, upon the manager or superintendent of the corporation or any person who is found in charge of the property, business, or office of the corporation within the jurisdiction.

- (b) If:
- (1) [no] No officer, director, manager, superintendent, or other person in charge of the property, business, or office of the corporation can be found within the State[,]; and
 - (2) [the] The corporation, if a foreign corporation, has neglected to deliver to the director the name of a person upon whom legal notice and process from the courts of the State may be served or if the person so named is not found within the State[,];

then service may be made upon the corporation by [delivering to the director for filing, or, in the director's absence, to the deputy director, a copy of the notice or process, certified to be such under the seal of any court of record, or by the chairperson or president of the board, or by the officer issuing the same. The director or deputy director so served shall as soon as practicable but not later than thirty days after the filing notify the defendant corporation by certified mail of the service. Delivery shall constitute service upon the corporation forty-five days after delivery, and shall authorize the court, board, or officer to proceed in all respects as in the case of service personally made upon an individual.]

(b) The director shall keep a record of all processes, notices, and demands served upon the director under this section, and shall record therein the time of such service and the action taken with reference thereto.] registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service using registered or certified mail shall be perfected at the earliest of:

- (1) The date the corporation receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the corporation; or
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) Nothing in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law."

SECTION 4. Section 415B-18, Hawaii Revised Statutes, is amended to read as follows:

"[[§415B-18]] Certificates and certified copies to be received in evidence. All certificates issued by the director pursuant to this chapter, and all copies of documents filed in the director's office pursuant to this chapter where certified by the director, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the director, under the seal of [this State] the department, as to the existence or nonexistence of the facts relating to corporations, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated."

SECTION 5. Section 415B-45, Hawaii Revised Statutes, is amended to read as follows:

"[[§415B-45]] Books and records. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and any committee having any of the authority of the board of directors[; and]. Each corporation shall keep at its [registered office or] principal office in this State a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member or member's agent or attorney, for any proper purpose at any reasonable time."

SECTION 6. Section 415B-98, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) If a trustee is not appointed by [the director or] a court of competent jurisdiction, the last directors of the dissolved corporation shall be and act as trustees for the creditors and shareholders of the dissolved corporation with full powers to settle its affairs."

SECTION 7. Section 415B-133, Hawaii Revised Statutes, is amended to read as follows:

"§415B-133 Merger of foreign corporation authorized to conduct affairs in this State. Whenever a foreign corporation authorized to conduct affairs in this State is a party to a statutory merger permitted by the laws of the jurisdiction in

which it is incorporated, and the corporation is the surviving corporation, [it] the foreign corporation shall deliver to the director for filing, within sixty days after the merger becomes effective, a copy of the articles of merger duly certified by the proper officer of the jurisdiction in which the statutory merger was effected. It shall not be necessary for the surviving corporation to obtain either a new or amended certificate of authority to conduct affairs in this State [unless the name of the corporation is changed by the merger or the corporation desires to pursue any purpose other than one which it is then authorized to pursue in this State]."

SECTION 8. Section 425-17, Hawaii Revised Statutes, is amended to read as follows:

"§425-17 Withdrawal procedure for foreign general partnership. Any foreign general partnership which has qualified to transact business in this State may withdraw and surrender its right to engage in business within this State by securing from the director of commerce and consumer affairs a certificate of withdrawal [in the manner hereinafter provided]. Any such general partnership shall file in the office of the director[:]

- (1) A certificate executed and certified by at least one partner setting forth:
 - (A) That it surrenders its authority to transact intrastate business in this State,
 - (B) That it irrevocably consents that process against it in any action or suit upon any liability or obligation incurred within this State prior to the issuance of the certificate of withdrawal may be served upon the director of commerce and consumer affairs and that service of such process upon the director shall be deemed sufficient service upon it,
 - (C) A post office address to which the director may mail a copy of any process against such general partnership that may be so served upon the director, and
 - (D) A list of the names and resident addresses of all general partners;
- (2) Satisfactory proof showing that, within sixty days last past, it has advertised in a daily newspaper of general circulation in the State, once in each of four successive weeks (four publications), a notice in English to all creditors of the general partnership that it intends to apply, within sixty days from the first publication of the notice, to the director of commerce and consumer affairs for a certificate of withdrawal and intends to withdraw and surrender its rights to engage in business within this State and notifying all creditors of the general partnership to present their claims;
- (3) Satisfactory proof that not less than fifteen days have elapsed since the last publication of the notice;
- (4) Satisfactory proof showing that all creditors, resident or located within the State, have been paid; and
- (5) A valid certificate or certificates showing that all of the taxes, imposts, license fees and assessments theretofore levied upon, due or payable by the general partnership to the State or any of its municipal subdivisions have been fully paid and discharged.] an application for withdrawal, certified and signed by a general partner, which shall set forth:
 - (1) The name of the foreign general partnership, and the state or country under the laws of which it is formed;

- (2) That the foreign general partnership is not transacting business in this State;
- (3) That the foreign general partnership surrenders its authority to transact business in this State;
- (4) That the foreign general 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 general 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 general 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 general partnership in the State have been paid and discharged or that adequate provision has been made therefor;
- (8) A mailing address to which the director may mail a copy of any process against the foreign general partnership that may be served on the director; and
- (9) Such additional information as may be necessary or appropriate to enable the director to determine and assess any unpaid fees payable by the foreign general partnership.

Upon the filing with and the approval by the director of the aforesaid [certificate and proofs] application, and after the payment of a fee of \$3 [for such certificate], the director shall issue to such general partnership a certificate stating that it has withdrawn and surrendered its rights to engage in business within this State. No such general partnership may withdraw from this State without complying with the aforesaid conditions and until such compliance, service of legal notices and processes may be made on any agent of the general partnership within the State, or if none can be found, service of such notices and processes upon the director of commerce and consumer affairs shall be deemed sufficient service of such notices and processes upon it."

SECTION 9. Section 425D-201, Hawaii Revised Statutes, is amended to read as follows:

"[§425D-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]¹ 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."

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SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect July 1, 1993.

(Approved June 9, 1993.)

Note

1. So in original.

ACT 175

H.B. NO. 1664

A Bill for an Act Relating to Occupational Safety and Health Violations.

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

SECTION 1. Section 396-3, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Serious violation" means a violation that carries with it a substantial probability that death or serious physical harm could result from a condition that exists, or from one or more practices, means, methods, operations, or processes that have been adopted or are in use, in a place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, have known of the presence of the violation.

"Wilful violation" means a voluntary act or omission by the employer, as distinguished from an accidental act or omission, that is done with intentional disregard of, or plain indifference to, any standard, rule, citation, or order issued under the authority of this chapter. A wilful violation does not require a showing of malicious intent or bad motive."

SECTION 2. Section 396-10, Hawaii Revised Statutes, is amended by amending subsections (k) through (o) to read as follows:

"[(k) For the purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.]

(l) Civil penalties [owed] imposed under this chapter shall be paid to the department and may be recovered [in a] by civil action in the name of the department and the State [of Hawaii and] brought in the district or circuit court for the circuit where the violation is alleged to have occurred or where the employer has its principal office.

[(m) Notice of violation.] (l) When an alleged violation of any provision of this chapter or any [standards,] standard, rule, [regulation,] or order made thereunder has occurred, the department shall promptly issue a written citation, order, or notice thereof to the employer who shall be required to post [said] the citation, order, or notice. [Said] The citation, order, or notice thereof shall include the abatement requirements and within a reasonable time the employer shall be advised of the proposed sanctions, including proposed penalties. Whenever reference is made to posting of any citation, order, notice, petition, decision, or any other type of document issued by the director under this chapter and rules [and regulations]

made] adopted pursuant to this chapter, the employer shall post copies of the [said] document at the work site involved or affected and at the place or places where notices to the employees involved are normally posted. Where posting starts the time for notice of action to or for appeal by employees under this chapter and rules [and regulations made] adopted under this chapter, the document shall be posted by the employer upon receipt or on the next business day following receipt.

[(n)] [(m)] Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

[(o)] [(n)] Criminal offenses committed against any employee of the State acting within the scope of the employee's office, employment, or authority under this chapter shall be subject to the penalties set forth in the Hawaii Penal Code; provided that:

- (1) Ten years shall be added to the maximum term of imprisonment (unless life imprisonment is imposed) and \$50,000 shall be added to the maximum fine imposed for conviction of a class A felony;
- (2) Five years shall be added to the maximum term of imprisonment and \$25,000 shall be added to the maximum fine imposed for conviction of a class B felony;
- (3) Three years shall be added to the maximum term of imprisonment and \$10,000 shall be added to the maximum fine for conviction of a class C felony;
- (4) One year shall be added to the maximum term of imprisonment and \$2,000 shall be added to the maximum fine for conviction of a misdemeanor; and
- (5) The maximum term of imprisonment and maximum fines prescribed for misdemeanors under the Hawaii Penal Code shall apply to convictions of a petty misdemeanor."

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 9, 1993.)

ACT 176

H.B. NO. 1666

A Bill for an Act Relating to Employment Security.

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

SECTION 1. Section 383-44, Hawaii Revised Statutes, is amended to read as follows:

"**§383-44 Recovery of benefits paid.** (a) Any person who has received any amount as benefits under this chapter to which the person was not entitled shall be liable for [such] the amount unless the overpayment was received without fault on the part of the recipient and its recovery would be against equity and good conscience. Notice of redetermination in [such] these cases shall specify that the person is liable to repay to the fund the amount of overpaid benefits, the basis of

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the overpayment, and the week or weeks for which [such] the benefits were [paid] overpaid.

(b) The person liable [shall], in the discretion of the department [of labor and industrial relations], shall either repay [such] the amount to the department for the fund or have [such] the amount deducted from any future benefits payable to the person under this chapter within two years after the date of mailing of the notice of redetermination or the final decision on an appeal from [such] the redetermination.

(c) Notwithstanding any other provision of this chapter, the department, by agreement with another state or the United States as provided under section 303(g) of the Social Security Act, may recover any overpayment of benefits paid to any individual under the laws of this State or of another state or under an unemployment benefit program of the United States. Any overpayments subject to this subsection may be deducted from any future benefits payable to the individual under the laws of this State or of another state or under an unemployment program of the United States.

[c)] (d) In any case in which under this section an individual is liable to repay any amount to the department, [such] the amount shall be collectible without interest by civil action in the name of the State by the attorney general."

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, 1993.)

ACT 177

H.B. NO. 1675

A Bill for an Act Relating to Public Lands.

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

SECTION 1. Act 237, Session Laws of Hawaii 1988, is amended by adding a new section to be appropriately designated and to read as follows:

"SECTION . Agricultural leaseholds under this Act shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency related to standards for subdivision development."

SECTION 2. Act 237, Session Laws of Hawaii 1988, as amended by Act 249, Session Laws of Hawaii 1990, and Act 69, Session Laws of Hawaii 1991, is amended by amending SECTION 7 to read as follows:

"SECTION 7. This Act shall take effect on July 1, 1988, and shall be repealed on July 1, [1993.] 1994."

SECTION 3. Act 5, Session Laws of Hawaii 1987, as amended by Act 106, Session Laws of Hawaii 1991 and Act 58, Session Laws of Hawaii 1992, is amended by amending SECTION 6 to read as follows:

"SECTION 6. Notwithstanding any other law to the contrary, including chapter 171, Hawaii Revised Statutes, the department of land and natural resources

is authorized to negotiate and enter into lease agreements 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 this Act, or (2) on [July] January 1, [1993,] 1994, whichever occurs first."

SECTION 4. Session law material to be repealed is bracketed. New session law material is underscored.¹

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

(Approved June 9, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 178

H.B. NO. 1930

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 304-8.97, Hawaii Revised Statutes, is amended to read as follows:

"[§304-8.97] University of Hawaii alumni revolving fund. There is established a revolving fund to be known as the University of Hawaii alumni revolving fund, into which shall be deposited funds and proceeds received by the university from alumni activities and donations from alumni. Funds deposited into this account may be expended by the university [to carry out alumni activities and programs.] for all costs associated with conducting alumni affairs activities and programs for the university system, including but not limited to expenses for honoraria, hotel and room rentals, food and refreshment, printing and mailing, banners and signs, plaques and awards, airfare and per diem, leis, rental of audio visual, musical and stage equipment, and activity supplies and materials, without regard to statutory competitive bidding requirements."

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, 1993.)

ACT 179

H.B. NO. 2008

A Bill for an Act Relating to Interest and Usury.

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

SECTION 1. Section 478-2, Hawaii Revised Statutes, is amended to read as follows:

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"§478-2 Legal rate; computation. When there is no express written contract fixing a different rate of interest, interest shall be allowed at the rate of ten per cent a year, except that, with respect to obligations of the State, interest shall be allowed at the prime rate for each calendar quarter but in no event shall exceed ten per cent a year, as follows:

- (1) For money due on any bond, bill, promissory note, or other instrument of writing, or for money lent, after it becomes due;
- (2) For money due on the settlement of accounts, from the day on which the balance is ascertained;
- (3) For money received to the use of another, from the date of a demand made; and
- (4) For money upon an open account, after sixty days from the date of the last item or transaction.

As used in this section, "prime rate" means the prime rate as posted in the Wall Street Journal on the first business day of the month preceding the calendar quarter."

SECTION 2. New statutory material is underscored.

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

(Approved June 9, 1993.)

ACT 180

H.B. NO. 2030

A Bill for an Act Relating to Bond Authority for Public Health Facilities.

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

SECTION 1. Section 323-63, Hawaii Revised Statutes, is amended to read as follows:

- "[§]323-63[§] Powers.** The department [shall have the power to:] may:
- (1) Operate, manage, and control [the system of] all public health facilities[; and establish one or more public health facilities as a system of public health facilities for the purpose of issuing revenue bonds pursuant to part III of chapter 39];
 - (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] that 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] that 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] shall further 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] shall further 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 323-65, 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] audits 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) Issue revenue bonds pursuant to part III of chapter 39; and
- [15)] (16) Perform all other acts necessary or appropriate to carry out the purposes of this part."

SECTION 2. Section 323-70, Hawaii Revised Statutes, is amended to read as follows:

"[§323-70] Revenues. (a) Pursuant to chapter 91, the division [shall]¹ impose and collect rates, rents, fees, and charges for the use of its public health facilities and their derived services, and shall revise [such] these 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.

(b) 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[,] or maintenance, or both, of any or all facilities, services, and projects of the division[.]; provided that the rates, rents, fees, and charges imposed at public health facilities that are part of a system of public health facilities for which revenue bonds have been issued shall not be less than the rates, rents, fees, and charges required to enable the department to comply with section 39-61 and any resolution or certificate authorizing and securing the revenue bonds."

SECTION 3. Section 323-73, Hawaii Revised Statutes, is amended to read as follows:

"[§323-73] 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,

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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 director shall transfer all moneys remaining in a hospital special fund not required for the 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] that do not receive general fund augmentation may retain [up to] not more than 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] that a public health facility not supported by general funds may retain in its hospital special fund. The amounts the director [is authorized to] may 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]. The facility administration fund shall be used to defray the general administrative costs of the division and [to] provide supplemental funds to [those] public health facilities [which] that 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] that monitor and evaluate the division. [In the event] If the balance in the facility administration 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] the facility administration fund to the general fund at any time pursuant to section 37-53.

(c) Any other law to the contrary notwithstanding, a separate special fund shall be established for each system of public health facilities for which revenue bonds have been issued. All income, revenues, and receipts derived from the ownership or operation of the particular system shall be deposited in the special fund and applied in accordance with section 39-62 and the resolution or certificate authorizing and securing the revenue bonds. For the purposes of determining the amount to be assessed against a special fund established pursuant to this subsection, the director may separately allocate a portion of the special fund to each separate public health facility that constitutes a component of the system, or assess from the special fund as a whole.

[c)] (d) The director shall submit an annual report to the legislature, twenty days prior to the convening of each regular session, [which] that 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 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 9, 1993.)

Note

1. So in original.

ACT 181

S.B. NO. 125

A Bill for an Act Relating to Bail Bond Agents.

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

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The following chapters and sections are hereby repealed effective December 31, 1993:

- (1) Chapter 452 (Board of Massage)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 460 (Board of Osteopathic Examiners)
- (4) Chapter 461J (Board of Physical Therapy)
- (5) Chapter 463E (Podiatry)
- (6) Chapter 514E (Time Sharing Plans)
- [7) Sections 804-61 and 804-62]”

SECTION 2. Section 804-10.5, Hawaii Revised Statutes is amended by amending subsection (b) to read as follows:

“(b) No person shall be sufficient surety who:

- (1) Has been convicted of perjury for submitting a false statement under section 804-11.5; [or]
- (2) Does not satisfy the requirements of section 804-11.5[.]; or
- (3) Does not satisfy the requirements of article 9, chapter 431, if posting an insurance bond as defined in section 431:1-210(1).”

SECTION 3. Section 804-62, Hawaii Revised Statutes, is amended to read as follows:

“[[§804-62]] **Limit of compensation; penalty.** (a) The amount of compensation which may be collected on any bail bond or bond to keep the peace by one or more persons acting as sureties thereon shall not exceed [ten] a one time only fee from five to fifteen per cent of the amount thereof, but need not be less than [\$10] \$50 in any event[.]; provided that additional fees, subject to subsection (b), may be collected for:

- (1) The posting of a surety insurance bond as defined in section 431:1-210(1);
 - (2) The posting of a bond on behalf of a person whose case is pending appeal; or
 - (3) The posting of a bond in which more than one year has passed since the filing thereof.
- (b) The compensation collected pursuant to sections 804-62(a)(2) and (a)(3), in any year after the first year, may be collected annually, and:

- (1) Shall be charged on a prorated basis; and
- (2) Shall not exceed the percentage charged in the first year.

[(b)] (c) Every person holding a license to act as surety on any bail bond or bond to keep the peace who violates this section shall be fined not more than \$250 and shall forfeit the license and shall not be entitled to receive a similar license for a period of one year thereafter.”

SECTION 4. Section 804-61, Hawaii Revised Statutes, is repealed.

ACT 182

SECTION 5. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

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

(Approved June 9, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 182

S.B. NO. 127

A Bill for an Act Relating to Podiatry.

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

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The following chapters and sections are hereby repealed effective December 31, 1993:

- (1) Chapter 452 (Board of Massage)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 460 (Board of Osteopathic Examiners)
- (4) Chapter 461J (Board of Physical Therapy)
- [5] Chapter 463E (Podiatry)
- (6) [5] Chapter 514E (Time Sharing Plans)
- [7] [6] Sections 804-61 and 804-62"

SECTION 2. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The following chapters are hereby repealed effective December 31, 1995:

- (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
- (2) Chapter 437B (Motor Vehicle Repair Industry Board)
- (3) Chapter 440 (Boxing Commission)
- (4) Chapter 448H (Elevator Mechanics Licensing Board)
- (5) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- (6) Chapter 445 Part V (Pawnbrokers)
- (7) Chapter 463E (Podiatry)"

SECTION 3. Section 463E-4, Hawaii Revised Statutes, is amended to read as follows:

"§463E-4 Examinations. (a) The board shall [administer examinations which shall include, but not be limited to, examinations in the following areas: anatomy, histology and embryology, physiology, biochemistry, hygiene and public health, pathology, bacteriology, dermatology, syphilology, surgery and anesthesia, podiatry, therapeutics, physical medicine, podiatric medicine, pharmacology, materia medica, roentgenologic technique, and radiation safety.] require each applicant to furnish satisfactory evidence that the applicant has passed written examinations covering basic sciences, clinical sciences, and clinical competency as administered

by the National Board of Podiatric Medical Examiners or its successor organization.

(b) The examinations shall be held in Honolulu twice a year at a time and day which is convenient for the board.

[(c) The board may accept the certificate or evidence of passage of the National Board of Podiatric Medical Examiners or an equivalent testing agency in lieu of and as equivalent to part or all of its own written examination.

(d) (c) The [written examination] examinations shall be secured from and corrected by the National Board of Podiatric Medical Examiners or [an equivalent testing agency. The board, in addition may administer a written examination of podiatric medical clinical competency which may include portions which address the basic sciences and clinical sciences that support the clinical practice of podiatric medicine.] its successor organization."

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 9, 1993.)

ACT 183

S.B. NO. 130

A Bill for an Act Relating to Medicine and Surgery.

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

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The following chapters and sections are hereby repealed effective December 31, 1993:

- (1) Chapter 452 (Board of Massage)
- [2) Chapter 453 (Board of Medical Examiners)
- (3)] (2) Chapter 460 (Board of Osteopathic Examiners)
- [4)] (3) Chapter 461J (Board of Physical Therapy)
- [5)] (4) Chapter 463E (Podiatry)
- [6)] (5) Chapter 514E (Time Sharing Plans)
- [7)] (6) Sections 804-61 and 804-62"

SECTION 2. Section 26H-4, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The following chapters are hereby repealed effective December 31, 1995:

- (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
- (2) Chapter 437B (Motor Vehicle Repair Industry Board)
- (3) Chapter 440 (Boxing Commission)
- (4) Chapter 448H (Elevator Mechanics Licensing Board)
- (5) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- (6) Chapter 453 (Board of Medical Examiners)
- [6)] (7) Chapter 445 Part V (Pawnbrokers)"

ACT 184

SECTION 3. Chapter 453, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§453- Physician assistant advisory committee. There shall be a physician assistant advisory committee under the board of medical examiners consisting solely of persons certified under section 453-5.3. The committee shall review all complaints and requests relating to physician assistants, and review and recommend revisions of the physician assistant regulations.

The chairperson of the committee shall be the representative for the committee members to the board of medical examiners for the purpose of providing input to the board from the physician assistant's perspective on issues and concerns, including complaints and requests, regarding physician assistants. The chairperson shall not be a member of the board of medical examiners to avoid conflict of interests."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved June 9, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 184

S.B. NO. 261

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 twelfth year in a row and that the legislature is constitutionally required to give a tax credit or refund.

The purpose of this Act is to provide for an income tax credit of \$1 to the people of the State to satisfy constitutionally mandated requirements.

SECTION 2. (a) In addition to the food/excise tax credit allowed under section 235-55.8, 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 235-55.8(a), Hawaii Revised Statutes, a general income tax credit of \$1 which shall be deducted from income tax liability computed under chapter 235, Hawaii Revised Statutes. The general income tax credit of \$1 shall be multiplied by the number of qualified exemptions as defined in section 235-55.8(c), Hawaii Revised Statutes, to which the taxpayer is entitled, regardless of adjusted gross income. Section 235-55.8(c), Hawaii Revised Statutes, to the contrary notwithstanding, each person for whom the qualified exemption is claimed shall have been a resident of the State, as defined in section 235-1, Hawaii Revised Statutes, for at least nine months regardless of whether the 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 1993. Section 235-55.8(d), (e), and (f), Hawaii Revised Statutes, applies to this section and is incorporated herein to the extent not in conflict with this section.

(b) This section implements the provisions of Article VII, section 6, of the Constitution of the State of Hawaii, enacted by the 1978 Constitutional Convention, which reads 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 9, 1993.)

ACT 185

S.B. NO. 530

A Bill for an Act Relating to Motor Vehicle Registration.

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

SECTION 1. Section 249-3, Hawaii Revised Statutes, is amended to read as follows:

"§249-3 Tax for fraction of years, refunds; removal from State; junked vehicles; vehicles brought into the State. (a) Whenever it is clear to the director of finance that any vehicle taxable under sections 249-1 to 249-13 has been acquired or has been removed from storage, where it was not used for transportation or for other purposes covered by section 249-2[, subsequent to January 1 of the current year,] by the person seeking to register the vehicle, and [such] the vehicle is not subject to unpaid taxes for the same or any prior year under sections 249-1 to 249-13, the tax to be paid thereon shall be as provided under sections 249-1 to 249-13 less [eight and one-third per cent of such] the tax for each full month of the then calendar year which shall have elapsed at the date the vehicle was acquired or removed from storage[; provided that in].

(b) In no case shall the tax assessed and collected for any vehicle [hereunder] under this section be less than \$1[; and provided further:

(1) That any].

Any vehicle owned and brought into the State by any person shall be exempt from this chapter relative to the payment of taxes and display of number plates for twelve months or the remaining portion of the current registration period, whichever is less, for which the taxes have been paid on [such] the vehicle by the owner thereof in compliance with the law of the state or country in which the vehicle is licensed, and shall display on the vehicle the number plates for the current year required by the law of [such] the state or country[; and]

(2) That if].

If any owner of a vehicle upon which has been paid the annual tax due and payable for the current year as required by sections 249-1 to 249-13, intends to remove from the State [such] the vehicle and not bring it back to the State during

the same year, or if the owner junks the vehicle during the year for which the annual tax as required has been paid, the owner [shall], upon presenting to the director of finance a signed [and sworn affidavit stating, (A) the] statement setting forth:

- (1) The intention to remove the vehicle from the State, the date of intended shipment of the vehicle, the name of the vessel by which the shipment is intended; or [(B) the]
- (2) The intention to junk a vehicle; together with [such] other relevant facts as may be required by the director of finance, and upon surrender of the current license plates and any other documents as may be required by the director of finance for [such] the vehicle[.]

shall become entitled to a refund of a portion of the tax, prorated on the basis of months remaining in [such] the year [(i) after]:

- (A) After the intended removal[, or (ii) after];
- (B) After the junking[.]; or [(iii) after]
- (C) After the surrender of the license plates[.]

whichever is the later.

From the date of the surrender of the license plates, in the case of the intended removal, the vehicle [shall], except for the purpose of driving the same to the place of embarkation, shall be deemed an unlicensed vehicle, and shall be permitted, should it be brought back to the State prior to the expiration of [such] the year, to be operated in the State only upon payment to the director of finance of the entire amount of tax refunded. No vehicle taxable under sections 249-1 to 249-13 shall be removed from the State unless the owner thereof has first paid the annual tax due and payable thereon for the current year as required herein and has thereupon become entitled to a refund of a portion of the tax paid. The director of finance shall accept the junking of a vehicle not currently registered; provided that the owner of each [such] vehicle shall first present to the director of finance a signed [and sworn affidavit stating] statement of the fact of [such] the junking together with such other relevant facts as may be required by the director of finance and [such] the owner shall surrender the last issued certificate of registration, certificate of ownership, and license plates for each [such] vehicle.

If a previously junked vehicle is re-registered, the certificates of title and registration for the vehicle shall contain a statement indicating that the vehicle had been previously junked. A physical inspection of the vehicle identification number shall be required as a condition precedent to registration.

SECTION 2. Section 249-5, Hawaii Revised Statutes, is amended to read as follows:

“§249-5 Exemptions for stored vehicles; refunds. All vehicles taxable under sections 249-1 to 249-13, which are stored so that they are not used for transportation, or for the other purposes covered by section 249-2, shall be exempt from the tax imposed under this chapter for the period of storage; provided that the owner of each [such] vehicle shall first present to the director of finance a signed [and sworn affidavit stating] statement of the fact of [such] the storage, together with such other relevant facts as may be required by the director of finance and shall surrender the last issued certificate of registration, license plates, and emblem for [such] the vehicle. If the affidavit, certificate of registration, license plates, and emblem are presented to the director of finance after the expiration of the vehicle's registration period, then the unpaid tax for each month the license plates could have been validated with an emblem plus the fee for the currently issued license plates and emblem shall be paid in full upon presenting the affidavit. Should the affidavit be presented to the director of finance after payment of the current year's tax, then

a portion of the tax, for each full month remaining in [such] the current year shall be refunded upon completion of all storage requirements, but no refund shall be made for a period less than one month. The director of finance may dispose of the license plates for any vehicle whose registration has been expired for more than one year, and the owner shall be required to purchase new license plates and a new emblem upon removing the vehicle from storage."

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

SECTION 4. This Act shall take effect on July 1, 1993.

(Approved June 9, 1993.)

ACT 186

S.B. NO. 741

A Bill for an Act Relating to the Hawaii Penal Code.

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

SECTION 1. Section 701-108, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

- (a) A prosecution for manslaughter where the death was not caused by the operation of a motor vehicle must be commenced within ten years after it is committed;
- [(a)] (b) A prosecution for a class A felony must be commenced within six years after it is committed;
- [(b)] (c) A prosecution for any other felony must be commenced within three years after it is committed;
- [(c)] (d) A prosecution for a misdemeanor or a parking violation must be commenced within two years after it is committed;
- [(d)] (e) A prosecution for a petty misdemeanor or a violation other than a parking violation must be commenced within one year after it is committed."

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

SECTION 3. New statutory material is underscored.¹

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

(Approved June 9, 1993.)

Note

1. So in original.

A Bill for an Act Relating to Juveniles.

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

SECTION 1. The purpose of this Act is to bring consistency and fairness to the treatment of juveniles in Hawaii and to provide the highest level of appropriate services in order to control and protect youth consistent with public safety. Status offenders and law violators who are arrested by the police are often placed in secure custody in police lockups and occasionally in community correctional centers that also house criminal offenders. Public safety is compromised by the inappropriate placement of children into secure detention, resulting in children being exposed to negative role models, opportunities for victimization, violence and intimidation, and suicide.

This Act enables Hawaii to comply with the Juvenile Justice Delinquency Prevention Act of 1974 (JJDPA), as amended, by promoting a more humane treatment of juveniles through removal of status offenders from secure juvenile detention facilities, the removal of all juveniles from adult jails and lockups, and the separation of incarcerated juveniles from adult detainees. Status offenders are juveniles charged with offenses which would not be offenses if committed by adults. They are unique in that their behavior is not criminal.

Hawaii began participation in the Act in 1976. In promoting the standards embodied in the Act and its implementing regulations, the JJDPA provides formula grant funds to states through seed monies to fund programs that help states to work towards improving their juvenile justice system and to comply with the mandates.

Presently, Hawaii is not in compliance with the JJDPA and approximately \$1,000,000 has been withheld until Hawaii can demonstrate intent or compliance with the JJDPA. This Act will enable Hawaii to continue to receive these funds which are currently being held for the State as well as future grants.

SECTION 2. Section 571-32, Hawaii Revised Statutes, is amended to read as follows:

“§571-32 Detention; shelter; release; notice. (a) If a child who is believed to come within section 571-11(1) or (2) is not released as provided in section 571-31 and is not deemed suitable for diversion, [such] the child shall be taken without unnecessary delay to the court or to the place of detention or shelter designated by the court. If the court determines that the child requires care away from the child's own home but does not require secure physical restriction, [such] the child shall be given temporary care in any available nonsecure child caring institution, foster family home, or other shelter facility.

(b) The officer or other person who brings a child to a detention or shelter facility shall [at once] give notice to the court at once, stating the legal basis therefor and the reason why the child was not released to the child's parents. [In case] If the facility to which the child is taken is not an agency of the court, the person in charge of the facility in which the child is placed shall promptly give notice to the court that the child is in that person's custody. Prior to acceptance of the child for detention or shelter care, a prompt inquiry shall be made by a duly authorized staff member of the detention or shelter facility or officer of the court. Where it is deemed in the best interests of the child, the judge [or such], officer [or], staff member, or the director of detention services may then order the child to be released, if possible, to the care of the child's parent, guardian, legal custodian,

or other responsible adult, or the judge may order the child held in the facility subject to further order or placed in some other appropriate facility.

(c) As soon as a child is detained, the child's parents, guardian, or legal custodian shall be informed, by personal contact or by notice in writing on forms prescribed by the court, that they may have a prompt hearing held by a circuit judge or district family judge regarding release or detention. A child may be released on the order of the judge with or without a hearing. The director of detention services may order the release of the child if an order of detention has not been made.

(d) No child shall be held in a detention facility for juveniles or shelter longer than [forty-eight] twenty-four hours, excluding [Sundays] weekends and [court] holidays, unless a petition or motion for revocation of probation, or motion for revocation of protective supervision has been filed, or unless the judge [shall] orders otherwise [order.] after a court hearing. No ex parte motions shall be considered. [No child may be so held longer than forty-eight hours, excluding Sundays and court holidays, after the filing of a petition unless an order for such continued detention or shelter has been signed by the judge.] If there is probable cause to believe that the child comes within section 571-11(1), the child may be securely detained in a certified police station cellblock or community correctional center. The detention shall be limited to six hours. In areas which are outside a standard metropolitan statistical area, the detention may be up to twenty-four hours, excluding weekends and holidays, if no detention facility for juveniles is reasonably available. Any detention in a police station cellblock or community correctional center shall provide for the sight and sound separation of the child from adult offenders.

(e) [No child shall be released from such detention except in accordance with this chapter.] No child may be held after the filing of a petition or motion, as specified in subsection (d) of this section, unless an order for continued detention or shelter has been made by a judge after a court hearing. If there is probable cause to believe that the child comes within section 571-11(1), the child may be securely detained, following a court hearing, in a detention facility for juveniles or may be held in a shelter. If there is probable cause to believe that the child comes within section 571-11(2), or section 281-101.5, the child may be held, following a court hearing, in a shelter but may not be securely detained in a detention facility for juveniles for longer than twenty-four hours, excluding weekends and holidays, unless the child is subject to the provisions of Chapter 582, Interstate Compact on Juveniles, or is allegedly in or has already been adjudicated for a violation of a valid court order, as provided under the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

(f) [No child shall at any time be detained in a police station cellblock or community correctional center for more than twelve hours, except that, by the judge's order in which the reasons therefor shall be specified, a child whose conduct or condition endangers the child's own safety or the safety of others in the detention facility for children, or in counties where there is no detention facility for children, may be placed in some other place of confinement that the judge considers proper, including the places of detention for adults specified in this subsection.] No child shall be released from detention except in accordance with this chapter.

(g) Where a child transferred for criminal proceedings pursuant to waiver of family court jurisdiction is detained, the child shall be held in the detention facility used for persons charged with crime. When a child is ordered committed to an agency or institution, the child shall be [promptly] transported promptly to the place of commitment.

(h) Provisions regarding bail shall not be applicable to children detained in accordance with this chapter, except that bail may be allowed after a child has been transferred for criminal prosecution pursuant to waiver of family court jurisdiction.

ACT 188

(i) The official in charge of a facility for the detention of adult offenders or persons charged with crime shall inform the court immediately when a child who is or appears to be under eighteen years of age is received at the facility.

(j) Any other provision of law to the contrary notwithstanding, any person otherwise subject to proceedings under chapter 832 and who is under the age of eighteen may be confined in a detention facility[,] or correctional facility by order of a judge for the purposes set forth in section 832-12, 832-15, or 832-17.

(k) The department of human services through the office of youth services shall certify police station cellblocks and community correctional centers that provide sight and sound separation between children and adults in secure custody. Only cellblocks and centers certified under this subsection shall be authorized to detain juveniles pursuant to section 571-32(d). The office of youth services may develop sight and sound separation standards, issue certifications, monitor and inspect facilities for compliance, cite facilities for violations, withdraw certifications, and require certified facilities to submit such data and information as requested. In addition, the office of youth services may monitor and inspect all cellblocks and centers for compliance with section 571-32(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.

(Approved June 9, 1993.)

ACT 188

S.B. NO. 952

A Bill for an Act Relating to Excise Taxes.

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

SECTION 1. Section 237-13, Hawaii Revised Statutes, is amended to read as follows:

“§237-13 Imposition of tax. There is hereby levied and shall be assessed and collected annually privilege taxes against persons on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sales, or gross income, whichever is specified, as follows:

(1) Tax on manufacturers.

(A) Upon every person engaging or continuing within the State in the business of manufacturing, including compounding, canning, preserving, packing, printing, publishing, milling, processing, refining, or preparing for sale, profit, or commercial use, either directly or through the activity of others, in whole or in part, any article or articles, substance or substances, commodity or commodities, the amount of the tax to be equal to the value of the articles, substances, or commodities, manufactured, compounded, canned, preserved, packed, printed, milled, processed, refined, or prepared, for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding, preparing, or printing them, multiplied by one-half of one per cent.

- (B) The measure of the tax on manufacturers is the value of the entire product for sale, regardless of the place of sale or the fact that deliveries may be made to points outside the State.
- (C) If any person liable for the tax on manufacturers ships or transports the person's product, or any part thereof, out of the State, whether in a finished or unfinished condition, or sells the same for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), the value of the products in the condition or form in which they exist immediately before entering interstate or foreign commerce, determined as hereinafter provided, shall be the basis for the assessment of the tax imposed by this paragraph. This tax shall be due and payable as of the date of entry of the products into interstate or foreign commerce, whether the products are then sold or not. The department of taxation shall determine the basis for assessment, as provided by this paragraph, as follows:
- (i) If the products at the time of their entry into interstate or foreign commerce already have been sold, the gross proceeds of sale, less the transportation expenses, if any, incurred in realizing the gross proceeds for transportation from the time of entry of the products into interstate or foreign commerce, including insurance and storage in transit, shall be the measure of the value of the products.
 - (ii) If the products have not been sold at the time of their entry into interstate or foreign commerce, and in cases governed by clause (i) in which the products are sold under circumstances such that the gross proceeds of sale are not indicative of the true value of the products, the value of the products constituting the basis for assessment shall correspond as nearly as possible to the gross proceeds of sales for delivery outside the State, adjusted as provided in clause (i), or if sufficient data are not available, sales in the State, of similar products of like quality and character and in similar quantities, made by the taxpayer (unless not indicative of the true value) or by others. Sales outside the State, adjusted as provided in clause (i), may be considered when they constitute the best available data. The department shall prescribe uniform and equitable rules for ascertaining such values.
 - (iii) At the election of the taxpayer and with the approval of the department, the taxpayer may make the taxpayer's returns under clause (i) even though the products have not been sold at the time of their entry into interstate or foreign commerce.
 - (iv) In all cases in which products leave the State in an unfinished condition the basis for assessment shall be adjusted so as to deduct such portion of the value as is attributable to the finishing of the goods outside the State.
- (2) Tax on business of selling tangible personal property; producing.
- (A) Upon every person engaging or continuing in the business of selling any tangible personal property whatsoever (not including, however, bonds or other evidence of indebtedness, or stocks), there is likewise hereby levied, and shall be assessed and collected, a tax equivalent to four per cent of the gross

- proceeds of sales of the business; provided that insofar as certain retailing is taxed by section 237-16, the tax shall be that levied by section 237-16, and in the case of a wholesaler, the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business. Upon every person engaging or continuing within this State in the business of a producer the tax shall be equal to one-half of one per cent of the gross proceeds of sales of the business, or the value of the products, for sale, if sold for delivery outside the State or shipped or transported out of the State, and the value of the products shall be determined in the same manner as the value of manufactured products covered in the cases under paragraph (1)(C).
- (B) Gross proceeds of sales of tangible property in interstate and foreign commerce shall constitute a part of the measure of the tax imposed on persons in the business of selling tangible personal property, to the extent, under the conditions, and in accordance with the provisions of the Constitution of the United States and the acts of the Congress of the United States which may be now in force or may be hereafter adopted, and whenever there occurs in the State an activity to which, under the Constitution and acts of Congress, there may be attributed gross proceeds of sales, such gross proceeds shall be so attributed.
- (C) No manufacturer or producer, engaged in such business in the State and selling the manufacturer's or producer's products for delivery outside of the State (for example, consigned to a mainland purchaser via common carrier f.o.b. Honolulu), shall be required to pay the tax imposed in this chapter for the privilege of so selling the products, and the value or gross proceeds of sales of the products shall be included only in determining the measure of the tax imposed upon the manufacturer or producer as such.
- (D) When a manufacturer or producer, engaged in such business in the State, also is engaged in selling the manufacturer's or producer's products in the State at wholesale, retail, or in any other manner, the tax for the privilege of engaging in the business of selling the products in the State shall apply to the manufacturer or producer as well as the tax for the privilege of manufacturing or producing in the State, and the manufacturer or producer shall make the returns of the gross proceeds of the wholesale, retail, or other sales required for the privilege of selling in the State, as well as making the returns of the value or gross proceeds of sales of the products required for the privilege of manufacturing or producing in the State. The manufacturer or producer shall pay the tax imposed in this chapter at the highest rate applicable for any of the privileges exercised by the manufacturer or producer in respect of the particular products, and the value or gross proceeds of sales of the products, thus subjected to tax at the highest rate, may be deducted insofar as duplicated as to the same products by the measure of the tax upon the manufacturer or producer for the other privileges enumerated in this paragraph, paragraph (1), and section 237-16[.]; except that no producer of agricultural products who sells the products to a purchaser who will process the products outside the State shall be

required to pay the tax imposed in this chapter for the privilege of producing or selling those products.

- (E) A taxpayer selling to a federal cost-plus contractor may make the election provided for by paragraph (3)(C), and in any such case the tax shall be computed pursuant to the election, notwithstanding this paragraph or paragraph (1) to the contrary.
 - (F) The department, by rule, may provide that a seller may take from the purchaser of tangible personal property a certificate, in such form as the department shall prescribe, certifying that the sale is a sale at wholesale. If the certificate is so provided for by rule of the department:
 - (i) Any purchaser who furnishes such a certificate shall be obligated to pay to the seller, upon demand, if the sale in fact is not at wholesale, the amount of the additional tax which by reason thereof is imposed upon the seller; and
 - (ii) The absence of such a certificate, unless the sales of the business are exclusively at wholesale, in itself shall give rise to the presumption that the sale is not at wholesale.
- (3) Tax upon contractors.
- (A) Upon every person engaging or continuing within the State in the business of contracting, the tax shall be equal to four per cent of the gross income of the business; provided that insofar as the business of contracting is taxed by section 237-16, which relates to certain retailing, the tax shall be that levied by section 237-16.
 - (B) In computing the tax levied under this paragraph or section 237-16, there shall be deducted from the gross income of the taxpayer so much thereof as has been included in the measure of the tax levied under subparagraph (A) or section 237-16, on:
 - (i) Another taxpayer who is a contractor, as defined in section 237-6;
 - (ii) A specialty contractor, duly licensed by the department of commerce and consumer affairs pursuant to section 444-9, in respect of the specialty contractor's business as such; or
 - (iii) A specialty contractor who is not licensed by the department of commerce and consumer affairs pursuant to section 444-9, but who performs contracting activities on federal military installations and nowhere else in this State, if the tax on the amount so deducted has been paid by the other person, or has been withheld by the taxpayer and shall be paid over by the taxpayer to the assessor at the time of filing the return, such withholding being authorized by this paragraph; but any person claiming a deduction under this paragraph shall be required to show in the person's return the name of the person paying the tax on the amount deducted by the person or from whom the tax was withheld, and shall issue a receipt for any amount of tax withheld, which upon filing by the other taxpayer with the taxpayer's return, shall relieve the other taxpayer of liability for the amount of tax withheld.
 - (C) In computing the tax levied under this paragraph against any federal cost-plus contractor, there shall be excluded from the gross income of the contractor so much thereof as fulfills the following requirements:

- (i) The gross income exempted shall constitute reimbursement of costs incurred for materials, plant, or equipment purchased from a taxpayer licensed under this chapter, not exceeding the gross proceeds of sale of the taxpayer on account of the transaction.
- (ii) The taxpayer making the sale shall have certified to the department that the taxpayer is taxable with respect to the gross proceeds of the sale, and that the taxpayer elects to have the tax on such gross income computed the same as upon a sale to the state government.
- (D) A person who, as a business or as a part of a business in which the person is engaged, erects, constructs, or improves any building or structure, of any kind or description, or makes, constructs, or improves any road, street, sidewalk, sewer, or water system, or other improvements on land held by the person (whether held as a leasehold, fee simple, or otherwise), upon the sale or other disposition of the land or improvements, even if the work was not done pursuant to a contract, shall be liable to the same tax as if engaged in the business of contracting, unless the person shows that at the time the person was engaged in making the improvements it was, and for the period of at least one year after completion of the building, structure, or other improvements, it continued to be the person's purpose to hold and not sell or otherwise dispose of the land or improvements. The tax in respect of the improvements shall be measured by the amount of the proceeds of the sale or other disposition that is attributable to the erection, construction, or improvement of such building or structure, or the making, constructing, or improving of the road, street, sidewalk, sewer, or water system, or other improvements. The measure of tax in respect of the improvements shall not exceed the amount which would have been taxable had the work been performed by another, subject as in other cases to the deductions allowed by subparagraph (B). Upon the election of the taxpayer this paragraph may be applied notwithstanding the improvements were not made by the taxpayer, or were not made as or as a part of a business, or were made with the intention of holding the same. However, this paragraph shall not apply in respect of any proceeds that constitute or are in the nature of rent; all such gross income shall be taxable under paragraph (10).
- (4) Tax upon theaters, amusements, radio broadcasting stations, etc. Upon every person engaging or continuing within the State in the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, radio broadcasting station, or any other place at which amusements are offered to the public, the tax shall be equal to four per cent of the gross income of the business.
- (5) Tax upon sales representatives, etc. Upon every person classified as a representative or purchasing agent under section 237-1, engaging or continuing within the State in the business of performing services for another, other than as an employee, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the commissions and other compensation attributable to the services so rendered by the person.

- (6) Tax on service business. Upon every person engaging or continuing within the State in any service business or calling not otherwise specifically taxed under this chapter, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income of any such business; provided that where any person engaging or continuing within the State in any service business or calling renders such services upon the order of or at the request of another taxpayer who is engaged in the service business and who, in fact, acts as or acts in the nature of an intermediary between the person rendering such services and the ultimate recipient of the benefits of such services, so much of the gross income as is received by the person rendering the services shall be subjected to the tax at the rate of one-half of one per cent and all of the gross income received by the intermediary from the principal shall be subjected to a tax at the rate of four per cent; and provided that where any person is engaged in the business of selling interstate or foreign common carrier telecommunication services within and without the State, the tax shall be imposed on that portion of gross income received by any such person from service which is originated or terminated in this State and is charged to a telephone number, customer, or account in this State notwithstanding any other state law (except for the exemption under section 237-23(a)(1)) to the contrary. If, under the Constitution and laws of the United States, the entire gross income as determined under this paragraph of a business selling interstate or foreign common carrier telecommunication services cannot be included in the measure of the tax, such gross income shall be apportioned as provided in section 237-21; provided that the apportionment factor and formula shall be the same for all persons providing such services in the State.
- (7) Tax on insurance solicitors and agents. Upon every person engaged as a licensed solicitor, general agent, or subagent pursuant to chapter 431, there is hereby levied and shall be assessed and collected a tax equal to .15 per cent of the commissions due to such activity.
- (8) Professions. Upon every person engaging or continuing within the State in the practice of a profession, including those expounding the religious doctrines of any church, there is likewise hereby levied and shall be assessed and collected a tax equal to four per cent of the gross income on the practice or exposition.
- (9) Tax on receipts of sugar benefit payments. Upon the amounts received from the United States government by any producer of sugar (or the producer's legal representative or heirs), as defined under and by virtue of the Sugar Act of 1948, as amended, or other acts of the Congress of the United States relating thereto, there is hereby levied a tax of one-half of one per cent of the gross amount received, provided that the tax levied hereunder on any amount so received and actually disbursed to another by such producer in the form of a benefit payment shall be paid by the person or persons to whom such amount is actually disbursed, and the producer actually making any such benefit payment to another shall be entitled to claim on the producer's return a deduction from the gross amount taxable hereunder in the sum of the amount so disbursed. The amounts taxed under this paragraph shall not be taxable under any other paragraph, subsection, or section of this chapter.
- (10) Tax on other business. Upon every person engaging or continuing within the State in any business, trade, activity, occupation, or calling

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not included in the preceding paragraphs or any other provisions of this chapter, there is likewise hereby levied and shall be assessed and collected, a tax equal to four per cent of the gross income thereof. In addition, the rate prescribed by this paragraph shall apply to a business taxable under one or more of the preceding paragraphs or other provisions of this chapter, as to any gross income thereof not taxed thereunder as gross income or gross proceeds of sales or by taxing an equivalent value of products, unless specifically exempted."

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

SECTION 3. This Act shall take effect on July 1, 1993.

(Approved June 9, 1993.)

ACT 189

S.B. NO. 1354

A Bill for an Act Authorizing the Issuance of Special Purpose Revenue Bonds for the Waianae Coast Comprehensive Health Center.

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

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$7,000,000, in one or more series for the purpose of assisting the Waianae Coast Comprehensive Health Center, with the financing or refinancing, or both, of the construction of an addition to the health center's facilities.

The legislature finds and determines that the activities and facilities of the Waianae Coast Comprehensive Health Center constitute a project as defined in part II, chapter 39A, Hawaii Revised Statutes, and that the financing thereof is assistance to a health care facility.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is further authorized to issue from time to time refunding special purpose revenue bonds authorized in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 1995.

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

(Approved June 9, 1993.)

ACT 190

S.B. NO. 1361

A Bill for an Act Relating to Petroleum-Contaminated Soil.

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

SECTION 1. The legislature finds that recent events surrounding the exploration and disposal of petroleum-contaminated soil have drawn the attention and interest of the community, various government agencies, and elected officials. The legislature further finds that state laws governing solid waste management should evolve as we learn more about the need for regulation of various substances, and thus certain materials which were not initially included in the law may now need to be included to protect the public health and our environment.

The purpose of this Act is to regulate the disposal of petroleum-contaminated soils by including them under the laws governing solid waste management and solid waste pollution, and to provide resources for the effective enforcement of such regulation.

SECTION 2. Chapter 342H, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§342H- Transporting prohibited without permit. No person shall transport any petroleum-contaminated soil, as defined in section 342G-1, without a permit issued under section 342H-4; except that no permit shall be required for the transport of petroleum-contaminated soil to a soil remediation site, as permitted by the department if the transporter provides written notification to the department at least forty-eight hours in advance of any proposed transportation of petroleum-contaminated soil and abides by any transportation guidelines set by the department.”

SECTION 3. Section 342G-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a definition of “petroleum” to read:

“Petroleum” means any petroleum, including crude oil or any fraction thereof, that is liquid at standard temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).”

2. By adding a definition of “petroleum-contaminated soil” to read:

“Petroleum-contaminated soil” means soil that has been contaminated by a release of petroleum to a degree that exceeds levels determined to be acceptable by the director.”

3. By amending the definition of “special waste” to read:

“Special waste” means any solid waste which, because of its source or physical, chemical, or biological characteristics, requires special consideration for its proper processing or disposal, or both. This term includes, but is not limited to, asbestos, used oil, petroleum-contaminated soil, lead acid batteries, municipal waste combustion ash, sewage sludge that is not hazardous waste, agricultural and farm-generated wastes that are normally placed in landfills, medical wastes, tires, white goods, and derelict vehicles.”

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SECTION 4. Section 342G-26, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The special waste component shall describe the existing waste handling and disposal practices for special wastes, including, but not limited to, asbestos, used oil, petroleum-contaminated soil, lead acid batteries, municipal waste combustion ash, sewage sludge that is not hazardous waste, agricultural and farm-generated wastes, medical wastes, tires, white goods, and derelict vehicles. The component shall identify current and proposed programs to ensure the proper handling, reuse, and long-term disposal of special wastes.”

SECTION 5. Section 342H-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a definition of “petroleum” to read:

““Petroleum” means any petroleum, including crude oil or any fraction thereof, that is liquid at standard temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).”

2. By adding a definition of “petroleum-contaminated soil” to read:

““Petroleum-contaminated soil” means soil that has been contaminated by a release of petroleum to a degree that exceeds levels determined to be acceptable by the director.”

SECTION 6. Section 342H-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The department may require that applications for [such] permits [shall] be accompanied by plans, specifications, and [such] any other information [as] it deems necessary in order for it to determine whether the proposed installation, alteration, disposal, or use will be in accord with applicable rules and standards.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 8. This Act shall take effect upon its approval.

(Approved June 9, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 191

S.B. NO. 1363

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. Section 92F-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The following are examples of information in which the individual has a significant privacy interest:

- (1) Information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, other than directory information while an individual is present at such facility;
- (2) Information identifiable as part of an investigation into a possible violation of criminal law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (3) Information relating to eligibility for social services or welfare benefits or to the determination of benefit levels;
- (4) Information in an agency’s personnel file, or applications, nominations, recommendations, or proposals for public employment or appointment to a governmental position, except [information relating to the status of any formal charges against the employee and disciplinary action taken or information disclosed under section 92F-12(a)(14)];
 (A) Information disclosed under section 92F-12(a)(14); and
 (B) The following information related to employment misconduct that results in an employee’s suspension or discharge:
(i) The name of the employee;
(ii) The nature of the employment related misconduct;
(iii) The agency’s summary of the allegations of misconduct;
(iv) Findings of fact and conclusions of law; and
(v) The disciplinary action taken by the agency;
when the following has occurred: the highest non-judicial grievance adjustment procedure timely invoked by the employee or the employee’s representative has concluded; a written decision sustaining the suspension or discharge has been issued after this procedure; and thirty calendar days have elapsed following the issuance of the decision; provided that this subparagraph shall not apply to a county police department officer with respect to misconduct that occurs while the officer is not acting in the capacity of a police officer;
- (5) Information relating to an individual’s nongovernmental employment history except as necessary to demonstrate compliance with requirements for a particular government position;
- (6) Information describing an individual’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness;
- (7) Information compiled as part of an inquiry into an individual’s fitness to be granted or to retain a license, except:
 (A) The record of any proceeding resulting in the discipline of a licensee and the grounds for discipline;
 (B) Information on the current place of employment and required insurance coverages of licensees; and
 (C) The record of complaints including all dispositions; and
- (8) Information comprising a personal recommendation or evaluation.”

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

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

(Approved June 9, 1993.)

ACT 192

ACT 192

S.B. NO. 1582

A Bill for an Act Making an Appropriation for Educational Officer Classification and Compensation Adjustments.

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 \$246,667, or so much thereof as may be necessary for fiscal year 1993-1994, and the sum of \$296,001, or so much thereof as may be necessary for the fiscal year 1994-1995, for salary adjustments made by the educational officer classification and compensation appeals board to the educational officer classification/compensation plan, as provided by section 297-31.3, Hawaii Revised Statutes.

SECTION 2. The sums appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 1993.

(Approved June 9, 1993.)

ACT 193

S.B. NO. 1624

A Bill for an Act Relating to the Hawaii Rules of Evidence.

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

SECTION 1. This Act amends the evidentiary rule regarding the victim-counselor privilege by amending the reference to "registered social worker" in the definition of "victim counselor". Because social workers are no longer registered under chapter 467D, Hawaii Revised Statutes, due to the repeal of that chapter on December 31, 1992, pursuant to section 26H-4(b)(1), Hawaii Revised Statutes, the reference to "registered" social worker is now obsolete. A new definition of social worker is added to require that a person holding oneself out as a social worker, for purposes of the evidentiary rule, has received a master's degree from an accredited school of social work in order to retain the same qualifications as required under former section 467D-4, Hawaii Revised Statutes.

SECTION 2. Section 626-1, Hawaii Revised Statutes, is amended by amending subsection (a) of rule 505.5 to read as follows:

"(a) Definitions. As used in this rule:

(1) A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure would be in furtherance of the provision of counseling or treatment services to the victim or those reasonably necessary for the transmission of the communication.

[1] (2) "Domestic violence victims' program" means any refuge, shelter, office, safe home, institution, or center established for the purpose of offering assistance to victims of abuse through crisis intervention, medical, legal, or support counseling.

- [22] (3) "Sexual assault crisis center" means any office, institution, or center offering assistance to victims of sexual assault and the families of such victims through crisis intervention, medical, and legal, or support counseling.
- (4) "Social worker" means a person who has received a master's degree in social work from a school of social work accredited by the Council on Social Work Education.
- [33] (5) A "victim" is a person who consults a victim counselor for assistance in overcoming any adverse emotional or psychological effect of sexual assault, domestic violence, or child abuse.
- [44] A "victim counselor" is either a sexual assault counselor or a domestic violence victims' counselor. A sexual assault counselor is a person who is employed by or is a volunteer in a sexual assault crisis center, has undergone a minimum of thirty-five hours of training and who is, or who reports to and is under the direct control and supervision of, a [registered] social worker, nurse, psychiatrist, psychologist, or psychotherapist, and whose primary function is the rendering of advice, counseling or assistance to victims of sexual assault. A domestic violence victims' counselor is a person who is employed by or is a volunteer in a domestic violence victims' program, has undergone a minimum of twenty-five hours of training and who is, or who reports to and is under the direct control and supervision of, a direct service supervisor of a domestic violence victims' program, and whose primary function is the rendering of advice, counseling, or assistance to victims of abuse.
- (5) (6) A "victim counseling program" is any activity of a domestic violence victims' program or a sexual assault crisis center that has, as its primary function, the counseling and treatment of sexual assault, domestic violence, or child abuse victims and their families, and that operates independently of any law enforcement agency, prosecutor's office, or the department of human services.
- [66] A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure would be in furtherance of the provision of counseling or treatment services to the victim or those reasonably necessary for the transmission of the communication.]
- (7) A "victim counselor" is either a sexual assault counselor or a domestic violence victims' counselor. A sexual assault counselor is a person who is employed by or is a volunteer in a sexual assault crisis center, has undergone a minimum of thirty-five hours of training and who is, or who reports to and is under the direct control and supervision of, a social worker, nurse, psychiatrist, psychologist, or psychotherapist, and whose primary function is the rendering of advice, counseling or assistance to victims of sexual assault. A domestic violence victims' counselor is a person who is employed by or is a volunteer in a domestic violence victims' program, has undergone a minimum of twenty-five hours of training and who is, or who reports to and is under the direct control and supervision of, a direct service supervisor of a domestic violence victims' program, and whose primary function is the rendering of advice, counseling, or assistance to victims of abuse."

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

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

(Approved June 9, 1993.)

ACT 194

S.B. NO. 1664

A Bill for an Act Relating to Acupuncture.

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

SECTION 1. Section 436E-5, Hawaii Revised Statutes, is amended to read as follows:

"[§436E-5] Qualifications for examination. (a) No person shall be licensed to practice acupuncture unless the person has passed an examination and has been found to [be possessed of] have the necessary qualifications as prescribed in the rules adopted by the board pursuant to chapter 91.

(b) Before any applicant shall be eligible for [such] the examination, the applicant shall furnish satisfactory proof to the board that the applicant[:

- (1) Has completed a) has received a total of not less than one thousand five hundred hours of education and training consisting of:
 - (1) A formal program in the science of acupuncture (traditional oriental medicine) [and received a certificate or diploma from] at an institute [or private tutorship] or school approved by the board[. The training in the science of acupuncture (traditional oriental medicine) shall] that:
 - (A) Shall be for a period of not less than two academic years (not less than six hundred hours); and
 - (B) Shall result in the award of a certificate or diploma;
and [one]
 - (2) One clinical year in a clinical internship program supervised by a licensed acupuncturist (not less than twelve months and not less than nine hundred hours) [for a total of not less than one thousand five hundred hours.]; provided that the nine hundred hours of the clinical internship program may be obtained from the institute or school awarding the certificate or diploma or may be obtained under the supervision of a licensed acupuncturist not affiliated with an institute or school.
 - (2) Students who have completed not less than two years of a formal course of acupuncture and have received a certificate or diploma from an approved school or a qualified private tutor approved by the board shall be required to complete not less than twelve months (not less than nine hundred hours) of practice of acupuncture on human subjects in a clinical internship program supervised by a licensed acupuncturist prior to licensure.
 - (3) Tutorships which have been approved by the board prior to December 31, 1984, shall be acceptable for examination upon their completion; provided tutorships shall no longer be an accepted status to qualify for examination for acupuncture licensure after June 30, 1987.
- (c) Any person who had a valid and current license to practice acupuncture in this State on December 31, 1984, shall be issued a license under this chapter upon application and payment of a license fee not later than December 31, 1985.

(d) (c) Students who started training prior to December 31, 1984, in a school [or tutorship program] approved by the board prior to December 31, 1984, and who [shall complete] complete their training by December 31, 1989:

- (1) Shall not lose their rights of continued education, earned or accumulated credits; and
 - (2) [For] Shall, for the purposes of this chapter [their], meet requirements for examination and licensure [will be] as provided in chapter 436D and [chapter 16-72, Hawaii Administrative Rules,] rules adopted by the board as they existed on December 31, 1984, provided that the school [or tutorship] has not altered its program so as to lower the standards for completion of the program. These students may qualify for examination if they submit evidence of having completed:
 - (A) At least eighteen months (not less than five hundred seventy-six hours) of academic training; and
 - (B) At least six months (not less than four hundred eighty hours) of clinical training in the practice of acupuncture on human subjects under the supervision of a licensed acupuncturist.
- (d) Students who started training prior to December 31, 1984, in a tutorship program approved by the board prior to December 31, 1984, who completed their training by December 31, 1989, and who file an application with the board by June 30, 1994:
- (1) Shall not lose their rights of continued education earned or accumulated credits; and
 - (2) Shall, for purposes of this chapter, meet requirements for examination and licensure as provided in chapter 436D and rules adopted by the board as they existed on December 31, 1984; provided that the tutorship has not altered its program so as to lower the standards for completion of the program."

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

SECTION 3. This Act shall take effect upon approval.

(Approved June 9, 1993.)

ACT 195

S.B. NO. 1726

A Bill for an Act Relating to the Conveyance Tax.

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

SECTION 1. Chapter 247, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§247- Limitation period for assessment, levy, collection, or credit.

The amount of conveyance taxes imposed by this chapter shall be assessed or levied, and the overpayment, if any, shall be credited within three years after filing of the certificate prescribed by section 247-6. No proceeding in court without assessment for the collection of the taxes shall be begun after the expiration of the three-year period.

In the case of a false or fraudulent certificate filed with the intent to evade tax, or of a failure to file a certificate, the tax may be assessed or levied at any time."

SECTION 2. Section 247-2, Hawaii Revised Statutes, is amended to read as follows:

"§247-2 Basis and rate of tax. The tax [herein] imposed by section 247-1 shall be based on the actual and full consideration (whether cash or otherwise, including any promise, act, forbearance, property interest, value, gain, advantage, benefit, or profit) paid or to be paid, which shall include any liens or encumbrances thereon at the time of sale, lease, sublease, assignment, transfer, or conveyance, and shall be at the rate of [five] 10 cents per [one hundred dollars] \$100 of such actual and full consideration; provided that in the case of a lease or sublease, [the provisions of] this chapter shall apply only to a lease or sublease whose full unexpired term is for a period of five years or more, and in those cases, including (where appropriate) those cases where the lease has been extended or amended, the tax [herein] in this chapter shall be based on the cash value of the lease rentals discounted to present day value and capitalized at the rate of six per cent, plus the actual and full consideration paid or to be paid for any and all improvements, if any, which shall include [on site] on-site as well as [off site] offsite improvements, applicable to the leased premises; and provided further that the tax imposed for each transaction shall be not less than \$1."

SECTION 3. Section 247-3, Hawaii Revised Statutes, is amended to read as follows:

"§247-3 Exemptions. The tax imposed by section 247-1 shall not apply to:

- (1) Any document or instrument which is executed prior to January 1, 1967.
- (2) Any document or instrument which is given to secure a debt or obligation.
- (3) Any document or instrument which only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed.
- (4) Any document or instrument between husband and wife, or parent and child, in which only a nominal consideration is paid.
- (5) Any document or instrument in which there is a consideration of \$100 or less paid or to be paid.
- (6) Any document or instrument conveying real property which is executed pursuant to an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided that the taxes [hereunder] under this chapter have been fully paid upon the agreement of sale, and where applicable, upon such assignment or assignments of agreements of sale.
- (7) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto.
- (8) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments.

- (9) Any document or instrument [executed pursuant to eminent domain proceedings by] conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof[.] pursuant to the threat of the exercise or the exercise of the power of eminent domain.
- (10) Any document or instrument which solely conveys or grants an easement or easements.
- (11) Any document or instrument whereby owners partition their property, whether by mutual agreement or judicial action; provided that the value of each owner's interest in the property after partition is equal in value to that owner's interest before partition.
- (12) Any document or instrument between marital partners who are parties to a divorce action which is executed pursuant to an order of the court in the divorce action.
- (13) Any document or instrument conveying real property from a testamentary trust to a beneficiary under the trust.
- (14) Any document or instrument conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust."

SECTION 4. Section 247-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No certificate is required to be filed for any document or instrument made exempt by section 247-3, except that in the following situations, a certificate shall be filed in the manner and place which the director shall prescribe, within ninety days after the transaction or prior to the recordation or filing of the document or instrument with the registrar of conveyances or the assistant registrar of the land court or after such period, recordation, or filing as the director shall prescribe:

- (1) In the case of any document or instrument described under section 247-3(3), any party to the document or instrument shall file a certificate declaring that the document or instrument merely confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed.
- (2) In the case of any document or instrument described under section 247-3(4), any party to the document or instrument shall file a certificate declaring the amount of the nominal consideration paid and marital or parental relationship of the parties.
- (3) In the case of any document or instrument described under section 247-3(5), any party to [such] the document or instrument shall file a certificate declaring the reasons why the consideration is \$100 or less.
- (4) In the case of any document or instrument described in section 247-3(6), any party to [such a] the document or instrument shall file a certificate declaring that the document or instrument is made pursuant to an agreement of sale, and where applicable, an assignment or assignments of agreements of sale.
- (5) In the case of any document or instrument described under section 247-3(8), any person made a party to the document or instrument as grantee, assignee, or transferee shall file a certificate declaring the full and actual consideration of the property transferred.
- (6) In the case of any document or instrument described under section 247-3(11), any party to the document or instrument shall file a certificate declaring each owner's:

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- (A) Undivided interest in the real property and the value of that interest before partition; and
 - (B) Proportionate interest and the value of that interest after partition.
- (7) In the case of any document or instrument described under section 247-3(12), any party to the document or instrument shall file a certificate declaring that the document or instrument is made pursuant to an order of the court and containing the court case number.
- (8) In the case of any document or instrument described under section 247-3(13), any party to the document or instrument shall file a certificate declaring that the document or instrument conveys real property from a testamentary trust to a trust beneficiary.
- (9) In the case of any document or instrument described under section 247-3(14), any party to the document or instrument shall file a certificate declaring that the document or instrument conveys real property from the grantor to a grantor's revocable living trust or from a grantor's revocable living trust to the grantor."

SECTION 5. Section 247-7, Hawaii Revised Statutes, is amended to read as follows:

"§247-7 Disposition of taxes. All taxes collected under this chapter shall be paid into the state treasury to the credit of the general fund of the State, to be used and expended for the purposes for which the general fund was created and exists by law[.]; provided that of the taxes collected each fiscal year, twenty-five per cent shall be paid into the rental housing trust fund established by section 201F-2 and twenty-five per cent shall be paid into the natural area reserve fund established by section 195-9; provided that the funds paid into the natural area reserve fund shall be annually disbursed to the natural area partnership and forest stewardship programs by the department of land and natural resources after joint consultation with the forest stewardship committee and the natural area reserves system commission."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on July 1, 1993, and shall apply to any document or instrument presented for recordation or filing under chapter 247, Hawaii Revised Statutes, after June 30, 1993.

(Approved June 9, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 196

H.B. NO. 1117

A Bill for an Act Relating to Forfeiture.

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

SECTION 1. Act 260, Session Laws of Hawaii 1988, as amended by Act 197, Session Laws of Hawaii 1990, is amended by amending section 7 to read as follows:

"SECTION 7. This Act shall take effect upon its approval; provided that on July 1, [1993.] 1996, this Act shall be repealed and sections 842-3, 329-55, and 701-119, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the approval of this Act; provided further that the repeal of this Act shall not affect the rights and duties that matured, penalties that were incurred, property seizures that have been initiated, and properties that have been forfeited pursuant to this Act, and such rights, duties, penalties, seizures, and forfeitures shall be determined and adjudicated in accordance with the provisions of this Act."

SECTION 2. The legislative auditor shall submit a sunset evaluation report to the legislature no later than November 1, 1995. The evaluation shall assess whether the public interest requires that the forfeiture program be modified or repealed, and make recommendations for future policies, practices, and procedures for a forfeiture program.

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 10, 1993.)

ACT 197

H.B. NO. 2024

A Bill for an Act Relating to the Department of Human Services.

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

SECTION 1. Chapter 348, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§348- State advisory council on rehabilitation. (a) There is established within the department of human services a state advisory council on rehabilitation. The council shall consist of nineteen members appointed by the governor as provided in section 26-34. The members shall include:

- (1) At least one representative of the statewide council on independent living;
- (2) At least one representative of a parent training and information center;
- (3) At least one representative of the client assistance program;
- (4) At least one vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs, who shall serve as an ex officio, nonvoting member if employed by the vocational rehabilitation division of the department;
- (5) At least one representative of community rehabilitation program service providers;
- (6) At least four representatives of business, industry, and labor;
- (7) Representatives of disability advocacy groups representing a cross section of individuals with physical, cognitive, sensory, and mental disabilities, and parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities who have difficulty in representing themselves or are unable due to their disabilities to represent themselves;

(8) Current or former applicants for or recipients of vocational rehabilitation services; and

(9) The director of human services, who shall be an ex officio member.

A majority of the council members shall be persons who have disabilities and are not employed by the department. The council members shall elect a chairperson from the membership. Each member of the council shall serve a three-year term but may not serve more than two consecutive full terms.

(b) The council members shall serve without compensation but shall be reimbursed for reasonable expenses, including travel expenses, necessary for the performance of their duties.

(c) The council shall advise the department on eligibility, order of selection, services provided, performance of the department in providing services, and review the effectiveness of, and consumer satisfaction with, the performance of the department and other public and private entities. The council shall prepare and submit an annual report to the governor on the status of the vocational rehabilitation programs within the State and make the report available to the public.

(d) The council shall coordinate with other councils within the State including the statewide independent living council, the state planning council on developmental disabilities, the state council on mental health and substance abuse, and the advisory panel of individuals with disabilities in education. The council shall establish working relationships between the department and such councils and coordinate other functions as deemed appropriate under federal law.

(e) If there is a disagreement between the council and the department, the disagreement shall be resolved by the governor.

§348- Statewide council on independent living. (a) There is established within the department of human services a statewide council on independent living. The council shall consist of nineteen members appointed by the governor as provided in section 26-34. The members shall include:

- (1) At least one director of a center for independent living chosen by the directors of centers for independent living;
- (2) An employee of the department as an ex officio nonvoting member; and
- (3) Members of other state agencies that provide services for individuals with disabilities as ex officio nonvoting members.

The council may also include:

- (1) Additional representatives from centers for independent living;
- (2) Parents and guardians of individuals with disabilities;
- (3) Advocates of and for individuals with disabilities;
- (4) Representatives from private business;
- (5) Representatives from organizations that provide services;
- (6) Other appropriate individuals.

A majority of the council shall be individuals with disabilities who are not employed by any state agency or center for independent living. The council shall elect a chairperson from the membership. Each member shall serve a term of three years and may not serve more than two consecutive full terms.

(b) The council members shall serve without compensation but shall be reimbursed for reasonable expenses, including travel expenses, necessary for the performance of their duties.

(c) The council shall:

- (1) Develop and submit jointly with the department a state plan;
- (2) Monitor, review, and evaluate the implementation of the state plan;
- (3) Coordinate activities with the state advisory council on rehabilitation; and

- (4) Submit to the commissioner of the rehabilitation services administration such periodic reports as are requested."

SECTION 2. Section 26-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department of human services shall be headed by a single executive to be known as the director of human services.

There shall be within the department of human services a commission to be known as the board of human services which shall sit in an advisory capacity to the director of human services on matters within the jurisdiction of the department of human services. The board shall consist of ten members: one person from each county, other than the county of Kalawao, and five at large, and the director of health as an ex officio nonvoting member.

[There shall also be within the department a commission to be known as the board of vocational rehabilitation which shall sit in an advisory capacity to the head of that division charged with the administration of vocational rehabilitation laws and allied services. The board shall consist of eleven members, one person from each judicial circuit and four at large, with the directors of health and labor and industrial relations, and the superintendent of education, as ex officio voting members.]"

SECTION 4.¹ Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 5.¹ This Act shall take effect July 1, 1993.

(Approved June 10, 1993.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

ACT 198

H.B. NO. 52

A Bill for an Act Relating to the Hawaii Rules of Evidence.

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

SECTION 1. Section 626-1, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) of rule 608 to read:

"(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking the witness' credibility, [may,] if probative of untruthfulness, may be inquired into on cross-examination of the witness and [may], in the discretion of the court, may be [provided] proved by extrinsic evidence. When a witness testifies to the character of another witness under [paragraph] subsection (a), relevant specific instances of the other witness' conduct may be inquired into on cross-examination but may not be proved by extrinsic evidence.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility."

2. By amending rule 616 to read:

"[[]Rule 616[] Videotaping the testimony of a child who is a victim of an abuse offense or a sexual offense. (a) This rule applies only to a proceeding in the prosecution of an abuse offense or sexual offense alleged to have been committed against a child less than sixteen years of age at the time of the offense, and applies only to the statements or testimony of that child.

(b) The recording of an oral statement of the child made before the proceeding begins is admissible into evidence if:

- (1) No attorney of either party was present when the statement was made;
- (2) The recording is both visual and aural and recorded on film or videotape or by other electronic means;
- (3) The recording equipment was capable of making an accurate recording, the operator of the equipment was competent, and the recording is accurate and unaltered;
- (4) The statement was not made in response to questioning calculated to lead the child to make a particular statement;
- (5) Every voice on the recording and every person present at the interview is identified;
- (6) The person conducting the interview of the child in the recording is present at the proceeding and available to testify for or be cross-examined by either party and every other person present at the interview is available to testify;
- (7) The defendant or the attorney for the defendant is afforded discovery of the recording before it is offered into evidence; and
- (8) The child is present to testify.

(c) If the electronic recording of the statement of a child is admitted into evidence under this section, either party may call the child to testify, and the opposing party may cross-examine the child.

(d) On the motion of the attorney for any party, the court may order that the testimony of the child be taken in a room other than the courtroom and be televised by two-way closed circuit equipment in the courtroom to be viewed by the court, the prosecuting attorney, defense attorney, the defendant, and the trier of fact in the proceeding. During the child's testimony, persons necessary to operate the equipment and such other persons as determined by the court shall be present in the room with the child. Attorneys for the defendant and for the State may be present in the room with the child. Only the attorneys or the judge may question the child. The persons operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during the child's testimony, but does not permit the child to see or hear them. The court shall supervise the video monitoring to ensure that the defendant can see the victim while testifying, but that the defendant's presence is not unduly emphasized to the child.

(e) If the court orders the testimony of the child to be taken under subsection (d) the child may not be required to testify in court at the proceeding for which the testimony was taken.] **Televised testimony of child.** In any prosecution of an abuse offense or sexual offense alleged to have been committed against a child less than eighteen years of age at the time of the testimony, the court may order that the testimony of the child be taken in a room other than the courtroom and be televised by two-way closed circuit video equipment to be viewed by the court, the accused, and the trier of fact, if the court finds that requiring the child to testify in the physical presence of the accused would likely result in serious emotional distress to the child and substantial impairment of the child's ability to communicate. During the entire course of such a procedure, the attorneys for the defendant and for the

State shall have the right to be present with the child, and full direct and cross-examination shall be available as a matter of right.”

3. By amending rule 804 to read:

“Rule 804 Hearsay exceptions; declarant unavailable. (a) Definition of unavailability. “Unavailability as a witness” includes situations in which the declarant:

- (1) Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement; [or]
- (2) Persists in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the court to do so; [or]
- (3) Testifies to a lack of memory of the subject matter of the declarant’s statement; [or]
- (4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
- (5) Is absent from the hearing and the proponent of the declarant’s statement has been unable to procure the declarant’s attendance by process or other reasonable means.

A declarant is not unavailable as a witness if the declarant’s exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the declarant’s statement for the purpose of preventing the witness from attending or testifying. Determination of unavailability as a witness pursuant to this rule does not affect the opponent’s right, under rule 806, to call and to cross-examine the declarant concerning the subject matter of any statement received in accordance with this rule.

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

- (1) Former testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, at the instance of or against a party with an opportunity to develop the testimony by direct, cross, or redirect examination, with motive and interest similar to those of the party against whom now offered;
- (2) Statement under belief of impending death. A statement made by a declarant while believing that the declarant’s death was imminent, concerning the cause or circumstances of what the declarant believed to be the declarant’s impending death;
- (3) Statement against interest. A statement which was at the time of its making so far contrary to the declarant’s pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable [man] person in the declarant’s position would not have made the statement unless the declarant believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement;
- (4) Statement of personal or family history. (A) A statement concerning the declarant’s own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another

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- person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared;
- (5) Statement of recent perception. A statement, not in response to the instigation of a person engaged in investigating, litigating, or settling a claim, which narrates, describes, or explains an event or condition recently perceived by the declarant, made in good faith, not in contemplation of pending or anticipated litigation in which the declarant was interested, and while the declarant's recollection was clear;
- (6) Statement by child. A statement made by a child when under the age of sixteen, describing any act of sexual contact, sexual penetration, or physical violence performed with or against the child by another, if the court determines that the time, content, and circumstances of the statement provide strong assurances of trustworthiness with regard to appropriate factors that include but are not limited to: (A) age and mental condition of the declarant; (B) spontaneity and absence of suggestion; (C) appropriateness of the language and terminology of the statement, given the child's age; (D) lack of motive to fabricate; (E) time interval between the event and the statement, and the reasons therefor; and (F) whether or not the statement was recorded, and the time, circumstances, and method of the recording. If admitted, the statement may be read or, in the event of a recorded statement, broadcast into evidence but may not itself be received as an exhibit unless offered by an adverse party;
- [6] (7) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts, and (B) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant."

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 10, 1993.)

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H.B. NO. 603

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431:3-215, Hawaii Revised Statutes, is amended to read as follows:

"§431:3-215 [Reinsurance and return of certificate of authority upon withdrawal.] Withdrawal from State; obligations. (a) No insurer other than a life insurer shall withdraw from this State until its direct liability to its policyholders and obligees under all its insurance contracts then in force in this State has been assumed by another authorized insurer under an agreement approved by the commissioner.

(b) The assuming insurer shall, within a reasonable time, replace the assumed insurance contracts with its own, or by endorsement thereon acknowledge its liability under the assumed contracts.

(c) [An insurer desiring to withdraw from this State must] Six months prior to withdrawing from this State, an insurer shall [first] file an affidavit with the commissioner showing that:

- (1) It desires to withdraw from this State and to discontinue business in this State; and
- (2) All of its outstanding policies have been either reinsured or have expired. If the outstanding policies are reinsured, the withdrawing insurer must also submit the reinsurer's affidavit stating that it has reinsured all the outstanding policies of the withdrawing insurer upon risks in this State or upon business originating in this State. The reinsurer must be an insurer authorized to carry on the business of insurance in this State.

(d) The insurer shall return for cancellation its current certificate of authority and licenses for general agents issued by the commissioner.

(e) [An insurer desiring to withdraw from this State will] Six months prior to withdrawing from this State, an insurer shall, in addition to other requirements, publish in this State a notice of withdrawal once each week [in four successive weeks,] for the first eight successive weeks, and again in the last four successive weeks in the sixth month [the last publication to be not less than twenty-one days after the first publication,] in a newspaper of daily circulation. The notice of withdrawal as published must have the prior approval of the commissioner."

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 10, 1993.)

ACT 200

H.B. NO. 1089

A Bill for an Act Relating to Court Costs and Fees.

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

SECTION 1. Section 607-14, Hawaii Revised Statutes, is amended to read as follows:

"§607-14 Attorneys' fees in actions in the nature of assumpsit, etc. (a) In all the courts, in all actions in the nature of assumpsit and in all actions on a promissory note or other contract in writing that provides for an attorney's fee, there shall be taxed as attorneys' fees, [in addition to the attorneys' fees otherwise taxable by law,] to be paid by the losing party and to be included in the sum for

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which execution may issue, a fee [which] that the court determines to be reasonable [but which shall not exceed the amount obtainable under the following schedule:

25 per cent on first \$1,000 or fraction thereof.

20 per cent on second \$1,000 or fraction thereof.

15 per cent on third \$1,000 or fraction thereof.

10 per cent on fourth \$1,000 or fraction thereof.

5 per cent on fifth \$1,000 or fraction thereof

2.5 per cent on any amount in excess of \$5,000.]; provided that the attorney representing the prevailing party shall submit to the court an affidavit stating the amount of time the attorney spent on the action and the amount of time the attorney is likely to spend to obtain a final written judgment, or, if the fee is not based on an hourly rate, the amount of the agreed upon fee. The court shall then tax attorneys' fees, which the court determines to be reasonable, to be paid by the losing party; provided that this amount shall not exceed twenty-five per cent of the judgment.

Where the note or other contract in writing provides for a fee of twenty-five per cent or more, or provides for a reasonable attorney's fee, not more than twenty-five per cent shall be allowed.

Where the note or other contract in writing provides for a rate less than twenty-five per cent, not more than the specified rate shall be allowed.

Any law to the contrary notwithstanding, no such attorney's fee shall be allowed to the plaintiff by any court:

- (1) If prior to or at the time the debt was incurred, the debtor did not sign an instrument in writing which provided for the payment of an attorney's fee; and
- (2) If prior to or at the time the debt was incurred, the debtor did sign an instrument in writing which provided for the payment of an attorney's fee and such instrument in writing contains within its principal amount any attorney's fee from a prior debt.

The above fees provided for by this section shall be assessed on the amount of the judgment exclusive of costs and all [attorney's] attorneys' fees obtained by the plaintiff, and upon the amount sued for if the defendant obtains judgment. [The fees provided for by this section shall not be taxed in any action where the plaintiff obtains a judgment which includes attorneys' fees upon a promissory note or other evidence of indebtedness, when the promissory note or other evidence of indebtedness contains a provision for the recovery of costs of collection or attorneys' fees.]'

SECTION 2. Section 607-17, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 652-13, Hawaii Revised Statutes, is amended to read as follows:

"§652-13 Fees and costs. Every garnishee shall be allowed [\$3] \$10 in cases in the circuit courts and [\$1] \$10 in cases in the district courts for filing a return on or before the return day or for appearance on the return day, as the case may be, and, in special or exceptional cases in which the court may deem it proper, such further sums as the court may deem reasonable for counsel fees and other necessary expenses. The allowance for return or appearance of the garnishee shall be deposited with the clerk of the court in order to hold the garnishee and shall be paid to the garnishee when the garnishee makes the garnishee's return and files the same in court or when the garnishee makes the garnishee's appearance in court. If the garnishee fails to make and file a return or to make the garnishee's appearance in court the garnishee shall thereby forfeit the garnishee fees [herein] provided [for.] in this section. The garnishee, if discharged, may collect from the plaintiff on

execution any unpaid allowances or, if held, may retain the same out of the goods, effects, or credits of the defendant in the garnishee's hands.

As between the plaintiff and defendant, if the garnishee is discharged, the costs of the garnishment proceeding[, including \$1 for each copy of summons and \$1 for each service of summons,] shall be taxed against the plaintiff; but, if the garnishee is held, such costs and all such allowances as have been paid by the plaintiff to the garnishee shall be taxed against the defendant."

SECTION 4. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 1993.

(Approved June 10, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 201

H.B. NO. 1467

A Bill for an Act Relating to Parole.

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

SECTION 1. Section 353-64, Hawaii Revised Statutes, is amended to read as follows:

"§353-64 Committed persons paroled. Any committed person confined in any state correctional facility in execution of any sentence imposed upon the committed person, except in cases where the penalty of life imprisonment not subject to parole has been imposed, shall be subject to parole in manner and form as set forth in this part; provided that the committed person shall be paroled in the county where the committed person had a permanent residence or occupation or employment prior to incarceration, unless:

- (1) The committed person will reside in a county in which the population exceeds eight-hundred thousand persons; or
- (2) The committed person will be released for immediate departure from the State.

[provided] Provided further that to be eligible for parole, the committed person, if the person is determined by the department to be suitable for participation, must have been a participant in an academic, vocational education, or prison industry program authorized by the department and must have been involved in or completed the program to the satisfaction of the department; and provided further that this precondition for parole shall not apply if the committed person is in a correctional facility where academic, vocational education, and prison industry programs or facilities are not available."

SECTION 2. Section 706-670, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

"(3) Prisoner's plan and participation. Each prisoner shall be given reasonable notice of [his] the prisoner's parole hearing and shall prepare a parole plan, setting forth the manner of life [he] the prisoner intends to lead if released on parole, including specific information as to where and with whom [he] the prisoner

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will reside and what occupation or employment [he] the prisoner will follow. The prisoner shall be paroled in the county where the prisoner had a permanent residence or occupation or employment prior to the prisoner's incarceration, unless:

(a) The prisoner will reside in a county in which the population exceeds eight-hundred thousand persons; or

(b) The prisoner will be released for immediate departure from the State.

The institutional parole staff shall render reasonable aid to the prisoner in the preparation of [his] the prisoner's plan and in securing information for submission to the authority. In addition, [he] the prisoner shall:

(a) Be permitted to consult with any persons whose assistance [he] the prisoner reasonably desires, including [his] the prisoner's own legal counsel, in preparing for a hearing before the authority;

(b) Be permitted to be represented and assisted by counsel at the hearing;

(c) Have counsel appointed to represent and assist [him] the prisoner if [he] the prisoner so requests and cannot afford to retain counsel; and

(d) Be informed of [his] the prisoner's rights [under (a), (b), and (c).] as set forth in this subsection."

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 10, 1993.)

ACT 202

H.B. NO. 1636

A Bill for an Act Relating to Unregistered Motor Vehicle Mechanics and Repair Dealers.

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

SECTION 1. Chapter 437B, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§437B- Citation for unregistered activity. (a) In addition to any other remedy available, an investigator may issue citations to persons acting as or engaging in the business of a motor vehicle mechanic or repair dealer within the State without having a registration certificate previously obtained under and in compliance with this chapter and the rules adopted by the director.

(b) Each citation shall be in writing and shall describe the basis of the citation, including the specific statutory provisions alleged to have been violated, and may contain an order of abatement, and an assessment of civil penalties as provided in section 437B-. All penalties collected under this section shall be deposited in the special fund established under section 26-9(o).

(c) Service of a citation issued under this section shall be made by personal service, or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.

(d) Any person served with a citation under this section may submit a written request to the director for a hearing, within twenty days of the receipt of the citation, with respect to: the violations alleged, the scope of the order of abatement, or the amount of the civil penalties assessed.

(e) If the person cited under this section timely notifies the director of the request for a hearing, the director shall afford the person an opportunity for a hearing in accordance with chapter 91. The hearing shall be conducted by the director, or the director may designate a hearings officer to hold the hearing. The director or any hearings officer designated by the director shall have the power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue a final order.

(f) If the person cited under this section does not submit a written request to the director for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the director.

(g) The director may apply to the appropriate court for a judgment to enforce the provisions of any final order issued by the director or designated hearings officer pursuant to this section, including the provisions for abatement and civil penalties imposed.

(h) If any party is aggrieved by the decision of the director or the designated hearings officer, 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. The operation of an abatement order shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c).

(i) The sanctions and disposition authorized under this section shall be separate from and in addition to all other remedies, either civil or criminal, provided in any other applicable statutory provision.

(j) The director may adopt rules pursuant to chapter 91 necessary for the purposes of the section.

§437B- Violation; penalties. (a) Registrants who perform work outside their appropriate specialty or area of certification or who aid or abet an unregistered person to evade this chapter shall be assessed a civil penalty of not more than \$500 for the first violation; not more than \$1,000 for the second violation; and not less than \$1,500 or more than \$2,000 for any subsequent violation.

(b) Any person who violates section 437B-7 shall be assessed a civil penalty of not more than \$500 for the first violation; not more than \$1,000 for the second violation; not more than \$2,000 for the third violation; and not more than \$2,500 for any subsequent violation."

SECTION 2. Section 437B-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Director" means the director of commerce and consumer affairs."

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval and shall be repealed on June 30, 1996.

(Approved June 10, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 203

ACT 203

H.B. NO. 1655

A Bill for an Act Relating to Smoking in Public Places.

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

SECTION 1. Section 328K-1, Hawaii Revised Statutes, is amended by amending the definition of "restaurant" to read as follows:

"Restaurant" means any retail eating establishment where meals or food are served or provided for on-site consumption by seated patrons that is authorized by the department of health to operate as a [restaurant;] food service establishment, except:

- (1) Any [restaurant] food service establishment with a seating capacity of fifty or fewer patrons;
- (2) Any [restaurant] food service establishment while it is being used solely for private parties or gatherings;
- (3) Any enclosed room of a [restaurant] food service establishment or a banquet room¹ solely for private parties or gatherings;
- (4) Any private [restaurant] food service establishment or club [to] in which only members or their guests are permitted;
- (5) Any seating area completely outside the building housing the [restaurant] food service establishment; or
- (6) Bars."

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 10, 1993.)

Notes

1. Prior to amendment "," appeared here.
2. Prior to amendment "used" appeared here.

ACT 204

H.B. NO. 1665

A Bill for an Act Relating to Occupational Safety and Health.

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

SECTION 1. Section 396-8, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Discharge or discrimination against [employee] employees for exercising [rights] any right under this chapter is prohibited. In consideration of this prohibition:

- (1) No person shall discharge, suspend or otherwise discriminate in terms and conditions of employment against any employee by reason of:
 - (A) The employee's failure or refusal to operate or handle any machine, device, apparatus, or equipment which is in any unsafe condition; or

- (B) The employee's failure or refusal to engage in unsafe practices in violation of this chapter or of any standard, rule, regulation, citation or order issued under the authority of this chapter; [or
- (C) The employee's failure or refusal to operate or handle any machine, device, apparatus, or equipment in violation of this chapter or of any standard, rule, regulation, citation or order issued under the authority of this chapter; or
- (D) The employee's filing a complaint, having instituted or causing to be instituted any proceeding under or related to this chapter, or the employee's intent to testify in any such proceeding or otherwise acting to exercise rights under this chapter for oneself or others.]
- (2) Upon discretion of the director or request, names of complainants may be withheld from the employer[.];
- [3] Within thirty days of the alleged act of discrimination, the employee shall file a complaint with the department setting forth the circumstances thereof.
- (4) The director shall investigate said complaint and if the director finds discrimination in violation of this chapter, the director shall order the employer to provide necessary relief to the employee. This relief may include rehiring, reinstatement to former job with back pay and restoration of seniority.]
- (3) No person shall discharge or in any manner discriminate against any employee because the employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or intends to testify in any such proceeding, or acting to exercise or exercised on behalf of the employee or others any right afforded by this chapter;
- (4) Any employee who believes that there has been a discharge or discrimination against the employee by any person in violation of this subsection may, within sixty days after the violation occurs, file a complaint with the director alleging unlawful discharge or discrimination and setting forth the circumstances thereof;
- (5) Upon receipt of the complaint, the director shall investigate to determine if a discharge or discrimination in violation of this subsection has occurred;
- (6) If upon investigation the director determines that the provisions of this subsection have been violated, the director shall order the employer to provide all appropriate relief to the employee, including rehiring or reinstating the employee to the former position with back pay and restoration of seniority;
- (7) Within ninety days of receipt of a complaint filed under this subsection, unless extended by the director, the director shall notify the employee of the final determination and any subsequent action the department will take to resolve the complaint; and
- (8) Nothing in this subsection shall preclude any employee or representative of an employee from simultaneously pursuing a cause of action for injunctive relief or any other remedy provided by law.”

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 June 10, 1993.)

ACT 205

H.B. NO. 1736

A Bill for an Act Relating to the Insurance Laws.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding to article 19 three new sections to be appropriately designated and to read as follows:

“§431:19- Redomestication; approval as a domestic captive insurer.”

(a) Any foreign or alien captive insurance company may become a domestic captive insurance company by meeting the following requirements:

(1) Compliance with all of the requirements relating to the organization and licensing of a domestic captive insurance company of the same type and any requirements which the commissioner may adopt by rule; and

(2) By filing with the department of commerce and consumer affairs its articles of association, charter, or other organizational document together with appropriate amendments bringing the articles of association, charter, or other organizational document into compliance with the laws of this State, along with a certificate of general good issued by the commissioner.

(b) The domestic captive insurance company shall be entitled to the necessary or appropriate certificates and licenses to do business in this State and shall be subject to the authority and jurisdiction of this State. No captive insurance company redomesticating into this State need merge, consolidate, transfer assets, or otherwise engage in any other reorganization, other than as specified in this section.

(c) Upon redomestication in accordance with this section, the foreign or alien captive insurance company shall become a domestic captive insurance company organized under the laws of this State and shall have all the rights, privileges, immunities, and powers and be subject to all applicable laws, duties, and liabilities of a domestic captive insurance company of the same type. The domestic captive insurance company shall possess all rights that it had prior to the redomestication to the extent permitted by the law of this State and shall be responsible and liable for all the liabilities and obligations that it was subject to prior to the redomestication. All outstanding policies of the captive insurance company shall remain in full force and effect.

§431:19- Redomestication; conversion to foreign insurer. Any domestic captive insurance company, upon approval by the commissioner, may transfer its domicile to any other jurisdiction in accordance with the laws of that jurisdiction. Upon such a transfer, the captive insurance company shall cease to be domiciled in this State, and its corporate or other legal existence in this State shall cease upon the filing of proof of redomestication with the department of commerce and consumer affairs along with payment of a filing fee of \$300.

§431:19- Applicability of other laws to captive insurance companies writing no-fault policies in this State. Captive insurance companies writing no-

fault policies in this State shall be subject to sections 431:10C-102, 431:10C-103, 431:10C-107, 431:10C-108, 431:10C-109, 431:10C-112, 431:10C-115, 431:10C-115.5, 431:10C-119, 431:10C-120, 431:10C-207, 431:10C-211, 431:10C-212, 431:10C-213, 431:10C-215, 431:10C-301, and 431:10C-303 through 431:10C-315. Captive insurance companies shall also be subject to the rules adopted by the commissioner to implement these sections.”

SECTION 2. Section 431:2-209, Hawaii Revised Statutes, is amended to read as follows:

“§431:2-209 Records and reports. (a) The commissioner shall preserve in permanent form records and reports of the commissioner’s proceedings, hearings, investigations, and examinations, and shall file [such] the records in the commissioner’s office.

(b) The records of the commissioner and insurance filings in the commissioner’s office shall be open to public inspection, except as otherwise provided in this code.

(c) [Five years] One year after conclusion of the 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, and expired bonds[.]. Three years after the conclusion of the transactions to which they relate, the commissioner may destroy any claim files, working papers of examinations of insurers, reports of examination by insurance supervisory officials of other states, void or obsolete filings relating to license applications, records of hearings[,] and investigations, and any similar records, documents, or memoranda now or hereafter in the commissioner’s possession.

(d) [Five] Three years after the year to which they relate, the commissioner may destroy any foreign or alien insurer’s tax reports, or similar records or reports now or hereafter in the commissioner’s possession.

(e) The commissioner shall concurrently execute and file in a separate, permanent office file a certificate listing and giving a summary description of the records, files, documents and memoranda as they are destroyed.

(f) (e) The following records and reports on file with the commissioner shall be confidential and protected from discovery, production, and disclosure for so long as the commissioner deems prudent:

- (1) Complaints and investigation reports;
- (2) Working papers of examination reports; and
- (3) Proprietary information, including trade secrets, commercial information, and business plans, which, if disclosed may result in competitive harm to the person providing [said] that information.

[(g)] (f) The commissioner shall not disclose any information that is exempt from disclosure by federal or Hawaii [state] statutes.”

SECTION 3. 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:

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- (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 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) The commissioner's education and training fund may be used to pay the cost of consumer education and information, including publication of information, brochures, and consumer guides and costs related to conferences, workshops, seminars, and any other events of this nature which the commissioner sponsors or in which the commissioner or insurance division staff participates."

SECTION 4. Section 431:2-305, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The commissioner shall furnish to the person examined a copy of the examination report by the examiner not less than [sixty] thirty days prior to the filing of the report for public inspection [in the division]. If the person so requests in writing within the [sixty day] thirty-day period, the commissioner shall hold a hearing to consider the person's objections to the report as proposed, and shall not file the report until after the hearing and until after any modifications in the report deemed necessary by the commissioner have been made."

SECTION 5. Section 431:3-201, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person shall act as an insurer and no insurer shall transact insurance business in this State other than as authorized by a certificate of authority granted to it by the commissioner, except as to such transactions as are expressly otherwise provided in this code. [Chapter 418 shall not be applicable to any insurer authorized to do business in this State pursuant to this code.]"

SECTION 6. Section 431:3-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Annually [before] no later than March [16,] 15, or [such] any day subsequent thereto as the commissioner upon request and for cause may specify, the following documents [are required to] shall be filed with the commissioner:

- (1) By each insurer:
 - (A) A true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31, in general form and context as approved by the National Association of Insurance Commissioners plus any additional information required by the commissioner, verified by oaths of at least two of the insurer's principal officers, or the attorney-in-fact in the case of a reciprocal insurer, or the United States manager in the case of an alien insurer. The statement of an alien insurer [is required to] may relate only to its transactions and affairs in the United States[. The commissioner shall annually during November fur-

- nish each domestic insurer duplicate copies of annual statement forms required to be filed];
- (B) The tax statement provided for by section 431:7-201; and
 - (C) In the event of a change in any of the other information which section 431:3-212 requires an insurer to file with the commissioner at the time of its application for a certificate of authority, the current information in the form stated in section 431:3-212;
- (2) By each insurer, the certificate of valuation provided for by section 431:5-307 and documentation of the liabilities provided for by section 431:5-203(2) and (3). The certificate of valuation and documentation of liabilities shall be accompanied by an actuarial opinion by a qualified actuary or specialist;
 - (3) By each foreign or alien insurer, a certificate from the proper public official of its state or country of domicile showing that it is duly authorized to transact the classes of insurance which it is transacting; and
 - (4) By each alien insurer, a certificate [of] from the proper public official as to any deposit made or held as compliance with this code.”

SECTION 7. Section 431:3-302, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each domestic, foreign, and alien insurer which is authorized to transact insurance in this State shall annually on or before March 1 of each year file with the National Association of Insurance Commissioners (NAIC) a copy of its annual statement convention blank along with [such] additional filings as prescribed by the commissioner for the preceding year. The information filed with the NAIC shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and the actuarial certification. Any amendments and addendums to the statement filing subsequently filed with the commissioner shall also be filed with the NAIC. In addition to the printed annual statement blank and other reports addressed in this section, the annual filing for 1993 and thereafter shall include diskettes containing annual statement information in the format prescribed by the NAIC annual statement diskette filing specifications, and must be submitted on or before the March 1 due date of the corresponding printed information.”

SECTION 8. Section 431:4-110, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The commissioner shall not issue a solicitation permit until the person applying therefor files with the commissioner a corporate surety bond in the penalty sum of [\$20,000,] \$150,000, in favor of this State and for the use and benefit of this State and of subscribers and creditors of the proposed organization. The bond shall be conditioned upon the payment of costs incurred by this State in the event of any legal proceedings for liquidation or dissolution of the proposed organization before completion of organization or in the event a certificate of authority is not granted; upon a full accounting for funds received until the proposed insurer has been granted its certificate of authority; or until the proposed corporation has completed its organization as defined in the solicitation permit.

(b) In lieu of filing [such] the bond[.] described in subsection (a), the person may deposit with the director of finance through the commissioner [\$20,000] \$150,000 in cash or in United States government bonds at par value, to be held in trust upon the same conditions as required for the bond.”

SECTION 9. Section 431:4-201, Hawaii Revised Statutes, is amended to read as follows:

"§431:4-201 Other [articles] laws applicable. [The provisions in chapters 416, 417, and 417E relating to organization, powers, capital stock, meetings, bylaws, rights, duties and liabilities of directors, managers and stockholders, dissolution, consolidation and merger of private corporations shall apply] Domestic stock insurers shall be subject to title 23 and any applicable general laws enacted pertaining to stock corporations except where inconsistent with the express provisions of this article."

SECTION 10. Section 431:6-324, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections of this article, a domestic insurer also may do one or more of the following:

- (1) Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of [five] ten per cent of the insurer's assets or fifty per cent of the insurer's surplus as regards policyholders. However, after the investments, the insurer's surplus as regards policyholders shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, there shall be included:
 - (A) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary, whether or not represented by the purchase of capital stock or issuance of other securities[.]; and
 - (B) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;
- (2) If the insurer's total liabilities, as calculated for National Association of Insurance Commissioners' annual statement purposes, are less than ten per cent of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries. However, after the investment the insurer's surplus as regards policyholders, considering the investment as if it were a disallowed asset, shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;
- (3) Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries; provided that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in [item] paragraph (1) or in this article applicable to the insurer. For the purpose of this subsection, the total investment of the insurer shall include:
 - (A) Any direct investment by the insurer in an asset[.]; and
 - (B) The insurer's proportionate share of any investment of an asset by any subsidiary of the insurer, which shall be calculated by

- multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership of the subsidiary;
- (4) With the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries, provided that after the investment the insurer's surplus as regards policyholders, shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs; or
- (5) Invest any amount in the common stock, preferred stock, debt obligations, or other securities of any subsidiary exclusively engaged in holding title to, or holding title to and managing or developing real or personal property, if after considering as a disallowed asset so much of the investment as is represented by subsidiary assets which if held directly by the insurer would be considered as a disallowed asset, the insurer's surplus as regards policyholders shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs."

SECTION 11. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a)	The commissioner shall collect in advance the following fees:	
(1)	Certificate of authority: Issuance	<u>[\$300]</u> \$600
(2)	Organization of domestic insurers and affiliated corporations:	
(A)	Application and all other papers required for issuance of solicitation permit, filing	<u>[\$500]</u> \$1000
(B)	Issuance of solicitation permit.....	<u>[\$50]</u> \$100
(3)	General agent's license:	
(A)	Issuance, regular license	<u>[\$25]</u> \$50
(B)	Issuance, temporary license.....	<u>[\$25]</u> \$50
(4)	Subagent's license:	
(A)	Issuance, regular license	<u>[\$25]</u> \$50
(B)	Issuance, temporary license.....	<u>[\$25]</u> \$50
(5)	Nonresident agent's or broker's license: Issuance.....	<u>[\$20]</u> \$40
(6)	Solicitor's license: Issuance	<u>[\$20]</u> \$40
(7)	Independent adjuster's license: Issuance	<u>[\$20]</u> \$40
(8)	Public adjuster's license: Issuance	<u>[\$20]</u> \$40
(9)	Surplus line broker's license: Issuance	<u>[\$50]</u> \$100
(10)	Examination for license: For each examination, a fee to be established by the commissioner by rule adopted in accordance with chapter 91.	

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

- (1) [\$200] \$400 per year for all services (including extension of the certificate of authority) for an authorized insurer.
- (2) [\$25] \$50 per year for all services (including extension of the license) for a regularly licensed general agent.
- (3) [\$25] \$50 per year for all services (including extension of the license) for a regularly licensed subagent.
- (4) [\$15] \$30 per year for all services (including extension of the license) for a regularly licensed nonresident broker.
- (5) [\$10] \$20 per year for all services (including extension of the license) for a regularly licensed solicitor.
- (6) [\$15] \$30 per year for all services (including extension of the license) for a regularly licensed independent adjuster.

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- (7) [\$15] \$30 per year for all services (including extension of the license) for a regularly licensed public adjuster.
- (8) [\$15] \$30 per year for all services (including extension of the license) for a licensed surplus line broker.
- (9) The services referred to in [items] paragraphs (1) to (8) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository¹ other than the department of commerce and consumer affairs."

SECTION 12. Section 431:8-302, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) [Prior to] Before placing insurance with any unauthorized insurer, the broker shall ascertain the financial condition of the insurer and:

- (1) In the case of a foreign [insurers,] insurer, shall [deliver to the commissioner] maintain in the broker's office a current certificate, in proper form, [of] from the regulatory authority in the domicile of the unauthorized insurer to the effect that the insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction which equals the minimum capital and surplus requirements of this State for that kind of insurer as set out in article 3; or
- (2) In the case of an alien [insurers,] insurer, shall [submit to the commissioner] maintain in the broker's office evidence of the financial responsibility of the insurer. Evidence satisfactory to the commissioner that the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system in an amount not less than [\$1,500,000] \$2,500,000 for the protection of all its policyholders in the United States consisting of cash, securities, letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of authorized insurers writing like kinds of insurance in this State, shall constitute prima facie evidence of [such] responsibility.

Upon request by the commissioner, the broker shall immediately submit to the commissioner the items described in this subsection."

SECTION 13. Section 431:8-310, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The commissioner shall issue a surplus lines broker license to any general agent licensed under article 9 when the agent has:

- (1) Remitted the annual license fee to the commissioner as provided in article 7;
- (2) Submitted a completed license application on a form furnished by the commissioner; and
- (3) Filed with the commissioner, and maintains during the term of the license, in force and unimpaired, a bond in favor of this State in the sum of [\$25,000] \$100,000 with corporate sureties approved by the commissioner. The bond shall be conditioned that the broker will comply with this part and will promptly remit the taxes provided by section 431:8-315. No bond shall be terminated unless not less than sixty days prior written notice is given to the broker and the commissioner."

SECTION 14. Section 431:9-201, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person in this State shall act as, be appointed as, or hold oneself out to be a general agent, subagent, solicitor, or adjuster unless so licensed by this State."

SECTION 15. Section 431:9-206, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) This requirement shall not apply to:

- (1) Applicants for limited licenses, as travel insurance subagents or solicitors only, under section 431:9-214;
- (2) Applicants who at any time within the [five year] three-year period next preceding date of application held a license in this State which conferred powers comparable to those being applied for;
- (3) Applicants for license as nonresident agent or broker who have fulfilled qualification requirements in their state of residence and who are deemed by the commissioner to be fully qualified and competent;
- (4) Applicants for a general agent's, subagent's, or solicitor's license for life insurance or life disability insurance who hold the designation chartered life underwriter (C.L.U.) from The American College; or
- (5) Applicants for a general agent's, subagent's, or solicitor's license for any class of insurance, except life insurance, who hold the designation chartered property and casualty underwriter (C.P.C.U.) from the American Institute for Property and Liability Underwriters, Incorporated."

SECTION 16. Section 431:9-211, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Each such appointment shall be effective when all parties to the appointment have signed the notice of appointment form. The effective date of the appointment shall be the date on which the last party signs the appointment form.
The appointment shall continue in force until:

- (1) The commissioner notifies the insurer that the person so appointed is no longer licensed as a general agent by this State[.]; or
- (2) The commissioner notifies the general agent or domestic insurer that the person so appointed is no longer licensed as a subagent by this State[.]; or
- (3) The appointment as general agent is:
 - (A) Revoked by the insurer by written notice of [such] the revocation to the general agent[.]; or
 - (B) Terminated by the general agent by written notice of [such] the termination to the insurer[.]; or
- (4) The appointment as subagent is:
 - (A) Revoked by the general agent or domestic insurer by written notice of [such] the revocation to the subagent[.]; or
 - (B) Terminated by the subagent by written notice of [such] the termination to the general² or domestic insurer."

SECTION 17. Section 431:9-216, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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"(b) Each such appointment shall be effective when all parties to the appointment have signed the notice of appointment form. The effective date of the appointment shall be the date on which the last party signs the notice of appointment form. The appointment shall continue in force until:

- (1) The commissioner notifies the general agent, subagent, or domestic insurer that the person so appointed is no longer licensed as a solicitor by this State; or
- (2) The appointment is revoked by the general agent, subagent, or domestic insurer by written notice of [such] the revocation to the solicitor; or
- (3) The appointment is terminated by the solicitor by written notice of [such] the termination to the general agent, subagent, or domestic insurer."

SECTION 18. Section 431:9-228, Hawaii Revised Statutes, is amended to read as follows:

"§431:9-228 Place of business. (a) Every licensed general agent, subagent, and adjuster, shall have and maintain in this State, or, if a nonresident agent or broker, in the state of the agent's or broker's domicile, a place of business accessible to the public.

(b) The place of business shall be that wherein the licensee principally conducts transactions under the licensee's licenses.

(c) The licensee shall promptly notify the commissioner of change of business address.

[d) The place of business of a subagent shall be obviously separate from that of any general agent who appointed the subagent.]"

SECTION 19. Section 431:9-233, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The commissioner may issue a general agent's, subagent's, or solicitor's temporary license in the following circumstances:

- (1) To the surviving spouse, next of kin, employee, or personal representative of a licensed general agent, subagent, or solicitor upon [such] the agent's or solicitor's death;
- (2) To the spouse, next of kin, employee, or legal guardian of a licensed general agent, subagent, or solicitor disabled because of sickness, insanity, or injury;
- (3) To the spouse, next of kin, or employee of a licensed general agent, subagent, or solicitor who is drafted or volunteers for service in the armed services of the United States;
- (4) To a member of a partnership or officer or employee of a corporation licensed as general agent or subagent upon the death [or], disability, or termination of service of an individual designated in the partnership's or corporation's license to exercise powers thereunder; or
- (5) To the individual placed in charge of a branch office maintained in this State by a foreign or alien insurer upon the death [or], disability, or termination of its general agent."

SECTION 20. Section 431:9-238, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [After hearing and in] In addition to or in lieu of [the] suspension, revocation, or refusal to extend any [such] license, after a hearing, the commis-

sitioner may levy a fine upon the licensee in an amount not less than \$100 and not more than \$10,000.”

SECTION 21. Section 431:10A-103, Hawaii Revised Statutes, is amended to read as follows:

“§431:10A-103 Family coverage defined. As used in this part, family coverage means a policy that insures, originally or upon subsequent amendment, an adult member of a family who shall be deemed the policyholder and any two or more eligible members of that family, including spouse, dependent children or any children under a specified age which shall not exceed [seventeen] nineteen years, and any other person dependent upon the policyholder.”

SECTION 22. Section 431:10A-105, Hawaii Revised Statutes, is amended to read as follows:

“§431:10A-105 Required provisions. Except as provided in section 431:10A-107, each policy of accident and sickness insurance delivered or issued for delivery to any person in this State shall contain the provisions set forth below. These provisions shall be in the words in which [the same] they appear below, provided that the insurer may substitute corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. [Such] The provisions shall be preceded individually by the specified caption, or by such appropriate individual or group captions or subcaptions as the commissioner may approve. The provisions are as follows:

- (1) “Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless the approval is endorsed on or attached to this policy. No agent has authority to change this policy or to waive any of its provisions.”
- (2) (A) “Time Limit on Certain Defenses:
 - [1-] (i) After three years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for this policy shall be used to void this policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of [such] the three-year period.
 - [2-] (ii) No claim for loss incurred or disability (as defined in the policy) commencing after three years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.”
- (B) The policy provision set forth in [paragraph 1 in item (2)(A)] subparagraph (A)(i) shall not be [so] construed [as] to affect any legal requirement for avoidance of a policy or denial of a claim during the initial three-year period, nor to limit the application of [items (1) through (4) of section 431:10A-106] section 431:10A-106(1) through (4) in the event of misstatement with respect to age or occupation or other insurance.

- (C) A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium until at least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue, may contain in lieu of [paragraph 1 in item (2)(A)] subparagraph (A)(i) the following provision (from which the clause in parentheses may be omitted at the insurer's option): "Incontestable: After this policy has been in force for a period of three years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application."
- (3) (A) "Grace period: A grace period of days (insert a number not less than seven for weekly premium policies, ten for monthly premium policies, and thirty-one for all other policies) will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force."
- (B) A policy which contains a cancellation provision may add at the end of the above provision: "subject to the right of the insurer to cancel in accordance with the cancellation provision."
- (C) A policy in which the insurer reserves the right to refuse any renewal shall have at the beginning of the above provision: "Unless not less than [five] thirty days prior to the premium due date the insurer has delivered to the insured or has mailed to the insured's last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted."
- (4) (A) "Reinstatement: If any renewal premium is not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept [such] the premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or [such] agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy shall be reinstated upon approval of [such] the application by the insurer or, lacking [such] approval, upon the forty-fifth day following the date of [such] conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of [such] the application. The reinstated policy shall cover only loss resulting from [such] accidental injury as may be sustained after the date of reinstatement and loss due to [such] sickness as may begin more than ten days after [such] that date. In all other respects the insured and insurer shall have the same rights as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with the reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement."
- (B) The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums until at

- least age fifty or, in the case of a policy issued after age forty-four, for at least five years from its date of issue.
- (5) (A) "Notice of Claim: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of [such] the office as the insurer may designate for the purpose) or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer."
- (B) In a policy providing a loss of time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision: "Subject to the qualification set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, the insured shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of [said] the disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of [such] the claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in [the] giving [of such] notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which [said] notice is actually given."
- (6) "Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant [such] the forms [as], that are usually furnished by it for filing proofs of loss. If [such] the forms are not furnished within fifteen days after the giving of [such] notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made."
- (7) "Proofs of Loss: In case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss, written proof of loss must be furnished to the insurer at its office within ninety days after the termination of the period for which the insurer is liable, and in case of claim for any other loss within ninety days after the date of [such] loss. Failure to furnish [such] proof of loss within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within [such] the time[.] required, provided [such] proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than fifteen months from the time proof is otherwise required."
- (8) "Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of [such] loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination

- of liability will be paid immediately upon receipt of due written proof."
- (9) (A) "Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting [such] payment which may be prescribed herein and effective at the time of payment. If no [such] designation or provision is then effective, [such] the indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to [such] the designated beneficiary or to [such] the estate[.] of the insured. All other indemnities will be payable to the insured."
- (B) The following provisions, or either of them, may be included with the above provision at the option of the insurer:
- (i) "If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay [such] the indemnity, up to an amount not exceeding [\$ (insert an amount which shall not exceed] \$2,000[)] to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of [such] the payment."
- (ii) "Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy an account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of [such] loss, be paid directly to the hospital or person rendering [such] the services; but it is not required that the service be rendered by a particular hospital or person."
- (10) "Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law."
- (11) "Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No [such] action at law or in equity shall be brought after the expiration of three years after the time written proof of loss is required to be furnished."
- (12) (A) "Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy."
- (B) The first clause of the above provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option."

SECTION 23. Section 431:10A-305, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner may adopt from time to time, reasonable rules as are necessary to conform medicare supplement policies and certificates to the requirements of federal law and regulations [promulgated] adopted thereunder, including but not limited to:

- (1) Requiring refunds or credits if the policies or certificates do not meet loss ratio requirements;
- (2) Establishing a uniform methodology for calculating and reporting loss ratios;
- (3) Assuring public access to policies, premiums, and loss ratio information of issuers of medicare supplement insurance;
- (4) Establishing a process for approving or disapproving policy forms and certificate forms and proposed premium increases; and
- (5) Establishing a policy for holding public hearings prior to approval of premium increases[; and]
- (6) Establishing standards for medicare select policies and certificates].”

SECTION 24. Section 431:10C-115.5, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

“(b) This fund shall be used to pay the costs of administering the commissioner's obligations under this article. The costs shall include but not be limited to costs of peer review of treatment and rehabilitation services for injuries covered by no-fault insurance, costs related to public education and information, costs related to determination of the medical-rehabilitative threshold, [and] costs relating to closed claims studies and other studies and evaluations relating to motor vehicle insurance[.], and costs related to administrative contract with personnel necessary to carry out the purposes of this article.

(c) Every insurer making a challenge which is submitted to a peer review organization pursuant to section 431:10C-308.6[.] shall pay to the commissioner a fair and equitable amount to be determined by the commissioner, plus the cost of the peer review. The commissioner may increase the amount from time to time as warranted by increases in the cost of administering the peer review program. All payments collected by the commissioner shall be deposited in the no-fault administration revolving fund. The commissioner or the peer review organization shall not receive or accept any additional emolument on account of any challenge to a peer review organization. The peer review organization shall submit its charges, which shall not exceed [charges permissible under the workers' compensation schedules for consultation for a complex medical problem,] a fair and reasonable charge to be determined by the commissioner, along with the peer review organization's recommendation to the commissioner. The commissioner shall pay the peer review organization out of the no-fault administration revolving fund. The commissioner shall transmit copies of the peer review recommendation to the insured, insurer, and provider. The commissioner shall transmit the peer review charges to the insurer, and the insurer shall reimburse the no-fault administration revolving fund for [such] the charges within thirty days.

(d) Each insurer authorized to transact motor vehicle insurance in this State and each self-insurer shall deposit with the commissioner a fair and equitable amount to be determined by the commissioner on [March] April 1 of each year, to be credited to the no-fault administration revolving fund. In addition, each insurer authorized to transact motor vehicle insurance in this State and each self-insurer in this State, shall pay to the commissioner at a time determined by the commissioner,

a one-time deposit in an amount to be determined by the commissioner, to be credited to the no-fault administration revolving fund."

SECTION 25. Section 431:10C-117, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Any person, in the capacity of a licensed or unlicensed motor vehicle insurer, self-insurer, general agent, subagent, solicitor, or other representative, who violates any provision of this article shall be assessed a civil penalty not to exceed \$5,000 for each violation.

(c) Any person, in the capacity of a licensed or unlicensed motor vehicle insurer, self-insurer, general agent, subagent, solicitor, or other representative, who knowingly violates any provision of this article shall be assessed a civil penalty of not less than \$3,000 and not to exceed \$10,000 for each violation."

SECTION 26. Section 431:10C-301, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) A motor vehicle insurance policy shall include:

- (1) Liability coverage of not less than \$25,000 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 arising out of ownership, maintenance, use, loading, or unloading of the insured vehicle;
- (2) Liability coverage of not less than \$10,000 for all damages arising out of injury to or destruction of property including motor vehicles 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 arising out of ownership, maintenance, use, loading, or unloading, of the insured vehicle;
- (3) With respect to any motor vehicle registered or principally garaged in this State, liability coverage provided therein or supplemental thereto, in limits for bodily injury or death[,] set forth in paragraph (1), under provisions filed with and approved by the commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom; provided, however, that the coverage required under this paragraph shall not be applicable where any named insured in the policy shall reject the coverage in writing; and
- (4) Coverage for loss resulting from bodily injury or death suffered by any person legally entitled to recover damages from owners or operators of underinsured motor vehicles. An insurer may offer the underinsured motorist coverage required by this paragraph in the same manner as uninsured motorist coverage; provided that [such] the offer of both shall:
 - (A) Be conspicuously displayed so as to be readily noticeable by the insured;
 - (B) Set forth the premium for the coverage adjacent to the offer in [such] a manner that the premium is clearly identifiable with the offer and may be easily subtracted from the total premium to determine the premium payment due in the event the insured elects not to purchase the option; and

- (C) Provide for written rejection of the coverage by requiring the insured to affix the insured's signature in a location adjacent to or directly below the offer.
- (c) The stacking or aggregating of uninsured motorist coverage or underinsured motorist coverage, whichever is applicable, is prohibited. However, an insurer shall offer an option to stack uninsured motorist coverage and underinsured motorist coverage, as applicable, in each no-fault policy whenever any policy is issued, delivered, or renewed."

SECTION 27. Section 431:10C-304, Hawaii Revised Statutes, is amended to read as follows:

"§431:10C-304 Obligation to pay no-fault benefits. For purposes of this section, the term "no-fault insurer" includes no-fault self-insurers. Every no-fault [and self-insurer] insurer shall provide no-fault benefits for accidental harm as follows:

- (1) Except as otherwise provided in section 431:10C-305(d):
 - (A) In the case of injury arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to the following persons who sustain accidental harm as a result of the operation, maintenance, or use of the vehicle, an amount equal to the no-fault benefits payable for wage loss and other expenses to that person under section 431:10C-103(10)(A)(iii) and (iv) as a result of the injury:
 - (i) Any person, including the owner, operator, occupant, or user of the insured motor vehicle;
 - (ii) Any pedestrian (including a bicyclist); or
 - (iii) Any user or operator of a moped as defined in section 249-1;
 - (B) In the case of injury arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to a provider of services on behalf of the persons listed in [item (1)(A)] subparagraph (A), charges for services covered under section 431:10C-103(10)(A)(i) and (ii); or
 - (C) In the case of death of any person listed in [item (1)(A)], subparagraph (A), arising out of a motor vehicle accident, the insurer shall pay, without regard to fault, to the legal representatives of [such] the person who sustains accidental harm as a result of the operation, maintenance, or use of the vehicle, for the benefit of the surviving spouse and any [dependent], as defined in section 152 of the Internal Revenue Code of 1954, as amended, an amount equal to the no-fault benefits payable to the spouse and dependent as a result of the death of [such] the person, subject to [the provisions of] section 431:10C-103(10); [Provided] provided that subparagraphs (A), (B), and (C) shall not apply in the case of injury to or death of any operator of a motorcycle or motor scooter as defined in section 286-2 arising out of a motor vehicle accident.
- (2) Payment of no-fault benefits shall be made as the benefits accrue, except that in the case of death, payment of benefits under section 431:10C-103(10)(A)(iii) and (iv) may be made immediately in a lump sum payment, at the option of the beneficiary.

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- (3) (A) Payment of no-fault benefits shall be made within thirty days after the insurer has received reasonable proof of the fact and amount of benefits accrued, and demand for payment thereof.
(B) Subject to section 431:10C-308.6, relating to peer review, if the insurer elects to deny a claim for benefits in whole or in part, the insurer shall within thirty days notify the claimant in writing of the denial and the reasons for the denial. The denial notice shall be prepared and mailed by the insurer in triplicate copies and be in a format approved by the commissioner. In the case of benefits for services specified in section 431:10C-103(10)(A)(i) and (ii), the insurer shall also mail a copy of the denial to the provider.
(C) If the insurer cannot pay or deny the claim for benefits because additional information or loss documentation is needed, the insurer shall, within the thirty days, forward to the claimant an itemized list of all the required documents. In the case of benefits for services specified in section 431:10C-103(10)(A)(i) and (ii), the insurer shall also forward the list to the service provider.
- (4) Amounts of benefits which are unpaid thirty days after the insurer has received reasonable proof of the fact and the amount of benefits accrued, and demand for payment thereof, after the expiration of the thirty days, shall bear interest at the rate of one and one-half per cent per month.
- (5) No part of no-fault benefits paid shall be applied in any manner as attorney's fees in the case of injury or death for which the benefits are paid. The insurer shall pay, subject to section 431:10C-211, in addition to the no-fault benefits due, all attorney's fees and costs of settlement or suit necessary to effect the payment of any or all no-fault benefits found due under the contract. Any contract in violation of this provision shall be illegal and unenforceable. It shall constitute an unlawful and unethical act for any attorney to solicit, enter into, or knowingly accept benefits under any [such] contract.
- (6) Any insurer who violates [the provisions of] this section shall be subject to [the provisions of] section 431:10C-117(b) and (c)."

SECTION 28. Section 431:10C-308.6, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) If a peer review organization determines that treatment or rehabilitative services were appropriate and reasonable, the insurer shall pay to the provider the outstanding amount plus interest at a rate of [twelve] one and one-half per cent per [year] month on any amount withheld by the insurer pending the peer review."

SECTION 29. Section 431:10C-407, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The plan shall provide all no-fault benefits and services[,] and [tort] bodily injury and property damage liability [coverage] coverages to the limits and coverages specified in this article for all classes of persons, motor vehicles, and motor vehicle uses specified in this article upon the payment of premiums as provided in subpart C, as follows:

- (1) The plan shall provide no-fault benefits and policies for each of the following classes, and each class shall be able to secure a no-fault and

- [tort] bodily injury and property damage liability policy through the plan:
- (A) All motor vehicles owned by licensed assigned risk drivers as the commissioner, by rules, shall define. The commissioner shall regulate the class in accordance with the general practice of the industry, the applicable results, if any, of the commissioner's examination of the motor vehicle insurers' business records and experience, and any applicable and scientifically credible governmental or academic studies of the multi-accident or high-risk automobile driver.
 - (B) All motor vehicles owned by licensed drivers convicted within the thirty-six months immediately preceding the date of application, in any jurisdiction of any one or more of the offenses of, or of the offenses cognate to:
 - (i) Heedless and careless driving;
 - (ii) Driving while license suspended or revoked;
 - (iii) Leaving the scene of an accident;
 - (iv) Manslaughter, if resulting from the operation of a motor vehicle; or
 - (v) Driving under the influence of an intoxicating liquor as provided in section 291-4 or any drug, except marijuana, as provided in section 291-7.
 - (C) All commercial uses, first class, defined as any commercial use engaged in the transport of passengers for hire or gratuity.
 - (D) All commercial uses, second class, defined as any commercial, business, or institutional use other than the transport of passengers as described in subparagraph (C) or the exclusive use of a vehicle for domestic-household-familial purposes.
- (2) The plan shall provide no-fault benefits and bodily injury and property damage policies for all classes of persons, motor vehicles, and motor vehicle uses, at the premiums specified under subpart C, at the [options] option of the owners, for the following classes, which the commissioner, by rules, shall further define and regulate:
- (A) All licensed drivers, or unlicensed permanently disabled individuals unable to operate their motor vehicles, who are receiving public assistance benefits consisting of medical services or direct cash payments through the department of human services, or benefits from the supplemental security income program under the social security administration; provided that the licensed drivers, or unlicensed permanently disabled individuals unable to operate their motor vehicles, are the sole registered owners of the motor vehicles to be insured; provided further that not more than one vehicle per public assistance unit shall be insured under this part, unless extra vehicles are approved by the department of human services as being necessary for medical or employment purposes; provided further that the motor vehicle to be insured shall be used strictly for personal purposes, and not for commercial purposes.
 - (B) Any licensed physically handicapped driver, including drivers with any auditory limitation. Each category of driver/owner under subparagraphs
 - (A) and (B) may secure no-fault coverage through the plan at the individual's option, provided any previous no-fault policy has expired or has been canceled. Any person becoming eligible for plan coverage

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under subparagraph (A) shall first exhaust all paid coverage under any no-fault policy then in force before becoming eligible for plan coverage.

Any person eligible or becoming eligible under rules adopted by the commissioner under subparagraph (B), may at any time elect coverage under the plan and terminate any prior private insurer's coverage.

A certificate shall be issued by the department of human services indicating that the person is a bona fide public assistance recipient as defined in subparagraph (A). The certificate shall be deemed a policy for the purposes of chapter 431 upon the issuance of a valid no-fault insurance identification card pursuant to section 431:10C-107.

- (3) Under the joint underwriting plan, all basic no-fault coverages, including the basic no-fault policy, the mandatory [\$35,000 public] \$25,000 bodily injury liability, and the \$10,000 property damage policies shall be offered by every insurer to each eligible applicant assigned by the bureau. In addition, uninsured motorist and underinsured motorist coverages shall be offered by every insurer in conformance with section 431:10C-301, and optional additional coverages shall be offered [by every insurer] in conformance with section 431:10C-302, for each class except that defined in paragraph (2)(A), as the commissioner, by rules, shall provide."

SECTION 30. Section 431:10C-408, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any person eligible for benefits under this part, or who becomes eligible to file a claim or an action against the mandatory [public] bodily injury liability or property damage liability policies, shall, upon the bureau's determination of [such] eligibility, be entitled to:

- (1) The full no-fault benefits as if [such] the victim had been covered as an insured at the time of the accident producing the accidental harm.
- (2) The rights of claim and action against the insurer, assigned under section 431:10C-403, with reference to the mandatory [public] bodily injury liability policy for accidental harm, and with reference to the mandatory property damage liability policy for property damage sustained.

Any claims of an eligible assigned claimant against either mandatory [public] bodily injury liability or property damage liability policies, or the basic no-fault policy, shall be filed with the insurer assigned and shall be subject to all applicable conditions and provisions of subparts A and B, except that the date of notification of the assignment shall, where applicable, be substituted for the date of the accident for purposes of section 431:10C-315."

SECTION 31. Section 431:14-104, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Each filing shall be accompanied by a [\$20] \$50 fee payable to the commissioner, which fee shall be deposited in the commissioner's education and training fund."

SECTION 32. Section 431:14-104, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) An insurer may satisfy its obligation to make the filings by becoming a member of, or a subscriber to, a licensed rating organization which makes the filings[, and by authorizing the commissioner to accept the filings on its behalf] except for those lines of insurance for which the commissioner determines individual insurer rate filings shall be made. Nothing contained in this article shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.”

SECTION 33. Section 431:14-107, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Cooperation among rating organizations or among rating organizations and insurers [in rate making or] in [other] matters within the scope of this article is authorized, provided the filings resulting from [such] the cooperation are subject to all the provisions of this article which are applicable to filings generally. The commissioner may review [such] the cooperative activities and practices and if, after a hearing, the commissioner finds that any [such] activity or practice is unfair or unreasonable or otherwise inconsistent with this article, the commissioner may issue a written order specifying in what respects [such] the activity or practice is unfair or unreasonable or otherwise inconsistent with this article, and requiring the discontinuance of [such] the activity or practice.”

SECTION 34. Section 431:14-107.2, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) [No] Except as permitted in this article, no insurer shall agree with any other insurer or with a rating organization or with an advisory organization to mandate adherence to or to mandate use of any rate, rating plan, rating schedule, rating rule, policy or bond form, rate classification, rate territory, underwriting rule, survey, inspection,³ or similar material, except as needed to develop statistical plans permitted by section [[431:14-107.1]]. The fact that two or more insurers, whether or not members or subscribers of a rating organization or advisory organization, use consistently or intermittently the same rates, rating plans, rating schedules, rating rules, policy or bond forms, rate classifications, rate territories, underwriting rules, surveys or inspections, or similar materials is not sufficient in itself to support a finding that an agreement exists. Two or more insurers having a common ownership or operating in this State under common management or control may act in concert between or among themselves with respect to any matters pertaining to those activities authorized in this article as if they constituted a single insurer.

(c) [No] Except as permitted in this article, no insurer, rating organization, or advisory organization shall make any arrangement with any other insurer, advisory organization, or other person which has the purpose or effect of restraining trade unreasonably or of substantially lessening competition in the business of insurance.”

SECTION 35. Section 431:14-108, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [Every] Except for those lines of insurance for which the commissioner determines that individual rate filings shall be made, every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by the organization, except that any [such] insurer may make written application to the commissioner to file a deviation from the class rates, schedules, rating plans, or rules respecting any class of insurance, or class of risk within a class of insurance,

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or combination thereof. The application shall specify the basis for the deviation and shall be accompanied by the data upon which the applicant relies. A copy of the application and data shall be sent simultaneously to the rating organization.”

SECTION 36. Section 431:19-106, Hawaii Revised Statutes, is amended to read as follows:

“§431:19-106 Formation of captive insurance companies in this State.

(a) A pure captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(b) An association captive insurance company may be incorporated:

- (1) As a stock insurer with its capital divided into shares and held by the stockholders; or
- (2) As a mutual insurer without capital stock, the governing body of which is elected by the member organization of its association.

(c) A captive insurance company shall have not less than three incorporators of whom not less than two shall be residents of this State.

(d) Before the articles of incorporation are transmitted to the department of commerce and consumer affairs, the incorporators shall petition the commissioner to issue a certificate setting forth the commissioner's finding that the establishment and maintenance of the proposed corporation will promote the general good of the State. In arriving at such a finding, the commissioner shall consider:

- (1) The character, reputation, financial standing, and purposes of the incorporators;
- (2) The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and
- (3) [Such other] Other aspects as the commissioner deems advisable.

(e) The articles of incorporation, certificate, and the organization fee shall be transmitted to the department of commerce and consumer affairs, which shall record both the articles of incorporation and the certificate.

(f) The capital stock of a captive insurance company incorporated as a stock insurer shall be issued at not less than par value.

(g) At least one of the members of the board of directors of a captive insurance company incorporated in this State shall be a resident of this State.

(h) Captive insurance companies formed under this article, except for pure nonprofit captive insurance companies, shall have the privileges and be subject to the general corporation law as well as this article. In the event of conflict between the general corporation law and this article, the latter shall control.

(i) Pure nonprofit captive insurance companies formed under this article shall have the privileges and be subject to the nonprofit corporation law as well as this article. In the event of conflict between the nonprofit corporation law and this article, the latter shall control.

(j) The articles of incorporation of a risk retention captive insurance company incorporated as a stock insurer shall provide that no member shall own more than ten per cent of the risk retention captive insurance company's outstanding stock; provided that as an alternative, the commissioner, if the commissioner deems it in the best interest of the risk retention captive, the policyholders, and the public, may permit the articles of incorporation to state that no member shall vote more than ten per cent of the outstanding stock.”

SECTION 37. Section 431:19-116, Hawaii Revised Statutes, is amended to read as follows:

"[§]§431:19-116[]] Taxation. (a) Each pure captive insurance company licensed to do business in this State shall pay to the director of finance through the commissioner a tax of .25 per cent on gross premiums [received from] for insurance written on all risks or property resident, situated, or located within this State, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding December 31, less return premiums and less any reinsurance accepted. The tax shall be due and payable on March 15 of each year.

(b) Each association captive insurance company licensed to do business in this State and each risk retention captive insurance company chartered in this State shall pay a tax of one per cent on gross premiums [received from] for insurance written on all risks or property resident, situated, or located within this State, and on risks and property situated elsewhere upon which no premium tax is otherwise paid during the year ending on the preceding December 31, less return premiums and less any reinsurance accepted. The tax shall be due and payable on March 15 of each year.

(c) The tax imposed by this section when paid shall be in settlement of and in lieu of all demands for taxes of every character imposed by the laws of this State, the ordinances or other laws, or rules[, or regulations] of any [county or any city and] county of this State, except taxes on real property[,] and taxes on the purchase, use, or ownership of tangible personal property.”

SECTION 38. 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;] risk retention group captives chartered in this State pursuant to chapter 431, article 19;
 - (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 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) 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] the 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 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 39. Statutory material to be repealed is bracketed. New statutory material is underscored.⁴

SECTION 40. This Act shall take effect upon its approval.

(Approved June 10, 1993.)

Notes

1. Prior to amendment "depositary" appeared here.
2. Prior to amendment "agent" appeared here.
3. Comma should be underscored.
4. Edited pursuant to HRS §23G-16.5.

ACT 206

H.B. NO. 1881

A Bill for an Act Relating to the Regulation of Charitable Organizations, Professional Fund-Raising Counsel, and Professional Solicitors.

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

SECTION 1. Chapter 467B, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§467B- Commercial co-venturer's charitable sales promotions. (a) All charitable sales promotions by a commercial co-venturer shall disclose the name of the commercial co-venturer.

(b) Prior to the commencement of any charitable sales promotion in this State conducted by a commercial co-venturer using the name of a charitable organization, the commercial co-venturer shall obtain the written consent of the charitable organization whose name will be used during the charitable sales promotion.

(c) A final accounting for each charitable sales promotion shall be prepared by the commercial co-venturer following the completion of the promotion. A copy of the final accounting shall be provided to the director not more than twenty days after the copy is requested by the director. A copy of the final accounting shall be

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provided to the charitable organization not more than twenty days after the copy is requested by the charitable organization. The final accounting shall be kept by the commercial co-venturer for a period of three years, unless the commercial co-venturer and the charitable organization mutually agree that the accounting should be kept by the charitable organization instead of the commercial co-venturer.

§467B- Enforcement. (a) If any charitable organization, professional fund-raising counsel, or professional solicitor fails to file any statement, report, or other information required to be filed under this chapter, the director may demand that the charitable organization, the professional fund-raising counsel, or the professional solicitor provide the statement, report, or other information not more than twenty days after demanded by the director. This demand may be mailed to the address on file with the department.

(b) Whenever the director has reason to believe that any charitable organization, professional fund-raising counsel, professional solicitor, or other person is operating in violation of this chapter, the director may investigate and bring an action in any court of this State to enjoin the charitable organization, professional fund-raising counsel, professional solicitor, or other person from continuing the violation or doing any acts in furtherance thereof, and for any other relief that the court deems appropriate.

(c) The director may exercise the authority granted by this section against any charitable organization that operates under the guise or pretense of being an organization exempted by section 467B-11, and is not an organization entitled to an exemption."

SECTION 2. Section 467B-1, Hawaii Revised Statutes, is amended to read as follows:

"§467B-1 Definitions. As used in this chapter, unless the context otherwise requires:

"Charitable organization" means [any benevolent, philanthropic, patriotic, or eleemosynary person or one purporting to be such which solicits and collects funds for charitable purposes and includes each county, or other local division within this State of such charitable organization, provided such county division has authority and discretion to disburse funds or property otherwise than by transfer to any parent organization.];

- (1) Any person determined by the Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended; or
- (2) Any person who is or holds itself out to be established for any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose, or any person who in any manner employs a charitable appeal as the basis of any solicitation or an appeal that has a tendency to suggest there is a charitable purpose to the solicitation. The term includes each county or other local division of the charitable organization within this State, if the division has the authority and discretion to disburse funds or property otherwise than by transfer to any parent organization. The term does not include any federal, state, or county agency, or political parties and candidates for federal, state, or county office required to file financial information with federal or state election authorities or commissions.

"Charitable purpose" means [any benevolent, philanthropic, patriotic, or eleemosynary purpose.];

- (1) Any purpose described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended; or
- (2) Any benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary objective.

"Charitable sales promotion" means an advertising or sales campaign, conducted by a commercial co-venturer, that represents that the purchase or use of goods or services offered by the commercial co-venturer will benefit, in whole or in part, a charitable organization or charitable purpose.

"Commercial co-venturer" means a person who, for profit, is regularly and primarily engaged in trade or commerce other than in connection with soliciting for charitable organizations or charitable purposes, and who conducts charitable sales promotions.

"Contribution" means the promise or grant of any money or property of any kind or value, including the promise to pay, except payments by members of a charitable organization for membership fees, dues, fines, or assessments, or for services rendered to individual members, if membership in [such] the charitable organization confers a bona fide right, privilege, professional standing, honor, or other direct benefit, other than the right to vote, elect officers, or hold offices, and except money or property received from any governmental authority.

"Department" means department of commerce and consumer affairs of the State.

"Director" means the director of commerce and consumer affairs of the State.

["Federated fund-raising organization" means a federation of independent charitable organizations which have voluntarily joined together, including but not limited to a United Fund or Community Chest, for purposes of raising and distributing money for and among themselves and where membership does not confer operating authority and control of the individual agencies upon the federated group organization.]

"Gross receipts" means the total amount of money, contributions, and revenue of any kind received by the charitable organization from all sources, without subtracting any costs or expenses.

"Membership" means membership in a charitable organization [which] that provides services and confers a bona fide right, privilege, professional standing, honor or other direct benefit upon its members, in addition to the right to vote, elect officers or hold offices, upon the payment of fees, dues, assessments, etc. [It] The term does not include those persons who are granted a membership upon making a contribution as a result of solicitation.

"Parent organization" means that part of a charitable organization [which] that coordinates, supervises, or exercises control over policy, fund raising, and expenditures, or assists or advises one or more chapters, branches, or affiliates in the State.

"Percentage compensation" means any compensation, commission, bonus, award, or remuneration, whether direct, indirect, or otherwise, that is calculated by means of a formula, process, evaluation, or other mechanism that considers the amount of funds to be raised or received.

"Person" means any individual, organization, trust, foundation, group, association, partnership, corporation, society, or any combination [of them.] thereof.

"Professional fund-raising counsel" means any person who, for a [flat fixed] fee, plans, conducts, manages, carries on, advises, or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for or on behalf of any charitable organization, but who actually solicits no contributions as a part of the person's services. [It does not include] The term includes a bona fide

volunteer, salaried officer, or employee of a charitable organization [maintaining a permanent establishment within the State.] if the bona fide volunteer, salaried officer, or employee of the charitable organization receives percentage compensation.

“Professional solicitor” means any person who, for a financial or other consideration, solicits contributions for or on behalf of a charitable organization[, whether the solicitation is performed personally or through the person’s agents, servants, or employees, or through agents, servants, or employees specially employed by or for a charitable organization, who are engaged in the solicitation of contributions under the direction of the person, or a person who plans, conducts, manages, carries on, advises, or acts as a consultant to a charitable organization in connection with the solicitation of contributions but does not qualify as a “professional fund-raising counsel” within the meaning of this chapter]. [It does not include] The term includes a bona fide volunteer, salaried officer, or employee of a charitable organization [maintaining a permanent establishment within the State] if the bona fide volunteer, salaried officer, or employee of the charitable organization receives percentage compensation. The term does not include [and also] an attorney, investment counselor[,] or advisor, financial advisor, or banker, or other person who [advises a]:

- (1) Advises another person to make a contribution to a charitable organization as part of the person’s employment; and
- (2) Does not receive compensation from the charitable organization for that advice .

“Solicit” and “solicitation” mean a request directly or indirectly for money, credit, property, financial assistance, or thing of value on the plea or representation that the money, credit, property, financial assistance, or thing of value, or any portion thereof, will be used for a charitable purpose or to benefit a charitable organization. These terms shall include the following:

- (1) Any oral or written request.
- (2) The making of any announcement to any organization for the purpose of further dissemination, including announcements to the press, over the radio or television, or by telephone, telegraph, or facsimile, concerning an appeal or campaign by or for any charitable organization or purpose.
- (3) The distribution, circulation, posting, or publishing of any handbill, written advertisement, or other publication that directly or by implication seeks to obtain public support.
- (4) Where the sale or offer or attempted sale, of any advertisement, advertising space, book, card, tag, coupon, device, magazine, membership, merchandise, subscription, flower, ticket, candy, cookies, or other tangible item in connection with which any appeal is made for any charitable organization or purpose; or where the name of any charitable organization is used or referred to in any appeal as an inducement or reason for making any sale; or where in connection with any sale, any statement is made that the whole or any part of the proceeds from any sale will be used for any charitable purpose or to benefit any charitable organization.
- (5) A request made through the use of receptacles for contributions such as honor boxes, vending machines, wishing wells, contribution boxes, and novelty machines, where a charitable appeal is used or referred to or implied as an inducement or reason to contribute.

A solicitation occurs whether or not the person making the solicitation receives any contribution.”

SECTION 3. Section 467B-2, Hawaii Revised Statutes, is amended to read as follows:

"§467B-2 [Registration of] Filing requirements for charitable organizations. (a) Every charitable organization, except as otherwise provided in this chapter, [which] that intends to solicit contributions within or from the State, [or have funds solicited on its behalf, shall,] prior to any solicitation, shall file a [registration statement with the director upon forms] statement as prescribed by the director[, which shall be valid for one full year and which shall be refiled in the next and each following year in which the charitable organization is engaged in solicitation activities]. It shall be the duty of the president, [chairman,] chairperson, or principal officer of the charitable organization to file the statement required under this chapter. The statement shall be sworn to and shall contain the following information[:] and attachments:

- (1) The name of the charitable organization and the purpose for which it was organized[.];
- (2) The principal address of the charitable organization and the addresses of any office in the State. If the charitable organization does not maintain an office, then the name and address of the person having custody of its financial records[.];
- (3) The name and address of any chapter, branch, or affiliate in the State[.];
- (4) The date of and place [when] where the charitable organization was legally established, and the form of its [organization, and a reference to any determination of its tax-exempt status under the Internal Revenue Code.] organization;
- (5) The name and address of all officers, directors, and trustees, and of the principal salaried executive staff officer[.];
- (6) [A copy of a financial statement (balance sheet and income and expense statement) audited by an independent certified public accountant covering, in a consolidated report, complete information as to all the preceding fiscal year's fund-raising activities of the charitable organization, showing the kind and amounts of funds raised, costs and expenses incidental thereto, and allocation or disbursement of funds raised whenever the organization raised or received contributions exceeding \$10,000 during the preceding fiscal year; or a copy of an unaudited financial statement (either a compilation or review) covering all the preceding fiscal year's fund-raising activities of the charitable organization, showing the kind and amount of funds raised, costs and expenses incidental thereto, and allocation or disbursement of funds raised whenever the charitable organization raised or received contributions in excess of \$4,000 but not exceeding \$10,000, during the preceding fiscal year. The statement shall include the salary or other compensation paid to a professional solicitor or professional fund-raising counsel whether expressed in a fixed dollar amount or as a per cent of the total moneys, funds, pledges, or other property raised or received.] Whether the charitable organization has obtained tax exempt status under state or federal law and, if so, copies of its federal or state tax exemption determination letters. Every charitable organization that files a statement with the department, within thirty days after receipt, shall file with the director copies of any federal or state tax exemption determination letters received after the initial statement filing;

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- (7) Whether the charitable organization intends to solicit contributions from the public directly or have the solicitation done on its behalf by others. Where solicitation will be performed by a professional solicitor or commercial co-venturer on behalf of the charitable organization, whether the professional solicitor or commercial co-venturer is authorized by any other governmental authority to solicit contributions and whether the professional solicitor or commercial co-venturer, or any of the officers, directors, or managers of the professional solicitor or commercial co-venturer is or has ever been enjoined from soliciting contributions or had the authority to solicit contributions denied, suspended, or revoked.
- (8) Whether the charitable organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined [by any court] from soliciting contributions[.] or had the authority to solicit contributions denied, suspended, or revoked;
- (9) The general purpose for which the contributions to be solicited shall be used[.];
- (10) The [name] names which the charitable organization has ever used or been known by, any name under which it intends to solicit contributions[.] and, where the name of the charitable organization was not used in the solicitation, the name of every charitable solicitation campaign it has ever used or been known by. Every charitable organization that files a statement with the department shall file with the director at least thirty days prior to the use of the name in any solicitation within or from the State, a notice of any additional names under which it intends to solicit contributions or additional names of charitable solicitation campaigns where the name of the charitable organization will not be used in the solicitation;
- (11) The name of the individual or officer of the charitable organization who will have final responsibility for the custody of the contributions[.];
- (12) The name of the individual or officer of the charitable organization responsible for the final distribution of the contributions[.];
- (13) The accounting method used by the charitable organization, the starting date of the charitable organization's annual accounting period, and the charitable organization's employer identification number; and
- (14) Any other information that the director may require.
- (b) Each chapter, branch, or affiliate[, except an independent member agency of a federated fund-raising organization,] may [separately]:
- (1) Separately report the information required by this section[.], or [report]
- (2) Report the information to its parent organization which shall furnish the information as to its state affiliates, chapters, and branches in a consolidated form to the department.
- (c) On and after July 1, 1995, every charitable organization that is required to file a statement pursuant to subsection (a), and which receives \$25,000 or more in gross receipts during its preceding annual accounting period, at the time of filing the statement pursuant to subsection (a) and any renewal statements, shall file with the director a copy of financial statements for the preceding annual accounting period. When the organization's gross receipts are not less than \$25,000 but not more than \$100,000 during the preceding annual accounting period, the financial statements shall be reviewed or compiled by an independent certified public accountant. When the organization's gross receipts exceed \$100,000 during its preceding annual accounting period, the financial statements shall be audited in ac-

cordance with generally accepted auditing standards by an independent certified public accountant.

All financial statements shall be in accordance with generally accepted accounting principles except to the extent otherwise prescribed in this subsection or by the director. In addition to those statements required pursuant to generally accepted accounting principles, the financial statements or their related footnotes shall include a disclosure setting forth the amounts recorded as expenses for each professional fund-raising counsel and professional solicitor retained and, where not already required pursuant to generally accepted accounting principles, a statement or schedule of expenses, functionally allocated to expense of program, both management and general, and fundraising. The director may require additional information to be set forth in the financial statements as the director may deem appropriate, prescribe standards for their completion, and change the threshold amounts for the filing of the financial statements pursuant to this subsection.

[(c)] (d) The [registration] forms and other documents prescribed by the director shall be signed by an authorized officer and by the chief fiscal officer of the charitable organization and [shall be] verified by oath.

[(d)] (e) Every charitable organization [which] that submits [an independent registration] a statement or a renewal statement to the department shall pay [an annual registration] a fee in the amount of \$10[.], or in the amount and with any additional sums as may be prescribed by the director. A parent organization filing on behalf of one or more chapters, branches, or affiliates [and a federated fund-raising organization filing on behalf of its member agencies] shall pay a single [annual registration] fee for itself and the chapters, branches, or affiliates [or member agencies] included in the [registration] statement.

[(e)] (f) In lieu of [the filing] submitting [of] the [audited] financial statement[,] pursuant to subsection (c), [any] a charitable organization [required to] may file the completed and fully executed Internal Revenue Service Form 990 or Form 990EZ or [its successor form may substitute such form for purposes of this section.] their successor forms, if all schedules, exhibits, and attachments that were filed with the Internal Revenue Service are attached to the signed 990 or 990EZ or successor forms filed with the department with the exception of the Schedule of Contributors, which need not be filed. The Internal Revenue Service document may be used in lieu of the financial statement only to the extent that the information required by subsection (c) is provided by the document.

The signed 990 and 990EZ forms or their successor forms need not be audited. Any amendments to the information contained in the forms shall be filed with the department within thirty days after the amendments are filed with the Internal Revenue Service.

(g) Before July 1 of each year following the year in which the charitable organization first filed the statements required by subsection (a), the charitable organization, prior to any solicitation or operation, shall file a renewal statement in a form prescribed by the director, together with the renewal fee and, where required under subsection (c), a copy of the charitable organization's financial statement for the preceding annual accounting period. The director may prescribe procedures to allow a charitable organization extensions of time to file the statements required by this subsection for a period not more than six months. Except as provided in this subsection, the failure to comply with this section in a timely manner shall be deemed to be a withdrawal of the initial statement and all subsequent renewal statements filed with the department by that charitable organization.

(h) Every charitable organization that has filed a statement as required by subsection (a) shall notify the department of any changes in the information provided under subsection (a)(1), (2), (7), (8) and (11), not more than ten days after the change or occurrence."

SECTION 4. Section 467B-3, Hawaii Revised Statutes, is amended to read as follows:

"[§]467B-3[] Reciprocal agreements. The director may enter into a reciprocal agreement with the appropriate authority of another state for the purpose of exchanging information with respect to charitable organizations, professional fund-raising counsel, and professional solicitors. Pursuant to the agreement, the director may accept information filed by a charitable organization, professional fund-raising counsel, or professional solicitor with the appropriate authority of another state in lieu of the information required to be filed in accordance with this chapter[,] if the information is substantially similar to the information required under this chapter. The director [shall] may also grant exemption from the requirement of filing of annual [registration statement] statements to charitable organizations organized under the laws of another state having their principal place of business outside the State, whose funds are derived principally from sources outside the State and which have been granted exemption from the filing of [registration] annual statements by the state under whose laws they are organized if the state has a statute similar in substance to this chapter."

SECTION 5. Section 467B-5, Hawaii Revised Statutes, is amended to read as follows:

"\$467B-5 Records to be kept [by charitable organizations, professional fund-raising counsel, and professional solicitors]. Every charitable organization, professional fund-raising counsel, and professional solicitor subject to this chapter [shall, in accordance with the rules adopted by the director,] shall keep true and accurate records as to its activities [in the State] in a form that will accurately provide support for the information required by this chapter. Upon demand, the records shall be made available to the director for inspection. The records shall be retained for a period of [three] not less than five years [after the end of the period of registration to which they relate]."

SECTION 6. Section 467B-6, Hawaii Revised Statutes, is amended to read as follows:

"\$467B-6 Filing of agreements. (a) Every [written] contract [or in the absence of a contract in writing, a written statement of the nature of the arrangement] between a professional fund-raising counsel and a charitable organization that provides for a percentage compensation shall be filed with the department within ten days after the contract [or written agreement] is [concluded.] signed by the charitable organization.

(b) Every [written] contract [or, in the absence of a contract in writing, a written statement of the nature of the arrangement] between a professional solicitor and a charitable organization that provides for a percentage compensation shall be filed with the department [within] not more than ten days after the contract [or arrangement is concluded.] is signed by the charitable organization. The contract [or statement] shall disclose the percentage distribution between the parties to the contract of all funds to be raised or received as a result of the agreed upon solicitation activity. [No solicitation activity shall commence prior to ten days after the date of filing of the contract or statement.]

(c) [All agreements and arrangements between professional fund-raising counsel or solicitors and charitable organizations shall be reduced to writing before executed or acted upon.] The charitable organization, and the professional solicitor

or professional fund-raising counsel shall ensure that all the percentage-based contracts to which they are parties are on file with the department.

(d) On July 1, 1995 and on July 1 of each year thereafter, the charitable organization, and the professional fund-raising counsel or professional solicitor who are or were parties to contracts that provide for percentage compensation, shall file with the department a financial report for each percentage compensation contract pursuant to which solicitations were conducted in or from this State during the preceding twelve-month period. The financial report shall cover the preceding twelve-month period and state, for each contract, the name and address of each party, the gross receipts and revenues collected, and all expenses or payments relating to the contract that were incurred or paid to or by any party. This report shall be co-signed by all parties to the contract. The director may prescribe the form and content of the financial report as the director may deem appropriate. The director may prescribe procedures to allow extensions of time to file the financial report required by this subsection for a period not to exceed six months.

(e) All contracts between professional fund-raising counsel or professional solicitors, and charitable organizations shall be in writing. For the purposes of this section, the term "contract" includes all contracts, agreements, or arrangements between professional fund-raising counsel or professional solicitors, and charitable organizations."

SECTION 7. Section 467B-8, Hawaii Revised Statutes, is amended to read as follows:

"[[§467B-8]] Information filed to become public records. [Registration statements and applications,] Statements, reports, professional fund-raising counsel contracts or professional solicitor contracts, and all other documents and information required to be filed under this chapter or by the director shall become [public government records in the department,] and [shall] be open to the general public for inspection at [the time] such times and under [the] such conditions as the director may prescribe."

SECTION 8. Section 467B-9, Hawaii Revised Statutes, is amended to read as follows:

"**§467B-9 Prohibited acts.** (a) No person [shall], for the purpose of soliciting contributions from persons in the State, shall use the name of any other person except that of an officer, director, or trustee of the charitable organization by or for which contributions are solicited, without the written consent of the other persons.

[b)] A person shall be deemed to have used the name of another person for the purpose of soliciting contributions if the latter person's name is listed on any stationery, advertisement, brochure, or correspondence in or by which a contribution is solicited by or on behalf of a charitable organization or the latter person's name is listed or referred to in connection with a request for a contribution as one who has contributed to, sponsored, or endorsed the charitable organization or its activities.

[c)] (b) No charitable organization, professional solicitor, or professional [fund raiser] fund-raising counsel soliciting contributions shall use a name, symbol, or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public.

[d)] (c) No person [shall], in connection with [the solicitation of contributions for or the sale of goods or services of a person other than a charitable organization,] any solicitation or sale, shall misrepresent or mislead anyone by any

manner, means, practice, or device whatsoever, to believe that [the person on whose behalf] the solicitation or sale is being conducted [is] on behalf of a charitable organization or that the proceeds of the solicitation or sale will be used for charitable purposes, if that is not the fact.

[(e)] (d) No professional solicitor, and no agent, employee, independent contractor, or other person acting on behalf of the professional solicitor, shall solicit in the name of or on behalf of any charitable organization unless [the solicitor]:

- (1) The professional solicitor has obtained the [Has] written authorization of two officers of [such] the organization, [a copy of which shall be filed with the director;] which [the written] authorization shall bear the signature of the professional solicitor and the officers of the charitable organization and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date of issuance[;], and has filed a copy of the written authorization with the director prior to the solicitation; and
- (2) [Has the authorization with the solicitor when making solicitations and exhibits the same on request to persons solicited or police officers or agents of the department.] The professional solicitor and any person who, for compensation, acts as an agent, employee, independent contractor, or otherwise on behalf of the professional solicitor carries a copy of the authorization while conducting solicitations, and exhibits it on request to persons solicited or police officers or agents of the department.

[(f)] (e) No charitable organization, professional fund-raising counsel, or professional solicitor subject to this chapter[,] shall use or exploit the fact of [registration] filing any statement, report, professional fund-raising counsel contracts, or professional solicitor contracts or other documents or information required to be filed under this chapter or with the department so as to lead the public to believe that [such registration] the filing in any manner constitutes an endorsement or approval by the State of the purposes or goals for the solicitation by the [organization;] charitable organization, professional fund-raising counsel, or professional solicitor; provided that the use of the following statement shall not be deemed a prohibited exploitation: “[Registered] Information regarding this organization has been filed with the State of Hawaii department of commerce and consumer affairs [as required by law]. [Registration] Filing does not imply endorsement or approval of [a] the organization or the public solicitation for contributions.”

[(g)] (f) No person [shall, in soliciting contributions or the sale of goods for a charitable organization or other entity governed by this chapter,] while soliciting, shall impede or obstruct, with the intent to physically inconvenience the general public or any member thereof in any public place or in any place open to the public.

(g) No person shall submit for filing on behalf of any charitable organization, professional fund-raising counsel, or professional solicitor, any statement, financial statement, report, attachment, or other information to be filed with the department that contains information, statements or omissions that are false or misleading.

(h) No person shall solicit contributions from persons in the State or otherwise operate in the State as a charitable organization, an exempt charitable organization, professional fund-raising counsel, professional solicitor, or commercial co-venturer unless the person has filed the information required by this chapter with the department in a timely manner.

(i) No person shall aid, abet, or otherwise permit any persons to solicit contributions from persons in the State unless the person soliciting contributions has complied with the requirements of this chapter.

(j) No person shall fail to file the information and statements required by this chapter or fail to provide any information demanded by the director pursuant to this chapter in a timely manner.

(k) No person shall employ in any solicitation or collection of contributions for a charitable organization, any device, scheme, or artifice to defraud or obtain money or property by means of any false, deceptive, or misleading pretense, representation, or promise.

(l) No person, in the course of any solicitation, shall represent that funds collected will be used for a particular charitable purpose, or particular charitable purposes, if the funds solicited are not used for the represented purposes.

(m) No person shall receive compensation from a charitable organization for obtaining moneys or bequests for that charitable organization if that person has also received compensation for advising the donor to make the donation; provided that compensation may be received if the person obtains the written consent of the donor to receive compensation from the charitable organization.

(n) No person, after January 1, 1995, shall sell, license, offer to trade, or offer to lease, any list of donors that was obtained from the solicitation of persons to contribute to any charitable organization unless all listed donors have consented to their names and addresses being used in this manner."

SECTION 9. Section 467B-9.5, Hawaii Revised Statutes, is amended to read as follows:

"[§]467B-9.5[] Financial statements. Whenever the director has reasonable grounds to believe that any charitable organization, professional fund-raising counsel, or professional solicitor has engaged in any act or practice constituting a violation of [any provision of] this chapter or any rule or order adopted or issued [or promulgated hereunder], the director may require the charitable organization, professional fund-raising counsel, or professional solicitor to submit to the department a financial statement [certified] prepared in accordance with generally accepted accounting principles by an independent certified public accountant[.], or as otherwise required by the director."

SECTION 10. Section 467B-10, Hawaii Revised Statutes, is amended to read as follows:

"§467B-10 [Enforcement and penalties.] Penalties. [(a) If any registered charitable organization, professional fund-raising counsel, or professional solicitor fails to file any registration application or statement, report, or other information required to be filed under this chapter or demanded by the director, or otherwise violates this chapter, the director shall notify the delinquent charitable organization, professional fund-raising counsel, or professional solicitor by mailing a notice by registered or certified mail, with return receipt requested, to its last known address. If the required registration application or statement, annual report, or other information is not filed, or the demanded information is not provided, or if the existing violation is not discontinued within two weeks after the formal notification or receipt of the notice, the director may cancel, suspend, or refuse to accept the registration or other required information of the delinquent charitable organization, professional fund-raising counsel, or professional solicitor.

(b) If any registered charitable organization files a financial statement under section 467B-2(a)(6), the director may examine any records kept by the charitable

organization as is necessary to protect the public interest. If the director finds that the financial statement contains any false or misleading information, the director may suspend or cancel the charitable organization's registration.

(c) The director, upon the director's own motion or upon complaint of any person, may, if the director has reasonable ground to suspect a violation, investigate any charitable organization, professional fund-raising counsel, or professional solicitor to determine whether the charitable organization, professional fund-raising counsel, or professional solicitor has violated this chapter or has filed any application or other information required under this chapter which contains false or misleading statements. If the director after notice and hearing finds that any application or other information contains false or misleading statements, or that a registrant under this chapter has violated this chapter, the director may order the registration suspended or canceled.

(d) The registration of any charitable organization, professional fund-raising counsel, or professional solicitor, which knowingly makes a false or misleading statement in any registration application or statement, report, or other information required to be filed by the department of this chapter shall, upon notice and hearing, be revoked.

(e) All proceedings under this chapter shall be conducted in accordance with this chapter and all adjudications of the director shall be subject to judicial review as provided therein.

(f) In addition to the foregoing, any person who wilfully and knowingly violates this chapter, or who wilfully and knowingly gives false or incorrect information to the director in filing statements or reports required by this chapter, whether the reports or statements are verified or not, shall for the first offense be fined not less than \$100 nor more than \$500, or imprisoned not more than six months, or both, and for the second and any subsequent offense, be fined not less than \$500 nor more than \$1,000, or imprisoned not more than one year, or both.

(g) Whenever the director has reason to believe that any charitable organization, professional fund-raising counsel, or professional solicitor is operating in violation of this chapter, or has knowingly and wilfully made any false statement in any registration application or statement, report, or other information required to be filed by this chapter, or whenever a charitable organization, professional fund-raising counsel, or professional solicitor fails to file a registration statement required by this chapter, or whenever there is employed or is about to be employed in any solicitation or collection of contributions for a charitable organization, any device, scheme, or artifice to defraud or to obtain money or property by means of any false pretense, representation, or promise, or whenever the officers or representatives of any charitable organization, professional fund-raising counsel, or professional solicitor have refused or failed after notice to produce any records of the organization, or whenever the funds raised by solicitation activities are not devoted or will not be devoted to the charitable purposes of the charitable organization, in addition to all other actions authorized by law, the director may bring an action in the name of the State against the charitable organization and its officers, professional fund-raising counsel, professional solicitor, or any person employing any device, scheme, artifice, false representation, or promise, to defraud or obtain money or other property, to enjoin the charitable organization, professional fund-raising counsel, professional solicitor, or other person from continuing the violation, solicitation, collection, or engaging therein, or doing any acts in furtherance thereof and for such other relief as the court deems appropriate.

(h) The director may exercise the authority granted in this section against any charitable organization which operates under the guise or pretense of being an organization exempted by section 467B-11, and is not an organization entitled to such an exemption.] Any person who intentionally or knowingly violates this

chapter, or who intentionally or knowingly gives false or incorrect information to the director in filing statements or reports required by this chapter, whether the reports or statements are verified or not, shall for the first offense be fined not less than \$100 nor more than \$500, or imprisoned not more than six months, or both; and for the second and any subsequent offense, be fined not less than \$500 nor more than \$1,000, or imprisoned not more than one year, or both."

SECTION 11. Section 467B-10.5, Hawaii Revised Statutes, is amended to read as follows:

"[§467B-10.5] Violation as unfair practice. Any person who engages in an act or practice [which] that violates [any provision of] this chapter or rules adopted [pursuant thereto] or issued shall have engaged in an unfair or deceptive act or practice in the conduct of a trade or commerce, in violation of section 480-2, and shall be subject to the penalties and remedies provided for such a violation."

SECTION 12. Section 467B-11, Hawaii Revised Statutes, is amended to read as follows:

"§467B-11 Exemptions. [This chapter shall not apply to:] (a) Except as otherwise provided in this chapter, a charitable organization described as follows shall not be required to comply with sections 467B-2 and 467B-6 if the charitable organization complies with subsections (b) and (c):

- (1) A corporation sole or other religious corporation, trust, or organization incorporated or established for religious [purpose, nor to] purposes, any agency or organization incorporated or established for charitable, hospital, or educational purposes and engaged in effectuating one or more of [such] these purposes, that is affiliated with, operated by, or supervised or controlled by a corporation sole or other religious corporation, trust, or organization incorporated or established for religious purposes[, nor to]; and other religious agencies or organizations [which] that serve religion by the preservation of religious rights and freedom from persecution or prejudice, or by fostering religion, including the moral and ethical aspects of a particular religious faith[.];
- (2) Educational institutions that are recognized by the director or that are accredited by a regional accrediting association or by an organization affiliated with the national commission on accrediting[,]; any foundation having an established identity with any of the aforementioned educational institutions, any other educational institution confining its solicitation of contributions to its student body, alumni, faculty, and trustees, and their families[,]; or a library established under the laws of this State[,], provided that the annual financial report of the institution or library shall be filed with the director[.];
- (3) Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for the beneficiary's use[.];
- (4) Charitable organizations [which do not intend to solicit and receive and do not actually raise or receive contributions from the public in excess of \$4,000 during a calendar year or] that do not receive contributions from more than ten persons during a calendar year, if all of their functions, including fund-raising activities, are carried on by persons who are unpaid for their services and if no part of the assets or income of the charitable organization inures to the benefit of or is paid

to any officer or member thereof]. Nevertheless, if the contributions raised from the public, whether all is or is not received by any charitable organization during any calendar year, shall be in excess of \$4,000, it shall, within thirty days after the date of receipt register with the director as required by this chapter.];

- (5) Hospitals [which] that are nonprofit and charitable, and are required by law to file financial reports at least annually with the State; provided that a copy of the annual fiscal report [is also] shall be filed simultaneously with the director[.];
- (6) Organizations [which] that solicit only within the membership of the charitable organization by the members thereof. [The] For the purposes of this paragraph, the term "membership" shall not include those persons who are granted a membership upon making a contribution as the result of solicitation[.]
- (7) Any Hawaii or foreign nonprofit corporation that has been on record with the department for at least five years and is in good standing with respect to complying with the laws of this State and provided further all fund-raising activities are carried on by persons who are not in any manner compensated for such services.]; and
- (7) Any charitable organization that received less than \$4,000 in gross receipts during the preceding annual accounting period, and that will receive less than \$4,000 in gross receipts during the current annual accounting period.

(b) Any charitable organization [claiming to be exempt from the registration provisions of this chapter which is about to or does solicit charitable contributions] described in subsection (a)(1) to (6) shall submit annually to the director, on forms to be prescribed by the director the name, address, and purpose of the organization [and], a statement setting forth the reason for the claim for exemption[.], and any other information that the director may require. [If exempted, the director shall issue annually a letter of exemption which may be exhibited to the public. No registration fee shall be required of any exempt organization.] If the charitable organization is not exempted, it shall, prior to any solicitation, comply with all requirements of this chapter. The claim for exemption submitted by the charitable organization shall be accompanied by a fee of \$10, or in any amount and with any additional sums as may be prescribed by the director. Persons described in subsection (a)(7) shall not be required to file the claim for exemption, and shall not be required to pay any accompanying fees; provided that in the event more than \$4,000 in gross receipts is received during the current annual accounting period by a charitable organization operating under subsection (a)(7), the organization, not more than thirty days after collecting \$4,000 or more in gross receipts, and prior to any further solicitation, shall file a statement as provided in section 467B-2 or, where appropriate, a claim for exemption under subsection (a)(1) to (6).

(c) Any charitable organization described in subsection (a)(1) to (7), prior to any solicitation, shall register all names used in any solicitation, including, but not limited to, trade names, corporation names, partnership and organization names, and fundraising campaign names.”

SECTION 13. Section 467B-12, Hawaii Revised Statutes, is amended to read as follows:

“[\$467B-12] Registration of Filing requirements for professional fund-raising counsel and professional solicitors. (a) [No person shall act as a] Every professional fund-raising counsel or professional solicitor [for a charitable organization subject to the provisions of this chapter, unless the person has first

registered with the director. An application for registration], prior to any solicitation, shall file a statement with the department. The statement shall be in writing under oath or affirmation in the form prescribed by the director and shall contain the information as the director may require. The [application for registration] statement by a professional fund-raising counsel or professional solicitor shall be accompanied by [an annual] a fee [in the sum] in the amount of \$50[.], or in the amount and with any additional sums as may be prescribed by the director. [A partnership or corporation which is a professional fund-raising counsel or professional solicitor, may register for and pay a single fee on behalf of all its members, officers, agents and employees. However, the names and addresses of all officers, agents and employees of professional fund-raising counsel and all professional solicitors, their officers, agents, servants or employees employed to work under the direction of a professional solicitor shall be listed in the application.] The statement shall list the names, addresses, and social security numbers of all officers, agents, servants, employees, directors, and independent contractors of a professional fund-raising counsel, and the names, addresses, and social security numbers of all officers, agents, servants, employees, directors, and independent contractors of a professional solicitor. Renewal statements shall be filed with the department on or before July 1 of each calendar year in which the professional fund-raising counsel or professional solicitor does business in or from the State and shall be effective until June 30 of the next calendar year. The renewal statement shall be in a form prescribed by the director. A renewal fee of \$50, or in any amount and with any additional sums as may be prescribed by the director, shall accompany the renewal statement.

(b) The professional fund-raising counsel or professional solicitor [applicant shall], at the time of [making application,] each filing, shall file with and have approved by the director a bond in which the applicant [shall be] is the principal obligor in the penal sum of \$5,000 issued [by a surety company authorized to do business in the State] with good and sufficient surety or sureties approved by the director and which shall remain in effect [so long as a registration is in effect] for one year. The bond shall inure to the benefit of the State [in the reimbursement for any losses resulting from malfeasance, nonfeasance or misfeasance in the conduct of solicitation activities.], conditioned that the applicant, its officers, directors, employees, agents, servants, and independent contractors shall not violate this chapter. A partnership or corporation [which] that is a professional fund-raising counsel or professional solicitor may file a consolidated bond on behalf of all its members, officers, and employees.

((c) Each registration shall be valid throughout the State for a period of one year and may be renewed for additional one-year periods upon written application under oath in the form prescribed by the director and the payment of the fee prescribed herein.

(d) The director shall examine each application. If the director finds the application to be in conformity with all the requirements of this chapter and all relevant rules and regulations and the registrant has complied with all the requirements of this chapter and all relevant rules and regulations, the director shall approve the registration. Any applicant who is denied registration may, within fifteen days from the date of notification of the denial, request in writing a hearing before the director.]

(c) The charitable organization may void any agreement or contract for compensation or reimbursement with a professional solicitor or professional fund-raising counsel for that person's failure to comply with this section before or while soliciting persons on behalf of the charitable organization. If the charitable organization voids the agreement or contract, moneys collected by the professional solicitor or professional fund-raising counsel shall be paid to the charitable organization,

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to be held in trust on behalf of those donors who request a refund. The charitable organization shall make best efforts to notify donors of their option of receiving a refund. All moneys not claimed by the donors shall be the sole property of the charitable organization.

SECTION 14. Section 467B-14, Hawaii Revised Statutes, is amended to read as follows:

"[§467B-14] Publication. The director shall publish annually, in a newspaper of general circulation in the State, a list of all [registered] charitable organizations, professional fund-raising counsel, and professional solicitors[.], that have filed statements with the department."

SECTION 15. Section 467B-4, Hawaii Revised Statutes, is repealed.

SECTION 16. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 17. This Act shall take effect on July 1, 1994.

(Approved June 10, 1993.)

Notes

1. Should be underscored.
2. Edited pursuant to HRS §23G-16.5.

ACT 207

H.B. NO. 2012

A Bill for an Act Relating to School Lunch.

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

SECTION 1. The purpose of this Act is to require the department of education to establish and maintain the price of the school lunch to be set in proportion to the cost of preparing the school lunch.

SECTION 2. Section 296-44, Hawaii Revised Statutes, is amended to read as follows:

"§296-44 School cafeterias; funds; expenditures; cafeteria division. (a) The price for the school lunch shall be set by the department of education to ensure that moneys received from the sale of the lunches shall be one-third of the cost of preparing the school lunch, rounded to the nearest 25 cents, adjusted during the first year of each fiscal biennium. The price for the school lunch shall be based on the average cost of preparing the school lunch over the three years preceding the second year of the biennium.

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

(c) It is the intent of this section not to jeopardize the receipt of any federal aid and to the extent, and only to the extent necessary to effectuate this intent, the governor may modify the strict provisions of this section, but shall promptly report

any such modification with the governor's reasons therefor to the next succeeding session of the legislature for review.

(d) The governor may create a division within the department of education to carry out the cafeteria functions and programs."

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

SECTION 4. This Act shall take effect on July 1, 1993.

(Approved June 10, 1993.)

ACT 208

H.B. NO. 2026

A Bill for an Act Relating to Clean Air.

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

SECTION 1. Chapter 342B, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"**§342B- Exemptions.** The hydrogen sulfide standard adopted pursuant to this chapter shall not apply to waste ponds, waste piles, crops, feed, animals, or manure incident to agricultural operations necessary for the raising of animals or the growing or processing of crops."

SECTION 2. Section 342B-1, Hawaii Revised Statutes, is amended by amending the definitions of "covered source" and "regulated air pollutant" to read as follows:

"**'Covered source'** means:

- (1) Any major source;
- (2) Any source subject to a standard of performance for new stationary sources as established [in] by the director pursuant to this chapter;
- (3) Any source subject to an emissions standard for hazardous air pollutants as established [in] by the director pursuant to this chapter;
- (4) Any source subject to the rules for the prevention of significant deterioration of air quality as established [in] by the director pursuant to this chapter; and
- (5) Any source in a source category designated by the director."

"**'Regulated air pollutant'** means:

- (1) [A] Nitrogen oxides or any volatile organic compound;
- (2) Any air pollutant for which a national or state ambient air quality standard has been adopted; and
- (3) Any air pollutant that is established by rule pursuant to this chapter pertaining to standards of performance for new stationary sources and emissions standards for hazardous air pollutants."

SECTION 3. Section 342B-7, Hawaii Revised Statutes, is amended to read as follows:

"**[§342B-7]** **Annual reports.** The department shall compile an annual report summarizing:

- (1) Air quality data from all air quality monitoring stations;
- (2) Annual criteria pollutant emissions;
- (3) Annual air toxic emissions; and
- (4) All completed or issued enforcement actions.”

SECTION 4. Section 342B-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in subsections (b) and (c), where public participation is deemed appropriate by the director or is required, the director shall provide for notice and opportunity for public comment as follows:

- (1) The director shall make available for public inspection in at least one location in the county affected by the proposed action, or in which the source is or would be located:
 - (A) Information on the subject matter;
 - (B) All information submitted by the applicant, except for that deemed confidential;
 - (C) The department’s analysis and proposed action; and
 - (D) Other information and documents deemed appropriate by the department;
- (2) The director shall notify the public of the availability of information listed in paragraph (1). Notification shall be published in a newspaper which is printed and issued at least twice weekly in the county affected by the proposed action, or in which the source is or would be located;
- (3) Public notice shall be mailed to any person, group, or agency upon request;
- (4) The director shall provide a period of not less than [sixty] thirty days following the date of the public notice during which time interested persons may submit written comments on the subject matter, application, department’s analysis and proposed actions, and other appropriate considerations. The period for comment may be extended at the discretion of the director; and
- (5) The director, at the director’s sole discretion, may hold a public hearing if the public hearing would aid in the director’s decision. Any person may request a public hearing. The request shall be in writing and shall be filed within the [sixty-day] thirty-day comment period prescribed in paragraph (4) and shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The director shall publish the public notice for a hearing in accordance with paragraph (2) at least thirty days in advance of the hearing date and shall conduct the hearing in the county which would be affected by the proposed action, or in which the source is or would be located.”

SECTION 5. Section 342B-24, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) For each application for a covered source permit the director shall provide [for] public notice, including the method by which a public hearing can be requested, and an opportunity for public comments[, and an opportunity for public hearing] in accordance with section 342B-13.”

SECTION 6. Section 342B-26, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The director, after providing public notice [and opportunity for], including the method by which a public hearing can be requested, and an opportunity for public comment pursuant to section 342B-13, may issue a general permit covering numerous similar sources. The owner of any source covered by a general permit must apply to the department for use of the general permit."

SECTION 7. Section 342B-42, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) If the director determines that any person is continuing to violate this chapter, any rule adopted, permit issued, or variance granted pursuant to this chapter after having been served notice of violation, the director shall serve written notice by certified mail or personal delivery upon the alleged violator or violators specifying the alleged violation. With the notice the director:

- (1) Shall order the alleged violator or violators to submit a written schedule within thirty days specifying the measures to be taken and the time within which [such] the measures shall be taken to bring that person into compliance with this chapter, any rule adopted, permit issued, or variance granted pursuant to this chapter. The director shall accept or modify the submitted schedule within thirty days of receipt of [such] the schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director;
- (2) Shall order the alleged violator or violators to cease and desist from the activities that violate this chapter, any rule adopted, permit issued, or variance granted 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; [and]
- (3) May impose penalties as provided in section 342B-48 [by ordering]; and
- (4) May order the alleged violator or violators to appear before the director for a hearing at a time and place specified in the notice or to be set later and answer the charges complained of."

SECTION 8. Section 342B-47, Hawaii Revised Statutes, is amended to read as follows:

"[§342B-47] Civil penalties. (a) Any person who violates the vehicular smoke emission rules adopted by the department pursuant to this chapter shall be fined not less than \$25 nor more than \$2,500 for each separate offense. Each day of each violation constitutes a separate offense.

(b) Any person who violates the open burning control rules adopted by the department pursuant to this chapter shall be fined not more [that] than \$10,000 for each separate offense. Each day of each violation constitutes 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, any condition of a permit issued or variance granted pursuant to this chapter, or any fee or filing requirement, shall be fined not more than \$25,000 for each separate offense. Each day of each violation constitutes a separate offense.

(d) Any person who denies, obstructs, or hampers the entrance, inspection, or monitoring by any duly authorized officer or employee of the department of any

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building, place, or vehicle that the officer or employee is authorized to enter and inspect shall be fined not more than \$25,000 for each [violation.] separate offense. Each day of each violation constitutes a separate offense.

(e) State of mind shall not be an element of proof for civil violations."

SECTION 9. Section 342B-49, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§342B-49]]~~ **Criminal penalties.** (a) Any person who knowingly violates any applicable standards or limitations, any condition in a permit issued pursuant to this chapter, any order, any rule, or any fee or filing requirement, shall be punished by a fine of not more than \$25,000 for each day of each violation or by imprisonment not to exceed five years, or both.

(b) Any person who knowingly makes any false statement, representation, or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any monitoring device or method required by the department to be maintained by the person pursuant to this chapter, or who fails to report as required by this chapter, shall be punished by a fine of not more than \$25,000 for each day of each violation or by imprisonment for not more than two years, or both [for each instance of violation].

(c) Any person who negligently releases into the ambient air any hazardous air pollutant or extremely hazardous substance and who at the time negligently places another person in imminent danger of death or serious bodily injury [upon conviction,] shall be punished by a fine of not more than \$25,000 [or] for each day of each violation, or imprisonment for not more than one year, or both. If a conviction of any person under this subsection is for a violation committed after a first conviction of [such] the person under this subsection, the maximum punishment shall be doubled with respect to both the fine and [the] imprisonment.

(d) Any person who knowingly releases into the ambient air any hazardous air pollutant or extremely hazardous substance and who knows at the time that another person is thereby placed in imminent danger of death or serious bodily injury[, upon conviction,] shall be punished by a fine of not more than \$25,000[, or] for each day of each violation, or imprisonment [of] for not more than fifteen years, or both. Any organization which violates this subsection shall be subject to a fine of not more than \$1,000,000. If a conviction of any person under this subsection is for a violation committed after a first conviction of [such] the person under this subsection, the maximum punishment shall be doubled with respect to both the fine and imprisonment."

SECTION 10. Section 342B-55, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§342B-55]]~~ **Consent orders; settlement agreements.** [At] Notwithstanding section 342B-13, at least thirty days before a consent order or settlement agreement of any kind under this chapter to which the director or the State is a party is final or filed with a court, the director shall provide public notice and [a reasonable] an opportunity for the public to comment. The director shall promptly consider any [such] written comments and may withdraw or withhold consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that [such] the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this section shall apply to civil or criminal penalties under this chapter."

SECTION 11. Section 342B-1, Hawaii Revised Statutes, is amended by deleting the definition of "modification".

[““Modification” means any physical change in, or change in the method of operation of, a major source which increases the actual emissions of any air pollutant or hazardous air pollutant emitted by such source by more than a de minimis amount or which results in the emission of any air pollutant or hazardous air pollutant not previously emitted by more than a de minimis amount.”]

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 13. This Act shall take effect upon its approval.

(Approved June 10, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 209

H.B. NO. 2028

A Bill for an Act Relating to Motor Vehicle Tire Recovery.

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

SECTION 1. Chapter 342I, Hawaii Revised Statutes, is amended by amending the title to read as follows:

“[LEAD ACID BATTERY] SPECIAL WASTES RECYCLING”

SECTION 2. Chapter 342I, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . USED MOTOR VEHICLE TIRE RECOVERY

§342I- Definitions. As used in this part unless the context otherwise requires:

“Authorized tire collection facility” means any facility permitted by the department under chapter 342H as a tire collection facility which may collect and temporarily hold tires before transporting them to an authorized tire recycler.

“Authorized tire recycler” means any processor, shredder, or manufacturer permitted by the department under chapter 342H as a tire recycling facility.

“County” means any county of the State.

“Motor vehicle tire” means any tire that is used or designed for use on a motorized vehicle including but not limited to an automobile, bus, motorcycle, truck or heavy equipment.

“Tire retailer” means any person who sells or offers to sell tires to the public.

“Tire wholesaler” means any person who sells or offers to sell tires to tire retailers or other volume buyers of tires.

§342I- Motor vehicle tires; disposal in landfill or municipal solid waste incinerator prohibited. (a) No person shall place a whole motor vehicle tire in mixed municipal solid waste, or shall discard or otherwise dispose of a motor

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vehicle tire except by delivery to any motor vehicle tire retailer, tire wholesaler, or to an authorized tire collection or authorized tire recycler.

(b) No motor vehicle tire retailer shall dispose of a motor vehicle tire except by delivery to the agent of a motor vehicle tire wholesaler or to a motor vehicle tire manufacturer, or to an authorized motor vehicle tire recycler.

(c) Each tire improperly disposed of shall constitute a separate offense.

(d) For each violation of this section a violator shall be subject to the penalties and remedies provided under sections 342H-9 Penalties; 342H-10 Administrative penalties; and 342H-11 Injunctive Relief.

(e) Variances to these provisions may be granted by the director based on written requests submitted by a permitted disposal facility.

§342I- Motor vehicle tires; collection for recycling. (a) Each tire retailer shall:

(1) Accept, at the point of transfer, in a quantity at least equal to the number of new motor vehicle tires purchased by a customer, motor vehicle tires offered by the customer.

(2) Post written notice which shall be at least five inches by seven inches in size and easily visible to customers and shall contain the universal recycling symbol and the following language:

(A) "It is illegal to discard a motor vehicle tire";

(B) "Recycle your used tires";

(C) "State law requires us to accept used motor vehicle tires for recycling or disposal, in exchange for new tires purchased"; and

(D) "The price of a new tire includes disposal of your old tire".

(b) The department of health shall produce, print, and distribute the notices required by subsection (a)(2) to each retailer; provided that a retailer instead may use any sign or notice that meets the requirements of that subsection.

(c) Any advertising pertaining to the price of motor vehicle tires shall include the statement "The price includes disposal of your old tire."

(d) For businesses utilizing advertising prepared out of the State a sign no smaller than three square feet, placed at the point of sale stating: "The price of tires includes disposal of your old tires" may be substituted.

§342I- Inspection of motor vehicle tire retailers. In performing its duties under this part, the department may inspect any place, building, or premise governed by this part. Authorized employees of the agency may issue warnings and citations to persons who fail to comply with the requirements of this part.

§342I- Motor vehicle tire wholesalers. Any person selling new motor vehicle tires at wholesale shall accept at the point of transfer, in a quantity at least equal to the number of new tires purchased by a customer, used motor vehicle tires offered by the customer. A person accepting tires in transfer from a motor vehicle tire retailer shall be allowed a period not to exceed ninety days to remove tires from the retail point of collection."

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

SECTION 4. This Act shall take effect on July 1, 1994.

(Approved June 10, 1993.)

ACT 210

H.B. NO. 2029

A Bill for an Act Relating to the Mental Health and Substance Abuse System.

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

SECTION 1. Section 329-2, Hawaii Revised Statutes, is amended to read as follows:

“§329-2 Hawaii advisory commission on drug abuse and controlled substances; number; appointment. There shall be established a state advisory commission on drug abuse and controlled substances consisting of not more than fifteen nor less than nine members appointed by the governor, as provided in section 26-34. The members shall be selected on the basis of their ability to contribute to the solution of problems arising from the abuse of controlled substances, and to the extent possible, shall represent the pharmacological, medical, community and business affairs, youth action, educational, legal defense, enforcement, and corrections segments of the community. One of the appointed members shall be a member of the state council on mental health established by section 334-10, and shall be knowledgeable about the community and the relationships between mental health, mental illness, and substance abuse. The commission shall elect [its] a chairperson[,] from among its members. The members shall serve without compensation, but shall be paid their necessary expenses in attending meetings of the commission. The commission shall be a part of the department of health for administrative purposes[, as provided for in section 26-35.]; provided that the department of health shall appoint an ex-officio non-voting representative to the commission who shall regularly attend meetings of both this commission and the state council on mental health, and make regular reports to both bodies.”

SECTION 2. Section 334-10, Hawaii Revised Statutes, is amended to read as follows:

“[§334-10] State council on mental health [and substance abuse]. (a) There is established a state council on mental health [and substance abuse]. The council shall consist of [fifteen] twenty-one members appointed by the governor as provided in section 26-34. In making appointments to the council, the governor shall ensure that all service area boards of the State are represented, and that a majority of the members are nonproviders of mental health[, substance abuse,] or other health services[,], and that a majority of the members are not state employees. The number of parents of children with serious emotional disturbances shall be sufficient to provide adequate representation of such children in the deliberations of the council. The council shall be composed of residents of the State, including individuals representing:

- (1) The principal state agencies with respect to mental health, education, vocational rehabilitation, criminal justice, housing, and social services;
- (2) Public and private entities concerned with the need, planning, operation, funding, and use of mental health services and related support services;
- (3) Adults with serious mental illnesses who are receiving, or have received, mental health services;
- (4) The families of such adults or families of children with serious emotional disturbances; and
- (5) The Hawaii advisory commission on drug abuse and controlled substances who shall be a person knowledgeable about the community

and the relationships between mental health, mental illness, and substance abuse.

(b) The council [members] shall elect a chairperson[.] from among its members. All members shall serve without compensation but shall be paid their necessary expenses in attending meetings of the council.

[(b)] (c) The council shall advise the department on allocation of resources, statewide needs, and programs affecting two or more service areas. The council shall review and comment on the state plan[.] and shall serve as an advocate for adults with serious mental illness, children with serious emotional disturbances, other individuals with mental illnesses or emotional problems, and individuals with combined mental illness substance abuse disorders.

[(c)] (d) If the department's action is not in conformance with the council's advice, the department shall provide a written explanation of its position to the council [for its position].

[(d)] (e) The council shall prepare and submit an annual report to the governor and the legislature on implementation of the state plan. The report presented to the legislature shall be submitted at least ten days prior to the convening of each regular session."

SECTION 3. Section 334-11, Hawaii Revised Statutes, is amended to read as follows:

"§334-11 Service area [board.] boards. (a) A service area board shall be established to advise each service area center. [The] Each board shall consist of nine members appointed by the governor, who shall serve for [a term] terms to be determined by the governor. After the initial appointees, the governor shall fill each vacancy on a board by appointing a member from a list of four persons submitted by that board, except that, if the board is unable to achieve a quorum at two consecutive meetings called for the purpose of making such a list, the list may be provided by a group of at least seven service area [residents.] consumers and nonproviders of mental health services. This group shall consist of all board members willing to participate in making the list and other area [residents] consumers and nonproviders of mental health services to be selected by the service area board chairperson and service area center chief. Any meeting called for the purpose of making the list shall be subject to part I of chapter 92. The members of the board shall be service area residents, who are consumers or nonproviders of mental health services and service area providers with a majority being [residents] non-state employees and nonproviders of mental health or other health services.

[The] Each board [members] shall elect a chairperson[.] from among its members. All members shall serve without compensation but shall be paid their necessary expenses in attending meetings of the board.

(b) [The] Each service area center and [the] board, in consultation with public and private providers, shall participate in the development of service area plans and budgets. [The] Each board shall advise [the] its center about service area needs to prevent mental or emotional disorders [and substance abuse], combined mental illness substance abuse disorders, and [advise] persons [about treatment and rehabilitation needs of those] afflicted by these disorders[.], and provide advice, guidance, and recommendations to both the advisory commission on drug abuse and controlled substances (section 329-2) and the state council on mental health (section 334-10), as they deem appropriate.

(c) If [the] a center chief's actions are not in conformance with the board's planning decisions, the center chief shall provide a written explanation to the board [for the chief's position]."

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 10, 1993.)

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H.B. NO. 2032

A Bill for an Act Relating to the Community Hospitals.

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

SECTION 1. The legislature finds that the pilot project to foster autonomous operation of Maui Memorial Hospital, Hilo Hospital, and Kona Hospital, has contributed effectively to expediting and improving the delivery of health care services by Hawaii's public hospital system. Autonomous operation refers to a method of hospital management that decentralizes health care decision making and fosters local health care professional participation at the hospital level.

This pilot project, which was established through Act 223, Session Laws of Hawaii 1990, as amended by Act 187, Session Laws of Hawaii 1992, will be repealed on June 30, 1993. This pilot project has demonstrated positive benefits to the operating efficiency and the financial performance of the three hospitals.

The purpose of this Act is to expand the pilot project to include the one remaining acute care hospital and the four long-term care hospitals. The duration of the pilot project shall be for a three-year period.

SECTION 2. The department of health, through its director, shall formulate policies for the autonomous operation of the community hospitals until June 30, 1996. The provisions of this Act shall apply to Hilo Hospital, Maui Memorial Hospital, Kona Hospital, Kauai Veterans Memorial Hospital, Leahi Hospital, Maluhia Hospital, Kula Hospital, and Samuel Mahelona Memorial Hospital.

SECTION 3. The department of health shall formulate policy and exercise control as may be necessary to define a common set of health care goals that the hospitals specified in section 2 shall be responsible for fulfilling. The department shall also be responsible for the formulation of standards for measuring the efforts of these hospitals in achieving those goals. Subject to a review based on these goals and efforts, the hospitals specified in section 2 shall be allowed to utilize their resources in a flexible manner to achieve their objectives.

SECTION 4. Any state agency, except the state health planning and development agency, that may be required to act under state law on a matter affecting the hospitals specified in section 2, shall waive otherwise applicable policies, rules, or procedures when requested to do so by the director of health unless the agency, within thirty days, can justify to the governor a denial of the request. The department of health shall adopt procedures necessary to process waivers initiated by the hospitals specified in section 2.

SECTION 5. The department of health may adopt rules pursuant to chapter 91, Hawaii Revised Statutes, to implement this Act.

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SECTION 6. In order to achieve the benefits of a decentralized and relatively unencumbered autonomous operation, the hospitals specified in section 2 shall be granted flexibility in the hiring of personnel and the collection and disbursement of funds by being exempt from sections 103-22 and 103-41 through 103-48, Hawaii Revised Statutes, relating to advertising for bids and purchases to be made in Hawaii whenever public moneys are expended for the duration of the pilot project.

SECTION 7. The management advisory committee of each hospital shall fully participate in the pilot project.

SECTION 8. Nothing in this Act shall supersede collective bargaining agreements, civil service rules, or statutes protecting employee rights or providing employee benefits. No employee shall be adversely affected by this Act.

SECTION 9. The director of health shall submit to the governor, the president of the senate, and the speaker of the house of representatives, interim status reports not less than twenty days prior to the convening of the 1994, 1995, and 1996 regular sessions and a final project completion report not less than twenty days prior to the convening of the 1997 regular session.

SECTION 10. This Act shall take effect on July 1, 1993, and shall be repealed on June 30, 1996, except that section 9 shall be repealed on January 31, 1997.

(Approved June 10, 1993.)

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H.B. NO. 2050

A Bill for an Act Relating to Special Facility Revenue Bonds for Harbors.

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

SECTION 1. Section 266-52, Hawaii Revised Statutes, is amended to read as follows:

“§266-52 Powers. In addition and supplemental to the powers granted to the department by law, the department may:

- (1) With the approval of the governor, and without public bidding, enter into a special facility lease or an amendment or supplement thereto whereby the department agrees with another person engaged in maritime and maritime-related operations to construct, acquire, remodel, furnish, or equip a special facility solely for the use by such other person to a special facility lease; provided that such special facility lease may be amendatory and supplemental to an existing lease between the department and such other person for the land upon which the special facility which is the subject of such special facility lease is to be situated.
- (2) With the approval of the governor[, issue]:
(A) Issue special facility revenue bonds in such principal amounts as may be necessary to yield the amount of the cost of any construction, acquisition, remodeling, furnishing, and equipping of any special facility; provided that the total principal amount of

the special facility revenue bonds which may be issued pursuant to the authorization of this [paragraph] subparagraph shall not exceed [\$50,000,000.] \$100,000,000; and

- (B) Issue special facility revenue refunding bonds, without further authorization by the legislature, to refund outstanding special facility revenue bonds, including special facility revenue refunding bonds, or any part thereof, at or before the maturity or redemption date, issued pursuant to this part; provided that any issuance of the refunding bonds shall not reduce the amount authorized by the legislature as provided in paragraph (2)(A).
- (3) Perform and carry out the terms and provisions of any special facility lease.
- (4) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, remodel, furnish, or equip any special facility, or accept the assignment of any contract therefor entered into by the other person to the special facility lease.
- (5) Construct any special facility on land owned by the State.
- (6) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by such other person. Neither such undertaking by such other person nor the acceptance by the department of a contract theretofore entered into by such other person therefor, shall be subject to section 103-22."

SECTION 2. Section 266-53, Hawaii Revised Statutes, is amended to read as follows:

"[§266-53] Findings and determination for special facility leases. The department shall not enter into any special facility lease unless the department shall first find and determine that:

- (1) The special facility which is to be the subject of such special facility lease will not be used to provide services, commodities, supplies, or facilities which are then adequately being made available through the harbors system of the State;
- (2) The use or occupancy of the special facility under such special facility lease would not result in the reduction of the revenues derived from the harbors system to an amount below the amount required to be derived therefrom by section [39-59.] 39-61; and
- (3) The entering into of such special facility lease would not be in violation of or result in a breach of any covenant contained in any resolution or certificate authorizing any bonds of the State and the department then outstanding."

SECTION 3. Section 266-55, Hawaii Revised Statutes, is amended to read as follows:

"[§266-55] Special facility revenue bonds. All special facility revenue bonds authorized to be issued shall be issued pursuant to [sections 39-51 to 39-70,] part III of chapter 39, except as follows:

- (1) No such revenue bonds shall be issued unless at the time of issuance the department shall have entered into a special facility lease with respect to the special facility for which such revenue bonds are to be issued.

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- (2) Such revenue bonds shall be issued in the name of the department, and not in the name of the State.
- (3) No further authorization of the legislature shall be required for the issuance of the special facility revenue bonds, but the approval of the governor shall be required for such issuance.
- (4) Such revenue bonds shall be payable solely from and secured solely by the revenues derived by the department from the special facility for which they are issued, as defined in section 266-51(1).
- (5) The final maturity date of such revenue bonds shall not be later than either the estimated life of the special facility for which they are issued or the initial term of the special facility lease.
- (6) If deemed necessary or advisable by the department, or to permit the obligations of the other person to the special facility lease to be registered under the U.S. Securities Act of 1933, the department with the approval of the state director of finance may appoint a national or state bank within or without the State to serve as trustee for the holders of the revenue bonds and may enter into a trust indenture or trust agreement with such trustee. The trustee may be authorized by the department to collect, hold, and administer the revenues derived from the special facility for which the revenue bonds are issued and to apply such revenues to the payment of the principal and interest on such revenue bonds. In the event that any such trustee shall be appointed, any trust indenture or agreement entered into by the department with the trustee may contain the covenants and provisions authorized by [sections 39-51 to 39-70] part III of chapter 39 to be inserted in a resolution adopted or certificate issued, as though the words "resolution" or "certificate" as used in [those sections] that part read "trust indenture or agreement". Such covenants and provisions shall not be required to be included in the resolution or certificate authorizing the issuance of the revenue bonds if included in the trust indenture or agreement. Any resolution or certificate, trust indenture, or trust agreement adopted, issued, or entered into by the department pursuant to this part may also contain any provisions required for the qualification thereof under the U.S. Trust Indenture Act of 1939. The department may pledge and assign to the trustee the special facility lease and the rights of the department including the revenues thereunder.
- (7) If the department with the approval of the state director of finance shall have appointed or shall appoint a trustee for the holders of the revenue bonds, then notwithstanding the second sentence of section [39-65] 39-68 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 such fiscal agent. The department with the approval of the director of finance may appoint the trustee to serve as such fiscal agent, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange, and redemption, as the department 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 destruction thereof in accordance with sections 40-10 and 40-11. Nothing in this paragraph shall be a limitation upon or be construed as a limitation upon the powers granted in the preceding paragraph to the department with the approval of the director of finance to appoint the

trustee, or granted in sections 36-3 and [39-12] 39-13 and the third sentence of section [39-65] 39-68 to the director of finance to appoint the trustee or others, as fiscal agents, paying agents, and registrars for the revenue bonds or to authorize and empower such fiscal agents, paying agents, and registrars to perform the functions referred to in such paragraph and sections, it being the intent of this paragraph to confirm that the director of finance as aforesaid may elect not to serve as fiscal agent for the revenue bonds or may elect to limit the functions the director shall perform as such fiscal agent, as the director of finance may deem necessary, advisable, or expedient.

- (8) The department may sell such revenue bonds either at public or private sale.
- (9) If no trustee shall be appointed to collect, hold, and administer the revenues derived from the special facility for which such revenue bonds are issued, such revenues shall be held in a separate account in the treasury of the State, separate and apart from the harbor special fund, to be applied solely to the carrying out of the resolution, certificate, trust indenture, or trust agreement authorizing or securing such revenue bonds.
- (10) If the resolution, certificate, trust indenture, or trust agreement shall provide that no revenue bonds issued thereunder shall be valid or obligatory for any purpose unless certified or authenticated by the trustee for the holders of such revenue bonds, signatures of the officers of the State upon such bonds and the coupons thereof as required by section [39-64] 39-56 may be evidenced by their facsimile signatures.
- (11) The proceeds of such revenue bonds may be used and applied by the department to reimburse the other person to the special facility lease for all preliminary costs and expenses, including architectural and legal costs.
- (12) If the special facility lease shall require the other person to operate, maintain, and repair the special facility which is the subject of such lease, at the other person's expense, such requirement shall constitute compliance by the department with section [39-59(2).] 39-61(a)(2), and none of the revenues derived by the department from such special facility shall be required to be applied to the purposes of section [39-60(2).] 39-62(2). Sections [39-60(4), 39-60(5), and 39-60(6)] 39-62(4), 39-62(5), and 39-62(6) shall not be applicable to the revenues derived from a special facility lease."

SECTION 4. Section 266-56, Hawaii Revised Statutes, is repealed.

SECTION 5. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 6. If H.B. No. 2052² is passed by the legislature during this Regular Session of 1993, whether before or after the effective date of this Act, the corresponding provisions of SECTION 1 of H.B. No. 2052² shall be amended to conform to SECTION 1 of this Act.

SECTION 7. This Act shall take effect on July 1, 1993.

(Approved June 10, 1993.)

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Notes

1. Edited pursuant to HRS §23G-16.5.
2. Act 2.

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S.B. NO. 3

A Bill for an Act Relating to State Planning.

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

SECTION 1. Chapter 223, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§223- Diversification of economic development and population growth. The office of state planning shall develop a strategic plan as part of its quality growth policy. The plan shall develop recommendations on dispersing economic development and population growth to prevent overpopulation or overdevelopment of any one county within the State.”

SECTION 2. Section 223-2, Hawaii Revised Statutes, is amended to read as follows:

“§223-2 Quality growth policy. The office of [the governor] state planning shall develop a quality growth policy [for the State of Hawaii to effectuate the purpose of this chapter,] based upon [criteria which shall include] the following considerations:

- (1) An examination of the environmental impact of proposed urban development;
- (2) The relationship between short-term and long-term environmental quality;
- (3) Any irretrievable commitment of resources through urban development; and
- (4) Alternatives available to minimize adverse environmental effects as balanced against economic development of the State.

The quality growth policy shall include a comprehensive policy framework for directing growth and land use and shall identify State growth objectives and specific operational constraints to further such objectives.”

SECTION 3. Section 226-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) To achieve the population objective, it shall be the policy of this State to:

- (1) Manage population growth statewide in a manner that provides increased opportunities for Hawaii’s people to pursue their physical, social, and economic aspirations while recognizing the unique needs of each county.
- (2) Encourage an increase in economic activities and employment opportunities on the [Neighbor Islands] neighbor islands consistent with community needs and desires.
- (3) Promote increased opportunities for Hawaii’s people to pursue their socio-economic aspirations throughout the islands.

- (4) Encourage research activities and public awareness programs to foster an understanding of Hawaii's limited capacity to accommodate population needs and to address concerns resulting from an increase in Hawaii's population.
- (5) Encourage federal actions and coordination among major governmental agencies to promote a more balanced distribution of immigrants among the states, provided that such actions do not prevent the reunion of immediate family members.
- (6) Pursue an increase in federal assistance for states with a greater proportion of foreign immigrants relative to their state's population.
- (7) Plan the development and availability of land and water resources in a coordinated manner so as to provide for the desired levels of growth in each geographic area."

SECTION 4. Section 226-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Planning for the State's economy in general shall be directed toward achievement of the following objectives:

- (1) Increased and diversified employment opportunities to achieve full employment, increased income and job choice, and improved living standards for Hawaii's people.
- (2) A steadily growing and diversified economic base that is not overly dependent on a few industries[], and includes the development and expansion of industries on the neighbor islands."

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 10, 1993.)

Note

- 1. Edited pursuant to HRS §23G-16.5..

A Bill for an Act Relating to Traffic Violations Enforcement.

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

SECTION 1. The purpose of this Act is to improve the system by which traffic offenses presently are being processed in order to dispose expeditiously of these cases and thereby achieve efficient and effective use of limited judicial and law enforcement resources. This Act requires the judiciary to implement a program beginning on July 1, 1994, whereby the traffic offenses listed within this Act are decriminalized and drivers are offered opportunities to either pay or contest their fines in less confrontational settings. Toward that end, the judiciary is directed to prepare and submit to the legislature an implementation plan for this Act before January 1, 1994.

Currently, many traffic offenses, even minor ones, are technically classified as crimes. For example, riding a bicycle other than on a permanent and regular seat in violation of section 291C-143, Hawaii Revised Statutes, is a misdemeanor

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punishable by one year in prison, a \$2,000 fine, or both. These offenses, and many other civil traffic offenses that are punishable only by a fine and traffic "points," often require the driver to appear in court one or more times. However, the vast majority of offenders eventually are required only to pay a fine, something that could be done much more expeditiously by mail.

As a result, the process of disposing of these offenses costs drivers a large amount of time and taxpayers a larger amount of money. Perhaps more importantly, disposition of these cases consumes important judicial and prosecutorial resources that should be expended on more serious cases and keeps police officers in court when they should be on patrol providing the protection that the public expects and deserves.

Accordingly, this Act proposes to decriminalize all but the most serious traffic offenses by making violators subject only to civil penalties such as fines and traffic points. This will permit those who do not wish to contest the citation to simply pay a fine by mail with no further action. Those who wish to admit the violation but want to explain the circumstances as well as those who wish to contest the citation will be afforded a hearing for those purposes. When issuing a citation for a moving or equipment violation, the officer will enter on the citation the applicable fine, according to a standard schedule established by the district court, and a court appearance date. On receipt of the citation, the driver will be required to choose one of three options within fifteen days: (1) pay the fine indicated on the citation; (2) admit the infraction and appear for a hearing on the date indicated to explain the circumstances prior to the imposition of the fine and traffic points; or (3) deny the infraction and appear at a hearing on the date indicated to dispute the citation.

If the driver chooses to admit the violation and submit payment, traffic points will be assessed according to the schedule. If assessment of points will cause the driver to equal or exceed a total of twelve points and thereby require the suspension of the driver's license, payment will be rejected and the case will be scheduled for trial. If not, payment will be accepted, points assessed, and the matter closed.

If the driver chooses to admit the violation but desires a hearing to explain the circumstances, the driver will be afforded a hearing limited to an explanation seeking mitigation of the fine and points. The driver will be allowed to explain the circumstances of the violation and request leniency but will not be allowed to challenge the citation itself. If assessment of points will cause the driver to equal or exceed a total of twelve, thereby requiring suspension of the driver's license, the driver's admission will be rejected and the case will be scheduled for trial. If not, the court will assess the appropriate fine and traffic points, if any, and the matter closed.

If the driver chooses to contest the citation, the driver will be afforded a hearing for that purpose. Since a prosecutor will not be present and there will be no possibility of a prison term, the driver will not need to retain counsel in most cases. Instead, the citation and the description of the violation contained therein will be admitted as evidence of the violation, the driver may explain the driver's side of the case, and usually no witnesses will be required. If the driver is dissatisfied with the outcome of the hearing, the driver may request a regular district court trial, pursuant to the Hawaii Rules of Penal Procedure, where a prosecutor will present evidence and the infraction must be proved beyond a reasonable doubt.

If a driver fails to respond to the citation within fifteen days, judgment by default will be entered for the State, points will be assessed, and the driver will be notified. If the driver does not pay the fine within an additional thirty days or otherwise take action to set aside the default, the county director of finance will be

notified, and the driver will not be able to renew his or her driver's license or register or acquire a motor vehicle until the matter is settled in court.

While recognizing the need to expedite disposition of traffic infractions through an informal process, the legislature also recognizes that an informal system may provide a greater opportunity to "fix" tickets. Therefore, this Act also increases the penalty for "ticket fixing" from a misdemeanor to a class C felony and provides for a minimum fine of \$1,000 and a maximum fine of \$10,000.

The legislature finds that these steps are necessary to ensure that judicial and law enforcement resources are concentrated on serious criminal offenders.

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

"CHAPTER ADJUDICATION OF TRAFFIC INFRACTIONS"

§ -1 Purpose. Act 222, Session Laws of Hawaii 1978, began the process of decriminalizing certain traffic offenses, not of a serious nature, to the status of violations. In response to a request by the legislature, the judiciary prepared a report in 1987 that recommended, among other things, further decriminalization of traffic offenses, elimination of most traffic arraignments, disposition of uncontested violations by mail, and informal hearings where the violation or the proposed penalty is questioned. The legislature finds that further decriminalization of certain traffic offenses and streamlining of the handling of those traffic cases will achieve a more expeditious system for the judicial processing of traffic infractions. The system of processing traffic infractions established by this chapter will:

- (1) Eliminate the long and tedious arraignment proceeding for a majority of traffic matters;
- (2) Facilitate and encourage the resolution of many traffic infractions through the payment of a monetary assessment;
- (3) Speed the disposition of contested cases through a hearing, similar to small claims proceedings, in which the rules of evidence will not apply and the court will consider as evidence the notice of traffic infraction, applicable police reports, or other written statements by the police officer who issued the notice, any other relevant written material, and any evidence or statements by the person contesting the notice of traffic infraction;
- (4) Dispense in most cases with the need for witnesses, including law enforcement officers, to be present and for the participation of the prosecuting attorney;
- (5) Allow judicial, prosecutorial, and law enforcement resources to be used more efficiently and effectively; and
- (6) Save the taxpayers money and reduce their frustration with the judicial system by simplifying the traffic court process.

The legislature further finds that this chapter will not require expansion of the current traffic division of the district courts, but will achieve greater efficiency through more effective use of existing resources of the district courts.

§ -2 Definitions. As used in this chapter:

"Hearing" means a proceeding conducted by the district court pursuant to section -8 at which a driver either contests the notice of traffic infraction or admits to the traffic infraction but offers an explanation to mitigate the monetary assessment or traffic points, or both, imposed.

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“Traffic infraction” means all violations of statutes, ordinances, or rules relating to traffic movement and control, including parking, standing, equipment, and pedestrian offenses, for which the prescribed penalties do not include imprisonment.

“Trial” means a trial conducted by the district court pursuant to the Hawaii Rules of Penal Procedure and rules of the district court.

§ -3 Applicability. (a) Notwithstanding any other provision of law to the contrary, all traffic infractions shall be adjudicated pursuant to this chapter, except as provided in subsection (b). This chapter shall be applied uniformly throughout the State and in all counties. Penal sanctions except fines shall not apply to a violation of a county ordinance that would constitute a traffic infraction under this chapter. Traffic infractions shall not be classified as criminal offenses.

(b) Traffic infractions that involve an accident resulting in personal injury or property damage or are committed in the same course of conduct as a criminal offense for which the offender is arrested or charged shall not be adjudicated pursuant to this chapter, but shall be adjudicated by the appropriate district or circuit court of the circuit in which the traffic infraction was committed, whichever has jurisdiction pursuant to the applicable statute or rules of court. In no event shall section 701-109 preclude prosecution for a criminal offense where a traffic infraction committed in the same course of conduct has been adjudicated pursuant to this chapter.

§ -4 Venue and jurisdiction. (a) All violations of state law, ordinances, or rules designated as traffic infractions in this chapter shall be adjudicated in the district and circuit where the alleged infraction occurred, except as otherwise provided by law.

(b) Except as otherwise provided by law, jurisdiction is in the district court of the circuit where the alleged traffic infraction occurred. Except as otherwise provided in this chapter, district court judges shall adjudicate traffic infractions.

§ -5 Notice of traffic infraction; form; determination final unless contested. (a) The notice of traffic infraction shall include the complaint and summons for the purposes of this chapter. Whenever a notice of traffic infraction is issued to the driver of a motor vehicle, the driver's signature, driver's license number, and current address shall be affixed to the notice. If the driver refuses to sign the notice, the officer shall record this refusal on the notice and issue the notice to the driver. Individuals to whom a notice of traffic infraction is issued under this chapter need not be arraigned before the court, unless required by rule of the supreme court.

(b) The form for the notice of traffic infraction shall be prescribed by rules of the district court which shall be uniform throughout the State. Except in the case of traffic infractions involving parking, the notice shall include the following:

- (1) A statement of the specific traffic infraction, including a brief statement of facts, for which the notice was issued;
- (2) A statement of the monetary assessment, established for the particular traffic infraction pursuant to section -9, to be paid by the driver and the range of points that may be assessed by the court pursuant to section 286-128, both of which shall be uniform throughout the State;
- (3) A statement of the options provided in section -6(b) for answering the notice and the procedures necessary to exercise the options;
- (4) A statement that the person to whom the notice is issued must answer, choosing one of the options specified in section -6(b), within fifteen days;

- (5) A statement that failure to answer the notice of traffic infraction within fifteen days shall result in the entry of judgment by default for the State and a late penalty assessed and, if the driver fails to pay the monetary assessment within an additional thirty days or otherwise take action to set aside the default, notice to the director of finance of the appropriate county that the person to whom the notice was issued shall not be permitted to renew or obtain a driver's license or, where the notice was issued to a motor vehicle, the registered owner will not be permitted to register, renew the registration of, or transfer title to the motor vehicle until the traffic infraction is finally disposed of pursuant to this chapter;
 - (6) A statement that if, after receipt of the answer, the court determines that the assessment of points for the traffic infraction will cause the number of points on the person's traffic abstract to equal or exceed twelve, the matter will be scheduled for trial and that, if the person fails to appear for trial, a penal summons will be issued to bring the person before the court and the court will take action as provided in section -10;
 - (7) A statement that, at a hearing to contest the notice of traffic infraction conducted pursuant to section -8 or in consideration of a written statement contesting the notice of traffic infraction, no officer will be present unless the driver timely requests the court to have the officer present. The standard of proof to be applied by the court is whether a preponderance of the evidence proves that the specified traffic infraction was committed;
 - (8) A statement that, at a hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction or in consideration of a written request for mitigation, the person will be considered to have committed the traffic infraction;
 - (9) A space in which the driver's signature, current address, and driver's license number may be affixed; and
 - (10) The date, time, and place at which the driver must appear in court if the driver chooses to go to hearing.
- (c) In the case of traffic infractions involving parking, the notice shall be affixed conspicuously to the vehicle as provided in section 291C-167 and shall include the information required by paragraphs (1) to (8) of subsection (b).

§ -6 Answer required. (a) A person who receives a notice of traffic infraction shall answer the notice within fifteen days of the date of the notice. There shall be included with the notice of traffic infraction a preaddressed, postage paid envelope directed to the traffic violations bureau of the applicable district court.

- (b) In an answer to a notice of traffic infraction, a person shall either:
- (1) Admit the commission of the infraction by completing the appropriate portion of the notice of traffic infraction and submitting it, either by mail or in person, to the authority specified on the notice together with payment, except as provided in section -9(d), in the amount of the monetary assessment stated on the notice of traffic infraction. Payment by mail shall be in the form of a check, money order, or by approved credit card. Payment in person shall be in the form of United States currency, check, money order, or by approved credit card;
- (2) Deny the commission of the infraction by completing the appropriate portion of the notice of traffic infraction and submitting it, either by mail or in person, to the authority specified on the notice. In lieu of a hearing, the person may submit a written statement of grounds on

which the person contests the notice of traffic infraction, which shall be considered by the court as a statement given in court pursuant to section -8(a); or

- (3) Admit the commission of the infraction and request a hearing to explain circumstances mitigating the infraction by completing the appropriate portion of the notice of traffic infraction and submitting it, either by mail or in person, to the authority specified on the notice. In lieu of a hearing, the person may submit a written explanation of the mitigating circumstances, which shall be considered by the court as a statement given in court pursuant to section -8(b).

(c) When answering the notice of traffic infraction, the person shall affix the person's signature to the answer and shall state the address at which the person will accept future mailings from the court. No other response shall constitute an answer for purposes of this chapter.

§ -7 Court action after answer or failure to answer. (a) When an admitting answer is received, the court shall review the driver's abstract and determine the number of points, if any, to be assessed pursuant to section 286-128. If the points to be assessed by the court do not cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall enter judgment in favor of the State in the amount of the monetary assessment specified in the notice of traffic infraction and assess the determined number of points. If the monetary assessment is not submitted with the answer, the court shall take action as provided in section -10. If the points to be assessed by the court cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall reject the admission and refund the monetary assessment and schedule the matter for trial. Also, the court shall notify the person of the date, time, and place of the trial and inform the person that if the person fails to appear for trial, a penal summons shall be issued to bring the person before the court, and that the court shall take action as provided in section -10.

(b) When a denying answer is received, the court shall proceed as follows:

- (1) In the case of a traffic infraction that does not involve parking, the court shall determine whether the assessment of points for the traffic infraction will cause the number of points on the person's traffic abstract to equal or exceed a total of twelve. If the assessment of points for the traffic infraction will cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall reject the request for a hearing, schedule the matter for trial, and notify the person in writing of the date, time, and place of the trial. If the assessment of points for the traffic infraction will not cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall proceed as provided in section -8(a).
- (2) In the case of a traffic infraction that involves parking, the court shall notify the person or registered owner or owners in writing of the date, time, and place of hearing to contest the notice of traffic infraction. The notice of hearing shall be sent within thirty days from the post-marked date of the answer to the address stated in the denying answer or, if none is given, to the address at which the vehicle is registered. The notification also shall advise the person that, if the person fails to appear at the hearing, the court shall enter judgment by default in favor of the State, as of the date of the scheduled hearing, that the monetary assessment must be paid within thirty days from notice of default, and, if it is not paid, that the court will take action as provided in section -10.

- (3) When a denying answer is accompanied by a written statement of the grounds on which the person contests the notice of the traffic infraction, the court shall determine whether the assessment of points for the traffic infraction will cause the number of points on the person's traffic abstract to equal or exceed a total of twelve. If the assessment of points for the traffic infraction will cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall reject the denial and request for a decision based on the written statement, schedule the matter for trial, and notify the person in writing of the date, time, and place of the trial. If the assessment of points for the traffic infraction will not cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall proceed as provided in section -8(a) and shall notify the person of its decision, including the amount of the monetary assessment or points, if any, by mailing it within thirty days of the postmarked date of the answer to the address provided by the person in the answer, or if none is given to the address given when the notice of traffic infraction was issued or, in the case of parking violations, to the address stated in the denying answer or, if none is given, to the address at which the vehicle is registered. The decision also shall advise the person, if it is determined that the infraction was committed, that the person has the right, within thirty days, to request a trial and shall specify the procedures for doing so. The notice of decision shall also notify the person, if a monetary assessment is assessed by the court, that if the person does not request a trial, the assessment shall be paid within thirty days. The notice shall warn the person that if the assessment is not paid within thirty days, the court shall take action as provided in section -10.
- (c) When an answer admitting commission of the infraction but seeking to explain mitigating circumstances is received, the court shall proceed as follows:
- (1) In the case of a traffic infraction which does not involve parking, the court shall determine whether the assessment of points for the traffic infraction will cause the number of points on the person's traffic abstract to equal or exceed a total of twelve. If the assessment of points for the traffic infraction will cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall reject the admission and request to explain mitigating circumstances and notify the person in writing of the date, time, and place of the trial. If the assessment of points for the traffic infraction will not cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall proceed as provided in section -8(b).
 - (2) In case of a traffic infraction which involves parking, the court shall notify the person in writing of the date, time, and place of the hearing. The notice shall be sent, within thirty days from the postmarked date of the answer, to the address at which the vehicle is registered. The notice of hearing on mitigating circumstances shall advise the person that the court will enter judgment for the State and the hearing will be limited to an explanation of the mitigating circumstances. The notice of hearing also shall state that if the person fails to appear at the hearing, the monetary assessment must be paid within thirty days of the scheduled hearing. The notice of hearing shall warn the person that if the monetary assessment is not paid within thirty days, the court shall take action as provided in section -10.

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(3) If a written explanation is included with an answer admitting commission of the infraction, the court shall determine whether the assessment of points for the traffic infraction will cause the number of points on the person's traffic abstract to equal or exceed a total of twelve. If the assessment of points for the traffic infraction will cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall reject the denial and request for a decision based on the written statement, schedule the matter for trial, and notify the person in writing of the date, time, and place of the trial. If the assessment of points for the traffic infraction will not cause the number of points on the person's abstract to equal or exceed a total of twelve, the court shall enter judgment for the State and, after reviewing the explanation, determine the amount of the monetary assessment and points to be assessed, if any. The court shall then notify the person of the monetary assessment to be paid and the points assessed for the infraction, if any. There shall be no appeal from the order. If the court assesses a monetary assessment, the court shall also notify the person that the assessment shall be paid within thirty days of the postmarked date of the decision. The notice shall also warn the person that if the monetary assessment is not paid within thirty days, the court shall take action as provided in section -10.

(d) If the person fails to answer within fifteen days of issuance of the notice of traffic infraction, the court shall take action as provided in subsection (e).

(e) Whenever judgment by default in favor of the State is entered, the court shall mail a notice of entry of judgment of default to the address provided by the person when the notice of traffic infraction was issued or, in the case of parking violations, to the address stated in the answer, if any, or the address at which the vehicle is registered. The notice shall advise the person that the monetary assessment shall be paid within thirty days and shall explain the procedure for setting aside a default judgment. The notice shall also warn the person that if the monetary assessment is not paid within thirty days, the court shall take action as provided in section -10. Judgment by default for the State entered pursuant to this chapter may be set aside pending final disposition of the traffic infraction upon written application of the person and posting of an appearance bond equal to the amount of the monetary assessment and any other assessment imposed pursuant to section

-9. The application shall show good cause or excusable neglect for the person's failure to take action necessary to prevent entry of judgment by default. Upon receipt of the application, the court shall take action to remove the restriction placed on the person's driver's license or the motor vehicle's registration and title imposed pursuant to section -10. Thereafter, the court shall determine whether good cause or excusable neglect exists for the person's failure to take action necessary to prevent entry of judgment by default. If so, the notice of traffic infraction shall be disposed of pursuant to this chapter. If not, the appearance bond shall be forfeited and the notice of traffic infraction shall be finally disposed. In either case, the court shall, within thirty days, determine the existence of good cause or excusable neglect and notify the person of its decision in writing.

§ -8 Hearings. (a) In proceedings to contest the issuance of a notice of traffic infractions:

(1) In lieu of the personal appearance by the officer who issued the notice of traffic infraction, the court shall consider the notice of traffic infraction and any other written report made by the officer together with any oral or written statement by the driver, or in the case of

- traffic infractions involving parking, the operator or registered owner of the motor vehicle;
- (2) The court may compel by subpoena the attendance of the officer who issued the notice and other witnesses from whom it may wish to hear;
 - (3) The standard of proof to be applied by the court shall be whether a preponderance of the evidence proves that the traffic infraction was committed; and
 - (4) After due consideration of the evidence and arguments, if any, the court shall determine whether commission of the traffic infraction has been established. Where the commission of the traffic infraction has not been established, an order dismissing the notice of traffic infraction with prejudice shall be entered in the records. Where it has been established that the traffic infraction was committed, the court shall enter judgment for the State and may assess a monetary assessment pursuant to section -9, and points, if applicable, pursuant to section 286-128. The court also shall inform the person of the right to request, within thirty days, a trial pursuant to section -13. If the person requests a trial at the hearing, the court shall provide the person with the trial date forthwith. If trial is elected, arraignment and plea shall be held at the time of trial.
- (b) In proceedings to explain mitigating circumstances:
- (1) The procedure shall be informal and shall be limited to the issue of mitigating circumstances. A person who requests to explain the circumstances shall not be permitted to contest the issuance of the notice of traffic infraction;
 - (2) After the court has received the explanation, the court shall enter judgment for the State and may assess a monetary assessment, pursuant to section -9, and points, if applicable, pursuant to section 286-128; and
 - (3) The court after receiving the explanation may vacate the admission and dismiss the notice of traffic infraction with prejudice where the explanation establishes that the infraction was not committed; and
 - (4) There shall be no appeal from the order.
- (c) If a person for whom a hearing has been scheduled to contest the notice of traffic infraction or a hearing to explain mitigating circumstances fails to appear at the hearing, the court shall enter judgment by default for the State and take action as provided in section -7(e). If the monetary assessment is not paid within thirty days, the court shall take action as provided in section -10.

§ -9 Monetary assessments. (a) A person found to have committed a traffic infraction shall be assessed a monetary assessment not to exceed the maximum fine specified in the statute defining the traffic infraction.

(b) Notwithstanding section 291C-161 or any other law to the contrary, the district court of each circuit shall prescribe a schedule of monetary assessments for all traffic infractions, and any additional assessments to be imposed pursuant to subsection (c). The particular assessment to be entered on the notice of traffic infraction pursuant to section -5 shall correspond to the schedule prescribed by the district court. Except after proceedings conducted pursuant to section -8 or a trial conducted pursuant to section -13, monetary assessments assessed pursuant to this chapter shall not vary from the schedule prescribed by the district court having jurisdiction over the traffic infraction.

(c) In addition to any monetary assessment imposed for a traffic infraction, the court may impose additional assessments for:

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- (1) Failure to pay a monetary assessment by the scheduled date of payment; or
 - (2) The cost of service of a penal summons issued pursuant to this chapter.
- (d) The court may grant to a person claiming inability to pay, an extension of the period in which the monetary assessment shall be paid or may impose community service in lieu thereof. If the assessment is not paid or the community service is not performed on or before the date established and the court has not extended the time, the court shall take action as provided in section -10.

§ -10 Restriction on driver's license and motor vehicle registration.

(a) When the person issued a notice of traffic infraction not involving parking fails to pay a monetary assessment that has been ordered, the court shall cause an entry to be made in the driver's license record so as to prevent the person whose assessment is outstanding from acquiring or renewing the person's driver's license until the outstanding assessment is paid or the notice of traffic infraction is otherwise disposed of pursuant to this chapter.

(b) In all cases where the registered owner of a motor vehicle to which a notice of traffic infraction has been issued fails to pay any monetary assessments that have been ordered, the court shall cause an entry to be made in the motor vehicle's record so as to prevent issuance or renewal of the motor vehicle's certificate of registration and transfer of title to the motor vehicle until the outstanding assessment is paid or the notice of traffic infraction is otherwise disposed of pursuant to this chapter.

§ -11 Time computation. In computing any period of time prescribed or allowed by this chapter, the day of the act, event, or default from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included. Whenever an act required to be performed under this chapter may be accomplished by mail, the act shall be deemed to have been performed on the date of the postmark on the mailed article.

§ -12 Powers of the district court judge sitting in the traffic division.

A district court judge sitting in the traffic division and hearing cases pursuant to this chapter shall have all the powers of a district court judge under chapter 604, including the following powers:

- (1) To conduct traffic infraction hearings and to impose monetary assessments;
- (2) To permit deferral of monetary assessment or impose community service in lieu thereof;
- (3) To impose or to suspend the imposition of traffic violation points;
- (4) To dismiss a notice of traffic infraction or to set aside a judgment for the State;
- (5) To order temporary driver's license suspension or license reinstatement;
- (6) To order the director of finance not to issue or renew the driver's license or to register, renew the registration of, or issue title to a motor vehicle of any person who has not paid a monetary assessment or performed community service in lieu thereof;

- (7) To issue penal summonses and bench warrants and initiate contempt of court proceedings in proceedings conducted pursuant to section -13; and
- (8) To exercise other powers the court finds necessary and appropriate to carry out the purposes of this chapter.

§ -13 Trial. (a) If an admission made pursuant to section -6 or a determination made pursuant to section -8 that a person committed a traffic infraction would cause the number of traffic points on the person's abstract to equal or exceed a total of twelve, the notice of traffic infraction shall be adjudicated in a trial pursuant to the Hawaii Rules of Penal Procedure and rules of the district court.

(b) If, after proceedings to contest the notice of traffic infraction, a determination has been made that a person committed the traffic infraction, the person may request, within thirty days of the determination, a trial pursuant to the rules of penal procedure and rules of the district court, provided that arraignment and plea for such trial shall be held at the time of trial. If the person requests a trial at the conclusion of the proceedings to contest the notice of traffic infraction, the court shall provide the person with the trial date forthwith. Except as provided in subsection (a), a notice of traffic infraction shall not be adjudicated pursuant to this section until proceedings pursuant to section -8 have been completed.

(c) The result of the final determination or any admission made pursuant to -6 shall not be admissible in any trial conducted pursuant to -13.

§ -14 Rules (a) The supreme court may adopt rules of procedure for the conduct of all proceedings pursuant to this chapter.

(b) Chapter 626 shall not apply in proceedings conducted pursuant to this chapter, except for the rules governing privileged communications, and proceedings conducted under -13.

(c) Notwithstanding section 604-17, while the court is sitting in any matter pursuant to this chapter, the court shall not preserve the testimony or proceedings, except proceedings conducted pursuant to -13.

(d) The prosecuting attorney shall not participate in proceedings conducted pursuant to this chapter, except proceedings pursuant to section -13.

(e) Chapter 91 shall not apply in proceedings before the court."

SECTION 3. Section 286-25, Hawaii Revised Statutes, is amended to read as follows:

"§286-25 Operation of a vehicle without a certificate of inspection. Whoever operates, permits the operation of, causes to be operated, or parks any vehicle on a public highway without a current official certificate of inspection, issued under section 286-26, shall be fined not more than \$100 [or imprisoned not more than thirty days or both]."

SECTION 4. Section 286-61, Hawaii Revised Statutes, is amended to read as follows:

"§286-61 Penalty. Any person who violates [any of the provisions of] sections 286-41, 286-42, 286-44.5 to 286-56.5, and 286-58 to 286-60 shall be fined not less than \$5 nor more than \$1,000 [or imprisoned not more than one year, or both]; provided that any corporate owner of a motor vehicle who fails to register a motor vehicle as required by section 286-41(a) following a transfer of the vehicle between counties shall be fined \$1,000 for each violation. Any person who violates

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section 286-43, 286-44, or 286-57 shall be fined not less than \$5 and not more than \$1,000 or imprisoned not more than one year, or both."

SECTION 5. Section 286-82, Hawaii Revised Statutes, is amended to read as follows:

"§286-82 Penalty. Whoever violates this part shall be fined not more than \$1,000 [or imprisoned not more than one year, or both]."

SECTION 6. Section 286-128, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) Computation of points. In computing the total number of points charged to any person after a particular violation, those accrued as a result of violations [which] that have occurred during the twelve months' period including and immediately preceding the last violation shall be counted at their full value; those accrued from twelve to twenty-four months preceding the last violation shall be counted at one-half their established value; and those resulting from violations more than twenty-four months prior to the last violation shall not be counted. If no violation has been charged against a person during the twenty-four month period, a total of six favorable points will be credited to the person's account, which may be used to offset the points chargeable on accounts of violations. [Computation of points shall begin with offenses occurring only after May 25, 1961.] In the event that a district judge subsequent to the bail forfeiture does hear the case, the district judge may set aside the points resulting from the bail forfeiture and designate the points the district judge deems necessary; provided that no licensee shall twice be assigned points for the same traffic violation. The method of computing and crediting points under this subsection shall not apply if, at the time of computation, the person as to whom the computation is being made has outstanding any traffic infraction other than the one for which the computation is being made."

SECTION 7. Section 286-136, Hawaii Revised Statutes, is amended to read as follows:

"§286-136 Penalty. Whoever violates [this part] section 286-102, 286-122, 286-130, 286-131, 286-132, 286-133, or 286-134 shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Whoever violates any other section in this part shall be fined not more than \$1,000."

SECTION 8. Section 286-138, Hawaii Revised Statutes, is amended to read as follows:

"§286-138 Prohibiting "fixing" of tickets and providing penalties therefor; nolle prosequi by prosecuting attorney only by motion and approval of court. (a) It shall be unlawful for any person, including any government official or employee of the State or county, to "fix", "void", change, modify, adjust, tamper with, or otherwise dispose of any traffic citation, notice, or summons. Nothing in this subsection shall be construed to affect the powers of the judges of the several courts in the exercise of their judicial functions. Any person who intentionally or knowingly violates this subsection shall be [fined not more than \$1,000, or imprisoned for not more than one year, or both.] guilty of a class C felony; except that the person shall be fined not less than \$1,000 and not more than \$10,000. Any government official or employee of this State or any county who

violates [any of the provisions hereof] this subsection shall be summarily discharged from the official's or employee's office or employment.

(b) No nolle prosequi shall be entered in any case involving a violation of the traffic laws or ordinances of the State or of the several counties and no [such] case or any charge arising therefrom shall be stricken, amended, or reduced, except by consent of the court upon written motion of the prosecuting attorney stating the reasons therefor. The court may deny the motion if it deems the reasons insufficient."

SECTION 9. Section 286-210, Hawaii Revised Statutes, is amended to read as follows:

"[§286-210] Operation of a motor carrier vehicle without a safety inspection decal. Whoever operates, permits the operation of, causes to be operated, or parks any motor carrier vehicle on a public highway without a current motor carrier vehicle safety inspection decal, issued under section 286-209, shall be fined \$100 for each day of [said] the violation [or imprisoned not more than thirty days, or both]."

SECTION 10. Section 287-44, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person convicted of a violation of [this chapter] section 287-41 shall be fined not more than \$1,000 or imprisoned not more than one year, or both. Any person convicted of a violation of any other section in this chapter shall be fined not more than \$1,000."

SECTION 11. Section 290-12, Hawaii Revised Statutes, is amended to read as follows:

"§290-12 Leaving abandoned or derelict vehicles[; petty misdemeanor]. The registered owner of an abandoned vehicle, as defined in section 290-1, or a derelict vehicle, as defined in section 290-8, found on any roadway, alley, street, way, lane, trail, bridge, or highway or other public property[,] or on private property without authorization of the owner or occupant[,] shall be [guilty of a petty misdemeanor,] fined not more than \$1,000; provided that the registered owner shall not be [guilty] fined if the abandoned or derelict vehicle has been stolen or taken from the registered owner without permission or authorization."

SECTION 12. Section 291C-111, Hawaii Revised Statutes, is amended by:

(1) Amending its title to read as follows:

"§291C-111 Noncompliance with stopping, standing, or parking requirements [prohibited]."

(2) Amending subsection (a) to read as follows:

"(a) [The] With respect to highways under their respective jurisdictions, the director of transportation is authorized to and the counties by ordinance may [with respect to highways under their respective jurisdictions] prohibit or restrict the stopping, standing, or parking of vehicles where the stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would [unduly] interfere unduly with the free movement of traffic; provided that the violation of any law[,] or any ordinance, regardless of whether [or not] established under this or any other section, prohibiting or restricting the stopping, standing, or parking of vehicles[,] shall constitute a [violation under the

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Penal Code.] traffic infraction. The counties shall not provide any other penalty, civil or criminal, or any other charge, in the form of rental or otherwise, in place of[,] or in addition to[,] the fine to be imposed by the district court for any violation of any ordinance prohibiting or restricting the stopping, standing, or parking of vehicles.

The appropriate police department and county or prosecuting attorney, of the various counties[, as the case may be,] shall enforce any law or ordinance prohibiting or restricting the stopping, standing, or parking of vehicles, including[,] but not limited to[,] the issuance of parking tickets. Any person [convicted of] committing a violation of any law or ordinance, regardless of whether [or not] established under this or any other section, prohibiting or restricting the stopping, standing, or parking of vehicles[,] shall be subject to a fine to be enforced and collected by the district courts of this State and to be deposited into the state general fund for state use.”

SECTION 13. Section 291C-130, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any person who violates this section shall be fined not more than \$500[, or imprisoned not more than six months, or both].”

SECTION 14. Section 291C-141, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It is a [misdemeanor] traffic infraction for any person to do any act forbidden or fail to perform any act required in this part.”

SECTION 15. Section 291C-161, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Every person who violates section 291C-13[,] or 291C-18[, 291C-37, 291C-43, 291C-44, 291C-45, 291C-46, 291C-47, 291C-48, 291C-50, 291C-51, 291C-65, 291C-72, 291C-73, 291C-74 or 291C-95 of this chapter shall], for a first conviction thereof, shall be fined not more than \$100 or imprisoned not more than ten days; for conviction of a second offense committed within one year after the date of the first offense, the person shall be fined not more than \$200 or imprisoned not more than twenty days[,] or [by] both [fine and imprisonment]; for conviction of a third or subsequent offense committed within one year after the date of the first offense, the person shall be fined not more than \$500 or imprisoned not more than six months[,] or [by] both [fine and imprisonment].”

SECTION 16. Section 291C-167, Hawaii Revised Statutes, is amended to read as follows:

“[§291C-167] **Summons or citation on illegally parked vehicle.** Whenever any motor vehicle without a driver is found parked or stopped in violation of any of the restrictions contained in the state traffic laws, the officer finding [such] the vehicle shall take its registration number and may take any other information displayed on the vehicle [which] that may identify its registered owner[,] and [shall] conspicuously shall affix to [such] the vehicle a citation, as described in section 291C-165, for the registered owner of record to answer [to the charge against the registered owner within seven days during the hours and at a place specified in the citation.] as provided in chapter .”

SECTION 17. Section 291C-171, Hawaii Revised Statutes, is amended to read as follows:

“[[§291C-171]] Disposition of fines and forfeitures. All fines and forfeitures collected upon conviction or upon the forfeiture of bail of any person charged with a violation of any section or provision of the state traffic laws and all assessments collected relating to the commission of traffic infractions shall be paid to the director of finance of the State.”

SECTION 18. Section 291C-206, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) [Violation of this section shall be a petty misdemeanor.] Any person who violates this section shall be fined not more than \$500.”

SECTION 19. Section 291C-166, Hawaii Revised Statutes, is repealed.

SECTION 20. Section 291C-168, Hawaii Revised Statutes, is repealed.

SECTION 21. The administrative director of the courts shall prepare and submit a complete implementation plan to carry out the purposes of this Act to the legislature before January 1, 1994. In preparation of the implementation plan, the judiciary shall consult representatives from the following areas: judges, court administrators, court clerks, court cashiers, court budget and fiscal officers, court computer experts, court consultants, the attorney general, prosecuting attorneys, the public defender, and the agencies having jurisdiction over motor vehicles and licensing for each of the counties. The implementation plan shall address the following:

- (1) Transfer of the existing judges and personnel into the new system;
- (2) Job descriptions and responsibilities of all employees under the new system;
- (3) Timetable and schedule of training and implementation of the new system;
- (4) Specific court rules covering areas such as:
 - (A) Circumstances where the driver's record or nature of the infraction preclude disposition of a case through the normal monetary assessment process;
 - (B) When court appearances are necessary;
 - (C) Uniform traffic citations and notices;
 - (D) Monetary assessments; and
 - (E) Court and appeal procedures;
- (5) Applicability and integration of the judiciary's computer software systems with the new system created by this Act;
- (6) Public education with respect to the new system;
- (7) Additional offenses that should be adjudicated pursuant to this Act;
- (8) Additional facilities needed to implement the new system;
- (9) Statutes and rules requiring amendment; and
- (10) Itemized related costs.

The judiciary shall submit annual status reports on its findings to the legislature at least twenty days before the convening of the regular sessions of 1995, 1996, 1997, and 1998. The judiciary shall submit a final report of its findings and recommendations to the legislature at least twenty days before the convening of the regular session of 1999.

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SECTION 22. 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 that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 23. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 24. This Act shall take effect on July 1, 1994; except that section 21 shall take effect upon approval.

(Approved June 10, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 215

S.B. NO. 525

A Bill for an Act Relating to Firearms and Dangerous Weapons.

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

SECTION 1. Section 134-7¹ is amended to read as follows:

“§134-7 Ownership or possession prohibited, when; penalty. (a) No person who is a fugitive from justice shall own, possess, or control any firearm or ammunition therefor.

(b) No person who is under indictment for, or has waived indictment for, or has been bound over to the circuit court for, or has been convicted in this State or elsewhere of having committed a felony, or any crime of violence, or an illegal sale of any drug shall own, possess, or control any firearm or ammunition therefor.

(c) No person who:

- (1) Is or has been under treatment for addiction to any dangerous, harmful, or detrimental drug, intoxicating compound as defined in section 712-1240, or intoxicating liquor;
- (2) Has been committed pursuant to section 333F-9 or 333F-10;
- (3) Has been acquitted of a crime on the grounds of mental disease, disorder, or defect pursuant to section 704-411; or
- (4) Is or has been under treatment for significant behavioral, emotional, or mental disorders as defined by the most current diagnostic manual of the American Psychiatric Association or for treatment for organic brain syndromes;

shall own, possess, or control any firearm or ammunition therefor, unless the person has been medically documented to [have been cured of] be no longer adversely affected by the addiction, mental disease, disorder, or defect.

(d) No person who is less than twenty-five years old and has been adjudicated by the family court to have committed a felony, two or more crimes of violence, or an illegal sale of any drug shall own, possess or control any firearm or ammunition therefor.

(e) No minor who:

- (1) Is or has been under treatment for addiction to any dangerous, harmful, or detrimental drug, intoxicating compound as defined in section 712-1240, or intoxicating liquor;
- (2) Is a fugitive from justice; or

- (3) Has been determined not to have been responsible for a criminal act or has been committed to any institution on account of a mental disease, disorder, or defect;

shall own, possess, or control any firearm or ammunition therefor, unless the minor has been medically documented to [have been cured of] be no longer adversely affected by the addiction, mental disease, disorder, or defect.

For the purposes of enforcing this section, and notwithstanding section 571-84 or any other law to the contrary, any agency within the State shall make its records relating to family court adjudications available to law enforcement officials.

(f) No person who has been restrained pursuant to an order of any court, other than an order issued ex parte, from contacting, threatening, or physically abusing any person, shall possess or control any firearm or ammunition therefor, so long as the protective order or any extension thereof is in effect, unless the order, for good cause shown, specifically permits the possession of a firearm and ammunition. The restraining order or order of protection shall specifically include a statement that possession or control of a firearm or ammunition by the person named in the order is prohibited. Such person shall relinquish possession and control of any firearm and ammunition owned by that person to the police department of the appropriate county for safekeeping for the duration of the order or extension thereof.

[(f)] (g) Any person disqualified from ownership, possession, or control of firearms and ammunition by this chapter shall dispose of all firearms and ammunition in compliance with this chapter.

[(g)] (h) Any person violating subsection (a) or (b) shall be guilty of a class C felony; provided that any felon violating subsection (b) shall be guilty of a class B felony. Any person violating subsection (c), (d), (e), [or] (f), or (g) shall be guilty of a misdemeanor.”

SECTION 2. Section 586-6, Hawaii Revised Statutes, is amended to read as follows:

“§586-6 Service of order. Any order issued under this chapter shall either be personally served upon the respondent, or served by certified mail, unless the respondent was present at the hearing in which case the respondent may be served by handing the respondent a filed copy of the order after the hearing. A filed copy of each order issued under this chapter shall be served by regular mail upon the chief of police of each county.”

SECTION 3. Section 604-10.5, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) A hearing on the petition to enjoin harassment shall be held within fifteen days after it is filed. The parties named in the petition may file responses explaining, excusing, justifying, or denying the alleged act or acts of harassment. The court shall receive such evidence as is relevant at the hearing, and may make independent inquiry.

If the court finds by clear and convincing evidence that harassment exists, it shall enjoin for no more than three years further harassment of the petitioner; provided that this paragraph shall not prohibit the court from issuing other injunctions against the named parties even if the time to which the injunction applies exceeds a total of three years.

Any order issued under this subsection shall be served by regular mail upon the chief of police of each county.”

ACT 215

SECTION 4. Chapter 806, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§806- Disposal of firearms. At the time of arraignment, the court shall order a defendant who is under indictment for, or who has waived indictment for, or who has been bound over to the circuit court for a felony, or any crime of violence, or an illegal sale of any drug, to dispose of all firearms and ammunition within the defendant's possession in a manner in compliance with the provisions of chapter 134 and shall inform the defendant of the provisions of section 134-7(b) and section 134-12.5. The defendant shall comply with an order issued pursuant to this section within forty-eight hours of the issuance of such order. A defendant's compliance with the forty-eight hour requirement of this section shall not give rise to a prosecution for violations of sections 134-2, 134-3 or 134-4."

SECTION 5. Section 706-602, Hawaii Revised Statutes, is amended to read as follows:

"§706-602 Pre-sentence diagnosis, notice to victims, and report. (1) The pre-sentence diagnosis and report shall be made by personnel assigned to the court, intake service center or other agency designated by the court and shall include:

- (a) An analysis of the circumstances attending the commission of the crime;
- (b) The defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status and capacity to make restitution or to make reparation to the victim or victims of the defendant's crimes for loss or damage caused thereby, education, occupation, and personal habits;
- (c) Information made available by the victim or other source concerning the effect that the crime committed by the defendant has had upon said victim, including but not limited to, any physical or psychological harm or financial loss suffered; [and]
- (d) Information concerning defendant's compliance or non-compliance with any order issued under section 806-; and
- [d] (e) Any other matters that the reporting person or agency deems relevant or the court directs to be included.

(2) The court personnel, service center, or agency shall give notice of the Criminal Injuries Compensation Act, the application for compensation procedure, and the possibility of restitution by the defendant to all victims of the convicted defendant's criminal acts."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.²

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

(Approved June 10, 1993.)

Notes

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

ACT 216

S.B. NO. 812

A Bill for an Act Relating to Criminal Sentencing.

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

SECTION 1. Section 706-604, Hawaii Revised Statutes, is amended to read as follows:

“§706-604 Opportunity to be heard with respect to sentence; notice of pre-sentence report; opportunity to controvert or supplement; transmission of report to department. (1) Before imposing sentence, the court shall afford a fair opportunity to the defendant to be heard on the issue of the defendant's disposition.

(2) The court shall furnish to the defendant or the defendant's counsel and to the prosecuting attorney a copy of the report of any pre-sentence diagnosis or psychological [or], psychiatric, or other medical examination and afford fair opportunity, if the defendant or the prosecuting attorney so requests, to controvert or supplement them.

(3) In all circuit court cases, the court shall afford a fair opportunity to the victim to be heard on the issue of the defendant's disposition, before imposing sentence. The court, service center, or agency personnel who prepare the pre-sentence diagnosis and report shall inform the victim of the sentencing date and of the victim's opportunity to be heard. In the case of a homicide or where the victim is otherwise unable to appear at the sentencing hearing, the victim's family shall be afforded the fair opportunity to be heard.

[(3)] (4) If the defendant is sentenced to imprisonment, a copy of the report of any pre-sentence diagnosis or psychological [or], psychiatric, or other medical examination shall be transmitted [forthwith] immediately to the department of public safety or, when the defendant is committed to the custody of a specific institution, to [such] that institution.”

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 10, 1993.)

ACT 217

S.B. NO. 819

A Bill for an Act Relating to Sales to Owner-Occupants.

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

SECTION 1. Section 514A-104.5, Hawaii Revised Statutes, is amended:

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

“(b) The affidavit shall expire after three hundred sixty-five consecutive days have elapsed after the recordation of the instrument conveying the apartment to the affiant. The affidavit shall expire prior to this period upon acquisition of title to the property by an institutional lender or investor through mortgage foreclosure,

foreclosure under power of sale, or a conveyance in lieu of foreclosure.”

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

“(e) The affidavit shall be reaffirmed [at escrow by all the prospective owner-occupants of each residential unit and recorded or made part of the conveying documents.] as provided in subsection 514A-105(d).”

SECTION 2. Section 514A-105, Hawaii Revised Statutes, is amended to read as follows:

“§514A-105 Sale of residential units. (a) From the issuance of an effective date of the first public report until the developer has complied with [the provisions of] section 514A-104, the developer shall offer all the residential units designated pursuant to section 514A-103 for sale to only the prospective owner-occupants whose names are on the final reservation list in the order in which their names appear on [such] the list; provided, however, that notwithstanding [anything to the contrary set forth in] this part, in the case of a project which includes one or more existing structures being converted to condominium status, each residential unit contained in the project shall first be offered for sale to any individual occupying the unit immediately prior to the conversion and who submits a commission approved owner-occupant affidavit and an earnest money deposit in a reasonable amount designated by the developer.

(b) Each prospective owner-occupant who has selected a residential unit shall be given not less than ten calendar days to execute a sales contract for the unit selected. Those owner-occupants who have been offered such a contract, but elect not to execute the contract, shall be permanently stricken from the final reservation list. Those residential units for which a sales contract is not executed shall be aggregated by the developer and re-offered to the back-up prospective owner-occupants in the order in which their names appear on the final reservation list. The developer shall be required to make this re-offer once only. After complying with the foregoing requirements, the developer shall not be obligated to re-offer any of the designated residential units to prospective owner-occupants, except as otherwise provided in this part.

(c) Each contract for the purchase of a designated residential unit by an owner-occupant may be conditioned upon the purchaser obtaining adequate financing, or a commitment for adequate financing, by a date which is no earlier than fifty calendar days after the developer's execution and acceptance of the sales contract, and if the financing or commitment is not obtained, the contract may be canceled by either the developer or the purchaser. If the sales contract is so canceled, the developer shall re-offer the residential unit first to those owner-occupants whose names have not been removed from the final reservation list and who have not executed a sales contract for a residential unit in the project in the order in which their names appear on the final reservation list.

(d) Any prospective owner-occupant who executes an affidavit as set forth in section 514A-104.5 and a sales contract for the sale of one of the designated residential units shall be required to reaffirm [at closing of escrow such] the person's intent to be an owner-occupant [as set forth in section 514A-104.5. Any person who is unable to make such a reaffirmation shall be required to rescind the sales contract.] no earlier than the person's receipt for a final public report and no later than closing of escrow for the unit. The developer may provide in its sales contract that failure to sign the reaffirmation upon reasonable request shall constitute a default under the sales contract by the person failing to sign. The developer

shall [accept such rescission] cancel the sales contract or reservation of any person failing to make the reaffirmation pursuant to this subsection and shall re-offer the residential unit first to those owner-occupants whose names have not been removed from the final reservation list and who have not executed a sales contract for a residential unit in the project, in the order in which their names appear on the final reservation list. If the sales contract has become binding upon the purchaser pursuant to section 514A-62, the developer may [retain the purchaser's deposit up to an amount not to exceed the greater of five per cent of the deposit or actual damages, and shall refund to the purchaser any balance of the deposit.] exercise the remedies provided for in the sales contract and any other remedies provided by law.

(e) Any prospective owner-occupant on the final reservation list [may], at any time, may be offered any residential unit in the project not subject to the designation required by section 514A-103.

(f) The developer, escrow agent, or any other party, at the direction of the developer, shall mail twice to each owner-occupant by registered or certified mail, once by the sixtieth day and once by the two hundred seventieth day following the conveyance of the first unit to an owner-occupant listed on the final reservation list, a complete copy of the executed affidavit to inform them of their legal obligations and penalties as provided for in this part.

The developer shall keep records of its notice mailings and the owner-occupant affidavits for a period of three years starting from the date of its first mailing pursuant to this subsection and the date of the conveyance of the first unit to an owner-occupant listed on the final reservation list. Failure of the developer to give the notices required by this subsection shall not affect title to the owner-occupant unit or the obligations of the owner-occupant pursuant to 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 June 10, 1993.)

ACT 218

S.B. NO. 1316

A Bill for an Act Relating to the Penal Code.

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

SECTION 1. Agricultural theft leads to the destruction of entire crops and loss of expensive farm equipment such as tractors and wheelbarrows, as well as ground preparation materials such as fertilizer and herbicides. The volume of agricultural theft occurrence can greatly impact a major economic sector of the local economy.

The theft of crops and farm equipment on the island of Hawaii has cost farmers at least \$200,000 a year and losses are expected to increase steadily as more farmers file theft reports. Remote farms that are easily accessible by sugar cane roads are most vulnerable to this type of activity. To worsen the problem, many of the farmers do not live at the farm itself.

The purpose of this Act is to prevent the theft of crops and farm equipment by subjecting violators to a class C felony.

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SECTION 2. Section 708-800, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Agricultural equipment, supplies, or products" mean any agricultural equipment, supplies, or commercial agricultural products raised, grown, or maintained by a commercial agricultural enterprise or research agency while owned by the enterprise or agency."

SECTION 3. Section 708-831, Hawaii Revised Statutes, is amended to read as follows:

"§708-831 Theft in the second degree. (1) A person commits the offense of theft in the second degree if the person commits theft:

- (a) Of property from the person of another;
 - (b) Of property or services the value of which exceeds \$300; [or]
 - (c) Of an aquaculture product or part thereof from premises that is fenced or enclosed in a manner designed to exclude intruders and there is prominently displayed on the premises a sign or signs sufficient to give notice and reading substantially as follows: "It is a crime to take or remove products from these premises, Hawaii Revised Statutes section 708-831, theft in the second degree. Violators will be prosecuted."; or
 - (d) Of agricultural equipment, supplies, or products, or part thereof, the value of which exceeds \$100 but does not exceed \$20,000, from premises that are fenced, enclosed, or secured in a manner designed to exclude intruders and there is prominently displayed on the premises a sign or signs sufficient to give notice and reading substantially as follows: "It is a crime to take or remove agricultural equipment, supplies, or products from these premises, Hawaii Revised Statutes section 708-831, theft in the second degree. Violators will be prosecuted." The sign or signs, containing letters not less than two inches in height, shall be placed not more than 1000 feet apart along the boundary line of the land in a manner and in such position as to be clearly noticeable from outside the boundary line.
- (2) Theft in the second degree is a class C felony. A person convicted of committing the offense of theft in the second degree under sections (c) and (d) shall be sentenced in accordance with chapter 706, except that for the first offense, the court may impose a minimum sentence of a fine of at least \$1,000 or twofold damages sustained by the victim, whichever is greater.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

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

(Approved June 10, 1993.)

ACT 219

S.B. NO. 1448

A Bill for an Act Relating to Criminal Injuries Compensation.

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

SECTION 1. Section 351-13, Hawaii Revised Statutes, is amended to read as follows:

“§351-13 Powers and procedures of commission. (a) [Upon] Except for cases assigned to the administrator pursuant to subsection (c), upon an application [made to the criminal injuries compensation commission] for compensation under this chapter, the commission shall fix a time and place for a hearing on the application and shall cause notice thereof to be given to the applicant. The commission may hold hearings, sit and act at times and places, and take testimony as it may deem advisable. Any two members shall constitute a quorum, but the concurring vote of the two members shall be necessary to take any action. Any member may administer oaths or affirmations to witnesses appearing before the commission. The commission shall have the same powers of subpoena and compulsion of attendance of witnesses and production of documents[,] and of examination of witnesses as a circuit court. Subpoenas shall be issued under the signature of the chairperson or by majority vote of the commission members. The circuit court of any circuit in which a subpoena is issued or served or in which the attendance or production is required, 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. The orders shall be signed by the chairperson[,] or, in the absence of the chairperson, by the other two members.

(b) Notwithstanding any other provision, the commission may delegate to the administrator the authority to sign any order approved by the commission.

(c) The commission may assign cases to the administrator for determination of eligibility and any order of compensation if:

(1) The case can be adjudicated appropriately on the basis of available records and documents; and

(2) The applicant has waived a hearing before the commission.

(d) If the applicant is dissatisfied with the determination by the administrator, the applicant may appeal to the commission for a hearing, and the commission shall review the case as if it was not heard before and as if no decision had been previously rendered. In such an event, the commission's decision shall be final.”

SECTION 2. Section 351-14, Hawaii Revised Statutes, is amended to read as follows:

“§351-14 Hearings and evidence. [Where any application is made to the criminal injuries compensation commission under this chapter,] For those applications that will be heard by the commission, the applicant and the commission's legal adviser shall be entitled to appear and be heard. Any other person may appear and be heard who [satisfied] satisfies the commission that the person has a substantial interest in the proceedings. In any case in which the person entitled to make an application is a child, the application may be made on the child's behalf by any person acting as the child's parent or guardian. In any case in which the person entitled to make an application is mentally defective, the application may be made

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on the person's behalf by the person's guardian or [such] any other individual authorized to administer the person's estate.

Where, under this chapter, any person is entitled to appear and be heard by the commission, that person may appear in person or be represented by the person's attorney. All hearings shall be open to the public, unless in a particular case, the commission determines that the hearing, or a portion thereof, should be held in private, [having regard to the fact that] because the offender has not been convicted or [to] in the interest of the victim of an alleged sexual offense.

Every person appearing under this section shall have the right to produce evidence and to cross-examine witnesses. The commission may receive in evidence any statement, document, information, or matter that [may], in the opinion of the commission, may contribute to its functions under this chapter, whether or not [such] the statement, document, information, or matter would be admissible in a court of law.

If any person has been convicted of any offense with respect to an act or omission on which a claim under this chapter is based, proof of that conviction [shall], unless an appeal against the conviction or a petition for a rehearing in respect of the charge is pending or a new trial or rehearing has been ordered, shall be taken as conclusive evidence that the offense has been committed."

SECTION 3. Section 351-62.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Funds received pursuant to section 354D-12(b)(1) and amounts received pursuant to sections 351-35 and 351-63 shall be deposited into the criminal injuries compensation fund."

SECTION 4. This Act does not affect the rights and duties that were matured, penalties that were incurred, and proceedings that were begun before its effective date.

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 10, 1993.)

ACT 220

S.B. NO. 1729

A Bill for an Act Relating to an Excise Tax.

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

SECTION 1. Section 235-55.9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(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.

Qualified medical expenses shall not include the following:

- (1) Capital improvements; or
- (2) Prescription drugs or prosthetic devices exempt under section [237-24(23).] 237-24.3(7).

The amount of medical expenses paid during the taxable year shall not be reduced by any insurance reimbursement."

SECTION 2. 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 cigarettes and tobacco products imposed by chapter 245 on wholesalers or dealers holding licenses under that chapter and selling the products at wholesale[, and the amount 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] 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] 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] 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] 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; and
- (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;
 - (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[.].

§237-24.3 Additional amounts not taxable. In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

- [17] (1) 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 "producer 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] (2) Amounts received from sales of:
 - (A) [intoxicating] Intoxicating liquor as defined in chapter 244D[,];
 - (B) Cigarettes and tobacco products as defined in chapter 245[,]; and
 - (C) [agricultural,] 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] (3) Amounts received by the manager or board of directors of:
- (A) An association of apartment owners of a condominium property regime established in accordance with chapter 514A; or
 - (B) A nonprofit homeowners or community association incorporated in accordance with chapter 415B or any predecessor thereto and existing pursuant to covenants running with the land, in reimbursement of sums paid for common expenses;
- [20] (4) 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] (5) 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] (6) 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 United States Department of Agriculture food vouchers under the Special Supplemental Foods Program for Women, Infants and Children;
- [23] (7) 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)] (8) Taxes on transient accommodations imposed by chapter 237D and passed on and collected by operators holding certificates of registration under that chapter; and
- [(25)] (9) 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 3. Section 237-25, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any provision of law to the contrary notwithstanding, there shall be exempted from, and excluded from the measures of, the [taxes] tax imposed by [chapters] chapter 237 [and 245] all sales, and the gross proceeds of all sales, of:

- (1) Intoxicating liquor, as defined in chapter 281, hereafter sold by any person licensed under chapter 281 to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under chapter 238 or 244D but not including national banks), or to any organization to which such sale is permitted by the proviso of “Class 3” of section 281-31, located on any army, navy, or air force reservation, but the person making the sale shall nevertheless, within the meaning of chapters 237, 244D, and 281 be deemed to be a licensed seller.
- (2) Tobacco products[,] and cigarettes, as defined in chapter 245, sold by any person licensed under the chapter to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under chapter 238 or 245 but not including national banks), but the person making the sale shall nevertheless, within the meaning of chapters 237 and 245, be deemed to be a licensed seller.
- (3) Other tangible personal property hereafter sold by any person licensed under this chapter to the United States (including any agency or instrumentality thereof but not including national banks), but the person making such sale shall nevertheless, within the meaning of this chapter, be deemed a licensed seller.
- (4) When the amount of property sold by a licensee turns upon the amount of the property sold through a vending machine or similar device to the customer using the device, there shall not be deemed to have occurred any sale covered by an exemption under paragraph (1), (2), or (3).”

SECTION 4. Section 237-29.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be exempted from, and excluded from the measure of, the taxes imposed by this chapter all of the value or gross proceeds arising from the manufacture, production, or sale of tangible personal property:

- (1) Shipped by the manufacturer, producer, or seller to a point outside the State where the property is resold or otherwise consumed or used outside the State in the purchaser’s or the taxpayer’s business; or
- (2) The sale of which is exempt under [section 237-24(18).] section 237-24.3(2).”

SECTION 5. Section 238-3, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The tax imposed by this chapter shall not apply to any intoxicating liquor as defined in chapter 244D and cigarettes and tobacco products as defined in chapter 245, imported into the State and sold to any person or common carrier in interstate commerce, whether ocean-going or air, for consumption out-of-state by [such] the person, crew, or passengers on the shipper's vessels or airplanes.”

SECTION 6. Chapter 245, Hawaii Revised Statutes, is amended by amending the title to read:

“CIGARETTE TAX AND TOBACCO TAX LAW”

SECTION 7. Section 245-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Cigarette” means any roll for smoking made wholly or in part of tobacco, irrespective of size and shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.”

2. By amending the definition of “dealer” to read:

““Dealer” means any person [who comes into the possession of] rendering a distribution service who buys and maintains, at the person's place of business, a stock of cigarettes or tobacco products[,] which [products] have not been acquired from a wholesaler or dealer licensed under this chapter, and who [sells] distributes or uses such cigarettes or tobacco products.”

3. By amending the definition of “sale” or “sold” to read:

““Sale” or “sold” includes any delivery of cigarettes or tobacco products, whether cash is actually paid therefor or not.”

4. By amending the definition of “tobacco products” to read:

““Tobacco products” means tobacco in any form other than cigarettes, that is prepared or intended for consumption by, or the personal use[,] of, humans, including cigars and [cigarettes and] any substitutes thereof other than cigarettes which bear the semblance thereof, snuff, chewing tobacco, and smoking tobacco.”

5. By amending the definition of “wholesaler” to read:

““Wholesaler” means a person [who sells or otherwise] rendering a distribution service who buys and maintains, at the person's place of business, a stock of cigarettes or tobacco products that the person uses or distributes [tobacco products] only to retailers, or other wholesalers, or both.”

SECTION 8. Section 245-2, Hawaii Revised Statutes, is amended to read as follows:

"§245-2 License. It shall be unlawful for any person to engage in the business of a wholesaler or dealer [to sell or use tobacco products] in the State without having [first] received first a license therefor issued by the department of taxation under this chapter; provided that this section shall not be construed to supersede any other law relating to licensing of persons in the same business.

[Such] The license shall be issued by the department upon application therefor, in such form and manner as shall be required by [regulation] rule of the department, and the payment of a fee of \$2.50, and shall be renewable annually on July 1 for the twelve months ending the succeeding June 30.

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 to act as a wholesaler or dealer, who acts as [such] a wholesaler or dealer without securing a license in conformity with this chapter, and any officer or agent of any [such] firm who aids or abets the firm to act as wholesaler or dealer without securing a license in conformity with this chapter, shall be guilty of a misdemeanor, punishable as provided in the case of other misdemeanors by section 245-14(b)."

SECTION 9. Section 245-3, Hawaii Revised Statutes, is amended to read as follows:

"§245-3 [Tax;] Taxes; limitations. (a) Every wholesaler or dealer [shall], in addition to any other taxes provided by law, shall pay for the privilege of conducting business and other activities in the State an [excise]:

- (1) Excise tax equal to 3.00 cents for each cigarette sold by the wholesaler or dealer, after June 30, 1993, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer; such excise tax to increase to 3.50 cents per cigarette on the first day of the month one hundred eighty days after a United States congressional act is signed into law which requires military installations to purchase cigarettes in Hawaii in a manner similar to that required of alcoholic beverages under 10 United States Code, section 2488 (appropriated fund instrumentalities, purchase of alcoholic beverages); and
 - (2) Excise tax[, which is hereby imposed upon the sale or use of tobacco products,] equal to forty per cent of the wholesale price of each article or item of tobacco products sold by the wholesaler or dealer, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer.
- (b) The [tax,] taxes, however, [is] are subject to the following limitations:
- (1) [It] The measure of the taxes shall not [apply to] include any cigarettes or tobacco products exempted, and so long as the same are exempted, from the imposition of [the tax] taxes by the Constitution or laws of the United States[.]; and
 - (2) The [tax] taxes shall be paid only once [upon] in respect of the same cigarettes or tobacco product. This limitation shall not prohibit the imposition of the excise tax on receipts from sales of tobacco products under subsection (a)(2); provided that the amount subject to the tax on each sale shall not include amounts previously taxed under this chapter."

SECTION 10. Section 245-5, Hawaii Revised Statutes, is amended to read as follows:

"§245-5 Returns. Every licensee [shall], on or before the last day of each month, shall file with the department of taxation a return [of] showing the cigarettes and tobacco products sold or used by the licensee during the preceding calendar month and of the [tax payable thereon.] taxes chargeable against the taxpayer in accordance with this chapter. The form of the return shall be prescribed by the department and shall contain such information, including a separate statement of the number and wholesale price of cigarettes, and the wholesale price of tobacco products, sold or used, as it may deem necessary for the proper administration of this chapter."

SECTION 11. Section 245-6, Hawaii Revised Statutes, is amended to read as follows:

"§245-6 Payment of taxes; penalties. At the time of the filing of the return required under section 245-5 and within the time prescribed therefor, each licensee shall pay to the department of taxation the [tax] taxes imposed by this chapter, required to be shown by the return.

Penalties and interest shall be added to and become a part of the [tax,] taxes, when and as provided by section 231-39."

SECTION 12. Section 245-7, Hawaii Revised Statutes, is amended to read as follows:

"§245-7 Determination of [tax;] taxes; additional assessments, credits, and refunds. (a) As soon as practicable after each return shall have been filed, the department of taxation shall cause it to be examined and shall compute and determine the amount of the [tax] taxes payable thereon.

(b) If it should appear upon such examination or thereafter within five years after the filing of the return, or at any time if no return has been filed, as a result of [such] the examination or as a result of any examination of the records of the licensee or of any other inquiry or investigation, that the correct amount of the [tax] taxes is greater than that shown on the return, or that any [tax] taxes imposed by this chapter [has] have not been paid, an assessment of such [tax] taxes may be made, in the manner provided in section 235-108(b). The amount of the [tax] taxes for the period covered by the assessment shall not be reduced below the amount determined by an assessment so made, except upon appeal or in a proceeding brought pursuant to section 40-35.

(c) If the licensee has paid or returned with respect to any month more than the amount determined to be the correct amount of [tax] taxes for [such] the month, the amount of the [tax] taxes so returned and any assessment of [tax] taxes made pursuant to the return may be reduced, and any overpayment of [tax] taxes may be credited upon the [tax] taxes imposed by this chapter, or at the election of the licensee, the licensee not being delinquent in the payment of any taxes owing to the State, may be refunded in the manner provided in section 231-23(d)(,); provided that no reduction of [tax] taxes may be made when forbidden by subsection (b)(,) or more than five years after the filing of the return."

SECTION 13. Section 245-8, Hawaii Revised Statutes, is amended to read as follows:

"§245-8 Records to be kept. (a) Every wholesaler and dealer shall keep a record of every sale or use of cigarettes and tobacco products by the wholesaler or dealer, the number and wholesale price of cigarettes, and the wholesale price of tobacco products, sold or used, and of the [tax] taxes payable thereon, if any, in

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such form as the department of taxation may prescribe. The records shall be offered for inspection and examination at any time upon demand by the department and shall be preserved for a period of five years, except that the department [may], in writing, may consent to their destruction within [such] the five-year period or may require that they be kept longer. The department [may], by [regulation] rule, may require the licensee to keep such other records as it may deem necessary for the proper enforcement of this chapter.

(b) If any wholesaler or dealer fails to keep records from which a proper determination of the [tax] taxes due under this chapter may be made, the department may fix the amount of the [tax] taxes for any period from the best information obtainable by it and assess the [tax] taxes as [hereinbefore] provided[.] in this chapter."

SECTION 14. Section 245-9, Hawaii Revised Statutes, is amended to read as follows:

"§245-9 Inspection. The department of taxation may examine all records required to be kept under this chapter, and books, papers, and records of any person engaged in the [sale of] business of wholesaling or dealing cigarettes and tobacco products, to verify the accuracy of the payment of the [tax] taxes imposed by this chapter. Every person in possession of [such] any books, papers, and records, and the person's agents and employees, are [hereby] directed and required to give to the department the means, facilities, and opportunities for [such] the examinations."

SECTION 15. Section 245-10, Hawaii Revised Statutes, is amended to read as follows:

"§245-10 Appeals. Any person aggrieved by any assessment of the [tax] taxes imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114[.]; provided that the [tax] taxes so assessed shall have been paid. The hearing and disposition of [such] the appeal, including the distribution of costs and of taxes paid pending the appeal shall be as provided in chapter 232."

SECTION 16. Section 245-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any person who makes any false or fraudulent return or false statement in any return, with intent to defraud the State or to evade the payment of any [tax] taxes or any part thereof imposed by this chapter, or who, in any manner, intentionally deceives or attempts to deceive the director of taxation or the director's authorized agent in relation to any such [tax,] taxes, shall be punished as provided in section 231-34."

SECTION 17. Section 245-4, Hawaii Revised Statutes, is repealed.

SECTION 18. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 19. This Act shall take effect on July 1, 1993.

(Approved June 10, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 221

S.B. NO. 1851

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Industrial Enterprises.

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

SECTION 1. Manufactured lumber, of which medium density fiberboard is the best known, has become increasingly popular in the construction industry. The legislature finds that C. Brewer and Company, Limited, through its subsidiary, Bioenergy Corporation, has been growing eucalyptus trees since 1978 and that the fiber from eucalyptus trees can be used to manufacture medium density fiberboard. The development of a medium density fiberboard industry in the county of Hawaii would serve not only to stimulate the State's construction industry and Hawaii county's economy, but also to develop an export industry to the Far East where a lumber shortage exists.

C. Brewer and Company, Limited, is willing to undertake a joint venture with Timber Products of Springfield, Oregon, to manufacture medium density fiberboard in the county of Hawaii. The legislature finds that C. Brewer and Company, Limited, may be assisted through the issuance of special purpose revenue bonds because it is an industrial enterprise pursuant to part V, chapter 39A, Hawaii Revised Statutes, and that its activities and facilities in producing medium density fiberboard constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue in one or more series special purpose revenue bonds in a total amount not to exceed \$50,000,000, for the purpose of assisting C. Brewer and Company, Limited, in the construction of a medium density fiberboard plant in the county of Hawaii.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 1997.

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

(Approved June 10, 1993.)

A Bill for an Act Relating to Civil Service.

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

SECTION 1. The legislature finds that recruitment and retention of qualified, dedicated individuals to serve in the Hawaii national guard is essential to the safety of the general public.

Being a productive member of the Hawaii national guard requires an individual to shoulder an additional duty of citizenship. The member must maintain readiness to participate in both state and federal missions and make large commitments of time and body in sacrifice to the public interest. Sometimes the sacrifice is ultimate as in the case of Technical Sergeant Dennis C. Dalen who was killed in the line of duty while participating in Hurricane Iniki operations on Kauai.

The legislature further finds that recruitment and retention for the Hawaii national guard will become increasingly challenging in view of shifting national priorities which include restructuring and downsizing of the regular military. In such a climate, it is essential to keep service in the Hawaii national guard an attractive prospect.

The purpose of this bill is to establish an interim task force to develop incentives to attract and retain qualified individuals for the Hawaii national guard.

SECTION 2. There is established the adjutant general's interim task force on national guard recruitment and retention to develop appropriate incentives for enlistment and continued service of qualified individuals in the Hawaii national guard. In carrying out this assignment, the task force, among other matters, shall study and determine the feasibility and propriety of granting preference in civil service employment to individuals with ten or more years of service in the Hawaii national guard. The task force shall consist of eleven members. The adjutant general shall serve as the chairperson of the task force. One member of the task force shall be appointed by each of the following: the adjutant general, the speaker of the house of representatives, the president of the senate, the director of personnel services, the conference of personnel directors, the director of taxation, the president of the University of Hawaii, the housing finance and development corporation, the State of Hawaii organization of police officers, and the Hawaii employer's council. The task force shall meet during the interim between the 1993 and 1994 regular sessions, at times and places agreeable to the members, and conduct its business in the manner it determines to be most appropriate to the task. No later than twenty days prior to the convening of the 1994 regular session, the task force shall submit to the governor and the legislature a report of its deliberations and draft legislation appropriate to its findings, after which it shall be dissolved.

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

(Approved June 18, 1993.)

ACT 223

H.B. NO. 118

A Bill for an Act Relating to Telecommunications.

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

SECTION 1. The legislature finds that the 911 emergency telephone services system performs a vital role in ensuring the safety and welfare of both the citizens and tourists of Hawaii. The enhanced 911 telephone system, which electronically indicates to the operator the telephone number and address of a caller, provides an even greater level of protection. Conversion from the basic 911 system to the enhanced 911 system coupled with the rise of population throughout the State has escalated the counties' cost of providing this service. As a result, only the city and county of Honolulu and the county of Hawaii have been able to provide the necessary funding for this conversion. The purpose of this Act is to provide statewide enhanced 911 emergency telephone service by permitting a public utility to recover the capital cost through ratemaking procedures of the public utilities commission.

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

“§269- Emergency telephone service; capital costs; ratemaking. (a) A public utility providing local exchange telecommunications services shall be permitted to recover the capital cost and associated operating expenses for the first year of providing a statewide enhanced 911 emergency telephone service in the public switched telephone network, through a telephone line surcharge or the next rate case, whichever occurs first. Thereafter, the remaining capital costs and any additional capital costs shall be added to the rate base and recovered along with the associated operating expenses through local telephone rates of that public utility.

(b) Notwithstanding the commission's rules on ratemaking, the commission shall expedite and give highest priority to any necessary ratemaking procedures related to providing a statewide enhanced 911 emergency telephone service; provided that the commission may set forth conditions and requirements as the commission determines are in the public interest.

(c) The commission shall require every public utility providing statewide enhanced 911 emergency telephone service to maintain a separate accounting of the costs of providing an enhanced 911 emergency service and the revenues received from related surcharges until the next general rate case. The commission shall further require that every public utility imposing a surcharge shall identify such as a separate line item on all customer billing statements.

(d) This section shall not preclude the commission from changing any rate, established pursuant to this section, either specifically or pursuant to any general restructuring of all telephone rates, charges, and classifications.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval. Enhanced 911 emergency telephone service shall be made available statewide within one year from the effective date of this Act.

(Approved June 18, 1993.)

ACT 224

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 224

H.B. NO. 179

A Bill for an Act Relating to Transportation.

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

SECTION 1. Chapter 291C, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . HIGH OCCUPANCY VEHICLE LANES

§291C- **Definitions.** As used in this part unless the context otherwise requires:

"High occupancy vehicle" means a vehicle carrying at least two persons.

"High occupancy vehicle lane" means a designated lane of a laned roadway where use of the designated lane is restricted to high occupancy vehicles and to other vehicles as provided by county ordinance.

§291C- **Designation of high occupancy vehicle lane.** (a) The director of transportation by order, and the counties by ordinance, may designate high occupancy vehicle lanes as to roadways under their respective jurisdictions.

(b) Signs and other official traffic-control devices that designate high occupancy vehicle lanes shall be placed and maintained to advise drivers of the high occupancy vehicle requirement and the hours of usage. When the high occupancy vehicle lane also serves as a contra-flow lane, the hours of usage as a high occupancy vehicle lane shall be the time when the lane is coned for use as a high occupancy vehicle lane.

(c) No motor vehicle shall be operated upon these lanes except in conformance with the instructions on the signs and other official traffic-control devices.

(d) A motorcycle may use any high occupancy vehicle lane, regardless of the number of occupants.

§291C- **Summons or citation for illegal use of high occupancy vehicle lane.** Whenever any motor vehicle is observed operating in a high occupancy vehicle lane without the prescribed number of passengers, the officer observing the vehicle shall:

- (1) Cause a summons or citation as described in section 291C-165 to be issued at the scene of the violation to the operator of the vehicle; or
- (2) Make every reasonable effort to be seen by the operator of the vehicle and record evidence of the violation by taking any information displayed on the vehicle that may identify its registered owner and cause a summons or citation as described in section 291C-165 to be sent by certified or registered mail, with a return receipt that is postmarked within forty-eight hours of the time of the incident, to the registered owner of the vehicle at the address on record at the vehicle licensing division. If the end of the forty-eight hour period falls on a Saturday, Sunday, or holiday, then the ending period shall run until the end of the next day which is not a Saturday, Sunday, or holiday. Upon

receipt, the registered owner shall be given fourteen days to respond to the summons or citation by:

- (A) Paying a fine by mail; or
- (B) Requesting that a hearing be set on the matter. A mail receipt signed by the registered owner is *prima facie* evidence of notification.

§291C- Registered owner's responsibility for a summons or citation.

In any proceeding for a violation of this part, the information contained in the summons or citation issued in accordance with section 291C- shall be deemed evidence that the registered vehicle was violating the use of the high occupancy lane and the registered owner is responsible for its illegal operation. The registered owner shall be determined by the identification of the vehicle's registration plates.

§291C- Failure to comply with summons or citation. If a violator of this part does not return an answer in response to a summons or citation within a period of fourteen days upon receipt of the summons or citation, the traffic violations bureau shall issue to the registered owner of the vehicle a penal summons ordering the registered owner's appearance in court.

§291C- Liability for rental or U-drive vehicle. Notwithstanding any other law to the contrary, if the registered owner of record is the lessor of a rental or U-drive motor vehicle, as defined in section 286-2 pursuant to a written lease agreement, the lessee at the time of the violation shall be responsible for the summons or citation. However, the lessor shall be responsible for the summons or citation if the lessor does not provide the court, having jurisdiction over the summons or citation, with the name and address of the lessee within forty-five days after a notice containing the date, time, and location of the violation and the license number of the vehicle is sent to lessor; provided further that the administrative judge of the court having jurisdiction over the summons or citation may waive the requirement of providing the name and address of the lessee and impose on the lessor an administrative fee of \$50 per citation.

§291-¹ Penalty. A person who violates any provision of this part shall not be guilty of a violation for which points shall be assessed pursuant to section 286-128 but shall for a first conviction thereof be fined \$75; for conviction of a second offense committed within one year after the date of the first offense, the person shall be fined \$150; for conviction of a third or subsequent offense committed within one year after the date of the first offense, the person shall be fined \$200."

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, 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] two 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 by at least one member."

SECTION 3. Section 291C-53, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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] high occupancy vehicle lane designated on such roadway or highway. For the purposes of this subsection, [“carpool lane”] “high occupancy vehicle lane” means a designated lane of a laned roadway where the use of such designated lane is restricted to vehicles carrying at least two persons and to other vehicles enumerated by order or ordinance."

SECTION 4. Section 291C-165, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In every case when a citation is issued, the original of the [same] citation shall be given to the violator, or in the case of an unattended vehicle, the original of the [same] citation shall be affixed to [said] the vehicle as provided for in section 291C-167 [herein], or in the case of a vehicle utilizing the high occupancy vehicle lane illegally, the original of the citation shall be sent by certified or registered mail, with a return receipt that is postmarked within forty-eight hours of the time of the incident, to the registered owner of the vehicle at the address on record at the vehicle licensing division as provided in section 291C-. If the end of the forty-eight hour period falls on a Saturday, Sunday, or holiday, then the ending period shall run until the end of the next day which is not a Saturday, Sunday, or holiday; provided that the administrative judge of the district courts may [prescribe the giving to the violator or affixing to said vehicle,] allow a carbon copy of the citation[,] to be given to the violator or affixed to the vehicle

and provide for the disposition of the original and any other copies[.] of the citation.”

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 June 30, 1995.

(Approved June 18, 1993.)

Note

1. So in original.

ACT 225

H.B. NO. 361

A Bill for an Act Relating to Precursor Chemicals.

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

SECTION 1. Chapter 329, Hawaii Revised Statutes, is amended by amending the title of part VI to read as follows:

“[PART VI.] PRECURSORS TO THE MANUFACTURE OF [METHAMPHETAMINE] CONTROLLED SUBSTANCES”

SECTION 2. Section 329-61, Hawaii Revised Statutes, is amended to read as follows:

“[§329-61.] Substances subject to reporting. Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to any person in this State or for use in this State shall submit a report to the department of public safety of all [such] those transactions:

- (1) Phenyl-2-propanone;
- (2) Methylamine;
- (3) Phenylacetic acid;
- (4) Ephedrine;
- (5) Pseudoephedrine;
- (6) Norpseudoephedrine;
- (7) Phenylpropanolamine;
- (8) Hydriodic acid;
- (9) Benzyl cyanide;
- (10) Benzyl chloride;
- (11) N-methylformamide;
- (12) N-methylephedrine;
- (13) N-ethylephedrine;
- (14) N-ethylpseudoephedrine;
- (15) N-methylpseudoephedrine;
- (16) Chloroephedrine;
- (17) Chloropseudoephedrine[.];
- (18) Ethylamine;
- (19) D-lysergic acid;
- (20) Ergotamine tartrate;
- (21) Piperidine;
- (22) N-acetylanthranilic acid;
- (23) Anthranilic acid;

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- (24) Propionic anhydride;
- (25) Isosafrole;
- (26) Safrole;
- (27) Piperonal;
- (28) Thionychloride; and
- (29) Ergonovine maleate."

SECTION 3. Section 329-65, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the substances listed in section 329-61 with knowledge or the intent that the recipient will use the substance to unlawfully manufacture [methamphetamine] any controlled substance shall be fined not more than \$100,000, or imprisoned not more than five years, or both."

SECTION 4. Section 329-68, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All records and information required under this part shall be kept confidential[,]; provided that disclosure of records and information to authorized state, county, and federal agencies is permissible."

SECTION 5. Part VII of chapter 329, Hawaii Revised Statutes, is repealed.

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 18, 1993.)

ACT 226

H.B. NO. 534

A Bill for an Act Relating to Dangerous Weapons.

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

SECTION 1. Section 134-51, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person, not authorized by law, who carries concealed upon [one's person] the person's self or within any vehicle used or occupied by the person[,] or who is found armed with any dirk, dagger, butterfly knife, blackjack, slug shot, billy, metal knuckles, pistol, or other deadly or dangerous weapon[,] shall be guilty of a misdemeanor[. Any such person] and may be immediately arrested without warrant by any sheriff, police officer, or other officer or person. Any weapon, above enumerated, [shall,] upon conviction of the one carrying or possessing [same] it under this section, shall be summarily destroyed by the chief of police or sheriff."

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 18, 1993.)

ACT 227

H.B. NO. 539

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 321-15.6, Hawaii Revised Statutes, is amended to read as follows:

"§321-15.6 Adult residential care homes. (a) All adult residential care homes shall be licensed to ensure the health, safety, and welfare of the individuals placed therein; provided that the department may issue a temporary permit to operate an adult residential care home if an operator or applying operator is temporarily unable to conform to all minimum licensing standards. A temporary permit shall be valid for not more than six months.

(b) The director shall adopt rules regarding adult residential care homes in accordance with chapter 91 which shall be designed to:

- (1) Protect the health, safety, and civil rights of persons residing in facilities regulated;
- (2) Provide for the licensing of adult residential care homes; provided that the rules shall allow group living in two categories of adult residential care homes as licensed by the department of health: type I allowing group living by five or fewer unrelated persons, and type II allowing six or more persons including, but not limited to, the mentally ill, elders, the handicapped, the developmentally disabled, or totally disabled persons who are not related to the home operator or facility staff. For purposes of this section:

“Mentally ill person” means a mentally ill person as defined under section 334-1.

“Elder” means an elder as defined under section 201E-2.

“Handicapped person” means an individual with a physical handicap as defined under section 515-2.

“Developmentally disabled person” means a person with developmental disabilities as defined under section 333F-2.

“Totally disabled person” means a person totally disabled as defined under section 235-1;

- (3) Comply with applicable federal laws and regulations of Title XVI of the Social Security Act, as amended; and

- (4) Provide penalties for the failure to comply with any rule.

(c) The department may provide for the training of and consultations [to] with operators and staff of any facility licensed under this section, in conjunction with any licensing thereof, and shall adopt rules to ensure that adult residential care home operators shall have the needed skills to provide proper care and supervision in a home environment as required under department rules. [(i.e., first aid, cardio-pulmonary resuscitation, and nutrition training as a minimum).]

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(d) [Rules adopted under this section shall be enforced by the director.] The department shall establish a standard admission policy and procedure which shall require the provision of information that includes the appropriate medical and personal history of the patient as well as the level of care needed by the patient prior to the patient's referral and admission to any adult residential care home facility. The department shall develop appropriate forms and patient summaries for this purpose.

(e) The department shall maintain an inventory of all facilities licensed under this section and shall maintain a current inventory of vacancies therein to facilitate the placement of individuals in such facilities."

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 18, 1993.)

ACT 228

H.B. NO. 568

A Bill for an Act Relating to Child Custody.

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

SECTION 1. Findings and purpose. The legislature finds that persons with a history of violence against that person's partner or children are likely to commit such violence again. It is the goal of the legislature to enact measures to assure meaningful protection to children in custody conflicts. In 1989 the legislature enacted section 571-46(9), Hawaii Revised Statutes, which requires a court to consider evidence of family violence in determining what the best interests of a child are in establishing custody and visitation rights. The purpose of this Act is to make more clear that it is not in the best interests of a child to be in the custody of a parent against whom there is evidence of family violence. The court shall be required to include in its written order the reasons for any deviation from this assumption.

SECTION 2. 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, during the pendency of the action, at the final hearing, or any time during the minority of the child, may make an order for the custody of the minor child as may seem necessary or proper. In awarding the custody, the court 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 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 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 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 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 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 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, the determination regarding who was the primary aggressor, and the frequency and degree of family violence as [one of the] factors in determining the best interests of the child in establishing custody and visitation rights. If custody is given to a person against whom there is evidence of family violence, the court shall include, in its written order, the reasons for the decision. If there is evidence of family violence, an award of joint custody or any grant of visitation shall be arranged so as to best protect the child and the abused parent from further harm."

SECTION 3. New statutory material is underscored.¹

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

(Approved June 18, 1993.)

Note

1. So in original.

ACT 229

H.B. NO. 570

A Bill for an Act Relating to Domestic Abuse.

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

SECTION 1. Section 586-11, Hawaii Revised Statutes, is amended to read as follows:

“§586-11 Violation of an order for protection. Whenever an order for protection is granted pursuant to this chapter, a respondent or person to be restrained who knowingly or intentionally violates the order for protection is guilty of a misdemeanor. The court shall sentence a violator to appropriate counseling and shall sentence a person convicted under this section as follows:

- [1] For a violation of the order for protection that occurs after a conviction for a violation of the same order, a violator shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours;
- [2] For any subsequent violation that occurs after a second conviction for violation of the same order for protection, the person shall be sentenced to a mandatory minimum jail sentence of not less than thirty days.]
- [1] For a first conviction for violation of the order for protection:
 - (A) That is in the nature of non-domestic abuse, a violator may be sentenced to a jail sentence of forty-eight hours;
 - (B) That is in the nature of domestic abuse, a violator shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours;
- [2] For a second conviction for violation of the order for protection:
 - (A) That is in the nature of non-domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of non-domestic abuse, a violator shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours;
 - (B) That is in the nature of domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of domestic abuse, a violator shall be sentenced to a mandatory minimum jail sentence of not less than thirty days;
 - (C) That is in the nature of non-domestic abuse, and occurs after a first conviction for violation of the same order that was in the nature of domestic abuse, a violator shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours, unless the court, in writing, finds that the violation does not warrant a jail sentence and provides the reasons for its decision;
 - (D) That is in the nature of domestic abuse, and occurs after a first conviction for violation of the same order that is in the nature of non-domestic abuse, a violator shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours;
- [3] For any subsequent violation that occurs after a second conviction for violation of the same order for protection, the court shall impose a mandatory minimum sentence of not less than thirty days imprisonment.

The court may suspend any jail sentence [except the mandatory sentences] under [paragraphs (2) and (3),] subparagraphs (1)(A) and (2)(C), upon appropriate

conditions such as that the defendant remain alcohol and drug-free, conviction-free, or complete court-ordered assessments or counseling. Nothing in this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor offense. All remedies for the enforcement of judgments shall apply to this chapter."

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 18, 1993.)

ACT 230

H.B. NO. 620

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 the number of eligible voters in Hawaii has steadily declined even while the population increases. There is concern that the representative nature of democratic government is seriously threatened when fewer and fewer people exercise their inalienable right to vote. Part of the reason for the lowered voter turnout might be the extent to which candidates engage in negative campaigning which "turns off" voters. Another reason is that many voters, because of travel, work, or illness coming upon them after the absentee ballot application deadline, cannot be physically present at the polls on election day or at the absentee polling place during the few days before election day. In order to encourage more voter participation the purpose of this Act is to eliminate the incentive for negative campaigning which usually occurs during the last days before the election to sway voters one way or another. By permitting voters to vote in person by absentee ballot as early as absentee ballots are available by mail, the incentive for negative campaigning would be lost or at least minimized. In addition, it would re-enfranchise a large number of those who would otherwise not be able to vote.

SECTION 2. Section 15-2, Hawaii Revised Statutes, is amended to read as follows:

"**§15-2 Who may vote by absentee ballot.** Any person registered to vote may cast an absentee ballot in the manner provided in this chapter and rules adopted by the chief election officer [if the person is able to affirm generally to any of the following conditions:

- (1) Absence from the island, county, or district in which the voter is registered on election day;
- (2) Confinement in any hospital;
- (3) Confinement in any public institution for the care of aged persons;
- (4) Confinement in any Hansen's disease institution or settlement;
- (5) Confinement in any penal institution for misdemeanor or as a pretrial detainee;

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- (6) Confinement to the voter's home because of illness, infirmity, or physical disability;
- (7) Conflicting religious belief, ruling, doctrine, or standard.

Any other voter unable to appear at the voter's polling place on election day for causes determined by the chief election officer by rule to be good and sufficient shall be entitled to vote as provided by this chapter and the rules adopted thereunder.]”

SECTION 3. Section 15-7, Hawaii Revised Statutes, is amended to read as follows:

“§15-7 Absentee polling place. An absentee polling place shall be established at the office of the respective clerks or a place designated by the clerk under the provisions prescribed in the rules promulgated by the chief election officer. The provisions of section 11-21 relating to changes and transfers of registration shall apply to the absentee polling place as though it were the precinct at which a person's name properly appears on the list of registered voters. The absentee polling place shall be open no later than eighteen days before election day, or as soon thereafter as ballots are available, to handle the absentee voters who are voting in person.”

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 18, 1993.)

ACT 231

H.B. NO. 625

A Bill for an Act Relating to the Aloha Spirit.

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

SECTION 1. The Aloha Spirit is truly the heart of Hawaii, the real reason that visitors return again and again to our State. The Aloha Spirit imparts a special quality to our State.

Many natives of Hawaii who have been nurtured by the Aloha Spirit move away but do not leave the Aloha Spirit behind. The Aloha Spirit is a phenomenon that inspires both residents, visitors, and others who are touched by it thousands of miles away.

The purpose of this Act is to honor individuals who, through their achievements, have provided extraordinary service to the State and brought it to national or international honor and recognition, and who further embody and exemplify the Aloha Spirit to the world. Stringent criteria and careful selection of members shall ensure that the prestige of the honor is truly special and meaningful to both the recipients and the State.

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

“§5- Aloha order of merit. (a) There is established the Aloha order of merit, within the office of the governor for administrative purposes, to honor

individuals selected under this section. Individuals conferred the lifetime title of "member of the Aloha order of merit" shall be inducted into the order by the governor after receiving the approval of the legislature by concurrent resolution. Honorees shall have:

- (1) Achieved national or international recognition in their field either by a single event or by the totality of their work that has been either pioneering in their field or that has been outstanding in the long-term; and
- (2) (A) Contributed to the attainment of statehood for Hawaii;
 (B) Devoted themselves to the betterment of the State, embodying the concept of the Aloha Spirit;
 (C) Provided extraordinary service to the State; or
 (D) Brought honor to the State.

(b) Honorees shall be selected by an Aloha order of merit committee. The committee shall consist of three members. Each member shall serve for a term of two years. One member of the committee shall be a member of the senate appointed by the president of the senate, one member of the committee shall be a member of the house of representatives appointed by the speaker of the house of representatives, and one member of the committee shall be appointed by the governor.

(c) Nominations for honorees shall be accepted by the committee from members of the legislature, the governor, and the general public. Nominations shall be in the form and manner prescribed by the office of the governor. The committee shall establish criteria for selection and induction to ensure and maintain the prestige of the order. The committee may select or choose not to select any individual from the nominations received in any given year.

(d) Upon induction or as soon thereafter as may be necessary, the governor may award appropriate mementos to members of the order.

(e) The governor may request a member of the order to serve as an emissary for the people of Hawaii on appropriate occasions."

SECTION 3. Chapter 5, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§5- Aloha order of merit location. There shall be set aside within the Honolulu international airport an area to exhibit commemorative displays honoring members of the order. The displays may include likenesses of members and descriptions of the meritorious achievements of each member."

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 1993, provided that Section 3 shall take effect on July 1, 1994.

(Approved June 18, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

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ACT 232

H.B. NO. 653

A Bill for an Act Authorizing the Issuance of Special Purpose Revenue Bonds to Assist the Sand Island Business Association in Improving the Infrastructure of the Sand Island Industrial Park.

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

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in one or more series in a total amount not to exceed \$25,000,000, for the purpose of assisting the Sand Island Business Association in upgrading the infrastructure of Sand Island industrial park. The upgrades include: renovating the water, sewage, and storm drains; paving and curbing all roads; installing fire hydrants; moving utility lines underground; planting trees; and installing street lights and sidewalks. The legislature finds and determines that this activity of the Sand Island Business Association constitutes a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and that the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The department of budget and finance is further authorized to issue from time to time refunding special purpose revenue bonds authorized in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 1998.

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

(Approved June 18, 1993.)

ACT 233

H.B. NO. 658

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Industrial Enterprises.

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

SECTION 1. The legislature finds that the economy of the State of Hawaii is suffering from the effects of high unemployment and recessionary trends in the national economy. The legislature recognizes that the establishment of new industries to diversify the economic base of the State, create new employment opportunities, increase tax revenues, and stimulate the inflow of new capital into Hawaii, is desirable.

The legislature therefore finds that the establishment of new industries should be one of the priority considerations in the issuance of special purpose revenue bonds.

The legislature finds that a project with significant potential to stimulate new industries, support additional economic activity, provide affordable housing, and provide increased employment opportunities, has been undertaken in Laie on the north shore of the island of Oahu. At the present time, developments in this area include the Polynesian Cultural Center, a world-class tourist attraction, the Brigham Young University-Hawaii campus, the Laie Shopping Center, and the Laniloa Lodge.

Future developments in this area have been proposed in a Laie master plan prepared jointly by Zions Securities Corporation and the Laie Community Association. These developments include plans to develop more affordable housing units, expand the Polynesian Cultural Center and the Brigham Young University-Hawaii campus, develop lower-school facilities to be turned over to the state department of education, develop park and recreational facilities, and develop a light industrial area.

The legislature finds that the construction of an expanded community wastewater collection system would support existing and proposed developments in Laie, and provide a boost to the State's economy by providing needed jobs in the areas of construction, tourism, and education. In addition, an expanded community wastewater collection system is an integral part of the infrastructure needed for the development of desperately needed affordable housing for Hawaii's citizens.

Construction of an expanded community wastewater collection system is necessary and desirable for the continued growth of industrial and economic activities. The expansion, construction, and operation of an expanded community wastewater collection system will support proposed developments of industrial enterprises in Laie.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue in one or more series special purpose revenue bonds, in a total amount not to exceed \$8,000,000, for the purpose of assisting Zions Securities Corporation, a Hawaii corporation, in financing the construction of an expanded community wastewater collection system in Laie; provided that the facilities to be financed through the sale of these bonds shall meet with the approval of the state department of health and the department of public works of the city and county of Honolulu. The legislature finds and determines that the activity and facilities of Zions Securities Corporation constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 1996.

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

(Approved June 18, 1993.)

ACT 234

H.B. NO. 783

A Bill for an Act Relating to Criminal Procedure.

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

SECTION 1. Section 853-4, Hawaii Revised Statutes, is amended to read as follows:

"§853-4 Chapter not applicable; when. This chapter shall not apply when:

- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
- (2) The offense charged is a felony which involves the intentional, knowing, or reckless bodily injury or serious bodily injury of another person, or is a misdemeanor or petty misdemeanor which carries a mandatory minimum sentence and which involves the intentional, knowing, or reckless bodily injury or serious bodily injury of another person;
- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
- (4) The offense charged is a class A felony;
- (5) The offense charged is nonprobationable;
- (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct which if perpetrated in this State would be punishable as a felony;
- (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct which if perpetrated in this State would constitute a felony;
- (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
- (9) A firearm was used in the commission of the offense charged;
- (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
- (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, whether or not the period of deferral has already expired;
- (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
- (13) The offense charged is:
 - (A) Escape in the first degree;
 - (B) Escape in the second degree;
 - (C) Promoting prison contraband in the first degree;
 - (D) Promoting prison contraband in the second degree;
 - (E) Bail jumping in the first degree;
 - (F) Bail jumping in the second degree;
 - (G) Bribery;
 - (H) Bribery of a witness;
 - (I) Intimidating a witness;
 - (J) Bribery of or by a juror;

- (K) Intimidating a juror;
- (L) Jury tampering.

The court may by rule adopt other criteria in this area."

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

SECTION 3. New statutory material is underscored.

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

(Approved June 18, 1993.)

ACT 235

H.B. NO. 874

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Manufacturing Enterprises.

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

SECTION 1. Act 282, Session Laws of Hawaii 1990 (hereafter referred to as "Act 282"), authorized the issuance of special purpose revenue bonds up to \$15,000,000 to assist Elexs Ltd., a Hawaii corporation, or a partnership in which Elexs Ltd. is a general partner, in the generation of new capital for the manufacture of electric vehicles and related products in Hawaii. The legislature finds that the activities and facilities of Elexs Ltd. constitute a project as defined by part III, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a manufacturing enterprise.

The legislature finds that although these bonds were never issued pursuant to Act 282, the purpose of Act 282 remains valid, is in the public interest, and is for the public health, safety, and general welfare of the State.

The purpose of this Act is to extend the authorization to issue special purpose revenue bonds to Elexs Ltd., or its successor corporation, pursuant to Act 282 for a period of three years from June 30, 1992, to June 30, 1995.

SECTION 2. Act 282, Session Laws of Hawaii 1990, is amended by amending section 2 to read as follows:

"SECTION 2. Pursuant to part III, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue in one or more series special purpose revenue bonds in a total amount not to exceed \$15,000,000 for the purpose of assisting Elexs Ltd., a Hawaii corporation, or its successor corporation, or a partnership in which Elexs Ltd., or its successor corporation, is a general partner, in the generation of new capital for the manufacture of electric vehicles and related products in Hawaii. The legislature finds and determines that the activities and facilities of Elexs Ltd. [constitutes] 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. Act 282, Session Laws of Hawaii 1990, is amended by amending section 4 to read as follows:

ACT 236

"SECTION 4. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, [1992.] 1995."

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 18, 1993.)

ACT 236

H.B. NO. 882

A Bill for an Act Relating to Public Landscaping.

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

SECTION 1. Section 103-24.6, Hawaii Revised Statutes, is amended to read as follows:

"[[§103-24.6]] Indigenous and Polynesian introduced plants; use in public landscaping. (a) Wherever and whenever feasible, all plans, designs, and specifications for new or renovated landscaping of any building, complex of buildings, facility, complex of facilities, or housing developed by the State with public moneys shall incorporate indigenous land plant species, as defined in section 195D-2[;], and plant species brought to Hawaii by Polynesians before European contact, such as the kukui, noni, and coconut; provided that suitable [species cultivated plants] can be [transplanted or otherwise] made available for this purpose without jeopardizing [other species or any] wild plants in their natural habitat; and provided further that wherever and whenever possible, indigenous land plants shall be used for landscaping on the island or islands on which the species originated.

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

(c) The department shall adopt rules pursuant to chapter 91¹ to carry out the purposes of 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 18, 1993.)

Note

1. Prior to amendment "appropriate" appeared here.

ACT 237

H.B. NO. 883

A Bill for an Act Relating to Teenage Health.

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

SECTION 1. Act 162, Session Laws of Hawaii 1990, is amended by amending section 11 to read as follows:

“SECTION 11. This Act shall take effect upon its approval; provided that section 10 shall take effect on July 1, 1990; and provided further that this Act shall be repealed on June 30, [1993.] 1995.”

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 18, 1993.)

ACT 238

H.B. NO. 928

A Bill for an Act Relating to Tort Reform.

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

SECTION 1. Act 2, First Special Session Laws of Hawaii 1986, as amended by section 2 of Act 300, Session Laws of Hawaii 1989, as amended by section 1 of Act 62, Session Laws of Hawaii 1991, is amended to read as follows:

“SECTION 31. This Act shall take effect upon its approval, and Sections 2 [to], 4, 5, 6, 7, [Section] 17, and [Section] 20 shall be repealed on October 1, [1993] 1995.”

SECTION 2. The auditor shall conduct a study to review the effects of tort reform in Hawaii and to determine whether Act 2, First Special Session Laws of Hawaii¹ should become permanent. The auditor shall submit its findings and recommendations no later than twenty days prior to the convening of the regular session of 1995.

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 18, 1993.)

Note

1. So in original.

A Bill for an Act Relating to Firearms.

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

SECTION 1. Section 134-6, Hawaii Revised Statutes, is amended to read as follows:

"§134-6 [Possession] Carrying or use of firearm in the commission of a separate felony; place to keep firearms; loaded firearms; penalty. (a) It shall be unlawful for a person to knowingly [possess] carry on the person or have within the person's immediate control or intentionally use or threaten to use a firearm while engaged in the commission of a separate felony, whether the firearm was loaded or not, and whether operable or not[.]; provided that a person shall not be prosecuted under this subsection where the separate felony is:

- (1) A felony offense otherwise defined by this chapter;
- (2) The felony offense of reckless endangering in the first degree under section 707-713;
- (3) The felony offense of terroristic threatening in the first degree under section 707-716(a), 707-716(b), and 707-716(d); or
- (4) The felony offenses of criminal property damage in the first degree under section 708-820 and criminal property damage in the second degree under section 708-821 and the firearm is the instrument or means by which the property damage is caused.

(b) It shall be unlawful for a person to knowingly possess a firearm with the intent to facilitate the commission of a felony offense involving the distribution of a controlled substance, whether the firearm was loaded or not, and whether operable or not.

[(b)] (c) Except as provided in sections 134-5 and 134-9, all firearms and ammunition shall be confined to the possessor's place of business, residence, or sojourn; provided that it shall be lawful to carry unloaded firearms or ammunition or both in an enclosed container from the place of purchase to the purchaser's place of business, residence, or sojourn, or between these places upon change of place of business, residence, or sojourn, or between these places and the following: a place of repair; a target range; a licensed dealer's place of business; an organized, scheduled firearms show or exhibit; a place of formal hunter or firearm use training or instruction; or a police station. "Enclosed container" means a rigidly constructed receptacle, or a commercially manufactured gun case, or the equivalent thereof that completely encloses the firearm.

[(c)] (d) It shall be unlawful for any person on any public highway to carry on the person, or to have in the person's possession, or to carry in a vehicle any firearm loaded with ammunition; provided that the provision of this paragraph shall not apply to any person who has in the person's possession or carries a pistol or revolver and ammunition therefor in accordance with a license issued as provided in section 134-9.

[(d)] (e) Any person violating [this section] subsection (a) or (b) [by possessing, using or threatening to use a firearm while engaged in the commission of a felony] shall be guilty of a class A felony. Any person violating this section by carrying or possessing a loaded firearm or by carrying or possessing a loaded or unloaded pistol or revolver without a license issued as provided in section 134-9 shall be guilty of a class B felony. Any person violating this section by carrying or possessing an unloaded firearm, other than a pistol or revolver, shall be guilty of a class C felony.

(f) For the purposes of this section:

"Controlled substance" shall be as defined in section 329-1.

"Distribution" means the selling, transferring, prescribing, giving or delivering to another, or the leaving, bartering, or exchanging with another, or the offering or agreeing to do the same."

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 18, 1993.)

ACT 240

H.B. NO. 951

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Industrial Enterprises.

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

SECTION 1. The legislature enacted Act 278, Session Laws of Hawaii 1991, which authorizes the issuance of special purpose revenue bonds under part IV, chapter 39A, Hawaii Revised Statutes, to assist ETV Hawaii/Elephant Television, Inc., to provide television and film industry production and training to Hawaii's residents. The legislature finds that in order to facilitate the issuance of the special purpose revenue bonds for ETV Hawaii/Elephant Television, Inc., it is necessary to reclassify this project as an industrial enterprise.

The purpose of this Act is to amend Act 278, Session Laws of Hawaii 1991, to classify the special purpose bond issuance as an industrial enterprise instead of a processing enterprise.

SECTION 2. Act 278, Session Laws of Hawaii 1991, is amended as follows:

1. By amending section 1 to read:

"SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare. Presently, the State's economy is highly concentrated in a few industries and diversification of the State's economy is urgently needed to provide a broader economic base to create new employment opportunities, to increase tax revenues, and to stimulate the infusion of new capital into the State, which will ultimately improve the general welfare and economic well-being of residents of Hawaii.

The legislature further finds that a project with significant potential to stimulate new enterprises and to provide new and increased employment opportunities has been undertaken by ETV Hawaii/Elephant Television Inc., to provide television and film industry production and training to Hawaii's residents.

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The legislature finds that part [IV.] V., chapter 39A, Hawaii Revised Statutes, permits the State to assist [processing] industrial enterprises financially through the issuance of special purpose revenue bonds."

2. By amending section 2 to read:

"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 \$6,000,000, in one or more series, for the purpose of assisting ETV Hawaii/Elephant Television, Inc., a Hawaii corporation, or a Hawaii nonprofit corporation established by or under the auspices of ETV Hawaii/Elephant Television, Inc., in the generation of new capital for its television and film industry production and training facility on Maui. The legislature finds and determines that the activities and facilities of ETV Hawaii/Elephant Television, Inc., or a Hawaii nonprofit corporation established by or under the auspices of ETV Hawaii/Elephant Television, Inc., constitute a project defined in part [IV.] V., chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to [a processing] an industrial enterprise."

3. By amending section 4 to read:

"SECTION 4. The special purpose revenue bonds issued under this Act shall be issued pursuant to part [IV.] V., chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist [processing] industrial enterprises."

4. By amending section 5 to read:

"SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, [1993.] 1998."

SECTION 3. Session law material to be repealed is bracketed. New session law material is underscored.

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

(Approved June 18, 1993.)

ACT 241

H.B. NO. 1047

A Bill for an Act Relating to the Convention Center.

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

SECTION 1. Act 96, Session Laws of Hawaii 1988, as amended by Act 159, Session Laws of Hawaii 1992, is amended by amending section 3 to read as follows:

"SECTION 3. [Unless the developer's plan for the convention center facility is approved by the authority on or before June 30, 1994, this] This Act shall automatically expire on June 30, 1995.

In the event any judicial or quasi-judicial proceeding is commenced regarding the validity of this Act or any section of this Act, or any action of the authority,

the running of the period shall be suspended until a final nonappealable determination is made in said judicial or quasi-judicial proceeding."

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 18, 1993.)

ACT 242

H.B. NO. 1062

A Bill for an Act Relating to Driving Under the Influence.

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

SECTION 1. Section 291-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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, meaning that the person concerned is under the influence of intoxicating liquor in an amount sufficient to impair the person's normal mental faculties or ability to care for oneself and guard against casualty; or
- (2) The person operates or assumes actual physical control of the operation of any vehicle with .10 [per cent] or more[, by weight of alcohol in the person's blood.] grams of alcohol per one hundred milliliters or cubic centimeters of blood or .10 or more grams of alcohol per two hundred ten liters of breath."

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 18, 1993.)

ACT 243

H.B. NO. 1178

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Native Hawaiian-Owned Industrial Enterprise.

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

SECTION 1. The legislature finds that it is in the public's interest to assist native Hawaiian-owned businesses. Previous support has taken various forms including preferential status for native Hawaiian-owned businesses obtaining land for commercial and industrial uses and financial assistance under the Hawaiian Homes Commission Act. Efforts such as these have not resulted in a large number of

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native Hawaiian-owned businesses being created. A major problem encountered by native Hawaiian-owned businesses is the lack of available financing.

The legislature finds and declares that assistance to Waimana Enterprises, Inc., a native Hawaiian-owned business, can be provided through the issuance of special purpose revenue bonds under this Act, which is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. The special purpose revenue bonds will provide financial assistance to Waimana Enterprises, Inc., a native Hawaiian-owned Hawaii business, and result in the general public paying less for the additional generation of electricity. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 3. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue in one or more series special purpose revenue bonds in a total amount not to exceed \$10,000,000, for the purpose of assisting Waimana Enterprises, Inc., an experienced native Hawaiian-owned Hawaii corporation, or a partnership in which Waimana Enterprises, Inc., or a wholly owned subsidiary of Waimana Enterprises, Inc., is a general partner, for the establishment of a cogeneration facility on Oahu. The electrical output of the facilities shall be made available for use by members of the general public by sale to the public electric utility serving the area. The legislature finds and determines that such an activity and facilities constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 4. The special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on December 31, 1998.

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

(Approved June 18, 1993.)

ACT 244

H.B. NO. 1276

A Bill for an Act Relating to Lead Acid Battery Recycling.

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

SECTION 1. The legislature finds that, while the existing lead acid battery recycling laws have achieved a high rate of recovery of lead acid batteries, there are certain segments of the lead acid battery waste stream that are not being handled properly. Those batteries, discarded by residents who work on cars at their homes or small repair businesses, are regularly dumped on back roads or, at best, left at municipal landfills, transfer stations, or convenience centers. While these batteries represent only a small fraction of the total number of batteries disposed of in the State each year, their hazardous nature and difficulty in handling pose a significant problem to county solid waste operations.

The purpose of this Act is to encourage residents to properly dispose of used batteries.

SECTION 2. Section 342I-2, Hawaii Revised Statutes, is amended to read as follows:

“[§342I-2] 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] that shall be at least five inches by seven inches in size and [must] shall contain the universal recycling symbol and the following language:
 - [i] (A) “It is illegal to discard a motor vehicle battery or other lead acid battery”;
 - [ii] (B) “Recycle your used batteries”; [and]
 - [iii] (C) “State law requires us to accept used motor vehicle batteries or other lead acid batteries for recycling, in exchange for new batteries purchased”[.]; and
 - (D) “The price of a new battery includes disposal of your old battery”.
- (3) Any advertising pertaining to the price of lead acid batteries shall include the statement “The price includes disposal of your old battery”.
- (4) For businesses utilizing advertising prepared out of the State a sign no smaller than 3 square feet, placed at the point of sale stating: “The price of the battery includes disposal of your old battery” may be substituted.”

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 18, 1993.)

ACT 245

H.B. NO. 1327

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

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

SECTION 1. The legislature finds that it is in the public interest to encourage the development of energy projects that make electric energy available to members of the general public by its sale to an electric utility serving the public. The legislature further finds that the Encogen Hawaii, L.P., a Delaware limited partnership, is engaged in the development of a power plant project that will sell the electric energy it produces to the Hawaii Electric Light Company, Inc., which is an electric utility servicing the public.

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The legislature further finds that the Encogen Hawaii, L.P. may be assisted through the issuance of special purpose revenue bonds because it is an industrial enterprise pursuant to part V, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this part is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue in one or more series special purpose revenue bonds in a total amount not to exceed \$10,000,000, for the purpose of assisting the Encogen Hawaii, L.P. for the establishment of a power plant and related facilities. The electrical output of this plant and facilities shall be made available for use by members of the general public by sale to the Hawaii Electric Light Company, Inc. The legislature finds and determines that the activity and facilities of the Encogen Hawaii, L.P. constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The authorization to issue special purpose revenue bonds under this Act shall lapse on December 31, 1998.

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

(Approved June 18, 1993.)

ACT 246

H.B. NO. 1376

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Utilities Serving the General Public.

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

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds and refunding special purpose revenue bonds under this Act will assist the Kauai Electric Division of Citizens Utilities Company in providing electric service to the general public and in obtaining lower interest rate bond financing for capital improvement projects through the use of tax exempt special purpose revenue bonds and refunding bonds. This savings in interest cost would be reflected in the electric rates established by the public utilities commission in subsequent rate case proceedings. Ratepayers pay for capital costs, including the cost of financing, as part of the rates set by the public utilities commission. Therefore, the resulting reduction in capital costs will benefit the ratepayers of Kauai Electric Division of Citizens Utilities Company. Furthermore, these bonds cannot be secured directly or indirectly by the general credit of the counties or the revenues or taxes of the State but rather solely by Kauai Electric Division of Citizens Utilities Company. Thus, the cost of financing necessary capital improvements can be decreased with no cost or risk to the State. For the foregoing reasons, the legislature finds and declares that the issuance under this Act of special purpose revenue bonds and refunding special purpose revenue bonds is in the public interest.

and for the public health, safety, and general welfare. Kauai Electric Division of Citizens Utilities Company is an electric utility serving the general public that qualifies for special purpose revenue bonds pursuant to chapter 39A, part VI, Hawaii Revised Statutes.

SECTION 2. Pursuant to part VI, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in one or more series in a total amount not to exceed \$40,820,000 to finance the following capital improvement programs for the local furnishing of electric energy by Kauai Electric Division of Citizens Utilities Company, an electric utility serving the general public: multi-purpose capital improvement program, including preliminary engineering design and construction necessary for a new fossil fuel generator facility, transmission lines and other power plant additions or electric systems or both. The special purpose revenue bonds will be issued during the period from July 1, 1993, through December 31, 1998; provided that approval by the public utilities commission shall be required for any project financed by the issuance of special purpose revenue bonds under this Act; and provided, further, that of the amount authorized in this section, none shall be used for nuclear fuel generating units.

SECTION 3. The public utilities commission shall report annually to the legislature as to the progress under this Act in reducing financing costs of electric utilities, including the cost of the bonds at the time of issue as compared to the cost to the utility if the issue was made on other than the issuance of revenue bonds, the estimated benefits derived from the use of the special purpose revenue bonds, and a listing of the projects to be funded by the special purpose revenue bonds.

SECTION 4. The department of budget and finance is authorized, from time to time, including times subsequent to December 31, 1993, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and any refunding of special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to chapter 39A, part VI, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds and refunding special purpose revenue bonds to assist utilities serving the general public in providing electric energy.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on December 31, 1998.

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

(Approved June 18, 1993.)

ACT 247

H.B. NO. 1537

A Bill for an Act Relating to Motor Vehicles.

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

SECTION 1. Chapter 437D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§437D- Rental agreements; unpaid parking citations. Pursuant to section 291C-168.5, the lessor, as the registered owner of the rental motor vehicle, may be responsible for fines or fees related to parking citations. The lessor may adopt a policy of charging the lessee the actual cost of the parking citation paid to the court plus an administrative fee not to exceed \$20; provided, however, that every rental agreement of a lessor adopting the policy must disclose, at a minimum, in plain language and in at least ten-point bold typeface print:

- (1) The amount of the administrative fee to be charged; and
- (2) Language encouraging the lessee to pay the parking citation directly.”

SECTION 3.¹ New statutory material is underscored.²

SECTION 4.¹ This Act shall take effect upon its approval.

(Approved June 18, 1993.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

ACT 248

H.B. NO. 1582

A Bill for an Act Relating to Meat Inspection.

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

SECTION 1. Section 159-3, Hawaii Revised Statutes, is amended by deleting the definition “animal food manufacturer”.

[““Animal food manufacturer” means any person engaged in the business of manufacturing or processing animal food derived wholly or in part from carcasses or parts or products of the carcasses of cattle, sheep, swine, goats, horses, mules, other equines, or exotic animals.”]

SECTION 2. Section 159-11, Hawaii Revised Statutes, is amended to read as follows:

“§159-11 Certificate of sanitation. (a) The board may issue certificates of sanitation to slaughterhouses[,] and meat processors[, and animal food manufacturers] which are subject to this chapter and which meet minimum sanitary specifications required for:

- (1) The slaughtering of animals for use of the meat or meat products in intrastate commerce.
- (2) The processing, rendering, transporting, storing, and handling of the meat or meat products in intrastate commerce. The board may adopt rules, subject to chapter 91, governing the minimum sanitary specifi-

cations and prescribing forms, requiring reports, and providing for periodic renewals of [such] the certificates.

(b) Notwithstanding any [requirement] other law or rule under this chapter [or the rules adopted under this section] which [require] requires the renovation or upgrading of the physical facilities of slaughterhouses[,] and meat processors[, or animal food manufacturers] in order to obtain a certificate of sanitation, the board[, as of July 1, 1969,] shall [continue to] nonetheless issue certificates of sanitation to slaughterhouses and meat processors [now] licensed by the State[, and to meat processors and animal food manufacturers who are in business, to continue their operations],¹ provided that:

- (1) The facilities of the slaughterhouses[,] and meat processors[, and animal food manufacturers shall be] are sanitary and [that] the products which emerge from their respective operations are wholesome, not adulterated, and fit for human [and other] consumption; and
- (2) Upon the sale or transfer of any of the foregoing businesses, the person to whom the business is transferred shall be required to meet all of the requirements [provided in] and the rules [adopted] under this chapter.”

SECTION 3. Section 159-13, Hawaii Revised Statutes, is amended to read as follows:

“[§159-13[] Application for a license. The board may issue licenses to slaughterhouses[,] and meat processing establishments [and animal food manufacturers] having certificates of sanitation issued under section 159-11. An applicant for an original or renewal license to operate as a slaughterhouse operator[,] or meat processor [or animal food manufacturer] shall file an application upon a form prepared by the board, containing the information which the board deems necessary for the administration of this chapter.

The license year shall be from July 1 to June 30. All applications for renewal of licenses shall be made at least 30 days prior to the commencement of the license year.”

SECTION 4. Section 159-36, Hawaii Revised Statutes, is amended to read as follows:

“§159-36 [Inspection and sanitary requirements; sale; transportation.] Articles not intended for human food. [The board may provide for inspection and sanitary requirements under part IV] Inspection is not provided under this chapter at any establishment for the slaughter of cattle, sheep, swine, goats, horses, mules, or other equines, or the preparation of any carcasses or parts or products of animals, which are not intended for use as human food[, but the]. All meat or meat products, prior to their offer for sale or transportation in intrastate commerce, unless naturally inedible by humans, shall be denatured or otherwise identified as prescribed by the board to deter their use for human food. No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses, parts thereof, or meat or meat products of any animals, which are not intended for use as human food unless they are denatured or otherwise identified as required by the rules adopted by the board or are naturally inedible by humans.”

SECTION 5. Section 159-37, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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"(a) For the enforcement of this chapter, the following classes of persons shall keep records as the board may prescribe and all persons subject to the requirements shall, at all reasonable times, upon notice by a duly authorized representative of the board, afford the representative [and] or any duly authorized representative of the Secretary of Agriculture [accompanied by the representative of the board] access to their places of business and opportunity to examine the facilities, inventory, and records thereof, to copy all of those records, and to take reasonable samples of their inventory upon payment of the fair market value therefor:

- (1) Any person who engages, in or for intrastate commerce, in the business of slaughtering any cattle, sheep, swine, goats, horses, mules, or other equines, or preparing, freezing, packaging, or labeling any carcasses, or parts or products of carcasses, of any animals, for use as human food or animal food.
- (2) Any person who engages in the business of buying or selling as meat broker, wholesaler or otherwise, or transporting in intrastate commerce, or storing in or for commerce, any carcasses, or parts or products of carcasses, of any animals.
- (3) Any person who engages in business, in or for intrastate commerce, as a renderer, or engages in the business of buying, selling, or transporting, in commerce, any dead, dying, disabled, or diseased cattle, sheep, swine, goats, horses, mules, or other equines, or parts of the carcasses of [such] the animals that died otherwise than by slaughter.
- (4) Any person who engages in the business of custom slaughtering or preparing any cattle, sheep, swine, goats, horses, or other equines for use as human food or animal food."

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 18, 1993.)

Note

1. So in original.

ACT 249

H.B. NO. 1592

A Bill for an Act Relating to the Issuance of Certificates of Identification.

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

SECTION 1. Section 846-23, Hawaii Revised Statutes, is amended to read as follows:

"§846-23 Rules. For the purpose of carrying out this part the attorney general, subject to chapter 91, [may] shall prescribe rules having the force and effect of law[.] including rules assessing reasonable fees for the services provided under this part. The rules shall provide for a waiver of any fee in cases of extreme hardship. Until rules establishing the fees are adopted, the fee for each service provided under this part shall be \$10, which fee may be waived in cases of extreme hardship."

SECTION 2. Section 846-27, Hawaii Revised Statutes, is amended to read as follows:

“§846-27 Registration and issuance of certificate; fee. Every person residing or present in the State may be registered, and have issued to the person a certificate of identification, under this part.

Application for the registration shall be made in person by any adult person or minor over the age of [sixteen] fourteen years. In the case of a minor under the age of [sixteen] fourteen years, the application shall be made in the minor's behalf by the parent, or [other] by another person in loco parentis of such minor[.] who can provide proof of guardianship. In the case of an incompetent person, the application shall be made by the person having the custody or control of or maintaining the incompetent person. [A fee of \$6 shall be paid by each applicant, which fee, however, may be waived by the attorney general in cases of extreme hardship.]”

SECTION 3. Section 846-28, Hawaii Revised Statutes, is amended to read as follows:

“§846-28 Information to be secured. The department of the attorney general shall require, collect, secure, make, and maintain a record of the following items of information so far as it is practicable to secure the same, with respect to each applicant for registration:

- (1) The name of the person applying to be registered (hereinafter called the “registrant” or “applicant”), the street and number or address of the applicant's place of [habitation in the State,] permanent residence, and the applicant's residence and business telephone numbers, if any;
- (2) The applicant's occupation and any pertinent data relating thereto;
- (3) The applicant's nationality or racial extraction;
- (4) The applicant's citizenship [status];
- (5) The date and place of the applicant's birth;
- (6) The applicant's personal description including sex, height, weight, hair, eyes, complexion, build, scars, and marks;
- (7) The [fingerprints of both hands of the applicant,] applicant's right thumbprint or, if the applicant has no right thumb, other identifying imprint as specified by rules of the department; provided that this requirement shall not apply to minors until they reach the age of [six] three years[, except as may be requested by a parent or guardian];
- (8) The name, relationship, and address of the nearest relative or other person to be notified in case of sickness, accident, death, emergency, or need of the applicant, if such notification is desired; and
- (9) The social security number of the applicant.”

SECTION 4. Section 846-29, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) Special provisions may be made by rules of the attorney general:
- (1) For the registration of inmates[, employees, and others] residing at or in hospitals, correctional facilities, [homes for the aged, indigent homes,] and other institutions; and
 - (2) For the registration of other persons, whenever special treatment is required so as to minimize hardship or inconvenience attendant upon the registration contemplated by this part.”

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SECTION 5. Section 846-30, Hawaii Revised Statutes, is amended to read as follows:

"§846-30 Identification certificates; form. The department of the attorney general, after taking the [fingerprints] thumbprint of each registrant as provided in this part (except as otherwise provided in the case of children under [six] three years of age), and after securing the information required by or pursuant to this part, shall issue to each registrant a certificate of identification in such form, and with such information, as the attorney general deems necessary and practicable, the certificate to contain, among other things: the registrant's social security number; the date of issue; the legal name, residence, citizenship [status], date of birth [(if known)], the registrant's signature, a facsimile signature of the attorney general, a facsimile signature of the officer or employee issuing the certificate (to be designated as the "administrator of the data center"), [the fingerprints of the index and middle fingers of each of the registrant's hands (except as otherwise provided in the case of children under six years of age),] the name and address of the person to be notified in case of need, and such other personal identification data as the attorney general deems necessary and practicable. [Upon the fingerprinting of each child attaining the age of six years after having been registered, the child's previous certificate shall be canceled and a new certificate, bearing the child's fingerprints, shall be issued under the same number.]"

SECTION 6. Section 846-31, Hawaii Revised Statutes, is amended to read as follows:

"§846-31 Identification certificates not to be altered; duties of holder; lost certificates. No person, except agents of the department of the attorney general acting pursuant to [its] the authority[.] of law, shall alter, deface, or destroy any certificate of identification. Except as specifically authorized by this section or the rules of the attorney general, no registrant shall loan or give the registrant's certificate of identification to any other person, and no person shall use the certificate of identification of any other person. Any registrant whose certificate of identification is stolen or otherwise lost, or altered, defaced, or destroyed, may at any time apply for a duplicate certificate of identification in such manner as the attorney general may require, which duplicate shall be issued by the department upon being satisfied as to such loss, alteration, defacing, or destruction [and the payment of a fee of \$6, and shall be distinctly marked as a duplicate. The fee may be waived by the attorney general where the requirement thereof would impose extreme hardship]. In the case of an altered or defaced certificate of identification, the certificate, if available, shall be surrendered by the registrant and canceled by the department. Any person finding or coming into possession of the certificate of identification of any other person shall promptly return or deliver the same to the owner thereof or to the nearest office of the department."

SECTION 7. Section 846-32, Hawaii Revised Statutes, is amended to read as follows:

"§846-32 Correction or alteration of records and certificates in cases of error or subsequent changes concerning names, citizenship, description, etc. (a) If, after registration, the name of any registrant is legally changed by marriage, divorce, adoption, legitimation, order of the lieutenant governor, or other legal means, or if there is a change in the registrant's citizenship [status], the registrant or other person in charge of the registrant (in the case of a minor or incompetent person), within thirty days after the change of name or citizenship [status], shall

report the change and present the registrant's certificate of identification to the department of the attorney general [and pay to the department a fee of \$6 (which fee, however, may be waived by the department in cases of extreme hardship)]. The department, upon being satisfied as to the change and receiving payment of the fee, shall cancel the certificate and issue a new certificate bearing the new name or citizenship [status] of the registrant, making appropriate notation of the facts upon the records of the department.

(b) If any error has been made in any item of information contained in the records of the department or the certificate of identification concerning any registrant, the department, of its own motion, or upon application by the registrant, and upon receipt of [evidence] satisfactory evidence [to it] that an error has been committed, with the approval of the attorney general or the attorney general's specially authorized representatives, may correct the error and, in such case, shall make appropriate changes or notations stating the error and the correct information upon the records of the department and the certificate of identification.

(c) In case any item of personal information originally correct with respect to any registrant shall change after registration, the change, if material, may be registered by the department and the records and certificate of identification may be altered to conform thereto, upon receipt by the department of satisfactory evidence as to the change and the approval of the attorney general or the attorney general's specially authorized representative [and the payment of a fee of \$6 (which fee, however, may be waived by the department in cases of extreme hardship)]."

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 18, 1993.)

ACT 250

H.B. NO. 1594

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. Section 92F-13, Hawaii Revised Statutes, is amended to read as follows:

"[[§92F-13]] Government records; exceptions to general rule. This [chapter] part shall not require disclosure of:

- (1) Government records,¹ which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;
- (2) Government records pertaining to the prosecution or defense of any judicial or quasi-judicial action to which the State or any county is or may be a party, to the extent that such records would not be discoverable;
- (3) Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function;
- (4) Government records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure; and

- (5) Inchoate and draft working papers of legislative committees including budget worksheets and unfiled committee reports; work product; records or transcripts of an investigating committee of the legislature which are closed by rules adopted pursuant to section 21-4 and the personal files of members of the legislature."

SECTION 2. Section 92F-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No agency may disclose or authorize disclosure of government records to any other agency unless the disclosure is:

- [1] Compatible with the purpose for which the information was collected or obtained;
- (2) Consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;
- (3) (1) [Reasonably appears to be proper] Necessary for the performance of the requesting agency's duties and functions[;] and is also:
 - (A) Compatible with the purpose for which the information was collected or obtained; or
 - (B) Consistent with the conditions or reasonable expectations of use and disclosure under which the information was provided;
- (4) (2) To the state archives for² purposes of historical preservation, administrative maintenance, or destruction;
- (5) To an agency or instrumentality of any governmental jurisdiction within or under the control of the United States, or to a foreign government if specifically authorized by treaty or statute, for a civil or criminal law enforcement investigation;]
- (3) To another agency, another state, or the federal government, or foreign law enforcement agency or authority, if the disclosure is:
 - (A) For the purpose of a civil or criminal law enforcement activity authorized by law; and
 - (B) Pursuant to:
 - (i) A written agreement or written request, or
 - (ii) A verbal request, made under exigent circumstances, by an officer or employee of the requesting agency whose identity has been verified, provided that such request is promptly confirmed in writing;
- (4) To a criminal law enforcement agency of this State, another state, or the federal government, or a foreign criminal law enforcement agency or authority, if the information is limited to an individual's name and other identifying particulars, including present and past places of employment;
- (5) To a foreign government pursuant to an executive agreement, compact, treaty, or statute;
- (6) To the legislature, or a county council, or any committee or subcommittee thereof;
- (7) Pursuant to an order of a court of competent jurisdiction;
- (8) To authorized officials of [a department or agency of] another agency, another state, or the federal government for the purpose of auditing or monitoring an agency program that [received] receives federal [monies;], state, or county funding;
- (9) To the offices of the legislative auditor, the legislative reference bureau, or the ombudsman of this State for the performance of their respective functions; [or]

- (10) To the department of personnel services, county personnel agencies, or line agency personnel offices for the performance of their respective duties and functions, including employee recruitment and examination, classification and compensation reviews, the administration and auditing of personnel transactions, the administration of training and safety, workers' compensation, and employee benefits and assistance programs, and for labor relations purposes; or
 [(10)] (11) Otherwise subject to disclosure under this chapter."

SECTION 3. Section 92F-22, Hawaii Revised Statutes, is amended to read as follows:

"[§]92F-22[]] Exemptions and limitations on individual access. An agency is not required by this [chapter] part to grant an individual access to personal records, or information in such records:

- (1) Maintained by an agency that performs as its or as a principal function any activity pertaining to the prevention, control, or reduction of crime, and which consist of:
 - (A) Information which fits or falls within the definition of "criminal history record information" in section 846-1;
 - (B)] (A) Information or reports prepared or compiled for the purpose of criminal intelligence or of a criminal investigation, including reports [or] of informers, witnesses, and investigators; or
 - [(C)] (B) Reports prepared or compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through confinement, correctional supervision, and release from supervision.
- (2) The disclosure of which would reveal the identity of a source who furnished information to the agency under an express or implied promise of confidentiality.
- (3) Consisting of testing or examination material or scoring keys used solely to determine individual qualifications for appointment or promotion in public employment, or used as or to administer a licensing examination or an academic examination, the disclosure of which would compromise the objectivity, fairness, or effectiveness of the testing or examination process.
- (4) Including investigative reports and materials, related to an upcoming, ongoing, or pending civil or criminal action or administrative proceeding against the individual.
- (5) Required to be withheld from the individual to whom it pertains by statute or judicial decision or authorized to be so withheld by constitutional or statutory privilege."

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 18, 1993.)

Notes

1. Comma should be underscored.
2. "The" should be underscored.

ACT 251

H.B. NO. 1598

A Bill for an Act Relating to Family Support.

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

SECTION 1. Section 576E-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or a former spouse who is living with a child or children for whom the individual also owes support."

SECTION 2. Section 576E-1, Hawaii Revised Statutes, is amended by amending the definition of "obligor" to read:

"Obligor" means a responsible parent obligated by court or administrative order to pay child support[.] or who is obligated by court order to pay spousal support in conjunction with child support."

SECTION 3. 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, suspend, terminate, and enforce child support obligations and collect or enforce spousal support 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 nonwelfare 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, suspend, terminate, or enforce a child support order[.] and to collect or enforce a spousal support order in conjunction with a child support order;
- (4) Determine that a responsible parent has not complied with a court or administrative order and make recommendations to the court or other agency with respect to contempt or other appropriate proceedings;
- (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;
- (8) Exercise the powers and authority described in this section, notwithstanding the existence of a prior court or administrative order issued by another state or foreign jurisdiction, except as modified or limited by this chapter; and

- (9) Delegate the powers and authority described in this section to hearings officers and employees of the agency.”

SECTION 4. Section 576E-5, Hawaii Revised Statutes, is amended to read as follows:

“§576E-5 Commencement of administrative proceedings; notice. The agency shall serve a notice of administrative proceedings and notice of financial responsibility upon the responsible parent prior to the issuance of an order under this chapter. [The] Where applicable, notice shall contain[:] the following:

- (1) A copy of the order proposed to be entered;
- (2) A statement that the responsible parent is entitled to an administrative hearing before an impartial hearings officer to contest the entry of the order together with an explanation of the procedure for requesting a hearing;
- (3) A statement of rights at the hearing together with an explanation of defenses or objections which may be considered by the hearings officer;
- (4) The legal authority under which the hearing is to be held;
- (5) A statement that the property of the responsible parent may be seized or that the income of the responsible parent may be withheld for payment of support;
- (6) A statement that information relating to the responsible parent's nonpayment of support may be made available to credit-reporting agencies;
- (7) A statement that child and spousal support [payment] shall be payable by an order for immediate income withholding which shall be entered concurrently with the administrative order pursuant to section 576E-16;
- (8) A statement that the responsible parent has the right to request judicial review of a final order of a hearings officer pursuant to section 576E-13; [and]
- (9) A statement that an administrative determination of a support obligation creates a judgment by operation of law upon filing of the order at the family court and as such is entitled to full faith and credit in any other state or jurisdiction.”

SECTION 5. Section 576E-10, Hawaii Revised Statutes, is amended to read as follows:

“§576E-10 Hearings officers. The attorney general shall appoint and commission, 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 application of the guidelines established under section 576D-7;

- (3) Enter an income withholding order pursuant to section 576E-16;
- (4) Conduct a hearing and enter an automatic income assignment order pursuant to section 571-52.2;
- (5) Enter an interstate income withholding order pursuant to section 576E-16;
- (6) Enter support orders which have the effect of modifying, suspending, terminating, or enforcing the child support provision of orders of the Hawaii family courts;
- (7) Enter support orders of any form if the order establishes, modifies, suspends, terminates, or enforces child support obligations;
- (8) Receive testimony from the parties to the hearing and establish a record;
- (9) Evaluate the testimony and other evidence received at the hearing and make specific findings of fact and conclusions of law after contested case hearings and when otherwise required by law;
- (10) Issue subpoenas;
- (11) Compel production of documents and witnesses;
- (12) Dismiss a child support case upon finding of good cause;
- (13) Hold a pre-hearing conference;
- (14) Conduct a hearing and enter an order concerning whether a state income tax refund should be intercepted to satisfy a past due support obligation pursuant to section 231-54;
- (15) Enter an order concerning whether a responsible parent's unemployment compensation should be applied to satisfy a past due support obligation pursuant to chapter 576D;
- (16) Enter an order concerning whether a lien should be imposed on a responsible parent's personal and real property pursuant to section 576D-10.5;
- (17) Enter an order concerning whether a responsible parent should be required to post bond in order to secure payment of past due support pursuant to chapter 576D;
- (18) Enter an order concerning whether a responsible parent's child support obligation should be reported to consumer credit reporting agencies pursuant to chapter 576D; [and]
- (19) Refer contempt proceedings to the appropriate court[.]; and
- (20) Enter an order enforcing the collection of spousal support for a spouse or former spouse who is living with a subject child or children if a support obligation has been established by a court order for that spouse and the child support is being enforced for the subject child or children.

SECTION 6. Section 576E-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever an administrative order is entered 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, there shall concurrently be issued an order which shall operate as an assignment to the agency for the benefit of the child or in the case of spousal support, for the benefit of a spouse or former spouse, 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 court or administrative order. 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."

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 18, 1993.)

ACT 252

H.B. NO. 1606

A Bill for an Act Relating to the Natural Energy Laboratory of Hawaii Authority.

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

SECTION 1. Section 227D-1, Hawaii Revised Statutes, is amended by amending the definition of "research and technology park" to read as follows:

"Research and technology park" means a tract of real property determined by the board as being suitable for use as building sites for projects engaged in research, development, demonstration, processing, or manufacturing activities or enterprises utilizing or in support of the utilization of natural resources or geothermal energy. This includes, but is not limited to, research, commercialization, training, education, technical analyses, pilot plant, or prototype product development, and may include the installation of improvements to tracts incidental to the use of real property as a research and technology park, such as water, sewer, sewage and waste disposal, and drainage facilities, sufficient to adequately service projects in the research and technology park, and provision of incidental transportation facilities, power distribution facilities, and communication facilities. Research and technology parks shall not include any buildings or structures of any kind except for buildings or structures incidental to improvements of the research and technology park."

SECTION 2. Section 227D-2, Hawaii Revised Statutes, is amended as follows:

1. By amending the title to read:

"[§227D-2] [Natural] Establishment of the natural energy laboratory of Hawaii authority; [established.] purpose."

2. By amending subsection (a) to read:

"(a) There is established the natural energy laboratory of Hawaii authority, which shall be a body corporate and politic and an instrumentality and agency of the State. The authority shall be placed within the department of business, economic development, and tourism for administrative purposes, pursuant to section 26-35. The purpose of the natural energy laboratory of Hawaii authority shall be to facilitate research, development, and commercialization of natural energy resources in Hawaii. Its duties shall include:

- (1) Establishing, managing, and operating facilities that provide sites for:
(A) Research and development;

- (B) Commercial projects and businesses utilizing natural resources, such as ocean water or geothermal energy;
- (C) Those businesses engaged in other compatible scientific and technological investigations; and
- (D) Businesses or educational facilities that support the primary projects and activities;
- (2) Providing support, utilities, and other services to facility tenants and government agencies;
- (3) Maintaining the physical structure of the facilities;
- (4) Promoting and marketing these facilities; and
- (5) Promoting and marketing the reasonable utilization of available natural resources.”

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

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

- (1) Sue and be sued;
- (2) Have a seal and alter the same at its pleasure;
- (3) Promote the use of the geothermal energy and natural resources sites for the purposes provided by law;
- (4) Through its executive director appoint officers, agents and employees without regard to chapters 76 and 77 and to establish the salaries therefore;
- (5) Adopt rules under chapter 91 necessary to effectuate this chapter in connection with its operation, facilities, parks, properties, and projects;
- (6) Make, execute, enter into, amend, supplement, and carry out contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter with any private person, firm, partnership, association, company, or corporation only as it may be necessary in the conduct of its business and on such terms as it may deem appropriate; provided that the authority shall not obligate any funds of the State except as have been appropriated to it. Notwithstanding the foregoing, the authority may enter into and perform such contracts, leases, cooperative agreements, or other transactions with any agency or instrumentality of the United States, a foreign nation, a state, a territory, or a possession, or with any political subdivision thereof;
- (7) Accept, hold, or expend gifts or grants in any form from any public agency or private source, or from any other source;
- (8) Impose and collect fees pertaining to the use of properties and facilities of the authority;
- (9) Formulate budgets to provide for the operation of the facilities of the authority;
- (10) Submit an annual report to the governor and the legislature at least twenty days prior to the convening of each regular session;
- (11) [Own,] Acquire, own, lease, hold, clear, improve, and rehabilitate real, personal, or mixed property and assign, exchange, transfer, convey, lease, sublease, or encumber any project including by way of easements;
- (12) Construct, reconstruct, rehabilitate, improve, alter, or repair, or provide for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project and designate a qualified person as

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

SECTION 4. Section 227D-5, Hawaii Revised Statutes, is amended to read as follows:

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"[§227D-5] Special fund. There is established in the state treasury a fund to be known as the natural energy laboratory of Hawaii authority special fund, into which shall be deposited all grants, gifts, moneys and fees from tenants or other users of the authority's parks, projects, other leased facilities, and other services and publications. All moneys in the fund are appropriated for the purposes of and shall be expended by the authority for the operation, maintenance, and management of its parks, projects, facilities, services, and publications[.], and for the design and construction of new facilities and the renovation of or addition to existing facilities."

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 18, 1993.)

Note

1. So in original.

ACT 253

H.B. NO. 1630

A Bill for an Act Relating to Citations for Unlicensed Activity.

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

SECTION 1. Chapter 436B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§436B- Citation for unlicensed activity; civil penalties. (a) In addition to any other remedy available, the investigator may issue citations to persons acting in the capacity of or engaging in business within the State without having a license previously obtained under and in compliance with this chapter, the licensing laws for the respective profession or vocation, and the rules adopted thereunder.

(b) Each citation shall be in writing and shall describe the basis of the citation, including the specific statutory provisions alleged to have been violated, and may contain an order of abatement, and an assessment of civil penalties as provided in this section. All penalties collected under this section shall be deposited in the special fund established under section 26-9(o).

(c) Any person who violates this section shall be assessed a civil penalty of not more than \$500 or forty per cent of the total amount of the goods and services provided or to be provided, whichever is greater, for the first violation; not more than \$1,000 or forty per cent of the total amount of the goods and services provided or to be provided, whichever is greater, for the second violation; and not more than \$5,000 or forty per cent of the total amount of the goods and services provided or to be provided, whichever is greater, for any subsequent violation.

(d) Service of a citation issued under this section shall be made by personal service or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.

(e) Any person cited under this section may submit a written request to the director for a hearing, within twenty days from the service of the citation, with respect to the violations alleged, the scope of the order of abatement, or the amount of the civil penalties assessed.

(f) If the person cited under this section timely notifies the director of the request for a hearing, the director shall afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the director or the director may designate a hearings officer to hold the hearing. The director or any hearings officer designated by the director shall have the power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue a final order.

(g) If the person cited under this section does not submit a written request to the director for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the director.

(h) The director may apply to the appropriate court for a judgment to enforce the provisions of any final order issued by the director or designated hearings officer pursuant to this section, including the provision for abatement and civil penalties imposed.

(i) If any party is aggrieved by the decision of the director or the designated hearings officer, 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. The operation of an abatement order shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c).

(j) The sanctions and disposition authorized under this section shall be separate from and in addition to all other remedies either civil or criminal provided in any other applicable statutory provision.

(k) The director may adopt rules pursuant to chapter 91 necessary for the purpose of this section."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect upon its approval and shall be repealed on June 30, 1996.

(Approved June 18, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 254

H.B. NO. 1660

A Bill for an Act Relating to Workers' Compensation.

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

SECTION 1. Section 386-95, Hawaii Revised Statutes, is amended to read as follows:

"§386-95 Reports of injuries, other reports, penalty. Every employer shall keep a record of all injuries, fatal or otherwise, received by the employer's employees in the course of their employment, when known to the employer or brought to the employer's attention.

Within seven working days after the employer has knowledge of such injury causing absence from work for one day or more or requiring medical treatment beyond ordinary first aid, the employer shall make a report thereon to the director. The report shall set forth the name, address, and nature of the employer's business and the name, age, sex, wages, and occupation of the injured employee and shall

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state the date and hour of the accident, if the injury is produced thereby, the nature and cause of the injury, and such other information as the director may require.

On December 31 of each year, the employer shall make a report to the director with respect to each injury on which the employer is continuing to pay compensation, showing all amounts paid by the employer on account of the injury.

The reports required by this section shall be made on forms to be obtained from the director pursuant to section 386-71 and deposit of reports in the United States mail, addressed to the director, within the time specified shall be deemed compliance with the requirements of this section.

When an injury results in immediate death, the employer shall within forty-eight hours notify personally or by telephone a representative of the department in the county where the injury occurred.

Within thirty days after final payment of compensation for an injury, the employer shall make a final report to the director showing the total payments made, the date of termination of temporary total disability, and such other information as the director may require.

Any employer who wilfully refuses or neglects to make any of the reports or give any notice required by this section shall be fined by the director not more than [\$1,000, or imprisoned not more than ninety days, or both.] \$5,000.

Copies of all reports, other than those of fatal injuries, filed with the director as required by this section shall be sent to the injured employee by the employer."

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 18, 1993.)

ACT 255

H.B. NO. 1661

A Bill for an Act Relating to Workers' Compensation.

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

SECTION 1. Section 386-91, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any party in interest or the director may file in the circuit court in the jurisdiction [of] in which the injury occurred, a certified copy of:

- (1) [a] A decision of the director [of labor and industrial relations awarding compensation,] assessing penalties, or awarding compensation or other relief, including attorneys fees, from which no appeal has been taken within the time allowed therefor; [or]
- (2) [a] A decision of the director [awarding compensation,] assessing penalties, or awarding compensation or other relief, including attorneys fees, from which decision an appeal has been taken but as to which [decision] no order has been made by the director or the appellate board or the court that the appeal therefrom shall operate as a supersedeas or stay; [or]
- (3) [a] A decision of the appellate board [awarding compensation,] assessing penalties, or awarding compensation or other relief, includ-

ing attorneys fees, from which no appeal has been taken within the time allowed therefor; or

- (4) [a] A decision of the appellate board [awarding compensation, assessing penalties, or awarding compensation or other relief, including attorneys fees], from which an appeal has been taken but as to which [decision] no order has been made by the appellate board or the court that the appeal therefrom shall operate as a supersedeas or stay.

The court shall render a judgment in accordance with [such] the decision and notify the parties thereof. The judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard and determined by the court, except that there shall be no appeal therefrom."

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 18, 1993.)

ACT 256

H.B. NO. 1671

A Bill for an Act Relating to Aquatic Resources.

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

SECTION 1. Chapter 187A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§187A- Release and confiscation of harmful aquatic life; penalty.

(a) No person shall release any live non-native fish or other live non-native aquatic life being held in an aquarium or other confinement for scientific study, exhibition, display, sale, or for any other purpose, into any waters of the State, except as provided in section 187A-2(4).

(b) The department or its agents may seize, confiscate, or destroy, as a public nuisance, any fish or other aquatic life found in any waters of the State and whose importation is prohibited or restricted pursuant to rules of the department of agriculture.

(c) Any person violating this section shall be guilty of a petty misdemeanor and upon conviction thereof shall be punished as provided by section 188-70."

SECTION 2. Section 188-29, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"§188-29 Nets and traps.¹ (a) It is unlawful for any person to use nets made of or using netting, or bullpen traps with a stretched mesh of less than two inches, 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, but not thrownets, to [take] fish for aquarium fish in conformance with the conditions of the permit[.], provided that noncommercial aquarium fish collectors shall be limited to a combined total of five fish or aquatic life specimens per person per day;
- (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."

SECTION 3. Section 188-68, Hawaii Revised Statutes, is amended to read as follows:

"§188-68 Stony coral; rock with marine life attached; taking and selling prohibited. (a) The intentional taking, breaking, or damaging with crowbar, chisel, or any other implement of any rock or coral to which marine life is visibly attached or affixed, or live stony coral of the taxonomic order, Madreporaria, including the Fungidae or Pocilloporidae families, [for any reason,] is prohibited except with a permit authorized under section 187A-6 or section 183-41 or by the department under rules adopted pursuant to chapter 91 necessary for collecting marine life visibly attached to rocks placed in the water for a commercial purpose.

(b) [After July 1, 1992, no] No person shall sell or offer for sale as souvenirs any stony coral of the taxonomic order, Madreporaria, of the species Montipora verrucosa, Fungia scutaria, Pocillopora damicornis, Pocillopora meandrina, Pocillopora eydouxi, Porites compressa, Porites lobata, and Tubastraea coccinea, provided that stony coral souvenirs shall not include coral rubble pieces or fragments imported for the manufacture and sale of coral jewelry or obtained through dredging operations in Hawaii for agricultural or other industrial uses."

SECTION 4. Section 188-70, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) In addition to the above penalties, for the first conviction a fine of up to \$100 may be levied for each specimen of aquatic life taken or rock or coral broken or damaged illegally under this chapter; provided that for every subsequent conviction within five years of the first conviction, a fine of up to \$100 shall be levied for each specimen of aquatic life taken or rock or coral broken or damaged illegally under this chapter."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.²

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

(Approved June 18, 1993.)

Notes

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

ACT 257

H.B. NO. 1694

A Bill for an Act Relating to Income Tax Refunds.

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

SECTION 1. Section 235-111, Hawaii Revised Statutes, is amended to read as follows:

"§235-111 Limitation period for assessment, levy, collection, or credit; net operating loss carrybacks. (a) General rule. The amount of income taxes imposed by this chapter (also the amount of income taxes imposed by any preceding law of the State) and the liability of any employer in respect of wages, shall be assessed or levied and the overpayment, if any, shall be credited within three years after filing of the [final] return for the taxable year, or within three years of the due date prescribed for the filing of the return, whichever is later[, and no]. No proceeding in court without assessment for the collection of [such] the taxes or the enforcement of [such] the liability shall be begun after the expiration of [such] the period.

(b) Limitations on credit or refund. Claim for credit or refund of an overpayment of any tax imposed by this chapter shall be filed by the taxpayer or employer within three years from the time the return was filed or from the due date prescribed for the filing of the return, or within two years from the time the tax was paid, whichever is later. No credit or refund shall be allowed or made after three years from the due date of the return unless a claim for credit or refund is filed by the taxpayer or employer within that time. For the purposes of this section, taxes paid before the due date of the return shall be deemed to have been paid on the due date of the return determined without regard to any extensions.

- (1) If the claim was filed by the taxpayer during the three-year period prescribed in this subsection, the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to three years plus the period of any extension of time for filing the return.
- (2) If the claim was not filed within the three-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim.
- (3) If no claim was filed, the credit or refund shall not exceed the amount which would be allowable under paragraph (1) or (2), as the case may be, if the claim was filed on the date the credit or refund is allowed.

[(b)] (c) Exceptions; fraudulent return or no return. In the case of a false or fraudulent return with intent to evade tax or liability, or of a failure to file return, the tax or liability may be assessed or levied at any time; provided that in the case of a return claimed to be false or fraudulent with intent to evade tax or liability, the determination as to [such] the claim [must] shall first be made by a judge of the circuit court for or in the circuit within which the taxpayer or employer has the taxpayer's or employer's residence or principal place of business, or if none in the State then in the first circuit, upon petition filed by the department of taxation. The petition and other pleadings and proceedings in the matter shall be governed and conducted in accordance with statutory and other requirements relating to proceedings in equity, including all rights to appeal allowed in [such] the proceedings. No assessment or levy of the tax or liability after the expiration of the three-year period shall be made unless so provided in the final decree entered in the proceedings.

[(c)] (d) Extension by agreement. Where, before the expiration of the time prescribed in subsection (a) for the assessment, levy, and collection of the tax or liability; or in subsection (b) for the credit or refund of an overpayment, both the department and the taxpayer or employer have consented in writing to its assessment or levy after [such] that date, the tax or liability may be assessed or levied or the overpayment, if any, may be credited at any time prior to the expiration of the period previously agreed upon. The period so agreed upon may be extended by the subsequent agreements in writing made before the expiration of the period previously agreed upon.

[(d)] (e) Overpayment of carrybacks. If an overpayment results from a net operating loss carryback, the statute of limitations in [subsection] subsections (a) and (b) shall not apply. The overpayment shall be credited within three years of the due date prescribed for filing the return (including extensions thereof) for the taxable year of the net operating loss, or the period agreed to under subsection [(c)] (d) with respect to [such] the taxable year, whichever expires later.”

SECTION 2. Section 237-40, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Exceptions. In the case of a false or fraudulent return with intent to evade tax, or of a failure to file the annual return, the tax may be assessed or levied at any time; however, in the case of a return claimed to be false or fraudulent with intent to evade tax, the determination as to the claim [must] shall first be made by a judge of the circuit court as provided in section [235-111(b)] 235-111(c) which shall apply to the tax imposed by this chapter.”

SECTION 3. Section 237D-9, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) In the case of a false or fraudulent return with intent to evade tax, or of a failure to file the annual return, the tax may be assessed or levied at any time; however, in the case of a return claimed to be false or fraudulent with intent to evade tax, the determination as to the claim [must] shall first be made by a judge of the circuit court as provided in section [235-111(b)] 235-111(c) which shall apply to the tax imposed by this chapter.”

SECTION 4. Section 243-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In the case of a false or fraudulent statement with intent to evade tax or liability, or of a failure to file a statement, the tax or liability may be assessed or

levied at any time; provided that in the case of a statement claimed to be false or fraudulent with intent to evade tax or liability, the determination as to the claim [must] shall first be made by a judge of the circuit court as provided in section [235-111(b)] 235-111(c) which shall apply to the tax imposed by this chapter."

SECTION 5. Section 251-8, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) In the case of a false or fraudulent return with intent to evade the surcharge tax, or of a failure to file the annual return, the surcharge tax may be assessed or levied at any time; however, in the case of a return claimed to be false or fraudulent with intent to evade the surcharge tax, the determination as to the claim shall first be made by a judge of the circuit court as provided in section [235-111(b),] 235-11(c)¹ which shall apply to the surcharge tax imposed by this chapter."

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

SECTION 7. This Act shall take effect upon its approval and shall apply to credits or refunds claimed or made after December 31, 1993.

(Approved June 18, 1993.)

Note

1. So in original.

ACT 258

H.B. NO. 1721

A Bill for an Act Relating to Coastal Zone Management.

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

SECTION 1. Section 205A-2, Hawaii Revised Statutes, is amended to read as follows:

“\$205A-2 Coastal zone management program; objectives and policies.

(a) The objectives and policies in this section shall apply to [both] all parts [I and II] of this chapter.

(b) Objectives.

(1) Recreational resources;

(A) Provide coastal recreational opportunities accessible to the public.

(2) Historic resources;

(A) Protect, preserve, and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

(3) Scenic and open space resources;

(A) Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.

(4) Coastal ecosystems;

(A) Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.

- (5) Economic uses;
 - (A) Provide public or private facilities and improvements important to the State's economy in suitable locations.
 - (6) Coastal hazards;
 - (A) Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, [and] subsidence, and pollution.¹
 - (7) Managing development;
 - (A) Improve the development review process, communication, and public participation in the management of coastal resources and hazards.
 - (8) Public participation;
 - (A) Stimulate public awareness, education, and participation in coastal management.
 - (9) Beach protection;
 - (A) Protect beaches for public use and recreation.
- (c) Policies.
- (1) Recreational resources;
 - (A) Improve coordination and funding of coastal [recreation] recreational planning and management; and
 - (B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:
 - (i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;
 - (ii) Requiring replacement of coastal resources having significant recreational value, including but not limited to surfing sites, fishponds, and [sandy] sand beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable;
 - (iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;
 - (iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;
 - (v) [Encouraging expanded] Ensuring public recreational use of county, [State,] state, and federally owned or controlled shoreline lands and waters having recreational value[.] consistent with public safety standards and conservation of natural resources;
 - (vi) Adopting water quality standards and regulating point and nonpoint sources of pollution to protect, and where feasible, restore the recreational value of coastal waters;
 - (vii) Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing; and
 - (viii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, county planning commissions; and crediting such dedication against the requirements of section 46-6.
 - (2) Historic resources;
 - (A) Identify and analyze significant archaeological resources;

- (B) Maximize information retention through preservation of remains and artifacts or salvage operations; and
 - (C) Support state goals for protection, restoration, interpretation, and display of historic resources.
- (3) Scenic and open space resources;
- (A) Identify valued scenic resources in the coastal zone management area;
 - (B) [Ensure] Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;
 - (C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and
 - (D) Encourage those developments which are not coastal dependent to locate in inland areas.
- (4) Coastal ecosystems;
- (A) Improve the technical basis for natural resource management;
 - (B) Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;
 - (C) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and
 - (D) Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate state water quality standards.
- (5) Economic uses;
- (A) Concentrate [in appropriate areas the location of] coastal dependent development [necessary to the State's economy;] in appropriate areas;
 - (B) [Ensure] Ensure that coastal dependent development such as harbors and ports, and coastal related development such as visitor industry facilities[,] and energy generating facilities, are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and
 - (C) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:
 - (i) [Utilization] Use of presently designated locations is not feasible;
 - (ii) Adverse environmental effects are minimized; and
 - (iii) [Important] The development is important to the State's economy.
- (6) Coastal hazards;
- (A) Develop and communicate adequate information [on] about storm wave, tsunami, flood, erosion, [and] subsidence, and point and nonpoint source pollution [hazard;] hazards;
 - (B) Control development in areas subject to storm wave, tsunami, flood, erosion, [and] subsidence, and point and nonpoint source pollution [hazard;] hazards;

- (C) Ensure that developments comply with requirements of the Federal Flood Insurance Program; [and]
 - (D) Prevent coastal flooding from inland projects[.]; and
 - (E) Develop a coastal point and nonpoint source pollution control program.
- (7) Managing development;
- (A) [Effectively utilize and] Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;
 - (B) Facilitate timely processing of [application] applications for development permits and resolve overlapping or conflicting permit requirements; and
 - (C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life-cycle and in terms understandable to the [general] public to facilitate public participation in the planning and review process.
- (8) Public participation:
- (A) Maintain a public advisory body to identify coastal management problems and to provide policy advice and assistance to the coastal zone management program;
 - (B) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal-related issues, developments, and government activities; and
 - (C) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts.
- (9) Beach protection:
- (A) Locate new structures inland from the shoreline setback to conserve open space and to minimize loss of improvements due to erosion;
 - (B) Prohibit construction of private erosion- protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities; and
 - (C) Minimize the construction of public erosion- protection structures seaward of the shoreline.”

SECTION 2. 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] Consult with the counties and the [general] public [prepare] in preparing 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) Prepare and periodically update a plan for use of coastal zone management funds to resolve coastal problems and issues that are not adequately addressed by existing laws and rules;
 - (8) Advocate agency compliance with chapter 205A;
 - (9) Monitor the coastal zone management-related enforcement activities of the state and county agencies responsible for the administration of the objectives and policies of this chapter; and
 - [7] (10) 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 3. Section 205A-5, Hawaii Revised Statutes, is amended to read as follows:

"§205A-5 Compliance. (a) All agencies shall ensure that their rules comply with the objectives and policies of this chapter and any guidelines enacted by the legislature.

(b) All agencies shall enforce the objectives and policies of this chapter and any rules adopted pursuant to this chapter."

SECTION 4. Section 205A-22, Hawaii Revised Statutes, is amended by adding a definition of "department" to be appropriately inserted and to read:

"Department" means the planning department in the counties of Kauai, Maui, and Hawaii, and the department of land utilization in the city and county of Honolulu, or other appropriate agency as designated by the county councils."

SECTION 5. Section 205A-41, Hawaii Revised Statutes, is amended to read as follows:

"§205A-41 Definitions. As used in this part, unless the context otherwise requires:

["Authority" means the authority as defined in part II.]

"Board approval" means approval by the board of land and natural resources pursuant to section 183-41.

["Department" means the planning department of each county.]

"Shoreline area" 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[.]; provided that if the highest annual wash of the waves is fixed or significantly affected by a structure that has not received all permits and approvals required by law or if any part of any structure in violation of this part extends seaward of the shoreline, then the term "shoreline area" shall include the entire structure.

"Shoreline setback line" means that line established in this part or by the county running inland from [and parallel to] the shoreline at a horizontal plane.

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"Structure" includes, but is not limited to, any portion of any building, pavement, road, pipe, flume, utility line, fence, groin, wall, or revetment."

SECTION 6. Section 205A-46, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A variance may be granted for a structure or activity otherwise prohibited in² 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 watersports recreational facilities;
- (6) Facilities or improvements by public agencies or public utilities regulated under chapter 269;
- (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], and 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 diminish the size of a public beach, and will be necessary to stabilize an eroding shoreline."

SECTION 7. Each agency charged with carrying out this Act shall adopt rules necessary to implement or comply with the provisions of this Act by July 1, 1994.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 1993.

(Approved June 18, 1993.)

Notes

1. So in original.
2. Prior to amendment "by" appeared here.

ACT 259

H.B. NO. 1732

A Bill for an Act Relating to Miscellaneous Permits for Pharmacy.

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

SECTION 1. Section 461-15, Hawaii Revised Statutes, is amended to read as follows:

"§461-15 Miscellaneous permits. (a) It shall be unlawful:

- (1) For any person to sell or offer for sale at public auction, or to sell or offer for sale at private sale in a place where public auctions are conducted, any drugs without first [having obtained] obtaining a permit from the board of pharmacy to do so;
- (2) For any person to in any manner distribute or dispense samples of any drugs or medical supplies without first [having obtained] obtaining a permit from the board to do so; provided that nothing in this paragraph shall interfere with the furnishing of samples or drugs directly to physicians, druggists, dentists, veterinarians, and optometrists for use in their professional practice;
- (3) For wholesalers to sell, distribute, or dispense any drug, except to a pharmacist, physician, dentist, veterinarian, or optometrist who is allowed to use pharmaceutical agents under chapter 459 or to a generally recognized industrial, agricultural, manufacturing, or scientific user of drugs for professional or business purposes; provided that it shall be unlawful for wholesalers to sell, distribute, or dispense any pharmaceutical agent which is not listed under section 459-15 to any optometrist; [and]
- (4) For any person, as principal or agent, to conduct or engage in the business of preparing, manufacturing, compounding, packing, or re-packing any drug without first [having obtained] obtaining a permit from the board to do so[.]; and
- (5) For any out-of-state pharmacy or entity engaging in the practice of pharmacy, in any manner to distribute, ship, mail, or deliver prescription drugs or devices into the State without first obtaining a permit from the board; provided that the applicant shall:
 - (A) Provide the location, names, and titles of all principal corporate officers;
 - (B) Attest that the applicant or any personnel of the applicant has not been found in violation of any state or federal drug laws, including the illegal use of drugs or improper distribution of drugs;
 - (C) Submit verification of a valid unexpired license, permit, or registration in good standing to conduct the pharmacy in compliance with the laws of the home state and agree to maintain in good standing such license, permit, or registration; and
 - (D) Have in its employ a registered pharmacist whose registration is current and in good standing.

(b) A person whose application for a permit has been denied may file for an administrative hearing in conformity with chapter 91."

SECTION 2. Section 461-16, Hawaii Revised Statutes, is amended to read as follows:

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"§461-16 Fees for permits and licenses; renewal. (a) The board shall collect application, license, and permit fees for each permit to operate a pharmacy or for each license to operate as a wholesale prescription drug distributor and a fee for the issuance of a permit in accordance with section [461-15(1) or (4).] 461-15(a)(1), (4), and (5).

(b) Permits issued under sections 461-14 and 461-15 and licenses issued under section 461-8.6 shall be conspicuously displayed in the place for which the permit or license was granted. The permits and licenses shall not be transferable, shall expire on December 31 of each odd-numbered year following the date of issuance, and shall be renewed biennially.

(c) The holder of an expired permit or an expired license to operate as a wholesale prescription drug distributor may have the same restored within three years of the date of expiration upon due application therefor and payment of the delinquent fees and a penalty fee[.]; provided that in the case of an expired permit, the holder of the expired permit meets the requirements for the renewal of permits."

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 18, 1993.)

ACT 260

H.B. NO. 1734

A Bill for an Act Relating to Acupuncture.

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

SECTION 1. Section 436E-3.5, Hawaii Revised Statutes, is amended to read as follows:

"[§436E-3.5][] [Certification.] Physicians and osteopaths not exempt. 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.] shall be subject to licensing under this chapter."

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

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

(Approved June 18, 1993.)

ACT 261

H.B. NO. 1797

A Bill for an Act Relating to the Environment.

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

SECTION 1. The legislature finds that there is an approaching threat to essential public services and the State's economy, including, without limitation, the supply of electricity on the island of Hawaii, as a result of the bankruptcy status of Hamakua Sugar Company. The impending shutdown of Hamakua Sugar Company operations on March 31, 1993, will stop the supply of electricity to Hawaii Electric Light Company and its subsequent distribution to Hawaii Electric Light Company customers. Currently, Hamakua Sugar Company provides ten megawatts of capacity or approximately 5.5 per cent of the Big Island electrical system. Stoppage or disruption of the electricity supplied by Hamakua will have serious adverse impacts on the public health and welfare. The supply of electricity to residential homes, businesses, government offices, hospitals, and visitor destinations may be affected. The legislature further finds that, to avoid disruption of essential public services and to protect the public health and welfare of Big Island residents and visitors, independent operation of the Hamakua Sugar Company facility to supply electricity to the Hawaii Electric Light Company after March 31, 1993, will be required. This operation of the Hamakua Sugar Company facility will require the transfer or issuance of permits or variances previously issued pursuant to chapters 342B and 342D, Hawaii Revised Statutes. Because the transfer and issuance of these permits and variances cannot be completed by March 31, 1993, the purpose of this Act is to grant the director of health emergency authority to ensure the uninterrupted supply of electricity.

SECTION 2. Section 342B-43, Hawaii Revised Statutes, is amended to read as follows:

"[§]342B-43[] 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 release of any air pollutant or combination of air pollutants [which] that requires immediate action, the director, with the approval of the governor and without public hearing, may order any person causing or contributing to the release of the air pollutant [to] immediately to reduce or stop the release and the director may take any and all other actions as may be necessary. Any [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] that the governor or any other officer may have to declare an emergency and act on the basis of [such a] the declaration, if [such] the power is conferred by statute or constitutional provision[,] or inheres in the office.

(c) Notwithstanding any other law to the contrary, the director may approve the transfer and modification of permits, subject to review by the director, and enter into consent orders, schedules of compliance, and settlement agreements to ensure the uninterrupted supply of electricity from existing Hamakua Sugar Company electrical operations. The department shall provide for public notice of the department's actions by publishing at least once in a newspaper of general circulation in the State within five days after the permit transfer, modification, consent order, schedule of compliance, or settlement agreement; and based upon any public comments received, the department may take action as allowed by section 342B-27. This subsection shall not apply to any modification of a permit that is subject to

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federal standards for new stationary sources or federal regulations for the prevention of significant deterioration."

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

SECTION 4. This Act shall take effect upon its approval and shall be repealed on November 1, 1993; provided that on November 1, 1993, section 342B-43, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the approval of this Act.

(Approved June 18, 1993.)

ACT 262

H.B. NO. 1799

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Processing Enterprises.

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

SECTION 1. The legislature finds that it is in the public interest to encourage the development of manufacturing and processing entrepreneurs that purchase thermal fluids output produced by cogeneration facilities. The legislature further finds that Hawaiian Entrepreneurs is engaged in the development of a manufacturing and processing facility project that will use the thermal fluids to be produced by the cogeneration facility of Hui 'Enekinia Hawai'i.

The legislature further finds that Hawaiian Entrepreneurs may be assisted through the issuance of special purpose revenue bonds because it is a processing enterprise pursuant to part IV, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part IV, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue in one or more series special purpose revenue bonds in a total amount not to exceed \$5,000,000, as seed money for the purpose of assisting Hawaiian Entrepreneurs, or a partnership in which Hawaiian Entrepreneurs is a general partner, for the establishment of a manufacturing and processing facility. The legislature finds and determines that the activity and facilities of Hawaiian Entrepreneurs constitute a project as defined in part IV, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a processing enterprise.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part IV, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds to assist processing enterprises.

SECTION 4. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 1998.

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

(Approved June 18, 1993.)

ACT 263

H.B. NO. 1800

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Industrial Enterprises.

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

SECTION 1. The legislature finds that it is in the public interest to encourage the development of cogeneration facilities that make electric energy and water available to members of the general public by the sale of the electric energy to an electric utility and the water to the existing and planned water systems serving the area. The legislature further finds that Hui 'Enekinia Hawai'i is engaged in the development of a cogeneration facility project that will sell the electric energy it produces to the Hawaii Electric Light Company, Inc., which is an electric utility serving the public, and the thermal fluids it produces to existing and planned manufacturing and processing entrepreneurs in the area.

The legislature further finds that Hui 'Enekinia Hawai'i may be assisted through the issuance of special purpose revenue bonds because it is an industrial enterprise pursuant to part V, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue in one or more series special purpose revenue bonds in a total amount not to exceed \$10,000,000, for the purpose of assisting Hui 'Enekinia Hawai'i, or a partnership in which Hui 'Enekinia Hawai'i is a general partner, for the establishment of a cogeneration facility and related water production facilities. The electrical output of this plant and facilities shall be made available for use by members of the general public by sale to Hawaii Electric Light Company, Inc. The water and thermal fluids output of this plant and related facilities shall be made available for use by members of the general public by sale to existing and planned manufacturing and processing entrepreneurs in the area. The legislature finds and determines that the activity and facilities of Hui 'Enekinia Hawai'i constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds to assist industrial enterprises.

SECTION 4. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 1998.

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

(Approved June 18, 1993.)

ACT 264

H.B. NO. 1883

A Bill for an Act Relating to the Board of Barbers.

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

SECTION 1. Section 438-2, Hawaii Revised Statutes, is amended to read as follows:

"§438-2 [Certificate of registration] License required. (a) It shall be unlawful for any person in the State to engage in the practice of barbering for compensation unless the person has first obtained a [certificate of registration] license, apprentice permit, or temporary permit.

(b) It shall be unlawful for any person to operate a barber shop in the State unless the person has first [registered] obtained a license for the barber shop.

(c) The practice of barbering shall be carried on only by persons [duly registered] holding a license, apprentice permit, or temporary permit to practice in this State and only in [registered] licensed barber shops, except that a duly [registered] licensed barber may practice barbering at a health care, nursing, mental or correctional facility, barber school, beauty shop, charitable event, or a person's private home, office, or hotel room when requested to do so."

SECTION 2. Section 438-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to any other powers and duties authorized by law, the board may give examinations for the issuance of [certificates of registration] licenses to practice barbering [or]; issue apprentice permits or temporary permits; grant, revoke, or suspend [certificates] licenses, apprentice permits, or temporary permits; and establish, subject to chapter 91 and with the approval of the governor and the director, rules governing the practice of barbering that shall have the force and effect of law."

SECTION 3. Section 438-6, Hawaii Revised Statutes, is amended to read as follows:

"§438-6 Appeal from actions of the board. (a) An appeal may be taken from a final action of the board suspending or revoking a [certificate] license, apprentice permit, or temporary permit for the causes mentioned in section 438-14 to the circuit court of the circuit in which the person whose [certificate] license, apprentice permit, or temporary permit has been suspended or revoked resides. The judgment of the circuit court may be reviewed by the supreme court.

(b) Any person aggrieved by the denial or refusal of a [certificate] license, apprentice permit, or temporary permit 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."

SECTION 4. Section 438-7, Hawaii Revised Statutes, is amended to read as follows:

"§438-7 Applications. (a) Each person who desires to practice as a barber or as an apprentice barber or to operate a barber shop shall first file with the board a written application, under oath, on a form prescribed and supplied by the board, [shall submit satisfactory proof of the required age, and shall] deposit with the

board the required fees, and [a passport sized photograph of the applicant.] satisfy the applicable qualification requirements specified in this section.

(b) An applicant for a barber's license shall:

- (1) Be at least seventeen years of age;
 - (2) Have a total of fifteen hundred clock hours of barber training through the following or any combination thereof:
 - (A) As an apprentice, holding an apprentice permit; or
 - (B) As a student enrolled in a school that has a barbering curriculum; provided that only classes related to barbering shall be applied towards the accumulation of clock hours.
- The board shall adopt rules pursuant to chapter 91 to implement this paragraph.
- (3) Take and pass an examination for licensure; and
 - (4) Provide a current passport sized photograph.

(c) An applicant for an apprentice permit shall:

- (1) Be at least seventeen years of age; and
- (2) Provide proof that the applicant will be training in a licensed barber shop under supervision of a licensed barber.

(d) An applicant for a barber shop license shall:

- (1) Meet the standards of sanitation required by the department of health and as prescribed by the rules of the board;
- (2) Identify at least one licensed barber at the barber shop to qualify the barber shop for licensure;
- (3) Identify the owner of the barber shop who shall be responsible for all operations of the barber shop and who shall ensure that only currently licensed barbers, barber apprentice permittees, or barber temporary permittees practice barbering in the barber shop;
- (4) Identify the name and location of the barber shop;
- (5) Demonstrate that the applicant has adequate equipment and facilities for the practice of barbering as prescribed by the rules of the board; and
- (6) Provide a statement that the applicant shall allow only licensed barbers who have at least one year's experience to train apprentices as prescribed by the rules of the board.

(e) Any barber applicant who has not obtained licensure after four consecutive examinations offered by the board shall be required to apply and train as an apprentice barber for six months before qualifying for another series of examinations.

(f) Any transfer of ownership of a barber shop, change in a barber shop name, or relocation of a barber shop shall require the filing of a new application for licensure together with the required fees."

SECTION 5. Section 438-8, Hawaii Revised Statutes, is amended to read as follows:

"§438-8 Requisites for admission to examinations. (a) The executive secretary of the board shall determine the sufficiency of the preliminary qualifications of barber applicants for admission to examinations. [Applicants shall be at least seventeen years of age and have practiced as a barber or an apprentice for a period of at least six months under the immediate personal supervision of a registered barber.]

(b) The board shall contract with a professional testing service to have the testing service prepare and provide examinations for applicants as may be required for the purposes of this chapter. The examinations shall not be confined to any

specific system or method, and the examinations shall be consistent with the practical and theoretical requirements as provided by this chapter.

(c) Every applicant who is required by the board to be examined shall pay an examination fee as provided in rules adopted by the director pursuant to chapter 91."

SECTION 6. Section 438-9, Hawaii Revised Statutes, is amended to read as follows:

"**§438-9 [Certificates.] Issuance and display of licenses or permits.** [If a barber applicant passes the examination to the satisfaction of the board, and has paid the fee required and complies with the requirements pertaining to the applicant, the board shall issue a certificate signed by the chairperson and executive secretary and attested by its seal. The certificate is evidence that the person to whom it is issued is entitled to practice as a registered barber.] (a) A barber license shall be issued to each applicant who satisfies the application requirements, passes the examination, and pays the required fees. The [certificate] license shall be conspicuously displayed adjacent to or near the person's work [chair.] station.

(b) A barber shop license shall be issued to each applicant who satisfies the application requirements and pays the required fees. The license shall be displayed in a conspicuous place in the barber shop.

(c) A temporary permit may be issued to a qualified applicant approved for examination who pays the required fees. The temporary permit shall be conspicuously displayed adjacent to or near the person's work station.

(d) An apprentice permit shall be issued to an applicant who satisfies the application requirements and pays the required fees. The apprentice permit shall be conspicuously displayed adjacent to or near the person's work station."

SECTION 7. Section 438-10, Hawaii Revised Statutes, is amended to read as follows:

"**§438-10 Temporary permits[.]; apprentice permits.** [(a) Any person who is at least seventeen years of age and either:

(1) Has a certified or photostat copy of a certificate, or certificate of registration, or license as a practicing barber from another state or country which has substantially the same requirements for licensing or registering barbers as required by this chapter; or

(2) Can prove to the satisfaction of the board that the person has practiced as a barber in another state or country for at least five years immediately prior to making application in this State,

shall, upon payment of the required fee, be issued a permit to practice as a barber until the person is called by the board for examination to determine the person's fitness to receive a certificate of registration to practice barbering. If the applicant fails to pass the required examination, the applicant shall be allowed to practice as a barber until called by the board for the next term of examinations.

(b) Any person who is at least seventeen years of age and has a certificate of registration or permit as an apprentice in a state or country which has substantially the same requirements for registration as an apprentice as is provided by this chapter, shall, upon payment of the required fees, be issued a permit to work as an apprentice until called by the board for examination to determine the applicant's fitness to receive a certificate of registration to practice as a registered barber. The time spent in that state or country as an apprentice shall be credited towards qualification to take the examination to determine the applicant's fitness to receive a certificate of registration as a registered barber under this chapter.

(c) Any person who is at least seventeen years of age and who pays the required fees shall be issued a permit to train as an apprentice for six months or until called by the board for examination to determine the applicant's fitness to receive a certificate of registration to practice as a registered barber. No apprentice may independently practice barbering, but may as an apprentice do any or all of the acts constituting the practice of barbering under the immediate personal supervision and employment of a registered barber.] (a) A temporary permit may be issued upon application for examination and payment of the required fees. The temporary permit shall allow the qualified applicant to practice barbering under the supervision of a licensed barber and shall be effective for the period of time covering four consecutive examinations offered by the board after the permit's date of issuance. If the applicant has not obtained licensure after four consecutive examinations offered by the board, the applicant shall be required to apply and train as an apprentice for six months before qualifying for another series of examinations.

(b) An apprentice permit shall be used by the apprentice to obtain the hours of training needed to qualify for a barber's license. An apprentice shall obtain an apprentice permit before beginning apprenticeship training."

SECTION 8. Section 438-11, Hawaii Revised Statutes, is amended to read as follows:

"**§438-11 Fees.** [(a) Applicants for barber certificates of registration shall pay application, examination, and registration fees.

(b) Applicants for renewal of certificates to practice barbering and applicants for restoration of expired certificates shall pay the required fees.

(c) Applicants to conduct a barber shop shall pay application and registration fees. Applicants for biennial renewal of a certificate to conduct a barber shop and for the restoration of an expired certificate shall pay the required fees.] (a) Applicants for licensure and renewal of licensure under this chapter shall pay the required fees.

[(d)] (b) Applicants for temporary permits or apprentice permits shall pay application and [registration] permit fees.

[(e)] (c) A duplicate [certificate shall] license or permit may be issued upon the filing of a [statement covering the loss of a certificate or permit, verified by the oath of the applicant, and the submission by the applicant of one signed photograph of the applicant,] written request and the payment of a duplicate fee. [Each duplicate certificate or permit shall have the word "duplicate" stamped across the face thereof, and shall bear the same number as the certificate or permit that it was issued in lieu of.]

[(f)] (d) All fees required by this chapter shall be as provided in rules adopted by the director pursuant to chapter 91 and shall be deposited with the director of finance to the credit of the general fund, except that the examination fee required in section 438-8 may be paid directly to the professional testing service by the department or examinee."

SECTION 9. Section 438-12, Hawaii Revised Statutes, is amended to read as follows:

"**§438-12 Renewal of [certificates.] licenses.** The holder of a [certificate] license issued by the board of barbers who continues in active practice shall biennially, on or before December 31 of each odd-numbered year, renew the [certificate] license and pay the renewal fee. [A certificate which has not been renewed shall expire December 31 of the odd-numbered year next following the date of issuance. The holder of an expired certificate may have the same restored

within three years of the date of expiration, upon due application therefor and payment of the delinquent fees.] A license that has not been renewed shall be considered forfeited. A forfeited license may be restored within three years after the date of forfeiture upon compliance with the licensing renewal requirements provided by law and upon written application and payment of all applicable fees; provided that the board may consider restoration beyond this period as prescribed by rules of the board."

SECTION 10. Section 438-13, Hawaii Revised Statutes, is amended to read as follows:

"§438-13 Penalties. Any person who practices barbering, operates a barber shop, or acts in any capacity wherein a [certificate] license, apprentice permit, or temporary permit is required, without a [certificate] license, apprentice permit, or temporary permit as provided in this chapter shall be fined not more than \$100, or imprisoned not more than six months, or both. Each [and every] day of violation shall be a separate offense."

SECTION 11. Section 438-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to any other actions authorized by law, the board may take disciplinary action against any person to whom a [certificate] license, apprentice permit, or temporary permit has been issued under this chapter, including but not limited to revocation of the [certificate,] license, apprentice permit, or temporary permit, suspension, fine, or a combination thereof, or may refuse to grant or renew any [certificate] license, apprentice permit, or temporary permit for any cause authorized by law, including but not limited to the following:

- (1) Procuring a [certificate] license, apprentice permit, or temporary permit through fraud, misrepresentation, or deceit;
- (2) Professional misconduct, gross negligence, or manifest incapacity;
- (3) Permitting [an uncertified] a person without a license, apprentice permit, or temporary permit to perform activities which require a [certificate] license, apprentice permit, or temporary permit 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] a license, apprentice permit, or temporary permit as provided in this chapter;
- (7) Any [other] conduct constituting fraudulent or dishonest dealings;
- (8) Failure 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 12. Section 438-15, Hawaii Revised Statutes, is amended to read as follows:

"[§438-15] Right of injunction. The department [of commerce and consumer affairs] may, in addition to any other remedies available, apply to a court having competent jurisdiction for an injunction to restrain any violation of this chapter."

SECTION 13. Section 438-4, Hawaii Revised Statutes, is repealed.

SECTION 14. Any holder of an apprentice permit in effect prior to January 1, 1994, who files an application for a barber's license before July 31, 1994, may satisfy this training requirement by having practiced as an apprentice for a period of at least six months under the immediate personal supervision of a registered barber.

SECTION 15. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 16. This Act shall take effect upon its approval; provided that SECTIONS 4, 5, and 7 shall take effect on January 1, 1994.

(Approved June 18, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 265

H.B. NO. 1889

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

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

SECTION 1. Section 437-7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Line of credit.

- (1) Applicants for issuance of a dealer's license shall obtain an inventory or flooring line of credit from a federally insured financial institution[.] or from a financing source having a net worth of at least \$50,000,000. The line of credit shall be in the following amount:
 - (A) For new motor vehicle dealer applicants, \$500,000 or the amount required in the applicant's dealer sales and service agreement, whichever is less;
 - (B) For used motor vehicle dealer applicants, \$50,000; and
 - (C) For new and used motorcycle and motor scooter dealer applicants, \$50,000.
- (2) Applicants for issuance of a dealer's license shall provide the board with a photocopy of the financing statement filed at the bureau of conveyances of the department of land and natural resources, securing the line of credit.
- (3) Applicants for the issuance of an auction license shall obtain a secured line of credit in the amount of \$100,000 from a federally insured financial institution.
- (4) When an inventory or flooring line of credit cannot reasonably be obtained by a dealer, the board may provide that a bond, in an amount set forth in the board's rules, be obtained as an alternative form of security for the inventory or flooring line of credit."

SECTION 2. New statutory material is underscored.¹

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

(Approved June 18, 1993.)

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Note

1. So in original.

ACT 266

H.B. NO. 1899

A Bill for an Act Relating to Immunization.

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

SECTION 1. The purpose of this Act is to allow the department of health to provide vaccines and other immunizing agents to the public and to expand the category of persons charged with the responsibility of having minors or incompetents immunized.

SECTION 2. Section 325-32, Hawaii Revised Statutes, is amended to read as follows:

“§325-32 Immunization against infectious diseases. The department of health may [make regulations] adopt rules requiring and governing immunization against typhoid fever, pertussis (whooping cough), diphtheria, tetanus, poliomyelitis, measles, mumps, [small pox,] hepatitis B, rubella, haemophilus influenzae type B, and any other communicable disease, if a suitable immunizing agent is available for the disease and a need for immunization against it exists within the State. The department may also provide vaccines and other immunizing agents to private and public health care providers for administration to the general public.”

SECTION 3. Section 325-36, Hawaii Revised Statutes, is amended to read as follows:

“§325-36 Duty of adult, or of parent [or], guardian[.], or caregiver. (a) Every adult person required to be [vaccinated or] immunized, or to do any other act, unless the person is a minor or incompetent, shall cause the [vaccination or] immunization or other act to be performed.

(b) If the person is a minor or incompetent, the person's parent, or guardian having the person's care, custody, and control, shall cause the [vaccination or] immunization or other related act to be performed.

(c) If reasonable efforts have been made to obtain consent from the person's parent or guardian, and consent is not obtainable because the parent or guardian cannot be located or contacted, a caregiver with whom the minor or incompetent person lives, or a non-custodial parent, may cause the immunization or other related act to be performed.”

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 18, 1993.)

ACT 267

H.B. NO. 2040

A Bill for an Act Relating to Hazardous Waste.

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

SECTION 1. Chapter 342J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§342J- Notification. (a) Not later than forty-five days after the effective date of this section, any person generating or transporting, or owning or operating a facility for treatment, storage, or disposal of, any substance listed as hazardous waste or identified by its characteristics as hazardous waste under 40 Code of Federal Regulations Part 261, shall file with the department a notification stating the location and general description of the activity and the type and amount of hazardous waste handled or generated by the person.

(b) Not later than forty-five days after the adoption pursuant to this chapter of any rule that lists or identifies by characteristics any substance as hazardous waste, any person generating or transporting the substance, or owning or operating a facility for treatment, storage, or disposal of the substance, shall file with the department a notification stating the location and general description of the activity and the type and amount of hazardous waste handled or generated by the person.

This subsection shall not apply to activities or hazardous waste as to which notification has been made in compliance with subsection (a).

(c) Any person required by this section to provide notification to the department shall also advise the department, by January 31 of each year following initial notification, of the following changes:

- (1) Location of business;
 - (2) Name of business;
 - (3) Mailing address;
 - (4) Name of person who owns the facility at which hazardous waste is handled or generated;
 - (5) Change of status from small quantity to large quantity generator; and
 - (6) Change of status from large quantity to small quantity generator.
- (d) This section shall not apply to:
- (1) Generators of less than one-hundred kilograms of hazardous waste per month; or
 - (2) Any other person exempted from the notification requirements of this section pursuant to rules adopted by the department."

SECTION 2. Section 342J-30, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any person who:

- (1) Owns or operates a facility required to have a permit under this section which was in existence on November 19, 1980, or was in existence on the effective date of statutory or regulatory changes under RCRA that were made prior to the effective date of the first rules adopted under this chapter, and that rendered the facility subject to the requirement to have an RCRA permit, or is in existence on the effective date of statutory or regulatory changes under this chapter that are made after the effective date of the first rules adopted under this chapter and that render the facility subject to the requirement to have a permit under this section;

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- (2) Has complied with the requirements of section 3010(a) of RCRA, 42 United States Code §6930(a)[;], or section 342J- ; and
- (3) Has made an application for a permit under section 3005 of RCRA, 42 United States Code §6925, or section 342J-5;

shall be treated as having been issued [such] a permit until [such time as] final administrative disposition of [such] an application has been made unless the director proves that final administrative disposition of [such] the application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process that application. [Such] The facilities shall be deemed to have interim status. This subsection shall not apply to any facility which has been previously denied a permit under section 3005 of RCRA, 42 United States Code §6925 or section 342J-5 or if authority to operate the facility under section 3005 of RCRA, 42 United States Code §6925 or this section has been previously terminated."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.¹

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

(Approved June 18, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 268

H.B. NO. 2051

A Bill for an Act Relating to Highway Safety.

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

SECTION 1. 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), except section 286-102(b)(4), 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 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; and
- (4) Any person who has in the person's possession a valid commercial motor vehicle driver's license issued by any state of the United States, Mexico, or a province of the Dominion of Canada that issues licenses in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver's licenses."

SECTION 2. Section 286-231, Hawaii Revised Statutes, is amended by amending the definition of "nonresident commercial driver's license" to read as follows:

"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]."

SECTION 3. Section 286-232, Hawaii Revised Statutes, is amended to read as follows:

"[§286-232] 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."

SECTION 4. Section 286-233, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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[,] or Mexico, other than parking violations, in any type of motor vehicle, 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[,] or Mexico, other than parking violations, in any type of motor vehicle, shall notify the person's current employer in writing of the conviction within thirty days of the date of conviction."

SECTION 5. Section 286-234, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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 [commercial] driver's license."

SECTION 6. Section 286-237, Hawaii Revised Statutes, is amended to read as follows:

"[§286-237] 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 Code of Federal Regulations, 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."

SECTION 7. Section 286-243, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

"(d) If the [person] driver refuses testing, or submits to a test which discloses in the driver's body an alcohol concentration of 0.04 per cent or more by weight, the law enforcement officer shall submit an affidavit to a district judge of the circuit in which the [arrest was made,] driver was stopped or detained stating that the test was authorized pursuant to subsection (a) and that the [person] driver refused to submit to testing, or submitted to a test which disclosed in the driver's body an alcohol concentration of 0.04 per cent or more by weight.

(e) [Upon receipt of the] A hearing to determine the truth and correctness of an 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.] shall be scheduled to commence before a district judge within twenty days after the affidavit is filed or as soon thereafter as is practicable.

The State shall be represented at the hearing by the prosecuting attorney of the county in which the alleged violation occurred. The district judge shall hear and determine:

- (1) Whether the law enforcement officer who stopped or detained the driver had probable cause to believe that the driver had been either driving or in actual physical control of a commercial motor vehicle while having any alcohol in the driver's body;
- (2) Whether the driver was lawfully stopped or detained;
- (3) Whether the law enforcement officer informed the driver of the sanctions of section 286-240;
- (4) Whether the driver submitted to a test or tests of the driver's breath or blood or refused to be tested; and
- (5) If the driver submitted to a test or tests, whether the driver's alcohol concentration was 0.04 per cent or more by weight.

The amount of alcohol found in the driver's blood within three hours after the time of the alleged violation as shown by chemical analysis or other analytical techniques of the defendant's blood or breath shall be competent evidence that the defendant was under the influence of intoxicating liquor at the time of the alleged violation. Nothing in this section shall be construed as limiting the introduction of relevant evidence of a person's blood alcohol content obtained more than three hours after an alleged violation; provided that the evidence is offered in compliance with the Hawaii rules of evidence. 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] as provided by section 286-240."

SECTION 8. Section 286-245, Hawaii Revised Statutes, is amended to read as follows:

"[§286-245] Driving record information to be furnished. Notwithstanding any other provision of law to the contrary, the city and county of Honolulu shall furnish full information regarding the driving record of any person:

- (1) To the driver's license administrator of any other state, Mexico, or province or territory of Canada, requesting that information; and
- (2) To the person's employer or prospective employer."

SECTION 9. Section 286-248, Hawaii Revised Statutes, is amended to read as follows:

"[§286-248] 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, Mexico, 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 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved June 18, 1993.)

ACT 269

S.B. NO. 191

A Bill for an Act Relating to Volunteer Firefighters.

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- Volunteer firefighters; limited liability. Any volunteer firefighter who in good faith renders firefighting services shall not be liable for any civil damages resulting from the person's acts or omissions occurring during the course of firefighting, except for such damages as may result from the person's gross negligence, or wanton acts or omissions.

For purposes of this section, volunteer firefighter means any person who trains as a volunteer firefighter and who, of the person's own free will, provides firefighting services in a fire emergency without remuneration or expectation of remuneration.

For purposes of this section, good faith includes, but is not limited to, a reasonable opinion that the immediacy of a fire is such that the rendering of firefighting service should not be postponed."

SECTION 2. Section 431:14-103, Hawaii Revised Statutes, is amended to read as follows:

"§431:14-103 Making of rates. (a) Rates 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; provided that if the claim does not exceed the selected deductible amount pursuant to section 386-100, and the employer reimburses the insurer for the amount, [such claims] the claims shall not be calculated in the employer's experience rating or risk category;
 - (B) The conflagration and catastrophe hazards, if any;
 - (C) A reasonable margin for underwriting profit and contingencies;
 - (D) Dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;
 - (E) Past and prospective expenses both country-wide and those specifically applicable to this State;
 - (F) Investment income from unearned premium and loss reserve funds; and
 - (G) All other relevant factors within and outside this State.
- (3) In the case of fire insurance rates, consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which [such] that experience is available.
- (4) 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 [such] 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.
- (5) Risks may be grouped by classifications for the establishment 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. [Such] These standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. No risk classification may be based upon race, creed, national origin, or the religion of the insured.
- (6) Manual, minimum, class rates, rating schedules, or rating plans shall be made and adopted, except in the case of:
 - (A) Special rates where manual, minimum, class rates, rating schedules, or rating plans are not applicable; and
 - (B) Specifically rated inland marine risks.
- (7) No insurer authorized to do business in this State shall issue any policy which provides or makes available to any risks preferred rates based upon any grouping of persons, firms, or corporations by way of membership, license, franchise, contract, agreement, or any other [method or] means, other than common majority ownership of [such] the risks, or except where:
 - (A) A common stock ownership in and management control of [such] the risks are held by the same person, corporation, or firm;

- (B) Permitted or authorized by filings in existence as of January 1, 1988, under the casualty rating law and the fire rating law, as [such] these filings may be amended from time to time;
 - (C) Health care providers, as defined in section 671-1 which could have joined the patients' compensation fund as it existed in chapter 671, part III, prior to May 31, 1984, joined together with one or more groups of related or unrelated health care providers;
 - (D) Permitted under article 12; or
 - (E) Otherwise expressly provided by law.
- (b) In cases of workers' compensation insurance, all rates made in accordance with this section shall be given due consideration for good safety records of employers. By premium reductions, dividends, or both, insurance carriers shall recognize good safety performance records of employers in this State.
- (c) Except to the extent necessary to meet the provisions of subsection (a)(1), uniformity among insurers in any matters within the scope of this section [is] shall neither be required nor prohibited.
- (d) For the purpose of ratemaking, all insurers shall treat a volunteer firefighter the same as a firefighter employed by a county fire department; provided that the volunteer firefighters are attached to a station where a commercial drivers license holder is on duty at all times or at least four commercial drivers license holders are members of the volunteer unit.'

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 requirements of subsection (d) of section 431:14-103 in SECTION 2 shall be applied in future ratings and shall not require the amendment of current ratings.

(Approved June 18, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 270

S.B. NO. 536

A Bill for an Act Relating to Rebuilt Vehicles.

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

SECTION 1. Section 286-2, Hawaii Revised Statutes, is amended by amending the definition of "rebuilt vehicle" to read as follows:

"Rebuilt vehicle" means any vehicle which has been declared a total loss by [a police officer or] an insurer and has been rebuilt or repaired to operate on public highways. For the purpose of this definition, a vehicle [shall not be deemed to have been declared] is a total loss [by an insurer, despite such a declaration,] only if there [has been no] is material damage to the vehicle's [engine, transmission,] frame, unitized structure, or suspension system, and the projected cost of repairing the [vehicle] damage exceeds the market value of the vehicle at the time of the incident causing it to be declared a total loss."

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 June 18, 1993.)

ACT 271

S.B. NO. 555

A Bill for an Act Relating to Murder.

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

SECTION 1. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§706- Enhanced sentence for second degree murder. The court may sentence a person who has been convicted of murder in the second degree to life imprisonment without possibility of parole under section 706-656 if the court finds that the murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As used in this section, the phrase especially heinous, atrocious, or cruel, manifesting exceptional depravity means a conscienceless or pitiless crime which is unnecessarily torturous to a victim.

Hearings to determine the grounds for imposing an enhanced sentence for second degree murder may be initiated by the prosecutor or by the court on its own motion. The court shall not impose an enhanced term unless the ground therefor has been established at a hearing after the conviction of the defendant and on written notice to the defendant of the ground proposed. Subject to the provision of section 706-604, the defendant shall have the right to hear and controvert the evidence against the defendant and to offer evidence upon the issue.”

SECTION 2. Section 706-656, Hawaii Revised Statutes, is amended to read as follows:

“§706-656 Terms of imprisonment for first and second degree murder and attempted first and second degree murder. (1) Persons convicted of first degree murder or first degree attempted murder shall be sentenced to life imprisonment without possibility of parole.

As part of such sentence the court shall order the director [of the department] of public safety and the Hawaii paroling authority to prepare an application for the governor to commute the sentence to life imprisonment with parole at the end of twenty years of imprisonment; provided that persons who are repeat offenders under section 706-606.5 shall serve at least the applicable mandatory minimum term of imprisonment.

(2) Persons convicted of second degree murder and attempted second degree murder shall be sentenced to life imprisonment with possibility of parole. The minimum length of imprisonment shall be determined by the Hawaii paroling authority; provided that persons who are repeat offenders under section 706-606.5 shall serve at least the applicable mandatory minimum term of imprisonment[.]; and provided further that in any cases designated in section 706-606.5, the person may be sentenced to life imprisonment without possibility of parole.

If the court imposes a sentence of life imprisonment without possibility of parole, as part of such sentence the court shall order the director of public safety and the Hawaii paroling authority to prepare an application for the governor to commute the sentence to life imprisonment with parole at the end of twenty years of imprisonment; provided that persons who are repeat offenders under section

706-606.5 shall serve at least the applicable mandatory minimum term of imprisonment."

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.¹

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

(Approved June 18, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 272

S.B. NO. 993

A Bill for an Act Relating to Fisheries.

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

SECTION 1. Section 445-22, Hawaii Revised Statutes, is amended to read as follows:

"§445-22 Public auction unlawful when. It shall be unlawful for any person to sell, offer for sale, or expose for sale at public auction, any personal property at any place other than in a public auction room, except [household];

- (1) Household furniture, vehicles, automobiles, machinery, livestock, and such bulky articles as are usually sold in warehouses or places other than auction rooms; [provided that this section shall not apply to any sale];
- (2) Sales made under the direction of any court [or to sales];
- (3) Sales of any personal property belonging to the State or [to] any county[, or to a];
- (4) A bona fide sale of a stock of merchandise, where the creditors of the owner thereof are engaged in the legitimate closing out of [such] the stock; [nor to]
- (5) Sales by hawkers on the street [nor] or peddlers from vehicles[, nor to];
- (6) Sales by persons selling fruit, fish, seafood products, vegetables, butter, eggs, or other farm or ranch produce; [nor to a] or
- (7) A bona fide sale of a stock of merchandise, where the owner thereof is engaged in a legitimate closing out of [any such] the stock and [the owner] has been engaged in business at a specified location in the State for not less than six months immediately preceding the commencement of any such sale; provided [further] that [in the latter case,] the owner [shall], before commencing any such sale, shall affix to each article to be sold a tag designating the article by serial number, and file with the county treasurer a true and sworn statement containing a detailed list and inventory of [such] the stock, which statement shall include [(1) a]:
- (A) A description of each article to be sold sufficient to identify the same[, (2) its];

- (B) The article's serial number[, (3) its];
- (C) The article's cost price[, and (4) the]; and
- (D) The approximate date of [its] the article's receipt by the owner, if received by the owner not more than ninety days prior to the date of the statement[, and shall immediately, upon].

Upon conclusion of sale, the owner shall immediately file with the treasurer a true and sworn statement containing a detailed list and inventory of such stock as has been sold at and during the sale, which statement shall include [(1)] a description of each article sold sufficient to identify the same, [(2) its] the article's serial number, and [(3)] the price received therefor.

The treasurer [shall], at any time prior to the filing of the final statement with the treasurer, or within ten days thereafter, shall require the owner to file with the treasurer the invoices and bills of lading of any articles in the stock [which] that appear from the preliminary statement to have been received by the owner within three months prior to the first day of the sale. The statements, invoices, and bills of lading shall be open to inspection by any interested person [on] upon application to the treasurer. The sale at public auction shall be only of the stock on hand at the time of filing the statement with the treasurer, and [such] the stock shall not be augmented or replenished in anticipation of the auction sale, or pending or during the sale[, and the]. The auction sale shall be held on successive days, Sundays and legal holidays excepted, and shall not continue for more than thirty days within the period of one year. Failure to comply with any of the foregoing provisions shall be deemed prima facie evidence that the sale was not for the legitimate purpose of closing out [such] the stock.

For the purposes of this chapter, [a public auction room is defined to be] the term "public auction room" means a place designated by a licensed auctioneer in the manner set forth in section 445-29, as the place for holding auction; provided that the treasurer of any county may give a special permit to any regularly licensed auctioneer to conduct the sale of pictures, paintings, furniture, books and bric-a-brac, or personal property under foreclosure of mortgage, at a place other than [at such] a public auction room."

SECTION 2. Section 445-23, Hawaii Revised Statutes, is amended to read as follows:

"**§445-23 Hours for auctions.** No auction sale of goods, wares, and merchandise shall be conducted between the hours of 9:00 o'clock in the evening and 8:00 o'clock in the morning, and no such auction of any nature or description shall be conducted during the months of November and December of any year; provided that this section shall not apply to [sales]:

- (1) Sales of household furniture, vehicles, automobiles, machinery, livestock, and like bulky articles[, or to any];
- (2) Any sale made under the direction of any court[, or to sales];
- (3) Sales of any personal property belonging to the State or [to] any county[, or to a];
- (4) A bona fide sale of a stock of merchandise, where the creditors of the owner thereof are engaged in the legitimate closing out of [such] the stock; [nor to]
- (5) Sales by hawkers on the street [nor] or peddlers from vehicles[, nor to];
- (6) Sales by persons selling fruits, fish, seafood products, vegetables, butter, eggs, or other farm or ranch produce; [provided further that the prohibitions of this section shall not apply to auctions]; or

- (7) Auctions held in public auction rooms [which] that have been established for six months or more."

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 18, 1993.)

ACT 273

S.B. NO. 1397

A Bill for an Act Relating to the Statewide Trail and Access System.

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

SECTION 1. Section 198D-2, Hawaii Revised Statutes, is amended to read as follows:

"[§198D-2] Establishment of Hawaii statewide trail and access [system.] program. (a) There is established the Hawaii statewide trail and access [system.] program, to be known as Na Ala Hele. [The Hawaii statewide trail and access system shall consist of all trails and accesses in the State.] The department of land and natural resources shall plan, develop, acquire land or rights for public use of land, construct, restore, and engage in coordination activities to implement the [system.] program in accordance with this chapter.

(b) The trail and access program shall prepare an annual report for the legislature concerning the amount of moneys accruing to the credit of the general fund from the following sources:

- (1) All taxes collected under chapter 243 on non-highway recreational fuel, or in the alternative, 0.3 per cent of the proceeds under chapter 243 deposited into the state highway fund established under section 248-8;
- (2) Federal government grants for the management, maintenance, and development of trails and accesses;
- (3) Private contributions for the management, maintenance, and development of trails and accesses; and
- (4) Earnings on the investment of the moneys specified in paragraphs (1) to (3), which became a part of the general fund.

The trail and access program shall submit the report to the legislature not fewer than twenty days prior to the convening of each regular session of the legislature.

(c) The moneys specified in subsection (b) shall be deposited in the state treasury; provided that moneys received as deposits or contributions from the federal government or private sources shall be accounted for in accordance with the conditions established by the agencies or persons making the contribution. Earnings on the investment of these moneys shall become a part of the general fund.

(d) All moneys to meet the general operating needs and expenses of the trail and access program shall be allocated by the legislature through appropriations out of the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate this chapter."

SECTION 2. Section 198D-8, Hawaii Revised Statutes, is amended to read as follows:

“[§198D-8] Request to acquire rights for public use of additional trails and accesses. The department may request the legislature for appropriations to acquire rights to trails and accesses which are closed to public use or which are necessary to effectuate the [statewide] trail and access [system.] program.”

SECTION 3. Section 198D-9, Hawaii Revised Statutes, is amended to read as follows:

“§198D-9 Other powers and duties of department. The department:

- (1) May establish signing and design standards for classifications of trails and accesses;
- (2) Shall establish advisory councils to solicit advice and assistance in the implementation of the [statewide] trail and access [system.] program. [Appointment] The appointment of members to advisory councils shall be made by the department. If advisory councils are established, the members of the advisory councils shall serve part-time and shall not be compensated for official duties performed. Advisory councils may be established on regional, islandwide, countywide, or statewide bases[;]. The statewide council shall include representatives of motorized as well as nonmotorized trail users;
- (3) Shall serve as the centralized information agency for matters relating to the [statewide] trail and access [system;] program;
- (4) Shall coordinate its activities under this chapter, including its compilation of the inventories and classifications of trails and accesses, with other public agencies;
- (5) Shall advise and, when able, assist other public agencies in the development, construction, operation, maintenance, and regulation of trails and accesses under [their] the other agencies' jurisdiction;
- (6) Shall advocate before the legislature, governor, and public agencies, for the implementation of the [statewide] trail and access [system;] program; and
- (7) Shall submit an annual report to the governor and legislature on activities engaged in under this chapter[.]; provided that the annual report shall include a comprehensive description of the status of the trail and access program and the financial information specified in section 198D-2(b).”

SECTION 4. Section 248-8, Hawaii Revised Statutes, is amended to read as follows:

“§248-8 Special funds in treasury of State. There are created in the treasury of the State three special funds to be known, respectively, as the state highway fund, the airport revenue fund, and the boating special fund. All taxes collected under chapter 243 in each calendar year, except the “county of Hawaii fuel tax”, “city and county of Honolulu fuel tax”, “county of Maui fuel tax”, and “county of Kauai fuel tax”, shall be deposited in the state highway fund; provided that [all]:

- (1) All taxes collected under chapter 243 [in] with respect to gasoline or other aviation fuel sold for use in or used for airplanes shall be set aside in the airport revenue fund; and [provided further that all]
- (2) All taxes collected under chapter 243 with respect to liquid fuel sold for use in or used for small boats shall be deposited in the boating special fund. [“Small boats” as used herein]

As used in this section, "small boats" means all vessels and other watercraft except those operated in overseas transportation beyond the State, and ocean-going tugs and dredges. The chairperson of the board of land and natural resources [is directed], from July 1, 1992, and every three years thereafter [to], shall establish standards or formulas that will as equitably as possible establish the total taxes collected under chapter 243 in each fiscal year that are derived from the sale of liquid fuel for use in or used for small boats. The amount so determined shall be deposited in the boating special fund.

An amount equal to all moneys collected under chapter 243 through the assessment of taxes on the sale of non-highway recreational fuel shall be reported to the trail and access program of the department of land and natural resources established under section 198D-2. Until such time as the department of transportation develops a system to calculate the tax revenues generated from non-highway recreational fuel, or until July 1, 1997, whichever is later, 0.3 per cent of all proceeds deposited into the highway fund shall be the amount reported to the trail and access program of the department of land and natural resources."

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

SECTION 6. This Act shall take effect on July 1, 1993.

(Approved June 18, 1993.)

ACT 274

S.B. NO. 1608

A Bill for an Act Relating to the Environment.

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

SECTION 1. Section 195-6, Hawaii Revised Statutes, is amended to read as follows:

"§195-6 Natural area reserves system commission. There shall be a natural area reserves system commission, hereinafter called the "commission[]." The commission shall consist of [eleven] thirteen members who shall be appointed in the manner and serve for the term set in section 26-34. Six of the members of the commission shall be persons possessing scientific qualifications as evidenced by an academic degree in wildlife or marine biology, botany, forestry, ecology, resource management, biogeography, zoology, or geology[]; one member shall be a person possessing membership in a hiking organization organized in the State; and one member shall be a person possessing membership in a hunting organization organized in the State. The [chairman] chairperson of the board of land and natural resources, the superintendent of education, the director of the office of state planning, the [chairman] chairperson of the board of agriculture and the president of the University of Hawaii, or their designated representatives, shall serve as ex officio voting members. The governor shall appoint the [chairman] chairperson from one of the appointed members of the commission. The members shall receive no compensation for their services on the commission but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of their duties.

The commission shall be a part of the department for administrative purposes as provided in section 26-35.

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Any action taken by the commission shall be by a simple majority of its members. [Six] Seven members of the commission shall constitute a quorum to do business.

The commission may engage employees necessary to perform its duties, including administrative personnel; as provided by section 26-35.

The commission shall adopt rules guiding its conduct and shall maintain a record of its activities and actions."

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 18, 1993.)

ACT 275

S.B. NO. 1669

A Bill for an Act Relating to Employment Security.

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

SECTION 1. Section 383-29, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Notwithstanding any provisions of this chapter to the contrary, a claimant shall not be denied benefits because of the claimant's regular attendance at a vocational training or retraining course which the director [of labor and industrial relations] has approved and continues from time to time to approve for the claimant. The director may approve such course for a claimant only if:

- (1) The training activity is authorized under Titles I, II, III, and IV (except on-the-job training) of the Job Partnership Training Act (P.L. 97-300);
or
- (2) All of the following conditions apply:
 - (A) Reasonable employment opportunities for which the claimant is fitted by training and experience do not exist in the locality or are severely curtailed;
 - (B) The training course relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities in the locality;
 - (C) The training course is offered by a competent and reliable agency; and
 - (D) The claimant has the required qualifications and aptitudes to complete the course successfully."

SECTION 2. Section 383-170, Hawaii Revised Statutes, is amended to read as follows:

"§383-170 Eligibility requirements for extended benefits. (a) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in the individual's eligibility period only if the department finds that with respect to such week:

- (1) The individual is an "exhaustee" as defined in section 383-168[.];

- (2) The individual has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits[.];
- (3) (A) Notwithstanding paragraph (2), an individual shall be ineligible for payment of extended benefits for any week of unemployment in the individual's eligibility period if the department finds that during such period:
- (i) The individual failed to accept any offer of suitable work or failed to apply for any suitable work (as defined under subparagraph (C)) which was referred by the department; or
 - (ii) The individual failed to actively engage in seeking work as prescribed under subparagraph (E)[.];
- (B) Any individual who has been found ineligible for extended benefits by reason of subparagraph (A) shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until the individual has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times the extended weekly benefit amount[.];
- (C) For purposes of this paragraph, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; provided that:
- (i) The gross average weekly remuneration payable for the work shall exceed the sum of the individual's extended weekly benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in section 501(c)(17)(D) of the federal Internal Revenue Code of [1954] 1986, as amended) payable to such individual for such week; [and]
 - (ii) The work pays wages equal to the higher of the minimum wages provided by section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption[.], or the state or local minimum wage; and
 - (iii) No individual shall be denied extended benefits for failure to accept an offer of or referral to any job which meets the definition of suitability described above if the position was not offered to such individual in writing and was not listed with the employment service; [or] such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section 383-30(3) to the extent that the criteria of suitability in that section are not inconsistent with this subparagraph; or the individual furnishes satisfactory evidence to the department that the individual's prospects of obtaining work in the individual's customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in section 383-30(3) without regard to the definition specified in this subparagraph[.];

- (D) Notwithstanding this paragraph to the contrary, no work shall be deemed to be suitable work for an individual which does not conform with the labor standard provisions required by section 3304(a)(5) of the federal Internal Revenue Code of [1954] 1986, as amended, and set forth under section 383-30(3)[.];
 - (E) For the purposes of subparagraph (A)(ii), an individual shall be treated as actively engaged in seeking work during any week if:
 - (i) The individual has engaged in a systematic and sustained effort to obtain work during such week; [and]
 - (ii) The individual furnishes tangible evidence that the individual has engaged in such effort during such week[.]; and
 - (F) The employment service shall refer any claimant entitled to extended benefits under this chapter to any suitable work which meets the criteria prescribed in subparagraph (C)[.];
- (4) Notwithstanding paragraph (2), the individual has with respect to a disqualification under section 383-30(2) for suspension for misconduct connected with the individual's work, imposed during the individual's benefit year or an extended benefit period, been employed in each of four weeks (whether or not consecutive) subsequent to such disqualification and has earned remuneration equal to not less than four times the individual extended weekly benefit amount[.].
- (5) Notwithstanding paragraph (2), an individual shall not be eligible for extended benefits for any week [beginning after September 25, 1982], unless, in the base period with respect to which the individual exhausted all rights to regular benefits under this chapter, the individual had [a]:
- (A) A total of at least twenty weeks of employment as defined in section 383-1[.];
 - (B) Wages for insured work in an amount equal to not less than one and one-half times the high quarter wages; or
 - (C) Wages for insured work in an amount equal to not less than forty times the individual's most recent weekly benefit amount as determined under section 383-22(b); and
- (6) In accordance with the provisions of section 202(b)(1) of the Unemployment Compensation Amendments of 1992 (P.L. 102-318), which amends the Federal-State Extended Unemployment Compensation Act of 1970 (P.L. 91-373), paragraphs (3) and (4) shall not apply for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995.
- (b) No provision in this section shall apply if its application is prohibited by federal 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 June 18, 1993.)

ACT 276

H.B. NO. 195

A Bill for an Act Relating to the Office of Hawaiian Affairs Budget.

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

SECTION 1. The purpose of this Act is to appropriate funds for the biennial budget of the office of Hawaiian affairs.

SECTION 2. 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 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

(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 3. 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, 1993, and ending June 30, 1995. 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 1993-94	M O F	FISCAL YEAR 1994-95	M O F
Office of Hawaiian Affairs							
1.	OHA100	-POLICY AND ADMINISTRATION					
	OPERATING		OHA	10.00*		10.00*	
				434,669A		434,669A	
			OHA	10.00*		10.00*	
				457,069B		437,069B	
2.	OHA101	-ADMINISTRATIVE SERVICES					
	OPERATING		OHA	5.50*		5.50*	
				537,559A		541,987A	
			OHA	5.50*		5.50*	
				540,981B		546,434B	
3.	OHA102	-PUBLIC INFORMATION					
	OPERATING		OHA	2.25*		2.25*	
				226,657A		224,207A	
			OHA	2.25*		2.25*	

ACT 276**PROGRAM APPROPRIATIONS**

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		OHA		228,362B		226,058B	
4.	OHA103 -HUMAN RESOURCES			1.25*		1.25*	
	OPERATING	OHA		392,776A		407,891A	
				1.25*		1.25*	
		OHA		394,763B		409,877B	
5.	OHA104 -PLANNING AND RESEARCH			2.25*		1.75*	
	OPERATING	OHA		237,699A		137,444A	
				2.25*		1.75*	
		OHA		253,401B		153,146B	
6.	OHA105 -CULTURE			4,599A		4,599A	
	OPERATING	OHA		3.00*		3.00*	
		OHA		199,897B		249,897B	
7.	OHA106 -GOVERNMENT AND COMMUNITY AFFAIRS			1.25*		1.25*	
	OPERATING	OHA		66,102A		62,699A	
				1.25*		1.25*	
		OHA		91,298B		87,896B	
8.	OHA107 -LAND AND NATURAL RESOURCES			2.50*		2.50*	
	OPERATING	OHA		583,370A		583,370A	
				2.50*		2.50*	
		OHA		585,276B		585,276B	
9.	OHA108 -ECONOMIC DEVELOPMENT			5.50*		5.50*	
	OPERATING	OHA		512,744A		504,875A	
				5.50*		5.50*	
		OHA		526,521B		518,651B	
10.	OHA109 -EDUCATION			3.50*		3.50*	
	OPERATING	OHA		449,991A		470,885A	
				3.50*		3.50*	
		OHA		540,024B		564,498B	
11.	OHA110 -HOUSING			1.75*		1.75*	
	OPERATING	OHA		134,038A		85,239A	
				1.75*		1.75*	
		OHA		135,294B		86,495B	

SECTION 4. Provided that the general fund appropriations in section 3 of this Act shall be expended by the office of Hawaiian affairs.

SECTION 5. 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 further that these transfers shall not be inconsistent with legislative

intent; and provided further that a report itemizing the funds, positions, and reasons for each transfer shall be made to the legislature no later than twenty days prior to the convening of the 1994 and the 1995 regular sessions.

SECTION 6. Provided that, except as otherwise appropriated or authorized, as the case may be, the office of Hawaiian affairs and the State of Hawaii shall share equally in the costs of wages and fringe benefits for employees of the office of Hawaiian affairs; provided further that, for the purposes of this Act, "fringe benefits" means benefits received by public employees, including hospital, medical, and dental care under the public employees health fund, temporary disability insurance, workers' compensation, social security, and retirement benefits.

SECTION 7. Provided that the office of the auditor shall conduct financial and management audits of the office of Hawaiian affairs that shall include but not be limited to review and evaluation of: (1) the management and use of all general, special, and revolving fund monies, and all other monies and assets, under the control of the office of Hawaiian affairs; (2) the internal control structure of the office of Hawaiian affairs, including any deficiencies, whether minor or substantial, and any failure to correct, in whole or in part, deficiencies identified in previous financial or management audits of the office; and (3) the statutory authority for the office of Hawaiian affairs policies and procedures pertaining to use of general, special or revolving funds; provided further that these audits shall be submitted to the legislature for review no later than twenty days prior to the convening of the 1994 regular session.

SECTION 8. Provided that the office of Hawaiian affairs shall report on the accomplishments and status of the native Hawaiian land title project contractually administered through the Native Hawaiian Legal Corporation (NHLC) during the fiscal year 1992-1993 and 1993-1994; provided further that each report shall include, but not be limited to:

- (1) A listing and summary of the status of all title cases handled by the NHLC and a review of requests which the NHLC has declined to handle;
- (2) The current status of each case handled by NHLC; and
- (3) A detailed summary of the expenditures to date and projected future costs;

provided further that each respective report shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 9. Provided that the office of Hawaiian affairs shall submit detailed reports itemizing all intrastate and interstate travel for each trustee, office of Hawaiian affairs staff member, and any other person for whom the costs of intrastate or interstate travel have been paid or reimbursed, in whole or in part, by the office of Hawaiian affairs during fiscal year 1992-1993 and 1993-1994; provided further that each report shall specify the number of intrastate and interstate trips by type of meeting, workshop, conference or business meeting attended; provided further that the information concerning intrastate and interstate travel shall be differentiated and reported separately in each report; and provided further that the respective reports shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 10. Provided that of the funds appropriated for the office of Hawaiian affairs in accordance with the provisions of section 6 of this Act, the total

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special funded share of the fringe benefits cost for employees from each program shall be as follows:

	Fiscal Year 1993-1994	Fiscal Year 1994-1995
OHA 100:	\$82,803	\$82,803
OHA 101:	\$40,563	\$41,588
OHA 102:	\$18,785	\$18,931
OHA 103:	\$ 9,204	\$ 9,204
OHA 104:	\$15,702	\$15,702
OHA 105:	\$ 3,138	\$ 3,138
OHA 106:	\$10,303	\$10,303
OHA 107:	\$19,954	\$19,954
OHA 108:	\$40,555	\$40,555
OHA 109:	\$20,351	\$20,351
OHA 110:	\$ 9,179	\$ 9,179;

provided further that for the purposes of this section, the definition for fringe benefits shall be defined in section 6 of this Act.

SECTION 11. Provided that of the funds appropriated for human resources (OHA 103), the sum of \$298,000 in general funds and \$298,000 in special funds for fiscal year 1993-94 and the sum of \$313,000 in general funds and \$313,000 in special funds for fiscal year 1994-95 shall be expended for services-on-a-fee work contracted to Alu Like, Inc.

SECTION 12. Provided that of the funds appropriated for planning and research (OHA 104), the sum of \$6,930 in general funds and \$6,930 in special funds for fiscal year 1993-94 shall be expended for a pilot program for community planner training in the counties of Maui and Kauai; provided further that the sum of \$4,000 in general funds and \$4,000 in special funds for fiscal year 1993-94 shall be appropriated for pilot mini-grant programs for community based plans and projects in the counties of Maui and Kauai; provided further that successful completion of the community planner training and mini-grant training programs shall be required for participation in the office of Hawaiian affairs housing division's proposed affordable housing self-help grant program; provided further that non-profit groups which submit evidence of having previously completed all phases of a self-help housing project may be considered for exemption from these training programs; and provided further that the office of Hawaiian affairs shall submit to the legislature no later than twenty days prior to the convening of the 1994 regular session, an evaluation of the community planning training program and the mini-grant program as prerequisites and partial justification for the funding of any self-help affordable housing programs for fiscal year 1994-95.

SECTION 13. Provided that of the funds appropriated for planning and research (OHA 104), the sum of \$60,000 in general funds and \$60,000 in special funds for fiscal year 1993-94 shall be expended to conduct independent program evaluations of programs funded by the legislature during fiscal biennium 1991-93; provided further that for each evaluation, the report shall include but not be limited to identification of the goals and purpose of each program, evaluation of effectiveness of each program in meeting the stated goals, and recommendations for program changes, including but not limited to recommendations for deletion or expansion and any other changes; provided further that programs selected for

evaluation shall include but not be limited to programs conceived, developed, or operated by the office of Hawaiian affairs and programs undertaken on a contract or services-on-a-fee basis; provided further that programs shall be evaluated with respect to alternative programs that may be available; provided further that the report shall detail the costs incurred for each evaluation and that the office of Hawaiian affairs shall submit the criteria by which programs are evaluated; provided further that a status report on all programs funded by the legislature during fiscal year 1993-94 shall be submitted by the office of Hawaiian affairs; provided further that status reports or program evaluations shall be submitted for those programs identified in sections 14, 15, 17, 18, 19, 20 and 21 of this Act in accordance with the provisions of each section; provided further that the office of Hawaiian affairs shall submit the reports to the legislature no later than twenty days prior to the convening of the 1994 regular session; and provided further that the 1994 report shall be submitted prior to consideration of any request for restoration of the program evaluation section of planning and research (OHA 104) in fiscal year 1994-95.

SECTION 14. Provided that of the funds appropriated for culture (OHA 105), the sum of \$75,000 in special funds for fiscal year 1993-94 and the sum of \$125,000 in special funds for fiscal year 1994-95 shall be expended for project 'Aha No'eau which contemplates one conference in fiscal year 1993-94 and two conferences in fiscal year 1994-95 to bring together Hawaiian artisans, crafters and practitioners to share and discuss aspects of their respective disciplines; and provided further that an independent evaluation of the fiscal year 1993-94 conference shall be included in the independent program evaluation reports required by section 13.

SECTION 15. Provided that of the funds appropriated for culture (OHA 105), the sum of \$25,000 in special funds for fiscal year 1993-94 and the sum of \$25,000 in special funds for fiscal year 1994-95 shall be expended in each fiscal year for the purpose of producing six audio/visual recordings of fragile living Hawaiian treasures; provided further that an independent evaluation of this project for fiscal year 1993-94 shall be included in the independent program evaluation reports required by section 13.

SECTION 16. Provided that of the funds appropriated for culture (OHA 105), the sum of \$2,000 in general funds and \$2,000 in special funds for fiscal year 1993-1994 and the sum of \$2,000 in general funds and \$2,000 in special funds for fiscal year 1994-1995 shall be expended for protocol and cultural assistance.

SECTION 17. Provided that of the funds appropriated for economic development (OHA 108), \$52,113 in general funds and \$52,114 in special funds for fiscal year 1993-94 and the sum of \$44,244 in general funds and \$44,244 in special funds for fiscal year 1994-95 shall be expended for one business loan officer, one loan adjustment specialist, and one loan assistant, to meet the projected increase in operating costs for the native Hawaiian revolving loan fund; provided further that prior to the expenditure of any funds, the office of Hawaiian affairs shall confirm in writing to the legislature that the grant from the Administration for Native Americans (ANA) has been approved and that congressional re-authorization of the native Hawaiian revolving loan fund (NHRLF) has been confirmed as a result of the ANA grant; provided further that a detailed activity and program summary of the NHRLF shall be included in the independent program evaluation reports required by section 13.

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SECTION 18. Provided that of the funds appropriated for economic development (OHA 108), the sum of \$135,000 in general funds and \$135,000 in special funds for fiscal year 1993-94 and the sum of \$135,000 in general funds and \$135,000 in special funds for fiscal year 1994-95 shall be expended for the service-on-a-fee contract with Alu Like, Inc. for management and technical assistance; provided further that an independent evaluation of the service-on-a-fee contract shall be included in the independent program evaluation reports required by section 13.

SECTION 19. Provided that of the funds appropriated for education (OHA 109), the sum of \$39,500 in general funds and \$39,500 in special funds for fiscal year 1993-94 and the sum of \$68,000 in general funds and \$68,000 in special funds for fiscal year 1994-95 shall be expended to expand the center for gifted and talented native Hawaiian children program, Na Pua No'eau, on Maui and Kauai in fiscal year 1993-94 and on Oahu in fiscal year 1994-95; provided further that an independent evaluation of the status of this program shall be included in the independent program evaluation reports required by section 13.

SECTION 20. Provided that of the funds appropriated for education (OHA 109), the sum of \$48,148 in special funds for fiscal year 1993-94 and the sum of \$51,727 in special funds for fiscal year 1994-95 shall be expended for the 'Aha Kupuna project, which represents a change to 100 percent special funding; provided further that an independent evaluation of the 'Aha Kupuna program shall be included in the independent program evaluation reports required by section 13.

SECTION 21. Provided that of the funds appropriated for housing (OHA 110), the sum of \$33,324 in general funds and \$33,324 in special funds for fiscal year 1993-94 shall be expended to support a Kauai affordable housing grant project by a qualified non-profit community based organization; provided further that the office of Hawaiian affairs shall provide additional technical support at no additional cost to assure that the non-profit organization can implement the project; provided further that there shall be no requests for extension of funds for this project after fiscal year 1993-94; and provided further that an independent evaluation of the program shall be included in the independent program evaluation reports required by section 13.

SECTION 22. Provided that of the funds appropriated for housing (OHA 110), the sum of \$2,432 in general funds and \$2,432 in special funds for fiscal year 1993-1994 shall be expended to establish a housing information and referral service; provided further that no funds shall be expended to establish an interest-free loan fund, nor any other assistance fund for security deposits, lease rents, or other payments; provided further that the office of Hawaiian affairs shall identify, coordinate, and cooperate with other agencies and services that can provide housing and rental assistance funding; and provided further that the office of Hawaiian affairs shall submit to the legislature a report and analysis of these alternatives as an integral part of any justification to support establishment of a separate fund in conjunction with any funding request.

SECTION 23. Provided that of the funds appropriated for housing (OHA 110), the sum of \$31,677 in general funds and \$31,678 in special funds for the fiscal year 1993-94 and the sum of \$31,677 in general funds and \$31,678 in special funds for the fiscal year 1994-95 shall be expended to sponsor self-help housing projects.

SECTION 24. Provided that of the funds appropriated for housing (OHA 110), the sum of \$20,000 in general funds and \$20,000 in special funds for the fiscal year 1993-94 shall be expended for a comparative analysis of the "territorial homestead" or "999-year" leases to clarify title and tenancy rights.

SECTION 25. In the event manifest clerical, typographical, or other mechanical errors are found in the Act, the chairperson of the trustees 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 26. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 277

H.B. NO. 203

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. This Act shall be known as the Judiciary Appropriations Act of 1993.

SECTION 2. 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.

(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 3. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized from the sources of funding specified to the judiciary for the fiscal biennium beginning July 1, 1993, and ending June 30, 1995. The total expenditures and the number of permanent positions established in each fiscal year of the fiscal biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided in this Act.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
The Judicial System							
1.	JUD101	-COURTS OF APPEAL			71.00*		71.00*
		OPERATING	JUD	4,395,574A		4,387,574A	
2.	JUD111	-CIRCUIT COURTS			501.50*		501.50*
		OPERATING	JUD	24,065,428A		24,065,428A	
3.	JUD112	-FAMILY COURTS			427.50*		427.50*
		OPERATING	JUD	24,665,214A		24,775,214A	
4.	JUD121	-DISTRICT COURTS			521.50*		521.50*
		OPERATING	JUD	17,039,024A		17,039,024A	
			JUD	54.00*		54.00*	
				1,828,028B		1,828,028B	
5.	JUD201	-ADMIN. DIRECTOR SERVICES			252.50*		252.50*
		OPERATING	JUD	16,231,964A		16,044,719A	
		INVESTMENT CAPITAL	JUD	1,393,000C		C	

PART III. PROGRAM PROVISIONS

SECTION 4. Provided that 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; and provided further that a report identifying all transfers implemented during the previous fiscal year shall be submitted to the legislature no later than twenty days prior to the convening of each regular session.

SECTION 5. Provided that 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 operating purposes; provided further that no transfer shall be made to implement any collective bargaining contract signed after this legislature adjourns sine die; provided further that the chief justice shall submit to the legislature, no later than twenty days prior to the convening of the 1994 and 1995 regular sessions, reports of all transfers of funds and positions as of December 31 and June 30 of each fiscal year of the fiscal biennium 1993-1995.

SECTION 6. Provided that if the chief justice, or any agency, or any government unit secures federal funds or other property 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 the agency with the chief justice's approval, shall have the power to enter into the undertaking with the federal government or private organization or individual; and provided further that while most federal aid al-

locations are known and state matching funds are provided in this Act, in instances where programs for which federal-state cost sharing is not yet determined, the availability of federal funds shall be construed as a proportionate reduction of state costs whenever possible.

SECTION 7. 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 all such transfers for the prior fiscal year shall be reported to the legislature at the beginning of each fiscal year.

SECTION 8. Provided that of the general fund appropriation for the court of appeals (JUD 101), the sum of \$8,000 for fiscal year 1993-1994 shall be expended to hold a citizens forum for judicial selection.

SECTION 9. Provided that of the general fund appropriation for circuit court, (JUD 111), the sum of \$530,352 for each year of the fiscal biennium 1993-1995 shall be expended by the first circuit for two circuit court judges to adjudicate the current felony caseload and, to the extent practicable, to reduce and dispose of the backlog of felony cases; provided further that the judiciary shall submit to the legislature status reports on efforts to address increases in the felony caseload; provided further that the status reports shall include but not be limited to identification of goals and objectives relating to the increase in felony cases, utilization of funds appropriated for those purposes, and an evaluation of the extent to which the funds have enabled achievement or advancement of the established goals and objectives; provided further that the status reports shall also include identification of and justification for any anticipated or projected program adjustments relating to the felony caseload; provided further that the status reports shall be submitted no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 10. Provided that of the general fund appropriation for family court, (JUD 112), the sum of \$150,000 in fiscal year 1993-1994 and \$150,000 in fiscal year 1994-1995 shall be expended by the first circuit for In Community Service through purchase of service agreements under chapter 42D, Hawaii Revised Statutes.

SECTION 11. Provided that of the general fund appropriation for family court, (JUD 112), the sum of \$30,000 in fiscal year 1993-1994 and \$140,000 in fiscal year 1994-1995 shall be expended by the third circuit for short-term shelter placement services through purchase of service agreements under chapter 42D, Hawaii Revised Statutes.

SECTION 12. Provided that of the general fund appropriation for family court, (JUD 112), the sum of \$251,560 for each year of the fiscal biennium 1993-1995 shall be expended by the first circuit for two district court per diem judges to adjudicate the current domestic violence caseload and, to the extent practicable, to reduce and dispose of the backlog of domestic violence cases; provided further that the judiciary shall submit to the legislature status reports on efforts to address increases in the domestic violence caseload; provided further that the status reports shall include but not be limited to identification of goals and objectives relating to the increase in domestic violence cases, utilization of funds appropriated for those purposes, and an evaluation of the extent to which the funds have enabled achievement or advancement of the established goals and objectives; provided further that the status reports shall also include identification of and justification for any anticipated

pated or projected program adjustments relating to the domestic violence caseload; provided further that the status reports shall be submitted no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 13. Provided that of the general fund appropriation for family court, (JUD 112), the sum of \$100,000 for each year of the fiscal biennium 1993-1995 shall be expended by the third circuit to correct security problems at the third circuit court facility in Hilo; provided further that these corrections shall consist of but not be limited to the problems noted in the security survey conducted by the department of public safety on May 27, 1992.

SECTION 14. Provided that of the general fund appropriation for district court, (JUD 121), the sum of \$251,560 for each year of the fiscal biennium 1993-1995 shall be expended by the first circuit for two district court per diem judges to adjudicate the current DUI caseload and, to the extent practicable, to reduce and dispose of the backlog of DUI cases; provided further that the judiciary shall submit to the legislature status reports on efforts to address increases in the DUI caseload; provided further that the status reports shall include but not be limited to identification of goals and objectives relating to the increase in DUI cases, utilization of funds appropriated for those purposes, and an evaluation of the extent to which the funds have enabled achievement or advancement of the established goals and objectives; provided further that the status reports shall also include identification of and justification for any anticipated or projected program adjustments relating to the DUI caseload; provided further that the status reports shall be submitted no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 15. Provided that of the general fund appropriation for administrative director services (JUD 201), the sum of \$50,000 for fiscal year 1993-1994 shall be expended to conduct a study on the economic impact of divorce on spouses in Hawaii; provided further that the judiciary shall submit a preliminary study to the legislature no later than twenty days prior to the convening of the 1994 regular session.

PART IV. CAPITAL IMPROVEMENTS PROGRAM PROJECTS

SECTION 16. The sum of \$1,393,000 appropriated or authorized in Part II of this Act for capital investment shall be expended by the judiciary for the projects listed below; provided that several related or similar projects may be combined into a single project, if a combination is advantageous or convenient, for planning, land acquisition, design, construction, and equipment purposes; provided further that the total cost of any projects thus combined shall not exceed the total of the sums specified for the projects separately. The amount indicated after each cost element, and the total funding for each project listed in this Part, is in thousands of dollars.

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F

The Judicial System**JUD201 -ADMIN. DIRECTOR SERVICES**

1. KOOAUPOKO DISTRICT COURT, OAHU

DESIGN FOR THE KOOAUPOKO DISTRICT COURT.

DESIGN		590	
TOTAL FUNDING	JUD	590C	C

2. REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE DESIGN, CONSTRUCTION, AND EQUIPMENT

FOR REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE.

DESIGN		40	
CONSTRUCTION		250	
EQUIPMENT		13	
TOTAL FUNDING	JUD	303C	C

3. HILO JUDICIARY COMPLEX, HAWAII

PLANS AND DESIGN FOR A JUDICIARY COMPLEX IN HILO TO ACCOMMODATE THE CIRCUIT, FAMILY, AND DISTRICT COURTS.

PLANS		200	
DESIGN		300	
TOTAL FUNDING	JUD	500C	C

PART V. CAPITAL IMPROVEMENT PROVISIONS

SECTION 17. Provided that of the general obligation bond fund appropriation for administrative director services (JUD 201), the sum of \$500,000 in fiscal year 1993-94 shall be used for plans and design of the Hilo judiciary complex; provided further that the judiciary defer on the plans and design on its current site and consider alternate sites; provided further that the judiciary shall conduct a study on alternate sites and a feasibility study of each site in terms of total estimated cost for each site; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 legislative session.

SECTION 18. Any law to the contrary notwithstanding, the appropriations under Act 299, Session Laws of Hawaii 1991, section 13, as amended and renumbered by Act 301, Session Laws of Hawaii 1992, section 5, in the amounts indicated or balances thereof are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
JUD 201-1	37,487,000 C
JUD 201-6	900,000 C"

PART VI. ISSUANCE OF BONDS

SECTION 19. 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 IV of this Act; provided that the sum total of the general obligation bonds so issued shall not exceed \$1,393,000.

PART VII. SPECIAL PROVISIONS

SECTION 20. 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 IV of this Act shall not lapse at the end of the fiscal year for which the appropriations are made; provided that all appropriations for fiscal biennium 1993-1995 which are unencumbered as of June 30, 1996, shall lapse as of that date.

SECTION 21. The judiciary is authorized to delegate to other state or county agencies the acquisition of land, planning, design, construction, and equipment of any capital improvement project when it is determined by the judiciary to be advantageous to do so.

SECTION 22. All unrequired balances in the general obligation bond fund, after the objectives of Part II appropriations for capital investment purposes listed as projects in Part IV have been met, shall be transferred to the judiciary project adjustment fund.

SECTION 23. If the amount allocated from the general obligation bond fund for a capital investment project listed in Part IV is insufficient, the chief justice may make supplemental allotments from the project adjustment fund; provided that supplemental allotments shall not be used to increase the scope of the project; and provided further that reports of supplemental allotments and transfers made in the preceding calendar year shall be provided by the judiciary to the legislature by February 1 of the following calendar year.

SECTION 24. The chief justice may authorize reduction in the scope of project when warranted by changing conditions such as reduction in a specific target population; provided that the scope of a project shall not be reduced solely to accommodate the amount of available funding.

SECTION 25. The chief justice shall determine when and the manner in which authorized projects shall be initiated; provided that the chief justice shall from time to time inform the governor of specific amounts required for the projects; and provided further that the governor shall provide for those amounts through the issuance of bonds authorized in Part VI.

SECTION 26. Any provision of law to the contrary notwithstanding, the chief justice may supplement any early-phased cost element of a capital improvement project authorized under this Act from funds appropriated for later-phased cost elements of 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 for all cost elements shall not exceed the total appropriation for that project.

PART VII. MISCELLANEOUS PROVISIONS AND EFFECTIVE DATE

SECTION 27. If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, the remainder of the Act and any provision thereof shall not be affected. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and shall be expended to fulfill the objective and intent of the appropriation to the extent possible.

SECTION 28. If any manifest clerical, typographical, or other mechanical error is found in this Act, the chief justice is authorized to correct the error. All changes made pursuant to this section shall be reported to the legislature at its next session.

SECTION 29. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 278

H.B. NO. 300

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

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 part II to be appropriately designated and to read as follows:

“§201E- Issuance of bonds for the preservation of low- income housing projects. The corporation, pursuant to and in accordance with Part II, subpart A, may issue bonds to purchase low-income housing projects financed by the United States Department of Housing and Urban Development in order to preserve these projects. Upon the payment of all interest and principal stemming from the issuance of these bonds, the corporation may transfer title to these projects to qualified nonprofit organizations or to the Hawaii housing authority or the authority's successor. Nothing in this section shall be construed to:

- (1) Prohibit qualified nonprofit organizations or the Hawaii housing authority from operating these projects on behalf of the corporation, or providing for the repair and maintenance of these projects, before the payment of all interest and principal stemming from the issuance of these bonds; or
- (2) Prohibit the corporation from transferring title to these projects to qualified nonprofit organizations or the Hawaii housing authority if these bonds can be secured to the satisfaction of the bondholders. The corporation shall give qualified nonprofit organizations priority over the Hawaii housing authority when transferring title to these projects.

As used in this section, “qualified nonprofit organization” includes community-based nonprofit organizations and resident councils.”

SECTION 2. New statutory material is underscored.¹

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

(Approved June 21, 1993.)

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Note

1. Edited pursuant to HRS §23G-16.5.

ACT 279

H.B. NO. 434

A Bill for an Act Relating to State Comprehensive Emergency Medical Services System.

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

SECTION 1. In Act 148, Session Laws of Hawaii 1978, the legislature found that establishment of a state comprehensive emergency medical services system was a matter of compelling public interest. By providing for a system of personnel, facilities, and equipment as well as training, coordination, and use of available public safety resources, Act 148 has helped to ensure the effective and coordinated delivery of health care services under emergency conditions.

The legislature is aware that rapid defibrillation, using automatic external defibrillators, is a valid and beneficial medical intervention that is important to an effective emergency medical services system. The American Heart Association strongly endorses the use of early defibrillation by first responders as the key intervention for increasing the survival chances of cardiac arrest patients. Accordingly, the legislature finds that all personnel whose jobs require the performance of basic cardiopulmonary resuscitation (CPR) should be trained to operate automatic external defibrillators as recommended by the American Heart Association.

The purpose of this Act is to provide for appropriate training and resources to allow emergency service personnel to provide early defibrillation to victims of cardiac arrest.

SECTION 2. Section 321-224, Hawaii Revised Statutes, is amended to read as follows:

“§321-224 Department of health, functions, duties. In addition to other functions and duties assigned [to the department of health] under this part, [it shall have but not be limited to] the [following functions and duties. The] department shall:

- (1) Regulate ambulances and ambulance services[.];
- (2) Establish emergency medical services throughout the State, which shall meet the requirements of this part, subject to section 321-228[.];
- (3) Provide training for basic life support personnel[,] and advance life support personnel, as provided in section 321-229[.];
- (4) Collect and evaluate data for the continued evaluation of the state system subject to section 321-230[.];
- (5) Coordinate emergency medical resources, and the allocation of the state system's services and facilities, in the event of mass casualties, natural disasters, national emergencies, and other emergencies, ensuring linkage to local, state, and national disaster plans, and participation in exercises to test [such disaster] these plans[.];
- (6) Establish, administer, and maintain a communication system for the state system[.];
- (7) Assist each county in the development of a “911” emergency telephone system[.];
- (8) Secure technical assistance and other assistance and consultation necessary to the implementation of this part, subject to section 321-230[.];

- (9) Implement public information and education programs to inform the public of the state system and its use, and [to] disseminate [such] other emergency medical information, including appropriate methods of medical self-help and first-aid, and the availability of first-aid training programs in the State[.];
- (10) Establish standards and provide training for dispatchers in the state system, and maintain a program of quality assurance for dispatch equipment and operations[.];
- (11) Establish a program that will enable emergency service personnel to provide early defibrillation; and
- [(11)] (12) Consult with the advisory committee on matters relating to the implementation of this part."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$45,000, or so much thereof as may be necessary for fiscal year 1993-1994, for the purposes of purchasing six defibrillation devices at \$7,500 each to enable the administration of early defibrillation by emergency service personnel. The sum appropriated shall be expended by the department of health 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, 1993.

(Approved June 21, 1993.)

ACT 280

H.B. NO. 628

A Bill for an Act Relating to State Funds.

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

SECTION 1. Act 240, Session Laws of Hawaii 1990, was passed by the legislature to direct the state auditor to perform a comprehensive evaluation of all state special and revolving funds to determine whether:

- (1) Their continued existence is justified; and
- (2) Moneys appropriated from the general fund and revenues generated by special or revolving fund programs should be deposited in the general fund.

To date, the State has established in excess of one hundred thirty special and revolving funds. These funds generally provide automatic program funding through the assessment of fees, program revenues, or the use of other funds without the benefit of legislative review or taking into account the overall condition of the state budget.

The office of the state auditor concluded in its final report that the proliferation of special and revolving funds as financing mechanisms to support state programs has had a deleterious effect on the legislature's ability to control the state budget.

The legislature concurs with the overall findings of the auditor but also recognizes that circumstances necessitate the continuation of some special and revolving funds. Some funds are needed to meet federal obligations, while others must remain to provide the flexibility needed to accommodate variable or unpre-

dictable program demands. It is the intent of the legislature to continue to review all special and revolving funds and to repeal or modify the funds as circumstances demand.

The purpose of this Act is to repeal or modify various special and revolving funds currently administered by the departments, agencies, and offices of the State.

PART I. SPECIAL AND REVOLVING FUNDS UNDER THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SECTION 2. Section 8-5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) There shall be a commission to be known as the King Kamehameha celebration commission [which] placed within the department of accounting and general services for administrative purposes. The commission shall consist of eighteen members to be appointed by the governor in the manner provided by section 26-34[, such]. The appointments [to] shall be made from the following organizations, with at least one member from each organization:

- (1) The Order of Kamehameha of Hawaii;
- (2) Ahahui Kaahumanu;
- (3) Hale o Na Alii o Hawaii Ahahui poo;
- (4) Daughters and Sons of Hawaiian Warriors;
- (5) Daughters of Hawaii;
- (6) Kamehameha Schools Alumni Association;
- (7) State Association of Hawaiian Civic Clubs;
- (8) Waimanalo Homesteaders' Association;
- (9) Kapahulu Music Club;
- (10) Hui Holo Pa-u Me Na Hoa Hololio;
- (11) Papakolea Community Association; and
- (12) Hui Kukakuka.

In addition, the governor shall appoint one member from each of the following islands: Kauai, Maui, Molokai, Oahu, and Hawaii. Each of these members shall be a resident of the respective island that the member represents. Also, there shall be one at-large member.”

2. By amending subsection (c) to read:

“(c) The members of the King Kamehameha celebration commission shall serve without compensation, but shall be entitled to reimbursement for travel and necessary expenses while attending meetings and while in discharge of their duties. [The funds appropriated for the purposes hereof shall be disbursed on warrants of the state comptroller, based on vouchers approved by the chairperson of the commission.] The comptroller shall reimburse the members of the King Kamehameha celebration commission for all necessary expenses incurred during the discharge of their duties.”

3. By amending subsection (e) to read:

“(e) [The commission may accept donations of money and personal property. There is created in the treasury of the State a special fund to be known as the King Kamehameha celebration fund, into which all moneys donated or appropriated by the legislature to the commission shall be deposited and from which the expenses of the commission to carry out the purpose of this section shall be paid.

The moneys appropriated by the legislature to the King Kamehameha celebration fund and not expended within the fiscal year or years shall not lapse but such moneys shall be retained in a fund for use by the commission in subsequent years. Disbursement of moneys from said fund shall be by state warrants issued in accordance with applicable laws and rules and based on vouchers signed by the chairperson of the commission.] The comptroller shall account for all moneys appropriated by the legislature, and may accept donations of money and personal property on behalf of the commission; provided that all donations accepted from private sources shall be expended in the manner prescribed by the contributor."

SECTION 3. Chapter 106, Hawaii Revised Statutes, is amended as follows:

1. By adding a new section to be appropriately designated and to read:

"§106. Central purchasing of bulk supplies. The comptroller shall finance bulk purchases of supplies and commodities utilized by state agencies when bulk purchases by a single state agency results in substantial savings to the State. All proceeds realized through the resale of supplies or commodities to any state agency shall be deposited to the credit of the state general fund. The total resale price to the various agencies shall be equivalent to the original cost of the purchases. All expenditures shall be in conformance with chapter 103."

2. By repealing section 106-15.

SECTION 4. Chapter 106, Hawaii Revised Statutes, is amended as follows:

1. By adding a new section to be appropriately designated and to read:

"§106. Proceeds from the sale of state surplus property. All proceeds accumulated by the comptroller through the public sale of state surplus property or through the assessment of fees on state agencies for the storage, handling, or disposal of surplus state property shall be deposited to the credit of the state general fund. All costs incurred by the department under this section, including but not limited to the cost of reimbursing the federal surplus property program for the department's pro rata share of administrative expenses, shall be defrayed through appropriations made to the department by the legislature. For purposes of this section, "surplus state property" means any excessive personal property of a state agency transferred to the state surplus property branch for storage or disposal. The comptroller shall maintain an inventory of all surplus state property and keep a full record of all transactions involving state surplus property. The comptroller shall submit an annual report to the governor and the legislature detailing all transactions involving state surplus property made during the preceding fiscal year."

2. By repealing section 106-23.

SECTION 5. Section 107-11, Hawaii Revised Statutes, is amended by amending subsections (e) and (f) to read as follows:

"(e) There is [appropriated out of the general fund of the State the sum of \$50,000 into a fund] hereby created a fund to be known as the "state parking revolving fund" which [fund is to] shall be used to carry out the purposes of this section. Such amounts shall be expended by the comptroller from the fund, as may be necessary, to defray the cost of paving parking areas, the purchase and installation of parking meters and the operation thereof, and of other parking facilities on

state land within the comptroller's jurisdiction. The state parking revolving fund shall be utilized to conform with the special fund depository requirements under section 39-62 for all revenues and user taxes received as the result of the issuance of any state parking facility undertaking or loan program revenue bonds.

(f) All fees, charges, and other moneys collected pursuant to this section, and all revenues and user taxes received pursuant to section 39-62 as the result of the issuance of any state parking facility undertaking or loan program revenue bonds shall be deposited in the state parking revolving fund."

SECTION 6. Section 107-8, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 109-3, Hawaii Revised Statutes, is amended to read as follows:

"§109-3 Stadium special fund. There is created a special fund to be known as the stadium special fund into which funds collected by the authority shall be deposited. The fund shall be applied, used, and disposed of for the payment of:

- (1) The expenses of the operation, maintenance, and management of; and
- (2) All or a portion of the cost of financing any capital improvement project for;

the stadium and related facilities; provided that all services required for the stadium and related facilities shall be performed by persons hired on contract or otherwise, without regard for chapters 76 or 77[.]; provided further that the authority shall report to the legislature all receipts and expenditures of the stadium special fund account twenty days prior to the convening of each regular session."

PART II. SPECIAL AND REVOLVING FUNDS UNDER THE DEPARTMENT OF AGRICULTURE

SECTION 8. Sections 142-24, 142-25, 142-26, and 142-27, Hawaii Revised Statutes, are repealed.

PART III. SPECIAL AND REVOLVING FUNDS UNDER THE DEPARTMENT OF BUDGET AND FINANCE

SECTION 9. Section 106-16, Hawaii Revised Statutes, is amended to read as follows:

"[[§106-16[]] State telecommunications site and equipment maintenance [revolving fund]. There is established a revolving fund which shall be used to] program. The director of finance shall defray the costs of properly maintaining radio transmitter and receiver sites and facilities located on state-owned or controlled premises. All moneys collected from various government agencies and business organizations for the maintenance of these sites and facilities shall be deposited into the [revolving] state general fund. Expenditures [from the revolving fund] under this section shall be made by the director of finance. The director of finance shall prepare and submit to the legislature [a]:

- (1) The budgetary request for annual operating revenues for the program; and
- (2) A complete and detailed annual report of the scope of activities being carried out not later than twenty days prior to the convening of each regular session."

SECTION 10. Chapter 206P, Hawaii Revised Statutes, is amended as follows:

1. By adding a new section to be appropriately designated and to read:

"§206P- Sources and uses of funds. The director of finance, on behalf of the corporation, shall submit the annual budgetary request for operating revenues to the legislature to carry out the purposes of this chapter. The director may accept gifts and donations on behalf of the corporation; provided that moneys accepted from private sources shall be expended by the corporation in the manner prescribed by the contributor. The corporation may expend moneys appropriated by the legislature under this chapter to carry out section 206P-4."

2. By amending section 206P-5 to read:

"[§206P-5] Corporation shall be exempt from certain state laws. In order to promote cooperative projects with private firms or persons, the corporation shall be granted flexibility in hiring its personnel and in handling and shall not be subject to the following state laws:

- [(1) Sections 36-27 and 36-30, relating to special fund reimbursements to the state general fund;
- [(2)] (1) Chapter 76, relating to civil service;
- [(3)] (2) Chapter 77, relating to compensation; and
- [(4)] (3) Section 78-1, relating to public employment.]

3. By repealing section 206P-7.

SECTION 11. The department of budget and finance shall develop and submit to the legislature, legislation to repeal the county special fund for certification payment of county contributions to the pension retirement system twenty days prior to the convening of the regular session of 1994.

PART IV. SPECIAL AND REVOLVING FUNDS UNDER THE HOUSING FINANCE AND DEVELOPMENT CORPORATION

SECTION 12. Section 516-111, Hawaii Revised Statutes, is amended to read as follows:

"§516-111 Revenue bonds; special funds. [(a)] A separate special fund shall be established in accordance with section 39-62 for each acquisition loan program or part thereof financed from the proceeds of the revenue bonds secured under the same trust indenture. [Each fund shall be designated "fee title acquisition loan program revenue bond special fund" and shall bear additional designation as the corporation deems appropriate to properly identify the fund.

(b) Notwithstanding any other law to the contrary, including particularly section 516-44, all revenues, income, and receipts derived from the benefits of the acquisition loan program for which the revenue bonds are issued shall be paid into the fee title acquisition loan program revenue bond special fund established for that program and applied as provided in the proceedings authorizing the issuance of the revenue bonds.]

SECTION 13. Section 201E-208, Hawaii Revised Statutes, is repealed.

SECTION 14. Section 201E-160, Hawaii Revised Statutes, is amended:

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

“(f) In return for the corporation’s guarantee, the private lender shall remit out of monthly payments collected an insurance fee as established by the corporation. The funds remitted shall be [placed in the state mortgage guarantee fund provided for in subsection (k).] deposited to the credit of the state general fund.”

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

“(k) [There is created a special fund to be known as the “state mortgage guarantee fund”.] All interest and fees collected under this subpart by the corporation shall be deposited into [this fund. The purpose of the fund is] the general fund. All moneys necessary to guarantee payment of loans made under this subpart and to carry on the operations of the corporation in administering and granting loans under this subpart[.] shall be appropriated by the legislature out of the proceeds of the general fund. The corporation shall include in its legislative budgetary request for the upcoming fiscal period, the amounts necessary to effectuate the purposes of this section.”

PART V. SPECIAL AND REVOLVING FUNDS UNDER THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

SECTION 15. Section 211-4, Hawaii Revised Statutes, is amended to read as follows:

“**§211-4 Guarantee fees.** The director of business, economic development, and tourism may fix guarantee fees. The guarantee fees shall be computed as a percentage of the loan principal outstanding at the beginning of each year. The guarantee fees shall not be more than three per cent a year. These fees shall be deposited [in a special fund in the treasury of the State, established as the commercial loan guarantee reserve fund.] to the credit of the state general fund.”

SECTION 16. Section 206M-17, Hawaii Revised Statutes, is amended to read as follows:

“**[§206M-17] Development fund.** The development corporation shall establish a separate development fund with respect to each issue of bonds issued under this chapter, shall provide an appropriate designation therefor, and shall direct all revenues and receipts pledged to the payment of such issue of bonds to be deposited into such fund and, as permitted by section 206M-9(g)(8), designate a trustee to receive and receipt for, hold, and administer the moneys in such fund. The development corporation may establish such other funds and accounts as it may deem appropriate. Unless a trustee is designated as provided in this chapter, all funds and accounts of the development corporation shall be held and administered by the state director of finance as provided in section 37-54. The moneys on deposit in the funds shall be used for the purposes of this chapter.] **Revenue bond fund accounts.** The development corporation shall establish separate special funds in accordance with section 39-62 for the deposit of the proceeds of bonds authorized under this chapter.”

SECTION 17. Section 201C-3, Hawaii Revised Statutes, is amended to read as follows:

"[§201C-3] Revolving fund; established. There is established a financial services assistance revolving fund from which moneys shall be expended by the department under this chapter. All moneys appropriated to the fund by the legislature or received in repayment of loan principal, payment of interest, or fees, shall be deposited into the revolving fund and used for the purposes of this chapter.] **Financial assistance program; source of funds.** (a) All moneys to carry out the purposes of the financial services assistance program under this chapter shall be allocated by the legislature through appropriations out of the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this section.

(b) All moneys received in repayment of loan principal, payment of interest, or fees, under this chapter shall be deposited to the credit of the state general fund."

SECTION 18. Section 206M-15, Hawaii Revised Statutes, is amended to read as follows:

"§206M-15 High technology research and development [revolving fund].

(a) There is established the high technology research and development revolving fund into which shall be deposited all moneys as may be appropriated by the legislature or as may be contributed, transferred, 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 or county agency or other organizations, including high technology companies.] **loans and grants.** (a) All moneys necessary to carry out the purposes of this section shall be allocated by the legislature through appropriations out of the state general fund. The development corporation shall include in its budgetary request for the upcoming fiscal period, the amounts necessary to effectuate the purposes of this section. All moneys, interest charges, and other fees collected by the development corporation under this section shall be deposited to the credit of the state general fund. 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 up to fifty 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 award or contract from any participating federal agency subject to the availability of funds.

(c) The development corporation shall adopt rules pursuant to chapter 91 that:

- (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 receiving their first award in one fiscal year over multiple award grantees.

The development corporation may adopt any other rules pursuant to chapter 91 necessary for the purposes of this section.

(d) If funds appropriated for the purpose of making grants under this section are inadequate to satisfy all qualified requests, the development corporation shall apply for funds to be transferred from the Hawaii capital loan revolving fund to provide the grants in accordance with subsection (b). The amount of any single transfer of funds shall not exceed \$100,000, and the development corporation shall transfer the entire amount back to the Hawaii capital loan revolving fund within twelve months of receiving the funds. No more than one fund transfer shall be

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outstanding at any one time. The director of business, economic development, and tourism may transfer funds from the Hawaii capital loan revolving fund to the high technology research and development [revolving fund] corporation upon request to carry out the purposes of this section. Transfers of funds shall be made without any charges or fees."

SECTION 19. Section 227D-5, Hawaii Revised Statutes, is amended to read as follows:

"[[§227D-5]] Special fund. There is established in the state treasury a fund to be known as the natural energy laboratory of Hawaii authority special fund, into which shall be deposited all moneys and fees from tenants or other users of the authority's parks, projects, other leased facilities, and other services and publications. All moneys in the fund are appropriated for the purposes of and shall be expended by the authority for the operation, maintenance, and management of its parks, projects, facilities, services, and publications.] Project operating funds; disposition of receipts. (a) All moneys for the operation, maintenance, and management of the natural energy laboratory, and any park, project, facility, service, or publication of the authority shall be allocated by the legislature through appropriations out of the state general fund. The authority shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this section.

(b) All moneys and fees collected from tenants and other users of the authority's parks, projects, leased facilities, other services, and publications shall be deposited to the credit of the state general fund."

SECTION 20. Section 206E-109, Hawaii Revised Statutes, is amended to read as follows:

"§206E-109 Revenue bonds; special funds. [(a) A separate special fund shall be established for each reserved housing loan program or part thereof financed from the proceeds of the revenue bonds secured under the same trust indenture. Each fund shall be designated "reserved housing loan program revenue bond special fund" and shall bear additional designation as the authority deems appropriate to properly identify the fund.

(b) Notwithstanding any other law to the contrary, including specifically section 206E-16, all revenues, income, and receipts derived from the benefits of the reserved housing loan program for which the revenue bonds are issued shall be paid into the reserved housing loan program revenue bond special fund established for that program and applied as provided in the proceedings authorizing the issuance of the revenue bonds.] The authority shall establish a separate special fund in accordance with section 39-62 for each reserved housing loan program or part thereof financed from the proceeds of the revenue bonds secured under the same trust indenture."

SECTION 21. Section 201-85, Hawaii Revised Statutes, is amended to read as follows:

"[[§201-85 Exemptions.]] The department is authorized to hire employees necessary to staff its out-of-state offices subject to chapters 76 and 77 and legislative appropriations.

The department may also appoint such other employees exempt from chapters 76 and 77 as may be necessary to administer the affairs of its out-of-state offices. The initial appointment shall not exceed three years, during which time the

department shall submit to the legislature a request for approval prior to continuation of the position. The department shall set the duties, responsibilities, salaries, holidays, vacations, leaves, hours of work, and working conditions for these employees.

Subject to the approval of the director of budget and finance, the department may be exempted from the following state laws only to the extent necessary for the conduct of its business in operating out-of-state offices:

- (1) Sections 36-27 and 36-30, relating to special fund transfers and reimbursements to the general fund;
- (2) Chapter 103, relating to advertising for bids and purchases to be made in Hawaii whenever public moneys are expended;
- (3) Chapter 36, relating to management of state funds;
- (4) Chapter 38, relating to deposits of public funds;
- (5) Chapter 40, relating to audit and accounting, except that the department shall comply with section 40-81;
- (6) Chapter 76, relating to civil service;
- (7) Chapter 77, relating to compensation;
- (8) Section 78-1, relating to public employment, except when expressly hiring personnel subject to section 78-1; and
- (9) Section 171-30, relating to acquisition of real property.

[Notwithstanding any other law to the contrary, the department may establish a special fund for the deposit of moneys received from the legislature for the purpose of establishing and operating its out-of-state offices and for the deposit of other sources of income or revenue.] All moneys necessary for the establishment and operation of out-of-state offices shall be allocated by the legislature through appropriations out of the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this section."

SECTION 22. Section 209-34, Hawaii Revised Statutes, is amended to read as follows:

"§209-34 State disaster revolving loan fund. There is established the state disaster revolving loan fund into which shall be deposited all moneys received as repayment of loans and interest payments as provided in this part, and from which the director of business, economic development, and tourism may make loans in accordance with provisions of this part. All unexpended and unencumbered moneys remaining in the fund at the close of each fiscal year which are deemed, by the director of finance, to be in excess of the moneys necessary to carry out the purposes of this section over the next following fiscal year shall lapse to the credit of the state general fund."

PART VI. SPECIAL AND REVOLVING FUNDS UNDER THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

SECTION 23. Section 440G-15, Hawaii Revised Statutes, is amended to read as follows:

"§440G-15 Annual fees. (a) Each cable operator shall pay an annual fee to be determined by the director. [A portion of the] The fees so collected under this section shall be used to offset the costs of administering this chapter.

(b) The director shall adjust the fees assessed under this section, as necessary from time to time, to ensure that the gross proceeds collected do not surpass the annual operating costs of the program."

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SECTION 24. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Every person licensed under any chapter subject to section 26H-4, other than chapter 468, and every person licensed subject to chapter 485 shall pay upon issuance of a license, permit, certificate, or registration a fee [of \$10] and a subsequent annual fee [of \$10, which] to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91 and which shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period, where a renewal is required, a fee which shall be prescribed by rules adopted under chapter 91 and which shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91.

There is created in the state treasury a special fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, the moneys in the fund shall consist of annual fees collected under this subsection and section 514A-95 and penalties or fines assessed as a result of action brought by department personnel and penalties or fines or reimbursement of costs or attorneys fees assessed as a result of actions brought for violations of chapters 480 and 487. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapters 76 and 77, hearings officers, investigators, attorneys, accountants, and other necessary personnel. The moneys in the fund may be used to train such personnel as the director finds necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, “compliance resolution” means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to section 26H-4, other than chapter 468, has complied with that chapter;
- (2) Any person subject to chapter 485 has complied with that chapter; [or]
- (3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15); or
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. This subsection shall be repealed effective July 1, 2001.”

SECTION 25: 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 expenses 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.

(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. Persons shall not receive or accept any additional emolument on account of an examination. 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.

(f) Moneys in the insurance examiners revolving fund shall not revert to the general fund.

(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.] **Reimbursement and compensation of examiners; source of funds; disposition of receipts.** (a) All moneys necessary for the compensation and reimbursement of independent contractor examiners and insurance division staff examiners for actual travel expenses, reasonable living expenses, and per diem expenses, at customary rates approved by the commissioner shall be allocated by the legislature through appropriations out of the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this section.

(b) Each authorized insurer shall deposit at a time determined by the commissioner the sum of \$200 with the commissioner for deposit into the state general fund.

(c) All moneys, fees, and other payments received by the commissioner under this part shall be deposited to the credit of the state general fund.”

SECTION 26. Section 415-128, Hawaii Revised Statutes, is amended to read as follows:

“§415-128 Fees for filing documents and issuing certificates. The following fees shall be paid to the director upon the filing of corporate documents:

- (1) Articles of incorporation, \$50;
- (2) Articles of amendment, \$25;
- (3) Restated articles of incorporation, \$25;
- (4) Articles of merger or consolidation, \$100;
- (5) Articles of merger (subsidiary corporation), \$50;

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

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

The director shall adjust the fees assessed under this section, as necessary from time to time, through rules adopted under chapter 91 to ensure that the proceeds, together with all other receipts of the special fund under this section do not surpass the annual operating costs of the program. All unexpended and unencumbered moneys remaining on balance with the fund at the close of each fiscal year which are deemed, by the director of finance, to be in excess of the moneys necessary to carry out the processing of corporate documents over the next following fiscal year shall lapse to the credit of the state general fund.”

PART VII. SPECIAL AND REVOLVING FUNDS UNDER THE DEPARTMENT OF EDUCATION

SECTION 27. Section 431:10C-115, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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

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

SECTION 28. Section 299-5, Hawaii Revised Statutes, is amended to read as follows:

“[§299-5] **Traffic safety education.** The department of education may establish and administer a traffic safety education program to be conducted at each public school for students from grades kindergarten through twelve.

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

SECTION 29. The driver education fund account administered by the department of education pursuant to section 431:10C-115 is hereby transferred to the department of commerce and consumer affairs.

SECTION 30. Section 312-3.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The fund shall be administered by the state librarian who shall, [after consultation with] unless otherwise directed by 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.] disburse to each public library, the amount commensurate with the moneys received from the library under section 312-3.5 over the previous fiscal period. Allocations shall be made in quarterly installments within thirty days of the end of each calendar quarter.”

SECTION 31. Section 296D-1, Hawaii Revised Statutes, is amended to read as follows:

“[§296D-1] School priority [fund;] program; established. (a) There is established within the department of education a school priority [fund which shall be used] program to augment regular instruction and other educational services at the discretion of the individual public schools. Further, it is the intent of the legislature that the school priority [fund be used to] program promote the equitable distribution of educational resources statewide, [to] strengthen the scope of decision making and increase flexibility in resource allocation at the school level, and [to] provide a systematic method of conforming resource allocation to the unique needs and priorities of individual schools.

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

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

SECTION 32. Section 296D-2, Hawaii Revised Statutes, is amended to read as follows:

“[§296D-2] Definitions. As used in this chapter:

“Enrollment” means the number of students registered in the regular public schools, with each regular student and each special student being counted as one[;].

“Moneys” means funds which are not committed to positions[; and]

“School priority fund” includes moneys which may be appropriated and allotted separately for elementary schools and for secondary schools, and appropriated instructional resource augmentation positions which shall be allotted for the elementary schools].”

SECTION 33. Section 296D-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The superintendent of education shall allot the moneys of the school priority [fund] program to the school districts based on enrollment. In the allotment of positions to the districts, the superintendent shall calculate each district's entitlement based on enrollment and shall deploy or redeploy positions beginning September, 1983, such that each district will be provided with its full entitlement of positions by September, 1985.”

SECTION 34. Section 296D-5, Hawaii Revised Statutes, is amended to read as follows:

“§296D-5 Departmental controls. The superintendent shall develop and implement appropriate planning procedures and follow-up accountability reports, without regard to chapter 91, to ensure sound planning, control, and accountability in the use of moneys allocated by the legislature to the school priority [fund] program. The procedures and reports, however, shall recognize the need for providing the schools latitude and discretion to determine their needs and priorities, and shall avoid imposing undue amounts of paperwork and administrative burdens on the schools.

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

PART VIII. SPECIAL AND REVOLVING FUNDS UNDER THE DEPARTMENT OF HEALTH

SECTION 35. Section 325-6, Hawaii Revised Statutes, is amended to read as follows:

“§325-6 Epidemic control [fund]. Such appropriations as may be [provided] necessary for the purpose of controlling, suppressing, or preventing the spread of any communicable or preventable disease in the State or in any county thereof shall be [immediately deposited in the treasury in a special fund to be known as the “epidemic control fund.”] allocated by the legislature out of the proceeds of the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this section.

Whenever the department of health certifies that any communicable or preventable disease is present to such an extent that the usual facilities and personnel of the department are not adequate to properly control, suppress, or prevent the spread of the disease, [withdrawals] expenditures may be made [from the epidemic control fund] by the department, with the approval of the governor, for use, in whatever manner the department may deem necessary, in controlling, suppressing, or preventing the spread of any such disease. [All the withdrawals shall be upon warrants of the comptroller of the State on vouchers properly approved by the director of health.]”

SECTION 36. Section 334-14, Hawaii Revised Statutes, is amended to read as follows:

“[§334-14] Revolving fund for group homes for recovering substance abusers. There is established a revolving fund to make loans for the cost of

establishing programs for the provision of housing in which individuals recovering from alcohol or drug abuse may reside in groups of not less than four individuals. Funds deposited in this revolving fund shall be expended in accordance with Public Law 100-690, section 2036 or any subsequent related laws. All moneys withdrawn from the fund for such purpose shall be reimbursed or restored thereto, so far as may be, out of moneys received or collected from the loans made through this fund and shall then be available for further use.] **Group homes for substance abusers; source of funds; disposition of receipts.** (a) All moneys to make loans for the establishment of housing in which individuals recovering from alcohol or drug abuse may reside in groups of not less than four individuals, shall be allocated by the legislature through appropriations out of the state general fund.

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

(c) All moneys received from other funding sources, including but not limited to federal sources, or in repayment of loan principal, payment of interest, or fees, under this section shall be deposited to the credit of the state general fund.”

SECTION 37. Section 321-93, Hawaii Revised Statutes, is amended to read as follows:

“**§321-93 [Revolving fund.** There is appropriated out of the general revenues of the State the sum of \$15,000 as a revolving fund, to be expended by the department of health for the purposes of this part. All moneys received by the department for services rendered under this part shall be deposited into the fund.]

Home health services; source of funds; disposition of receipts. (a) All moneys to provide ancillary paramedical services, professional nursing care, physiotherapy, occupational therapy, speech and hearing therapy, medical social services, and home health aide services under the home health services program shall be allocated by the legislature through appropriations out of the state general fund.

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

(c) All moneys received by the department from charges and fees for services rendered under this part shall be deposited to the credit of the state general fund.”

SECTION 38. Section 326-27, Hawaii Revised Statutes, is amended to read as follows:

“**§326-27 [Revolving fund for Kalaupapa store.** To enable the department of health to operate and maintain the Kalaupapa store, situated at Kalaupapa, Molokai, \$10,000 is appropriated as a special fund to be deposited in the state treasury and to be a continual deposit, subject to the control of the department through its director, to be used from time to time in operating and maintaining the Kalaupapa store. All moneys withdrawn from the fund for such purposes shall be reimbursed or restored thereto, so far as may be, out of any moneys received or collected from the sales made in the Kalaupapa store and shall then be available for further use.] **Kalaupapa store; loans for operation and maintenance.** (a) All moneys to enable the department of health to operate and maintain the Kalaupapa store, situated in Kalaupapa, Molokai, shall be allocated by the legislature through appropriations out of the state general fund.

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

(c) All moneys received in reimbursement of payments made under this section shall be deposited to the credit of the state general fund.”

SECTION 39. Section 333F-17.5, Hawaii Revised Statutes, is amended to read as follows:

"[§]§333F-17.5[] Authority to establish specific funding. The department is authorized to establish and administer special funds for the deposit and expenditure of earned Title XIX funds collected for community program services provided under this chapter in order to maximize the use of federal funds for services to the developmentally disabled.] **Disposition of Title XIX funds.** All earned Title XIX funds collected for community program services under this chapter shall be deposited to the credit of the state general fund."

PART IX. SPECIAL AND REVOLVING FUNDS UNDER THE DEPARTMENT HUMAN SERVICES

SECTION 40. Section 346-9, Hawaii Revised Statutes, is amended to read as follows:

"§346-9 [Revolving fund. The director of finance shall set up, out of any moneys appropriated for the purposes of this chapter, a revolving fund not to exceed in amount the sum of \$10,000. This fund may be used by the department of human services for workshop purposes or home labor purposes for the welfare recipients or others who, in the opinion of the department, will be benefited by the experience, and all moneys in the fund may be expended for materials, machinery, and other facilities and for the erection, operation, and conduct of the workshops, and for the payment of such compensation, as the department may authorize. All proceeds derived from sale of products of the workshops or the home labor shall be deposited in the fund. This section shall be subject to any federal policies, rules or regulations, which may be applicable in order to obtain federal aid or the cooperation of any federal agency concerned.] **Workshop program.** (a) All moneys to fund workshop or home labor activities for welfare recipients or other persons who, in the opinion of the department, would benefit from the experience, and all moneys for the purchase of materials, machinery, and other facilities and for the erection, operation, and conduct of the workshops, and for the payment of compensation, as the department may authorize, shall be allocated by the legislature through appropriations out of the state general fund.

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

(c) All moneys received from other funding sources, including federal sources and all moneys derived from the sale of products of the workshops or home labor shall be deposited to the credit of the state general fund."

PART X. SPECIAL AND REVOLVING FUNDS UNDER THE UNIVERSITY OF HAWAII

SECTION 41. Section 304-8.7, Hawaii Revised Statutes, is amended to read as follows:

"[§]§304-8.7[] University of Hawaii at Manoa intercollegiate athletics revolving fund and University of Hawaii at Hilo intercollegiate athletics revolving fund. Notwithstanding any other law to the contrary, there are established revolving funds for the intercollegiate athletic programs of the University of Hawaii at Manoa and the University of Hawaii at Hilo, which shall be used to receive, deposit, disburse, and account for funds from the activities of the intercollegiate athletic programs. The university may establish appropriate charges for activities

related to its athletic programs and the use of its athletic facilities, the proceeds from which shall be deposited into these revolving funds.

The university shall maintain the financial integrity and viability of these revolving funds, including the maintenance of an adequate reserve to cope with the various factors that impact the revenue structure of an intercollegiate athletic program.] Intercollegiate athletic programs of the University of Hawaii at Manoa and the University of Hawaii at Hilo; establishment of charges; disposition of receipts. (a) The university may establish appropriate charges for activities related to its athletic programs and the use of its athletic facilities. All proceeds received out of the fees and charges established under this section shall be deposited to the credit of the state general fund.

(b) All moneys to carry out the intercollegiate programs of the University of Hawaii shall be allocated by the legislature through appropriations made out of the state general fund.

(c) The university shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to carry out the purposes of this section.”

SECTION 42. Section 304-8.9, Hawaii Revised Statutes, is amended to read as follows:

“[\$304-8.9[]] Systemwide computer services special fund[.] for the University of Hawaii systemwide consortium. (a) There is established a special fund [for systemwide computer services, which shall be used] to receive, deposit, disburse, and account for revenues and expenditures of the university's [computer operations.] single computer system (VAX system). Revenues collected from [users] members of the University of Hawaii systemwide consortium shall be deposited in this fund and expenditures made shall be in support of computer services, including personnel, current expense, and equipment costs.

(b) All moneys, user fees, and other revenues collected by the university for providing computer services to users who are not members of the consortium under subsection (a) shall be deposited to the credit of the state general fund.

(c) All moneys for the operation of the University of Hawaii systemwide computing center to provide computer services for nonconsortium projects of the university, the State, the federal government, and other outside users shall be allocated by the legislature through appropriations out of the state general fund.

(d) The university shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to carry out the purposes of subsection (b).”

SECTION 43. Section 304-25, Hawaii Revised Statutes, is amended to read as follows:

“§304-25 Compensation of laboratory school cafeteria personnel. The compensation of all cafeteria workers and the cafeteria manager at the university laboratory school cafeteria, or any successor organization or unit, shall be paid out of the general fund of the State. [In each fiscal quarter, the laboratory school principal or other authorized official of the university shall transfer from the laboratory school cafeteria special fund to the general fund of the State an amount equal to the proportionate share of the salaries of the laboratory school cafeteria workers comparable to the proportion borne by the department of education school cafeteria special fund for the salaries of cafeteria workers in the department of education.] The university shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to carry out the purposes of this section.”

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SECTION 44. 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, and the department of education[, and the university laboratory school]; 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 45. 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 261D-1; the special summer school fund under section 298-3.5; the school cafeteria special funds of the community colleges, and the department of education[, and the university laboratory school]; 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 46. Section 304-44.5, Hawaii Revised Statutes, is repealed.

SECTION 47. The University of Hawaii is hereby directed to discontinue the operation of the following administratively created special and revolving funds:

- (1) The University of Hawaii Manoa campus instructional resources center special fund;
- (2) The University of Hawaii Manoa campus health instructional resource unit special fund;
- (3) The systemwide rental of University of Hawaii property revolving fund; and

- (4) The University of Hawaii Manoa campus intramural sports revolving fund.

All unencumbered and unexpended balances remaining in each fund scheduled for repeal in this section shall be transferred to the credit of the state general fund on July 1, 1993. The university shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to carry out the functions and activities formerly financed by the special and revolving funds discontinued under this section.

PART XI. SPECIAL AND REVOLVING FUNDS UNDER THE DEPARTMENT OF LAND AND NATURAL RESOURCES

SECTION 48. Section 206-41, Hawaii Revised Statutes, is amended to read as follows:

"§206-41 [Revolving fund. The director of finance shall set up, out of any moneys appropriated for the purposes of this chapter, a revolving fund to be known as the development revolving fund.] **Source of operating funds; disposition of unencumbered funds.** (a) All moneys to carry out the purposes of this chapter shall be allocated by the legislature in accordance with subsection (c) out of appropriations from the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this chapter.

(b) All unexpended balances of appropriations, allocations, allotments, special revolving funds, or other funds heretofore created and made available for the purposes of developing or administering any project subject to this chapter shall be transferred to the [development project revolving fund;] state general fund; provided that any unexpended balances in any special revolving fund or other funds created and made available, in whole or in part, with federal funds, or with assistance from the federal government, or for housing undertaken pursuant to a contract between the federal government and the State or the board of land and natural resources shall be segregated from other funds and shall be deposited and maintained as required by the federal government.

[In addition to the funds specified in the above paragraph, there] (c) There is appropriated from the general revenues of the State sufficient moneys as may be necessary, from time to time, [to the development revolving fund,] with the approval of the governor, for the purposes specified in this chapter, provided that not more than \$1,000,000 may be expended, with the approval of the governor, in land development for any one project; and provided further that such sums as may be utilized from time to time and which are reimbursed [to this fund] from land sales shall be deposited into the general fund.

All moneys received by the board under or pursuant to this chapter, including refunds, reimbursements, and revenues, shall be deposited in the [revolving] state general fund, to the extent permitted by federal law or regulation. Except as otherwise provided by this chapter, the [revolving fund] funds appropriated by the legislature may be expended by the board for any and all of the purposes of this chapter, including, without prejudice to the generality of the foregoing, the acquisition, clearance, and improvement of property; the construction and reconstruction of building sites; and the development and administration of development projects and administration expenses. The provisions of this section shall be subject to applicable federal law and regulation, to any contract between the federal government and the State or the board relating to development projects subject to this chapter, and to the terms and conditions of contributions or other assistance from the federal government."

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SECTION 49. Section 174-22, Hawaii Revised Statutes, is amended to read as follows:

“§174-22 Land and water development [revolving fund. There shall be a special fund to be known as the “land and water development revolving fund”. Moneys in the revolving fund shall be expended] projects; source of funds; disposition of receipts. All moneys necessary for administrative costs, engineering surveys, economic studies, plans, maps, and for other water projects or purposes of the board of land and natural resources[.] shall be allocated by the legislature out of appropriations made from the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to carry out the purposes of this chapter. In the event any moneys are expended [therefrom] for engineering surveys, economic studies, plans, and other expenses directly attributable to any land or water project, or for the establishment of any land or water project, the amount of the expenditures shall be reimbursed to the [revolving] state general fund from any funds received by the board for and on account of the project.”

SECTION 50. Section 181-10, Hawaii Revised Statutes, is amended to read as follows:

“§181-10 Funds. All fees and fines collected under this chapter and all moneys forfeited under any bond or deposit shall be paid into the treasury of the State as general realizations. [All moneys forfeited under any bond or deposit shall be held in a special fund to be expended by the board of land and natural resources for the purpose mentioned in section 181-5.]”

SECTION 51. Section 180-16, Hawaii Revised Statutes, is amended to read as follows:

“§180-16 Budget. The department of land and natural resources shall submit to the director of finance, annually the budgetary estimates and information required by chapter 37, and shall include therein estimates of the financial requirements of the department. All contributions, moneys, and funds received by any district shall be deposited to the credit of the state general fund.”

SECTION 52. Section 180-17, Hawaii Revised Statutes, is repealed.

SECTION 53. Section 171-19, Hawaii Revised Statutes, is amended to read as follows:

“§171-19 Special land and development fund. (a) There is created in the department 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 prior legislative authority, the board may use the fund for the following purposes:

- (1) To reimburse the general fund of the State for advances made which are required to be reimbursed from the proceeds derived from sales, leases, licenses, or permits of public lands;

- (2) For the maintenance of all lands under the control and management of the board, including repairs or improvements, thereon; provided that the department shall not expend in excess of \$500,000 in any fiscal year without the prior approval of the governor;
 - (3) To repurchase any land, including improvements, in the exercise by the board of any right of repurchase specifically reserved in any patent, deed, lease, or other documents or as provided by law;
 - (4) For the payment of all appraisal fees; provided that all fees reimbursed to the board shall be deposited in the fund;
 - (5) For the payment of publication notices as required under this chapter; provided that all or a portion of the expenditures may be charged to the purchaser or lessee of public lands or any interest therein under rules adopted by the board;
 - (6) For the 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 developers who have contracted with the board for development of public lands under section 171-60.
- (b) Notwithstanding the above provisions, but subject to the restrictions contained in section 5(f) of the Admission Act, whenever the board sells remnants to abutting owners, the proceeds therefrom including interest on deferred payments, shall be deposited into the general fund; provided that such proceeds shall be set apart to the appropriate fund where mandatory federal requirements affecting federal funds so require.
- (c) Notwithstanding the above limitations on use of the proceeds of sale, where the board sells public lands including the buildings thereon once used but no longer necessary for school purposes at the recommendation and request of the board of education, all net proceeds derived from the sales shall be used for the acquisition of land or for the erection of buildings for school purposes to the extent of an approved building plan in the departmental school district wherein the sales occur. In the absence of any school building program in the district or in the event of any surplus remaining after the completion of buildings constructed pursuant to the approved plan then the proceeds or surplus shall be used in other departmental school districts in the county wherein the sales occur.
- (d) When use of the fund is authorized by the legislature for the development of public lands for a particular project, to be disposed of by sale, lease, license, or permit, the board may pay from the fund the costs of the development, including the costs of surveys, construction of roads, water lines, sewer lines, and such other improvements as may be necessary for the development of the lands; provided that the project shall meet with the zoning and subdivision requirements of the appropriate [county and city and] county government in which the lands are located, except that plans and specifications for recreational projects, including access roads therefor, shall not be required to meet with such approval; and provided further that no such development of public lands for disposal by sale, lease, license, or permit shall be made unless appropriate roads, water lines, and other improvements are installed which will make the land usable for the purpose for which it is being disposed at the time of disposition.

(e) All unexpended and unencumbered moneys remaining on balance with the fund at the close of each fiscal year which are deemed, by the director of finance, to be in excess of the moneys necessary to carry out the purposes of this section over the next following fiscal year shall lapse to the credit of the state general fund."

**PART XII. SPECIAL AND REVOLVING FUNDS UNDER
THE DEPARTMENT OF TRANSPORTATION**

SECTION 54. Section 264-15, Hawaii Revised Statutes, is amended to read as follows:

"[§264-15] **Highway advance acquisition [revolving fund].** There is established the "highway advance acquisition revolving fund" which shall be administered by the director of transportation.]; source of funds. The director may, with the approval of the governor, expend [from the fund such sums] moneys appropriated by the legislature as [are] may be necessary for the acquisition of real property when the director determines [that the]:

- (1) The acquisition of the real property is necessary for a state highway project [that is] authorized by the legislature[, that funds];
- (2) Funds previously authorized by the legislature are inadequate [therefor and that]; and
- (3) That any delay in the acquisition of such property would unnecessarily increase the cost of the highway project;

provided that the selected corridor and alignment of the project shall have been approved by the governor. [Expenditures from the fund shall be made on vouchers approved by the director or such other officer as may be designated by the director.]

All moneys received from the rental, sale, or lease of any property acquired [through the use of this fund] under this section shall be paid into the state general fund; provided that whenever federal funds are involved in the acquisition of the property, any money received from the sale, lease, or rental of such property shall be [credited to the account of] expended toward the project for which the property was acquired.

[Sums expended from the fund for a particular highway project shall be reimbursed or restored to the fund out of moneys subsequently appropriated or made available for that project. The director shall repay any loans made to the fund from the general fund, any special fund and any other revolving fund as soon as moneys become available therefor.

The director of transportation may make loans from time to time from the state highway fund to the fund such sums of money not otherwise appropriated or required to meet the obligations of section 248-9 and 36-28.

The director of finance may make loans from the general, special and revolving funds of the State for deposit into the fund when the director of finance determines that there are moneys in the general, special and revolving funds which are in excess of the amounts necessary for meeting the immediate requirements thereof, and that the action will not impede or hamper the financial operations of the general, special or revolving funds from which moneys are to be advanced or loaned.

Any loans made to the fund may provide for interest at a rate not less than that which could have been realized had the funds been invested in time certificates of deposit.]"

SECTION 55. Section 268-6, Hawaii Revised Statutes, is amended to read as follows:

"§268-6 Bonds, certificates of issuance; terms and conditions. (a) Any certificate or certificates providing for the issuance of revenue bonds pursuant to this chapter shall provide that the revenue bonds shall be redeemable before the maturity thereof at the option of the department of transportation at any time after

five years from the date of such bonds on such terms and conditions as the certificate or certificates providing for the issuance of the bonds shall prescribe, including the payment of premiums upon the redemption thereof, and may contain covenants on behalf of the State to protect and safeguard the security and rights of the holders thereof authorized by chapter 39, part III, and, in addition thereto, covenants as to, among other things:

- [1] (1) Creating a special fund for the deposit of the gross revenues derived from the operation of the ferry system and any additions or betterments thereto or extensions thereof, including the creating and maintenance of funds for working capital to be used in the operation of the ferry system and for renewals and replacements to the system;
- (2) (1) Subject to section 268-8, the establishment and maintenance of adequate rates, rentals, and charges for the services and facilities sold, furnished, or supplied through the ferry system; and
- [3] (2) Limitations upon the right to dispose of the ferry system or any part thereof without providing for the payment of revenue bonds issued pursuant to this chapter[; and]
- (4) The appointment and qualification of trustees and depositaries, either within or without the State, to receive, hold, disburse, invest, and reinvest all or any part of the income, revenues, receipts, and profits derived by the department from the operation, ownership, and management of the ferry system, provided that all covenants in the certificate or certificates shall be subject to review by the governor].

(b) All gross revenues derived from the operation of the ferry system and any additions or extensions thereof shall be deposited to the credit of the state general fund."

PART XIII. SPECIAL AND REVOLVING FUNDS UNDER THE DEPARTMENT OF PUBLIC SAFETY

SECTION 56. Section 354D-10, Hawaii Revised Statutes, is amended to read as follows:

“§354D-10 Correctional industries revolving fund. (a) There is created the correctional industries revolving fund to be administered by the department. All moneys collected by the department from the sale or disposition of goods and services produced in accordance with this chapter shall be deposited into the correctional industries revolving fund. The proceeds in the correctional industries revolving fund shall be used for: the purchase or lease of supplies, equipment, and machinery; the construction, leasing, or renovating of buildings used to carry out the purposes of this chapter; the salaries of personnel necessary to administer the enterprises established in accordance with this chapter; payment of inmates for work assignments; and other necessary expenses; provided that the correctional industries revolving fund shall not be maintained in excess of the amount necessary to carry out the purposes of this chapter.

(b) The director shall perform actuarial evaluations of the management and operation of the fund from time to time, as may be necessary, to ensure that the fund is self-sufficient.”

PART XIV. AMENDMENTS TO GENERAL LAWS RELATING TO SPECIAL AND REVOLVING FUNDS

SECTION 57. Chapter 23, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§23- Review of revolving and trust funds. (a) The office of the state auditor shall report to the legislature, at each regular session, a review of revolving and trust funds established to provide services rendered by any state department or establishment to other state departments or establishments or to any political subdivision of the State. The review shall include but not be limited to:

- (1) An evaluation of the original intent and purpose of each fund, both as expressed by the legislature and as understood by the expending agency;
- (2) The degree to which each fund achieves the stated and claimed purposes;
- (3) An evaluation of performance standards established by the agency; and
- (4) A summary statement reflecting total fund transactions in the preceding five fiscal years, including the fund balance at the beginning of each fiscal year, total deposits and withdrawals, amount of interest earned, total expenditures made from the fund, and the ending fund balance for each fiscal year.

(b) Each revolving and trust fund shall be reviewed every five years as follows:

- (1) Beginning 1994 and every five years thereafter, the auditor shall submit a review of the revolving and trust funds of the department of accounting and general services; the department of agriculture; the department of budget and finance; and the department of land and natural resources;
- (2) Beginning 1995 and every five years thereafter, the auditor shall submit a review of the revolving and trust funds of the department of the attorney general; the department of business, economic development, and tourism; and the university of Hawaii system;
- (3) Beginning 1996 and every five years thereafter, the auditor shall submit a review of the revolving and trust funds within the judiciary and of the department of commerce and consumer affairs; the department of Hawaiian home lands; the department of health; and the department of human services;
- (4) Beginning 1997 and every five years thereafter, the auditor shall submit a review of the revolving and trust funds of the office of the governor; the office of Hawaiian affairs; and the department of education; and
- (5) Beginning 1998 and every five years thereafter, the auditor shall submit a review of the revolving and trust funds of the department of labor and industrial relations; the department of taxation; the department of personnel services; the department of public safety; and all other moneys expended in accordance with section 37-40."

SECTION 58. Section 346-7, Hawaii Revised Statutes, is amended to read as follows:

"§346-7 Acceptance of grants-in-aid or outright grants. (a) The department of human services may accept, at any time, grants-in-aid or outright grants from the federal government or any department thereof for general assistance, medical assistance, care of transients, and other nonresidents, and cooperate with the federal government in connection therewith.

(b) The department shall submit a report detailing all funds received under this section to the legislature no later than twenty days prior to the convening of each regular session."

SECTION 59. Section 346-8, Hawaii Revised Statutes, is amended to read as follows:

"§346-8 Additional funds. (a) The department of human services may accept and deposit with the director of finance, for use in carrying out any of the purposes of this chapter or for costs of administration, any funds which may be provided by the United States government, any county, or any other source, in each case upon such terms and conditions as the department, in its discretion, may approve. All such funds shall be deemed additional to the funds provided by legislative appropriation. Any such funds received in reimbursement of expenditures made from funds provided by legislative appropriation for any purpose are reappropriated for the same purpose.

(b) Except as expressly otherwise provided, all appropriations made by the legislature shall be deemed subject to the foregoing provisions, to the end that the amounts of such appropriations shall be deemed to limit the amounts expendable from the general fund of the State but not to limit the amounts expendable by the department.

(c) The department shall submit a report detailing all moneys received under this section to the legislature no later than twenty days prior to the convening of each regular session."

SECTION 60. 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 61. The department of the attorney general is hereby directed to discontinue the operation of the Hawaii criminal justice commission special fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to carry out the functions previously financed by the proceeds of the fund. All moneys collected from the sale of commission reports and publications shall be deposited to the credit of the state general fund.

SECTION 62. On July 1, 1993, the director of finance shall transfer the following sums to the state general fund from the corresponding sources identified:

- | | | |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| (1) | State educational facilities improvement special fund, section 36-32, Hawaii Revised Statutes | \$20,000,000 |
| (2) | Hawaii development revolving fund, section 201E-217, Hawaii Revised Statutes | \$250,000 |
| (3) | Foreign trade zones special fund, section 212-9, Hawaii Revised Statutes | \$1,000,000 |
| (4) | Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund, section 189-23, Hawaii Revised Statutes..... | \$2,000,000 |
| (5) | Hawaii small fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund, section 189-43, Hawaii Revised Statutes | \$1,000,000 |
| (6) | Driver education and training fund, section 286G-2, Hawaii Revised Statutes..... | \$1,000,000 |
| (7) | Tax reserve fund, section 231-23, Hawaii Revised Statutes | \$25,000 |
| (8) | Hawaii historic preservation special fund, section 6E-16, Hawaii Revised Statutes | \$500,000 |

ACT 281

SECTION 63. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 64. This Act shall take effect on July 1, 1993, except that sections 19, 21, 25, 38, and 41 shall take effect on June 30, 1994; provided that the director of finance shall transfer to the credit of the state general fund:

- (1) On July 1, 1993, all unexpended or unencumbered balances remaining in any special or revolving fund scheduled for repeal on July 1, 1993, under this Act; and
- (2) On June 30, 1994, all unexpended or unencumbered balances remaining in any special or revolving fund scheduled for repeal on June 30, 1994, under this Act.

(Approved June 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 281

H.B. NO. 673

A Bill for an Act Relating to Recycling.

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

SECTION 1. Section 342G-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Secondary resources" means postconsumer material collected and processed for feedstock in a manufacturing process.

"Solid waste disposal facility" means any facility which receives solid waste for ultimate disposal through landfilling or incineration. This term does not include facilities utilized for transfer, storage, processing, or remanufacturing for recycling or reuse, or bioconversion."

SECTION 2. Section 342H-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Recycling" means the collection, separation, recovery, and sale or reuse of secondary resources that would otherwise be disposed of as municipal solid waste, and is an integral part of a manufacturing process aimed at producing a marketable product made of postconsumer material.

"Secondary resources" means postconsumer material collected and processed for feedstock in a manufacturing process."

SECTION 3. Section 342G-1, Hawaii Revised Statutes, is amended by amending the definitions of "composting" and "recycling" to read as follows:

"Composting" means a process in which organic solid wastes, such as biosolids (sewage sludge), green or yard waste materials, manures, and non-treated wood chips and shavings, are biologically decomposed and stabilized under controlled conditions to produce a stable humus-like [material] mulch or soil amendment. This term includes the processing of organic and non-treated wood waste [material] materials for the generation of wood [chip] chips or other [material] materials that can be used as soil amendment, planting mixes, mulches for horticul-

tural and agricultural applications, landfill cover, and land reclamation. The process of composting under methods approved by the department is a recycling activity. Land application of uncomposted organic solid waste shall not be considered an approved solid waste management activity.

"Recycling" means the collection, separation, recovery, and sale or reuse of [materials] secondary resources that would otherwise be disposed of as municipal solid waste[.], and is an integral part of a manufacturing process aimed at producing a marketable product made of postconsumer material."

SECTION 4. Section 342H-36, Hawaii Revised Statutes, is amended to read as follows:

"[]§342H-36[] [Solid waste recycling] Recycling for agricultural purposes; encouraged. The director shall encourage the recycling of solid wastes, including animal wastes and selected non-hazardous industrial wastes, and the composting of animal manures and by-products for agricultural and horticultural purposes. The use of treated sludge effluent for fertilizer and other agricultural purposes shall also be encouraged. Composting of agricultural secondary organic resources under approved methods shall also be encouraged."

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 21, 1993.)

ACT 282

H.B. NO. 690

A Bill for an Act Relating to Cooperative Housing Corporations.

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 COOPERATIVE HOUSING CORPORATIONS

§ -1 Cooperative housing corporation; defined. As used in this chapter, unless otherwise indicated by the context, "corporation" means a cooperative housing corporation that:

- (1) Has one and only one class of stock outstanding;
- (2) Allows each tenant shareholder to occupy a dwelling unit for dwelling purposes solely by reason of the tenant shareholder's ownership of stock in the corporation;
- (3) Does not allow a shareholder to receive, either conditionally or unconditionally, any distributions from the corporation except when there is a complete or partial liquidation of the corporation; provided that this paragraph does not apply to earnings and profits of the corporation; and

- (4) Has eighty per cent or more of the gross income for the taxable year in which taxes are paid or incurred pursuant to 26 United States Code §216(A) derived from tenant shareholders.

§ -2 Amendment of bylaws. The bylaws of a corporation may be amended only upon receiving the affirmative vote or written consent of at least two-thirds of the shareholders.

§ -3 Board of directors; election. (a) A meeting of the corporation for the purpose of electing the board of directors shall be held not later than one hundred eighty days after the first conveyance of a dwelling unit to a shareholder, if at least forty per cent of the dwelling units have been conveyed by that time. If forty per cent of the dwelling units have not been conveyed within one year after the first conveyance, the meeting of the corporation may be held upon the call of the owners of at least ten per cent of the shares by a petition presented to the secretary of the corporation.

(b) Every member of the board of directors shall be: (1) A shareholder of the cooperation, (2) A spouse of a shareholder; or (3) A trust beneficiary, if the shareholder is a trustee.

(c) Each dwelling unit shall have only one representative on the board of directors.

§ -4 Proxies. (a) A proxy shall be valid only for a specific meeting and any of that meeting's adjournments.

(b) A shareholder may designate any person or the board of directors as a proxy, and the proxy may be limited as indicated by the shareholder. No proxy shall be irrevocable unless: (1) The proxy is coupled with a financial interest in the dwelling unit; or (2) The proxy is held pursuant to a first mortgage of record encumbering a dwelling unit or an agreement of sale affecting a dwelling unit.

(c) A proxy statement shall contain at least the following information:

- (1) The name of the corporation;
- (2) The date of the meeting to which the proxy is applicable;
- (3) The printed name and the signature of the shareholder giving the proxy; and
- (4) The dwelling unit or units for which the proxy is given.

§ -5 Meetings of the board of directors. (a) All meetings of the board of directors, other than executive sessions, shall be open to all shareholders, and the shareholders may participate in any deliberation or discussion unless a majority of a quorum of the board of directors votes otherwise. The board of directors may adopt reasonable restrictions on shareholder participation.

(b) The board of directors shall meet at least once each year. Whenever practicable, notice of all board meetings shall be posted in prominent locations within the project by the resident manager, managing agent, member of the board of directors, or other person designated by the board of directors, at least seventy-two hours prior to the meeting or simultaneously when notice is given to members of the board of directors.

(c) Minutes of the meetings of the board of directors shall include the recorded vote of each board member on all motions except motions voted upon in executive session.

(d) The board of directors, with the approval of a majority of a quorum of its members, may adjourn any meeting and reconvene in executive session to discuss and vote upon matters concerning personnel or litigation in which the corporation is or may become involved, if the general nature of any business to be

considered in executive session is first announced in the session open to all shareholders.

(e) No board member shall cast that board member's vote by proxy.

(f) A board member shall not be allowed to vote at any board meeting where the board member has a conflict of interest. The board member shall disclose the conflict of interest, in its general nature, prior to the vote on that matter. The minutes of the meeting shall record the substance of the disclosure of the conflict of interest.

§ -6 Documents of the corporation. (a) Upon approval by the board of directors of the corporation's most current financial statement and the minutes of the most recent board of directors' meeting, the statement and the minutes shall be available for examination by any shareholder at no cost or on twenty-four hour loan, at convenient hours and a convenient location designated by the board of directors.

(b) Upon approval by the board of directors of the minutes of other meetings of the board of directors and the meetings of the corporation for the current and prior year, the minutes shall be available for examination by shareholders at convenient hours and a convenient location designated by the board. Copies of meeting minutes shall be provided to any shareholder upon the shareholder's request, if the shareholder pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(c) Financial statements, general ledgers, accounts receivable ledgers, accounts payable ledgers, check ledgers, insurance policies, contracts, invoices of the corporation for the current and prior year, and any documents regarding delinquencies of ninety days or more shall be available for examination by shareholders at no cost and at convenient hours at a place designated by the board; provided that shareholders shall pay for administrative costs associated with examinations in excess of eight hours per year.

The board may require shareholders to furnish the corporation with an affidavit stating that the information is requested in good faith for the protection of the interests of the corporation, its shareholders, or both.

Copies of these items shall be provided to any shareholder upon the shareholder's request, if the shareholder pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(d) Shareholders may view proxies, tally sheets, ballots, shareholders' check-in lists, and the certificate of election for a period of thirty days following any corporation meeting; provided that shareholders shall pay for administrative costs in excess of eight hours per year.

The board may require shareholders to furnish to the corporation an affidavit stating that the information is requested in good faith for the protection of the interest of the corporation, its shareholders, or both.

Proxies and ballots may be destroyed following the thirty-day period. Copies of tally sheets, shareholders' check-in lists, and the certificates of election from the most recent corporation meeting shall be provided to any shareholder upon the shareholder's request, if the shareholder pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(e) Shareholders may file a written request with the board of directors 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.

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§ -7 Shareholder list. The resident manager or managing agent or board of directors shall keep an accurate and current list of shareholders of the corporation and their current addresses, including the names and addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the board of directors and a copy shall be available, at cost, to any shareholder who furnishes to the resident manager, managing agent, or board of directors an affidavit stating that the list shall be used solely by the shareholder personally and solely for the purpose of soliciting votes or proxies or providing information to other shareholders with respect to corporation matters, and shall not be furnished to anyone for use for any other purpose.

§ -8 Notification of assessment increases. (a) The board of directors shall notify the shareholders in writing of any increase in assessments for common expenses, at least thirty days prior to the increase.

(b) As used in this section, "assessments for common expenses" means any amounts collected from shareholders pursuant to the terms of the corporation's bylaws, articles of incorporation, or proprietary leases, for the operation, maintenance, management, repair, replacement, and improvement of the land, buildings, and any other real or personal property owned or leased by the corporation.

§ -9 Mediation and arbitration of disputes. At the request of any party, any dispute concerning or involving one or more shareholders and a corporation, its board of directors, managing agent, resident manager, or one or more other shareholders relating to the interpretation, application, or enforcement of this chapter or the corporation's articles of incorporation, bylaws, or rules adopted in accordance with its bylaws shall be submitted first to mediation. When all reasonable efforts for mediation have been made and the dispute is not settled either in conference between the parties or through mediation, the dispute shall be submitted to arbitration in the same manner and subject to the same requirements, to the extent practicable, which now apply to condominium property regimes under part VII or chapter 514A.

§ -10 Applicability of other laws. Nothing in this chapter shall be construed to relieve any corporation from compliance with or being subject to any other applicable law.

§ -11 Application of Hawaii business corporation act. The provisions of the Hawaii Business Corporation Act, chapter 415, shall apply to cooperative housing corporations, except to the extent that the provisions of chapter 415 are inconsistent with this chapter."

SECTION 3.¹ This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

Note

1. So in original.

ACT 283

H.B. NO. 694

A Bill for an Act Relating to the Ala Wai Canal.

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 \$300,000, or so much thereof as may be necessary for fiscal

year 1993-1994, to drill the necessary test borings from underground sources near the Kapahulu street end of Ala Wai Canal to establish the quantity and quality of water available from these underground sources.

SECTION 2. The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 284

H.B. NO. 741

A Bill for an Act Making an Appropriation for a Study of the Penal Code.

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

SECTION 1. The Hawaii penal code is the fundamental document by which the State addresses crime. It is imperative that so important a body of law receive full and deliberate attention from time to time, to assure its continued force and effectiveness.

The decade which followed the passage of the Hawaii penal code in 1972 was marked by a dramatic growth of concern on the part of government and the public alike about the problem of crime. In response to the need for a comprehensive review of the code, the legislature appropriated funds in Act 291, Session Laws of Hawaii 1983, section 10, for a study of the penal code. The committee on penal code revision and reform of the judicial council of the Hawaii supreme court, which was appointed by Chief Justice Herman T. F. Lum in 1983, submitted "A Comprehensive Review & Reformation of the Hawaii Penal Code" to the thirteenth legislature in December, 1984. Many of the committee's recommendations were subsequently enacted into law in Act 314, Session Laws of Hawaii 1986.

During the ten years since the appointment of the committee, numerous amendments have been made to the code on a piecemeal basis. However, there has not been comprehensive review as to the effect these amendments have on the principles and philosophy on which the code is based. Moreover, there are concerns as to the structural and systemic impact these amendments have on the entire criminal justice system, including the court and the correctional system. Accordingly, the legislature has determined that the time has arrived for a second review to take place and that this review should not only be concerned with periodic changes that have been made to the original 1972 code, but also with the concept that the code is not an isolated body of law but rather a part of the entire criminal justice system of the State.

SECTION 2. The judicial council of Hawaii, established pursuant to section 601-4, Hawaii Revised Statutes, through a committee on penal code review, shall conduct a comprehensive review of the Hawaii penal code for the purpose of recommending to the legislature such amendments to the code as it may conclude are necessary so that:

- (1) The amendments to the penal code are consistent with and conform to the principles and philosophy of the code;
- (2) The code is in harmony with the entire criminal justice system; and
- (3) The continued force and effectiveness of the code is assured.

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The study shall be concluded and a final report submitted to the legislature, together with proposed implementing legislation, no later than twenty days prior to the convening of the 1995 regular session of the legislature. The council shall make a written progress report on the study to the legislature during the 1994 regular session.

SECTION 3. The judicial council of Hawaii shall appoint a committee to assist it with the study in an advisory capacity. The advisory committee may include as members, representatives from the judiciary, the department of the attorney general, the prosecuting attorneys, the office of the public defender, the county police departments, private citizens interested in criminal law and civil liberties, Hawaii attorneys in private practice who handle criminal cases, the corrections and intake service centers divisions of the department of public safety, and the Hawaii paroling authority. The committee shall include at least one member from each county. 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.

SECTION 4. The judicial council may appoint a reporter for the study and such other research and clerical staff as may be necessary without regard to chapters 76 and 77. In selecting the reporter and research assistant or assistants, the council is urged to utilize to the greatest extent possible the faculty and students of the William S. Richardson School of Law.

SECTION 5. There is appropriated out of the general revenues of the State the sum of \$50,000, or so much thereof as may be necessary for fiscal year 1993-1994, and the sum of \$50,000, or so much thereof as may be necessary for fiscal year 1994-1995, to carry out the purposes of this Act.

The sums appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 6. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 285

H.B. NO. 785

A Bill for an Act Relating to the Hawaii Revised Statutes.

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

SECTION 1. The revisor of statutes, as authorized by section 23G-16, Hawaii Revised Statutes, shall edit and prepare for publication the 1993 replacement to the Hawaii Revised Statutes, to contain such volumes as necessary to include all the laws in the 1985 replacement volumes, as amended and supplemented by the 1986 regular session through the 1993 regular session of the legislature of the State of Hawaii, in force at the time of publication. The project also includes a replacement index, the edition year to be designated by the revisor.

SECTION 2. Notwithstanding section 23G-14, Hawaii Revised Statutes, the revisor of statutes shall not publish a 1993 cumulative pocket part supplement, but shall publish an in-lieu supplement to the Hawaii Revised Statutes.

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SECTION 3. The lieutenant governor and the legislative reference bureau shall explore different methods and procedures of printing and distributing the replacement volumes to hold costs to a minimum, including but not limited to: using soft rather than hard cover; distributing fewer complimentary sets to state agencies; and distributing specific complimentary volumes rather than a full set.

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 fiscal year 1993-94, to the legislative reference bureau for the publication of the replacement volumes to the Hawaii Revised Statutes. The legislative reference bureau shall employ such temporary technical and clerical assistants as may be necessary for the purposes of this Act. Funds appropriated for the 1993 supplements by any other act of the 1993 legislature shall be reappropriated for the purposes of this Act.

SECTION 5. The sum appropriated shall be expended by the legislative reference bureau for the purposes of this Act.

SECTION 6. As of the close of business on June 30, 1994, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 7. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 286

H.B. NO. 924

A Bill for an Act Making Appropriations for a Juvenile Justice Information System.

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 \$261,400, or so much thereof as may be necessary for fiscal year 1993-1994, for the development and implementation of a juvenile justice information system.

SECTION 2. The sum appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 287

H.B. NO. 966

A Bill for an Act Relating to Credit Card Offenses.

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

SECTION 1. Section 708-800, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

ACT 288

“‘‘Encoding’’ means making, changing, altering, erasing, adding, creating, or manipulating a credit card number electronically, or magnetically, or both.”

SECTION 2. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§708- Fraudulent encoding of a credit card. (1) A person commits the offense of fraudulent encoding of a credit card if, with the intent to defraud the issuer, or another person or organization providing money, goods, services or anything else of value, the person:

- (a) Intentionally changes, alters, erases, adds, creates, tampers with, or manipulates a credit card number by encoding credit card numbers onto the magnetic strip of the credit card;
 - (b) Knowingly uses, utters, or offers a credit card with changed, altered, erased, added, tampered with, or manipulated magnetically or electronically encoded credit numbers on the magnetic strip of a credit card for the purpose of obtaining money, goods, services, or anything else of value; or
 - (c) Knowingly sells, or distributes any credit card with changed, altered, erased, added, tampered with, or manipulated magnetically or electronically encoded credit card numbers on the magnetic strip of the credit card.
- (2) Fraudulent encoding of a credit card is a Class B felony.”

SECTION 3. New statutory material is underscored.¹

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

(Approved June 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 288

H.B. NO. 1055

A Bill for an Act Relating to Highways.

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

SECTION 1. The purpose of this Act is to expressly declare the intent of the legislature in amending section 264-3, Hawaii Revised Statutes, to resolve the jurisdictional dispute between the State and counties over the ownership of certain disputed public highways. For counties having a population in excess of 500,000 persons, this Act will abrogate the requirement that a county remit to the State the proceeds from the sale of any county public highway that was formerly a state public highway. However, the State has no authority to waive a reimbursement or credit to the federal government if a reimbursement or credit is required. In consideration of the State waiving its right to have the proceeds from the sale of county public highways remitted to the State, the counties shall acknowledge ownership and jurisdiction of all disputed public highways within their respective counties, as defined in section 264-1, Hawaii Revised Statutes, without the necessity of conveyancing documents transferring title from the State to the respective counties, except when required for the purpose of disposal. The counties will be responsible for the preparation of the conveyancing documents which shall include,

but not be limited to, a metes and bounds survey of the abandoned public highway, if necessary. Moreover, this legislation does not establish a new program or increase the level of services under an existing program that would require the State to share the cost with the counties, pursuant to Article VIII, Section 5, of the Constitution of the State of Hawaii.

SECTION 2. Section 264-3, Hawaii Revised Statutes, is amended to read as follows:

“§264-3 Disposal of abandoned public highway. Whenever a public highway, or any portion thereof is at any time vacated, closed, abandoned, or discontinued, the [same] public highway shall be used or disposed of for the use of the State in the case of a state highway as provided by law and for the use of the county in which the highway lies in the case of a county highway; provided that [in]:

- (1) In the case of a county highway, before it is disposed of in any way, it shall be first offered to the abutters for a reasonable length of time and at a reasonable price, and if they do not take the [same] county highway, then it may be sold at public auction; [provided further that if] and
- (2) If any county highway, the right-of-way for which has been acquired in whole or in part by expenditure of [state or] federal funds, [or which was opened, laid out or built by the State over state owned lands.] is abandoned and disposed of, the necessary portion of the proceeds from the sale thereof shall be remitted to the State for [deposit in the appropriate funds provided by law.] reimbursement or credit to the Federal Highway Administration, if reimbursement or credit is so required.”

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 21, 1993.)

ACT 289

H.B. NO. 1152

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 1993.

SECTION 2. **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, Economic Development and Tourism
BUF	Department of Budget and Finance
CCA	Department of Commerce and Consumer Affairs
DEF	Department of Defense
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
PSD	Department of Public Safety
SUB	Subsidies
TAX	Department of Taxation
TRN	Department of Transportation
UOH	University of Hawaii
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 APPROPRIATIONS

SECTION 3. APPROPRIATIONS. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are hereby appropriated or authorized, as the case may be, from the means of financing specified to the expending agencies designated for the fiscal biennium beginning July 1, 1993, and ending June 30, 1995. 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 1993-94	M O F	FISCAL YEAR 1994-95			
A. ECONOMIC DEVELOPMENT									
1. BED102 - COMMERCE AND INDUSTRY									
	OPERATING	BED		44.00*		44.00*			
		BED		13,849,863A		13,121,680A			
		BED		946,620B		946,620B			
		BED		220,700U		220,700U			
	INVESTMENT CAPITAL	BED		4,100,000W		4,100,000W			
		BED		6,500,000C		C			
2. BED113 - STATE TOURISM OFFICE									
	OPERATING	BED		5.00*		5.00*			
		BED		29,999,865A		29,752,865A			
3. BED107 - FOREIGN TRADE									
	OPERATING	BED		24.00*		24.00*			
		BED		1,823,473B		1,723,473B			
4. AGR101 - FINANCIAL ASSISTANCE FOR AGRICULTURE									
	OPERATING	AGR		1,000,000A		A			
		AGR		15.00*		15.00*			
		AGR		998,080B		998,080B			
		AGR		78,000T		78,000T			
		AGR		4,100,000W		3,100,000W			
5. AGR122 - PLANT PEST AND DISEASE CONTROL									
	OPERATING	AGR		104.00*		104.00*			
		AGR		4,268,019A		4,197,019A			
		AGR		209,900N		114,900N			
		AGR		295,000T		295,000T			
		AGR		283,600U		283,600U			
6. AGR131 - ANIMAL QUARANTINE									
	OPERATING	AGR		63.00*		63.00*			
		AGR		2,293,375A		2,293,375A			
		AGR		237,857U		237,857U			
7. AGR132 - ANIMAL DISEASE CONTROL									
				24.50*		24.50*			

ACT 289

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		OPERATING	AGR	1,147,589A		1,147,589A	
			AGR	54,230T		54,230T	
		INVESTMENT CAPITAL	AGS	100,000C		C	
8.	LNR172 - FORESTRY - PRODUCTS DEVELOPMENT				28.50*		28.50*
	OPERATING	LNR	1,191,461A		1,186,461A		
		LNR	124,505N		124,505N		
9.	AGR151 - MARKETING INFO & DISTRIBUTION SYSTEMS IMPROVEMENT FOR AGR				67.00*		67.00*
	OPERATING	AGR	3,558,899A		3,558,899A		
		AGR	405,699N		399,699N		
		AGR	310,000T		337,000T		
		AGR	509,842W		509,842W		
10.	AGR141 - AGRICULTURAL RESOURCE MANAGEMENT				26.00*		26.00*
	OPERATING	AGR	403,442A		403,442A		
		AGR	172,062B		172,062B		
		AGR	625,226W		630,226W		
	INVESTMENT CAPITAL	AGR	500,000C		C		
11.	AGR192 - GENERAL ADMINISTRATION FOR AGR				39.00*		39.00*
	OPERATING	AGR	1,740,442A		1,740,442A		
	INVESTMENT CAPITAL	AGS	350,000C		C		
12.	AGR102 - FINANCIAL ASSISTANCE FOR AQUACULTURE						
	OPERATING	AGR	80,000W		80,000W		
13.	LNR153 - COMMERCIAL FISHERIES AND AQUACULTURE				22.00*		22.00*
	OPERATING	LNR	1,978,449A		1,978,449A		
		LNR	268,210N		268,210N		
14.	BED120 - ENERGY DEVELOPMENT AND MANAGEMENT				9.00*		9.00*
	OPERATING	BED	3,086,342A		3,835,960A		
		BED	759,000B		B		
		BED	3,460,010N		3,144,904N		
	INVESTMENT CAPITAL	BED	350,000B		B		
		BED	3,850,000C		2,000,000C		
		BED	9,000,000N		N		
		BED	5,000,000R		R		
15.	LNR141 - WATER AND LAND DEVELOPMENT				7.00*		7.00*
	OPERATING	LNR	954,552A		954,552A		
		LNR	110,000W		110,000W		
	INVESTMENT CAPITAL	LNR	2,650,000C		C		
16.	BED130 - ECON PLANNING & RESEARCH FOR ECON DEVELOPMENT				13.00*		13.00*
	OPERATING	BED	683,886A		683,886A		
17.	BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT				44.00*		44.00*
	OPERATING	BED	3,215,066A		3,202,216A		

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		BED		338,000B		338,000B	
B. EMPLOYMENT							
1. LBR111 - PLACEMENT SERVICES							
	OPERATING		LBR	3.00*		3.00*	
			LBR	349,189A		349,189A	
			LBR	482,119B		485,890B	
				132.50*		132.50*	
			LBR	13,801,239N		13,833,706N	
			LBR	1,015,953U		992,263U	
2. LBR123 - APPRENTICESHIP & OTHER TRAINING PROGRAMS							
	OPERATING		LBR	7.00*		7.00*	
			LBR	237,201A		237,201A	
3. LBR131 - EMPLOYMENT AND TRAINING PROGRAMS							
	OPERATING		LBR	4.00*		4.00*	
			LBR	632,726A		412,726A	
			LBR	3,422,940B		3,551,920B	
				8.00*		8.00*	
			LBR	15,040,821N		15,612,480N	
4. LBR135 - COMMISSION ON EMPLOYMENT & HUMAN RESOURCES							
	OPERATING		LBR	5.00*		5.00*	
			LBR	237,964A		237,964A	
			LBR	205,814N		205,814N	
5. LBR136 - TRANSITION CENTER							
	OPERATING		LBR			1,551,577A	
6. LBR143 - OCCUPATIONAL SAFETY & HEALTH							
	OPERATING		LBR	55.50*		55.50*	
			LBR	1,918,332A		1,918,332A	
			LBR	28.50*		28.50*	
			LBR	1,393,002N		1,405,959N	
7. LBR152 - WAGE STANDARDS & FAIR EMPLOYMENT PRACTICES							
	OPERATING		LBR	33.35*		33.35*	
			LBR	1,166,564A		1,166,564A	
8. LBR153 - CIVIL RIGHTS COMMISSION							
	OPERATING		LBR	27.20*		27.20*	
			LBR	1,237,122A		1,237,122A	
			LBR	149,308N		151,309N	
9. LBR161 - PUBLIC AND PRIVATE EMPLOYMENT							
	OPERATING		LBR	3.00*		3.00*	
			LBR	540,238A		540,238A	
10. LBR171 - UNEMPLOYMENT COMPENSATION							
	OPERATING		LBR	4,700,000A		4,800,000A	
			LBR	136,573,763B		151,822,020B	
				243.90*		243.90*	
			LBR	10,896,907N		10,995,528N	
11. LBR183 - DISABILITY COMPENSATION							
	OPERATING		LBR	135.30*		135.30*	
			LBR	4,274,454A		4,276,320A	

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PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
			LBR	17,055,000B		17,055,000B	
12.	HMS802 - VOCATIONAL REHABILITATION			33.09*		33.09*	
	OPERATING		HMS	4,247,344A		4,063,805A	
			HMS	773,814B		773,814B	
				95.91*		95.91*	
			HMS	5,054,732N		5,054,732N	
13.	LBR901 - DLIR-DATA GATHERING, RESEARCH AND ANALYSIS			17.84*		17.84*	
	OPERATING		LBR	1,388,443A		1,388,443A	
				28.08*		28.08*	
			LBR	1,688,122N		1,689,317N	
14.	LBR902 - GENERAL ADMINISTRATION			34.88*		34.88*	
	OPERATING		LBR	1,481,014A		1,481,014A	
				33.64*		33.64*	
			LBR	1,962,151N		1,987,538N	
15.	LBR903 - OFFICE OF COMMUNITY SERVICES			6.00*		6.00*	
	OPERATING		LBR	8,272,316A		7,794,816A	
				3.00*		3.00*	
	INVESTMENT CAPITAL		LBR	5,047,112N		5,141,222N	C
			LBR	3,839,000C			
16.	LBR812 - LABOR & INDUSTRIAL RELATIONS APPEALS BOARD			11.00*		11.00*	
	OPERATING		LBR	580,404A		597,404A	
C. TRANSPORTATION FACILITIES							
1.	TRN102 - HONOLULU INTERNATIONAL AIRPORT			635.00*		641.00*	
	OPERATING		TRN	62,348,436B		64,287,296B	
	INVESTMENT CAPITAL		TRN	11,918,000B		13,050,000B	
			TRN	111,323,000E		25,773,000E	
			TRN	7,600,000N		6,000,000N	
2.	TRN104 - GENERAL AVIATION			3.00*		3.00*	
	OPERATING		TRN	633,407B		777,801B	
3.	TRN111 - HILO INTERNATIONAL AIRPORT			86.00*		86.00*	
	OPERATING		TRN	7,223,353B		7,538,545B	
	INVESTMENT CAPITAL		TRN	5,510,000B		B	
			TRN	500,000N		N	
4.	TRN114 - KE-AHOLE AIRPORT			83.00*		83.00*	
	OPERATING		TRN	7,333,877B		8,538,134B	
	INVESTMENT CAPITAL		TRN	314,000B		1,020,000B	
			TRN	N		100,000N	
5.	TRN116 - WAIMEA-KOHALA AIRPORT			2.00*		2.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95
		OPERATING	TRN	110,473B		112,033B
6.	TRN118 - UPOLU AIRPORT	OPERATING	TRN	67,890B		7,160B
7.	TRN131 - KAHULUI AIRPORT			184.00*		184.00*
	OPERATING	TRN	14,017,875B			12,868,914B
	INVESTMENT CAPITAL	TRN	21,739,000B			26,588,000B
		TRN	17,945,000E			27,148,000E
		TRN	3,500,000N			6,000,000N
8.	TRN133 - HANA AIRPORT			2.00*		2.00*
	OPERATING	TRN	194,892B			389,450B
9.	TRN135 - KAPALUA AIRPORT			6.00*		6.00*
	OPERATING	TRN	1,019,887B			736,210B
10.	TRN141 - MOLOKAI AIRPORT			25.00*		25.00*
	OPERATING	TRN	2,011,197B			2,627,941B
11.	TRN143 - KALAUPAPA AIRPORT			1.00*		1.00*
	OPERATING	TRN	106,863B			60,377B
12.	TRN151 - LANAI AIRPORT			10.00*		10.00*
	OPERATING	TRN	531,561B			1,307,918B
13.	TRN161 - LIHUE AIRPORT			118.00*		118.00*
	OPERATING	TRN	9,132,838B			9,942,918B
	INVESTMENT CAPITAL	TRN	15,415,000B			B
		TRN	2,100,000N			N
14.	TRN163 - PORT ALLEN AIRPORT					
	OPERATING	TRN	1,711B			1,779B
15.	TRN195 - AIRPORTS ADMINISTRATION					
	OPERATING	TRN	178,354A			178,354A
		TRN	105.00*			105.00*
	INVESTMENT CAPITAL	TRN	157,879,092B			178,885,169B
		TRN	17,820,000E			1,155,000E
		TRN	600,000N			100,000N
16.	TRN301 - HONOLULU HARBOR			107.00*		107.00*
	OPERATING	TRN	11,044,176B			10,855,193B
	INVESTMENT CAPITAL	TRN	200,000B			B
		TRN	23,000,000E			E
17.	TRN303 - BARBERS POINT HARBOR			3.00*		3.00*
	OPERATING	TRN	370,740B			387,484B
	INVESTMENT CAPITAL	TRN	B			1,000,000B
		TRN	30,000,000E			E

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
18.	TRN305	- KEWALO BASIN			3,00*		3,00*
		OPERATING	TRN		530,397B		560,336B
19.	TRN311	- HILO HARBOR			10,00*		10,00*
		OPERATING	TRN		1,239,014B		1,197,466B
		INVESTMENT CAPITAL	TRN		100,000B		B
			TRN		E		750,000E
20.	TRN313	- KAWAIHAE HARBOR			7,00*		7,00*
		OPERATING	TRN		627,737B		610,078B
		INVESTMENT CAPITAL	TRN		300,000B		B
21.	TRN331	- KAHULUI HARBOR			15,00*		15,00*
		OPERATING	TRN		1,505,433B		1,375,697B
		INVESTMENT CAPITAL	TRN		500,000B		B
			TRN		6,300,000E		3,500,000E
22.	TRN341	- KAUNAKAKAI HARBOR			1,00*		1,00*
		OPERATING	TRN		177,823B		179,494B
		INVESTMENT CAPITAL	TRN		50,000B		300,000B
23.	TRN361	- NAWILIWILI HARBOR			12,50*		12,50*
		OPERATING	TRN		976,415B		927,506B
		INVESTMENT CAPITAL	TRN		13,000,000E		E
24.	TRN363	- PORT ALLEN HARBOR			1,00*		1,00*
		OPERATING	TRN		338,344B		309,056B
		INVESTMENT CAPITAL	TRN		1,300,000E		E
25.	TRN351	- KAUMALAPAU HARBOR			1,00*		1,00*
		OPERATING	TRN		146,847B		150,428B
		INVESTMENT CAPITAL	TRN		351,000B		B
			TRN		E		1,000,000E
			TRN		500,000N		N
26.	TRN395	- HARBORS ADMINISTRATION			58,00*		58,00*
		OPERATING	TRN		26,906,880B		31,659,181B
		INVESTMENT CAPITAL	TRN		1,145,000B		755,000B
27.	TRN501	- OAHU HIGHWAYS			272,00*		272,00*
		OPERATING	TRN		36,745,410B		39,011,032B
		INVESTMENT CAPITAL	TRN		810,000B		1,000,000B
			TRN		16,514,000E		8,148,000E
			TRN		3,393,000J		5,742,000J
			TRN		6,493,000N		N
28.	TRN511	- HAWAII HIGHWAYS			127,00*		127,00*
		OPERATING	TRN		17,202,012B		18,820,894B
		INVESTMENT CAPITAL	TRN		11,247,000E		29,928,000E

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
			TRN		66,000N		4,110,000N
29.	TRN531 - MAUI HIGHWAYS				77.00*		77.00*
	OPERATING		TRN		12,464,685B		12,084,045B
	INVESTMENT CAPITAL		TRN		1,020,000B		B
			TRN		24,654,000E		852,000E
			TRN		10,817,000N		68,000N
30.	TRN541 - MOLOKAI HIGHWAYS				12.00*		12.00*
	OPERATING		TRN		2,256,891B		2,314,334B
	INVESTMENT CAPITAL		TRN		100,000B		B
			TRN		26,000E		138,000E
			TRN		34,000N		462,000N
31.	TRN551 - LANAI HIGHWAYS				3.00*		3.00*
	OPERATING		TRN		698,546B		696,922B
32.	TRN561 - KAUAI HIGHWAYS				50.00*		50.00*
	OPERATING		TRN		5,736,741B		5,977,148B
	INVESTMENT CAPITAL		TRN		1,700,000E		446,000E
			TRN		N		1,654,000N
33.	TRN595 - HIGHWAYS ADMINISTRATION				64.00*		64.00*
	OPERATING		TRN		47,057,931B		49,382,587B
	INVESTMENT CAPITAL		TRN		4,771,000E		5,421,000E
			TRN		9,193,000N		8,793,000N
34.	TRN597 - HIGHWAY SAFETY				40.00*		40.00*
	OPERATING		TRN		5,070,427B		5,213,116B
			TRN		4.00*		4.00*
			TRN		352,652N		256,055N
35.	TRN995 - GENERAL ADMINISTRATION				102.00*		102.00*
	OPERATING		TRN		10,486,266B		10,045,320B
D. ENVIRONMENTAL PROTECTION							
1.	HTH840 - ENVIRONMENTAL MANAGEMENT				95.00*		95.00*
	OPERATING		HTH		3,868,399A		3,868,399A
			HTH		85,000B		85,000B
					38.00*		38.00*
	INVESTMENT CAPITAL		HTH		3,805,339N		3,805,339N
			HTH		3,900,000C		C
2.	AGR846 - PESTICIDES				25.00*		25.00*
	OPERATING		AGR		781,666A		781,666A
			AGR		396,800N		396,800N
3.	LNR401 - AQUATIC RESOURCES				26.00*		26.00*
	OPERATING		LNR		1,284,786A		1,284,786A

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				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
			LNR	433,935N		402,459N	
4.	LNR402 - FORESTS AND WILDLIFE RESOURCES			65.50*		65.50*	
	OPERATING		LNR	2,879,852A		2,785,852A	
				.50*		.50*	
			LNR	555,550N		555,550N	
5.	LNR403 - MINERAL RESOURCES			3.00*		3.00*	
	OPERATING		LNR	277,214A		277,214A	
6.	LNR404 - WATER RESOURCES			18.00*		18.00*	
	OPERATING		LNR	1,728,368A		1,728,368A	
7.	LNR405 - CONSERVATION & RESOURCES ENFORCEMENT			80.00*		80.00*	
	OPERATING		LNR	3,904,203A		3,904,203A	
			LNR	377,703N		392,703N	
				1.00*		1.00*	
	INVESTMENT CAPITAL		LNR	7,824W		7,824W	
			LNR	120,000C		C	
8.	LNR406 - COASTAL AREAS			15,000A		15,000A	
	OPERATING		LNR				
9.	TRN903 - COASTAL AREAS						
	OPERATING						
10.	LNR407 - NATURAL AREA RESERVES & MANAGEMENT			14.00*		14.00*	
	OPERATING		LNR	2,036,161A		2,036,161A	
			LNR	110,000N		110,000N	
11.	HTH850 - POLICY DVLPMT,COORD & ANLYS FOR NAT P ENVIR			7.00*		7.00*	
	OPERATING		HTH	291,336A		291,336A	
12.	LNR906 - LNR-NATURAL PHYSICAL ENVIRONMENT			45.00*		45.00*	
	OPERATING		LNR	2,118,534A		2,118,534A	
13.	HTH849 - ENVIRONMENTAL HEALTH ADMINISTRATION			17.50*		17.50*	
	OPERATING		HTH	963,616A		963,616A	
				12.50*		12.50*	
			HTH	1,788,650N		1,788,650N	

E. HEALTH

1.	HTH101 - TUBERCULOSIS/HANSEN'S DISEASE CONTROL			47.00*		47.00*	
	OPERATING		HTH	2,255,514A		2,250,314A	
				3.00*		3.00*	
			HTH	985,971N		985,971N	
2.	HTH111 - HANSEN'S DISEASE INSTITUTIONAL SERVICES			71.00*		71.00*	
	OPERATING		HTH	4,181,129A		4,391,129A	

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				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		INVESTMENT CAPITAL	AGS	777,000C			
3.	HTH121 - STD/AIDS PREVENTION SERVICES			15.00*		15.00*	
	OPERATING		HTH	6,044,594A		6,044,527A	
				4.00*		4.00*	
			HTH	2,206,116N		2,206,116N	
4.	HTH131 - EPIDEMIOLOGY SERVICES			15.00*		15.00*	
	OPERATING		HTH	2,024,800A		2,016,501A	
				1.00*		1.00*	
			HTH	870,592N		870,592N	
5.	HTH141 - DENTAL DISEASES			37.60*		37.60*	
	OPERATING		HTH	1,322,875A		1,322,875A	
6.	HTH151 - PREVENTIVE HEALTH SERVICES			6.00*		6.00*	
	OPERATING		HTH	1,388,733A		1,335,733A	
			HTH	295,161N		295,161N	
7.	HTH160 - NUTRITION			8.00*		8.00*	
	OPERATING		HTH	424,989A		424,989A	
				112.50*		118.50*	
			HTH	24,590,777N		29,272,857N	
8.	HTH180 - HEALTH EDUCATION & INJURY PREVENTION			29.00*		29.00*	
	OPERATING		HTH	1,383,775A		1,383,775A	
				3.00*		3.00*	
			HTH	640,304N		648,594N	
9.	HTH195 - HPDP ADMINISTRATION			15.00*		15.00*	
	OPERATING		HTH	704,425A		712,787A	
			HTH	66,723N		66,723N	
10.	HTH211 - HILO HOSPITAL			772.00*		786.00*	
	OPERATING		HTH	52,716,814B		52,960,023B	
11.	HTH212 - HONOKAA HOSPITAL			445,833A		335,833A	
	OPERATING		HTH	50.00*		50.00*	
			HTH	3,443,556B		3,484,324B	
	INVESTMENT CAPITAL		AGS	6,701,000C		C	
12.	HTH213 - KA'U HOSPITAL			480,544A		480,544A	
	OPERATING		HTH	33.00*		33.00*	
			HTH	1,832,347B		1,797,353B	
13.	HTH214 - KOHALA HOSPITAL			621,183A		621,183A	
	OPERATING		HTH	43.00*		44.00*	
			HTH	1,923,849B		2,074,712B	

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				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		INVESTMENT CAPITAL	AGS	222,000C			
14.	HTH215 - KONA HOSPITAL	OPERATING	HTH	5,245,414A		5,245,414A	
				317.25*		348.25*	
		INVESTMENT CAPITAL	HTH	16,529,219B		18,383,179B	
			AGS	7,020,000C		C	
15.	HTH221 - MAUI MEMORIAL HOSPITAL			635.50*		673.00*	
	OPERATING	HTH		52,378,158B		58,050,537B	
	INVESTMENT CAPITAL	AGS		971,000C		C	
16.	HTH222 - HANA MEDICAL CENTER	OPERATING	HTH	223,920A		223,920A	
			HTH	9.50*		9.50*	
			HTH	554,946B		554,946B	
17.	HTH223 - KULA HOSPITAL	OPERATING	HTH	1,188,338A		1,188,338A	
			HTH	184.00*		184.00*	
	INVESTMENT CAPITAL	AGS		9,103,670B		9,103,670B	
				400,000C		C	
18.	HTH224 - LANAI COMMUNITY HOSPITAL	OPERATING	HTH	375,607A		375,607A	
			HTH	28.00*		28.00*	
			HTH	1,822,771B		1,822,771B	
19.	HTH231 - KAUAI VETERANS MEMORIAL HOSPITAL	OPERATING	HTH	3,233,382A		3,233,382A	
			HTH	150.50*		150.50*	
	INVESTMENT CAPITAL	AGS		6,898,309B		6,898,309B	
				60,000C		C	
20.	HTH232 - SAMUEL MAHELONA MEMORIAL HOSPITAL	OPERATING	HTH	2,370,521A		2,370,521A	
			HTH	154.50*		154.50*	
	INVESTMENT CAPITAL	AGS		4,741,649B		4,741,649B	
				209,000C		C	
21.	HTH241 - MALUHIA HOSPITAL	OPERATING	HTH	4,685,420A		4,685,420A	
			HTH	194.00*		194.00*	
			HTH	8,913,413B		9,008,602B	
			HTH	532,595N		532,595N	
	INVESTMENT CAPITAL	AGS		300,000C		C	
22.	HTH242 - LEAHI HOSPITAL	OPERATING	HTH	4,117,002A		4,117,002A	
			HTH	311.00*		311.00*	
			HTH	11,042,203B		11,287,214B	
23.	SUB601 - PRIVATE HOSPITALS & MEDICAL SERVICES	OPERATING	SUB	2,401,820A		2,261,820A	
	INVESTMENT CAPITAL	HTH		1,050,000C		C	
24.	HTH295 - COMMUNITY HOSPITALS ADMINISTRATION	OPERATING	HTH	2,076,204A		2,076,204A	
				40.00*		40.00*	

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				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		HTH	HTH	2,698,473B		2,698,473B	
25.	HTH420 - ADULT MENTAL HEALTH			937.50*		937.50*	
	OPERATING	HTH	HTH	45,916,007A		45,916,007A	
		HTH	HTH	584,981B		584,981B	
			HTH	1,098,556N		1,098,556N	
26.	HTH440 - ALCOHOL & DRUG ABUSE			9.50*		9.50*	
	OPERATING	HTH	HTH	6,524,446A		6,526,188A	
				2.00*		2.00*	
	INVESTMENT CAPITAL	HTH	HTH	4,597,242N		4,597,242N	
				1,989,000C		C	
27.	HTH460 - CHILD & ADOLESCENT MENTAL HEALTH			188.00*		188.00*	
	OPERATING	HTH	HTH	20,377,994A		20,331,422A	
		HTH	HTH	400,000B		400,000B	
			HTH	381,900N		381,900N	
28.	HTH495 - BEHAVIORAL HEALTH SERVICES ADMINISTRATION			87.00*		87.00*	
	OPERATING	HTH	HTH	5,866,489A		5,912,711A	
				4.00*		4.00*	
		HTH	HTH	2,359,436N		2,369,979N	
29.	HTH501 - DEVELOPMENTAL DISABILITIES			515.25*		515.25*	
	OPERATING	HTH	HTH	30,744,532A		30,671,785A	
30.	HTH511 - WAIMANO TRAINING SCHOOL AND HOSPITAL						
	OPERATING						
31.	HTH530 - FAMILY HEALTH SERVICES			106.00*		106.00*	
	OPERATING	HTH	HTH	18,051,727A		17,991,727A	
				60.00*		60.00*	
		HTH	HTH	5,658,609N		5,827,194N	
32.	HTH540 - SCHOOL HEALTH SERVICES			385.00*		385.00*	
	OPERATING	HTH	HTH	10,033,068A		10,033,068A	
				2.00*		2.00*	
		HTH	HTH	205,638N		205,638N	
33.	HTH570 - COMMUNITY HEALTH NURSING			172.00*		172.00*	
	OPERATING	HTH	HTH	7,190,553A		7,190,553A	
				1.00*		1.00*	
		HTH	HTH	29,675N		29,675N	
34.	HTH595 - PERSONAL HEALTH SERVICES ADMINISTRATION			36.00*		36.00*	
	OPERATING	HTH	HTH	3,512,076A		3,512,076A	
				2.00*		2.00*	
		HTH	HTH	116,801N		121,801N	
35.	HTH610 - ENVIRONMENTAL HEALTH SERVICES			200.00*		200.00*	

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				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		OPERATING	HTH	6,177,297A		6,177,297A	
				2.00*		2.00*	
		INVESTMENT CAPITAL	HTH AGS	56,745X		56,745X	
				1,000,000C		C	
36.	HTH710 - STATE LABORATORY SERVICES				91.00*		91.00*
		OPERATING	HTH		3,884,856A		3,835,231A
37.	HTH720 - MED FACILITIES - STDS, INSPECTION, LICENSING				18.40*		18.40*
		OPERATING	HTH		962,266A		953,049A
					18.60*		18.60*
			HTH		1,382,920N		1,382,920N
38.	HTH730 - EMERGENCY MEDICAL SERVICES				14.00*		14.00*
		OPERATING	HTH		30,520,132A		30,520,132A
			HTH		369,894N		295,786N
39.	HTH760 - HEALTH STATUS MONITORING				35.00*		35.00*
		OPERATING	HTH		1,722,069A		1,722,069A
			HTH		124,139N		124,139N
40.	HTH770 - STATE HEALTH INSURANCE				18.00*		18.00*
		OPERATING	HTH		13,419,208A		14,419,208A
41.	HTH795 - HEALTH RESOURCES ADMINISTRATION				21.00*		21.00*
		OPERATING	HTH		1,430,097A		1,430,097A
			HTH		53,375N		57,675N
42.	HTH906 - COMPREHENSIVE HEALTH PLANNING				13.00*		13.00*
		OPERATING	HTH		568,483A		568,483A
43.	HTH907 - GENERAL ADMINISTRATION				131.00*		131.00*
		OPERATING	HTH		6,230,569A		6,230,569A
					7.00*		7.00*
			HTH		472,975N		502,500N

F. SOCIAL SERVICES

1.	HMS301 - CHILD WELFARE SERVICES				180.33*		180.33*
		OPERATING	HMS		16,027,136A		13,105,125A
					182.67*		182.67*
			HMS		8,017,929N		8,017,929N
			HMS		600,000U		600,000U
2.	HMS302 - CHILD DAY CARE SERVICES				32.00*		32.00*
		OPERATING	HMS		3,274,355A		3,274,355A
					1.00*		1.00*
			HMS		2,790,950N		2,790,950N
3.	HMS303 - CHILD FOSTER CARE SERVICES						

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				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		OPERATING	HMS	28.17*		28.17*	
				14,931,052A		12,443,681A	
				5.83*		5.83*	
			HMS	1,126,261N		1,126,261N	
4.	HMS601 - COMMUNITY LONG TERM CARE SERVICES			74.00*		74.00*	
	OPERATING		HMS	10,666,189A		10,535,189A	
			HMS	7,795,152N		7,795,152N	
			HMS	148,886U		148,886U	
5.	HMS501 - YOUTH SERVICES ADMINISTRATION			19.00*		19.00*	
	OPERATING		HMS	1,254,984A		1,300,343A	
			HMS	109,352N		N	
6.	HMS502 - YOUTH SERVICES PROGRAM			11.00*		11.00*	
	OPERATING		HMS	4,141,358A		3,888,999A	
			HMS	220,154N		220,154N	
	INVESTMENT CAPITAL		HMS	500,000C		C	
7.	HMS503 - YOUTH RESIDENTIAL PROGRAMS			78.50*		78.50*	
	OPERATING		HMS	4,922,582A		4,922,582A	
			HMS	1,541,015N		1,541,015N	
8.	DEF112 - SERVICES TO VETERANS			23.00*		23.00*	
	OPERATING		DEF	1,423,949A		1,436,334A	
	INVESTMENT CAPITAL		AGS	1,500,000C		C	
			AGS	1,960,000N		N	
9.	HMS201 - PAYMNTS TO ASSIST FAMILIES WITH DEPNDNT CHLD						
	OPERATING		HMS	67,244,628A		64,863,324A	
			HMS	67,244,628N		64,863,324N	
10.	HMS202 - PAYMNTS TO ASSIST THE AGED, BLIND & DISABLED						
	OPERATING		HMS	18,627,996A		21,195,336A	
11.	HMS204 - OTHER GENERAL ASSISTANCE PAYMENTS						
	OPERATING		HMS	38,013,192A		37,747,584A	
12.	HMS206 - OTHER FEDERAL ASSISTANCE PAYMENTS						
	OPERATING		HMS	1,491,331N		1,491,331N	
13.	HMS220 - RENTAL HOUSING SERVICES						
	OPERATING		HMS	997,000A		987,000A	
			HMS	26.50*		26.50*	
			HMS	2,091,953B		2,139,294B	
			HMS	214.00*		214.00*	
			HMS	19,205,551N		19,693,827N	
14.	HMS807 - TEACHER HOUSING						
	OPERATING		HMS	150,000A		150,000A	
			HMS	.50*		.50*	
			HMS	225,133B		231,881B	
15.	HMS229 - HOUSING ASSISTANCE ADMINISTRATION			8.00*		8.00*	

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				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		OPERATING	HMS	326,085B		326,085B	
				37.00*		37.00*	
			HMS	2,377,967N		2,375,296N	
16.	BUF225 - PRIVATE HOUSING DEVELOPMENT & OWNERSHIP						
	OPERATING		BUF	362,417A		A	
				19.00*		19.00*	
			BUF	3,732,672B		3,729,957B	
	INVESTMENT CAPITAL		BUF	1,000,000C		C	
17.	BUF223 - BROADENED HOMESITE OWNERSHIP				1.00*	1.00*	
	OPERATING		BUF	133,691A		133,691A	
				2.00*		2.00*	
			BUF	304,872B		301,862B	
18.	BUF227 - HOUSING FINANCE PROGRAM				8.00*	8.00*	
	OPERATING		BUF	1,065,605B		1,074,340B	
19.	BUF229 - HOUSING FINANCE & DEVELOPMENT ADMINISTRATION						
	OPERATING		BUF	468,910A		468,910A	
				22.00*		22.00*	
			BUF	2,137,449B		2,170,702B	
20.	HMS222 - RENTAL ASSISTANCE SERVICES				10.00*	10.00*	
	OPERATING		HMS	3,370,621A		3,370,621A	
				8.00*		8.00*	
			HMS	15,429,217N		15,429,217N	
21.	HMS224 - HOMELESS SERVICES				4.00*	4.00*	
	OPERATING		HMS	4,966,531A		4,966,531A	
22.	HMS230 - HEALTH CARE PAYMENTS						
	OPERATING		HMS	229,712,872A		256,233,968A	
			HMS	192,460,937N		214,713,968N	
			HMS	7,256,905U		7,256,905U	
23.	HMS236 - ELIGIBILITY DETERMINATION				333.99*	333.99*	
	OPERATING		HMS	10,977,464A		10,977,464A	
				252.51*		252.51*	
			HMS	10,834,723N		10,834,723N	
24.	HMS238 - DISABILITY DETERMINATION				36.00*	36.00*	
	OPERATING		HMS	2,831,510N		2,831,510N	
25.	ATG500 - CHILD SUPPORT ENFORCEMENT SERVICES				66.13*	66.13*	
	OPERATING		ATG	1,999,153A		1,999,153A	
				99.87*		99.87*	
			ATG	12,447,049N		12,147,732N	
			ATG	2,561,860T		2,005,662T	
26.	HMS701 - JOBS PROGRAM				56.50*	56.50*	
	OPERATING		HMS	8,326,047A		8,326,047A	

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				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
			HMS	56.50*		56.50*	
				5,317,532N		5,317,532N	
27.	HMS702 - FOOD STAMP EMPLOYMENT & TRAINING			2.25*		2.25*	
	OPERATING		HMS	745,201A		745,201A	
				.50*		.50*	
			HMS	755,630N		755,630N	
28.	HMS703 - GENERAL ASSISTANCE WORK PROGRAM			.90*		.90*	
	OPERATING		HMS	37,656A		37,656A	
				.35*		.35*	
			HMS	N		N	
29.	HHL602 - PLANNG, DEV, MGT & GEN SPPT FOR HAWN HMSTDs			87.00*		87.00*	
	OPERATING		HHL	3,251,162A		3,251,162A	
				55.00*		55.00*	
			HHL	2,632,822B		2,701,850B	
	INVESTMENT CAPITAL		HHL	13,880,000C		C	
30.	GOV861 - PLAN, PRGM DEV & COORD OF SVCS FOR CHD & YTH			11.00*		11.00*	
	OPERATING		GOV	4,978,931A		4,978,931A	
				3.00*		3.00*	
			GOV	3,600,000N		3,490,000N	
31.	GOV602 - PLAN. PRGM DEV & COORD OF SVCS FOR ELDERLY			9.65*		9.65*	
	OPERATING		GOV	7,666,130A		7,666,130A	
				8.35*		8.35*	
			GOV	5,327,948N		5,327,948N	
32.	HTH520 - PLAN, PROG DEV & COORD OF SVS FOR HANDCPPD			6.00*		6.00*	
	OPERATING		HTH	724,763A		724,763A	
33.	HMS902 - GENERAL SUPPORT FOR HEALTH CARE PAYMENTS			20.39*		20.39*	
	OPERATING		HMS	2,236,201A		2,236,201A	
				24.61*		24.61*	
			HMS	2,586,366N		2,586,366N	
34.	HMS903 - GENERAL SUPPORT FOR PUBLIC WELFARE			65.66*		65.66*	
	OPERATING		HMS	5,197,171A		5,197,171A	
				57.34*		57.34*	
			HMS	5,082,454N		5,082,711N	
35.	HMS904 - GENERAL ADMINISTRATION (DSSH)			194.61*		194.61*	
	OPERATING		HMS	7,824,433A		7,653,886A	
				16.39*		16.39*	
			HMS	698,290N		698,290N	

G. FORMAL EDUCATION

1. EDN100 - SCHOOL BASED BUDGETING 13,137.00* 13,300.00*

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PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		OPERATING	EDN	530,121,527A		529,556,661A	
			EDN	3,798,500B		3,836,000B	
			EDN	65,443,083N		71,731,461N	
			EDN	3,046,072T		2,960,072T	
			EDN	976,888U		986,658U	
		INVESTMENT CAPITAL	AGS	90,000,000B		90,000,000B	
			AGS	43,138,000C		3,872,000C	
2.	EDN105 - REGULAR INSTRUCTION PROGRAM	OPERATING					
3.	EDN106 - OTHER REGULAR INSTRUCTION	OPERATING					
4.	EDN107 - SPECIAL EDUCATION	OPERATING					
5.	EDN108 - COMPENSATORY EDUCATION	OPERATING					
6.	EDN203 - SCHOOL ADMINISTRATION	OPERATING					
7.	EDN204 - INSTRUCTIONAL MEDIA	OPERATING					
8.	EDN206 - COUNSELING	OPERATING					
9.	EDN207 - STUDENT ACTIVITIES	OPERATING					
10.	EDN306 - SAFETY AND SECURITY SERVICES	OPERATING					
11.	EDN200 - INSTRUCTIONAL SUPPORT	OPERATING	EDN	407.50*		407.50*	
			EDN	24,889,538A		24,889,538A	
				2,414,224N		2,467,035N	
12.	EDN205 - INSTRUCTIONAL DEVELOPMENT	OPERATING					
13.	EDN208 - EDUCATIONAL ASSESSMENT & PRESCRIPTIVE SERVICES	OPERATING					
14.	EDN300 - STATE AND DISTRICT ADMINISTRATION	OPERATING	EDN	566.50*		566.50*	
			EDN	35,757,884A		35,757,884A	
				1,168,139N		1,259,544N	
15.	EDN303 - STATE ADMINISTRATION	OPERATING					
16.	EDN304 - DISTRICT ADMINISTRATION	OPERATING					
17.	EDN400 - SCHOOL SUPPORT	OPERATING	EDN	1,382.60*		1,400.60*	
				70,692,039A		71,131,753A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS		
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95
			EDN	720.50*		720.50*
			EDN	17,490,530B		16,924,213B
				3.00*		3.00*
			EDN	17,761,297N		18,113,134N
18.	EDN305	- SCHOOL FOOD SERVICES OPERATING				
19.	EDN307	- PHYSICAL PLANT OPERATIONS & MAINTENANCE OPERATING				
20.	EDN500	- SCHOOL COMMUNITY SERVICE OPERATING	EDN	39.50*		39.50*
			EDN	25,672,508A		25,675,460A
			EDN	566,286B		653,642B
			EDN	976,109N		976,109N
21.	EDN405	- AFTER SCHOOL A+ PROGRAM OPERATING				
22.	EDN406	- ADULT EDUCATION OPERATING				
23.	AGS807	- PHYSICAL PLANT OPERATIONS & MAINTENANCE-AGS OPERATING	AGS	281.00*		281.00*
			AGS	44,875,588A		44,875,588A
24.	AGS808	- STUDENT TRANSPORTATION OPERATING	AGS	11.00*		11.00*
			AGS	22,425,957A		22,425,957A
25.	EDN407	- PUBLIC LIBRARIES OPERATING	EDN	614.05*		614.05*
			EDN	22,962,741A		22,964,490A
			EDN	1,475,000B		1,625,000B
			EDN	1,250,000N		660,763N
		INVESTMENT CAPITAL	AGS	12,200,000C		C
26.	UOH100	- UNIVERSITY OF HAWAII, MANOA OPERATING	UOH	3,629.34*		3,679.34*
			UOH	221,198,036A		233,172,534A
			UOH	58.75*		58.75*
			UOH	16,547,024B		16,547,139B
			UOH	82.06*		82.06*
			UOH	5,556,024N		5,619,667N
			UOH	119.25*		83.25*
		INVESTMENT CAPITAL	AGS	43,758,167W		36,998,950W
			AGS	2,873,000B		B
			AGS	9,132,000C		C
			AGS	10,000,000N		N
27.	UOH101	- INSTRUCTION - UOH, MANOA OPERATING				
28.	UOH102	- ORGANIZED RESEARCH - UOH, MANOA OPERATING				
29.	UOH103	- PUBLIC SERVICE - UOH, MANOA OPERATING				

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PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
30.	UOH104	ACADEMIC SUPPORT - UOH, MANOA OPERATING					
31.	UOH105	STUDENT SERVICES - UOH, MANOA OPERATING					
32.	UOH106	INSTITUTIONAL SUPPORT - UOH, MANOA OPERATING					
33.	UOH210	UNIVERSITY OF HAWAII, HILO OPERATING	UOH	324.00*		324.00*	
				21,267,537A		21,242,142A	
				15.00*		15.00*	
			UOH	2,193,704B		2,224,466B	
			UOH	394,543N		394,543N	
				6.00*		6.00*	
			UOH	2,902,165W		2,811,131W	
		INVESTMENT CAPITAL	AGS	3,370,000C		750,000C	
34.	UOH211	INSTRUCTION - UOH, HILO OPERATING					
35.	UOH213	PUBLIC SERVICE - UOH, HILO OPERATING					
36.	UOH214	ACADEMIC SUPPORT - UOH, HILO OPERATING					
37.	UOH215	STUDENT SERVICES - UOH, HILO OPERATING					
38.	UOH216	INSTITUTIONAL SUPPORT - UOH, HILO OPERATING					
39.	UOH300	HONOLULU COMMUNITY COLLEGE OPERATING	UOH	284.00*		284.00*	
				14,500,297A		14,470,465A	
				5.00*		5.00*	
			UOH	1,752,113B		1,773,710B	
			UOH	111,000N		111,000N	
				14.00*		14.00*	
			UOH	1,101,497W		1,193,280W	
40.	UOH301	INSTRUCTION - HONOLULU COMMUNITY COLLEGE OPERATING					
41.	UOH302	PUBLIC SERVICE-HONOLULU COMMUNITY COLLEGE OPERATING					
42.	UOH303	ACADEMIC SUPPORT-HONOLULU COMMUNITY COLLEGE OPERATING					
43.	UOH304	STUDENT SERVICES-HONOLULU COMMUNITY COLLEGE OPERATING					
44.	UOH305	INSTITUTIONAL SUPPORT - HONOLULU CC OPERATING					
45.	UOH310	KAPIOLANI COMMUNITY COLLEGE		299.60*		299.60*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		OPERATING	UOH	15,744,116A		16,021,502A	
				18.00*		18.00*	
			UOH	3,028,311B		3,068,272B	
			UOH	91,020N		91,020N	
				6.00*		6.00*	
		INVESTMENT CAPITAL	UOH	1,158,905W		1,200,174W	
			AGS	3,162,000C		C	
46.	UOH311	- INSTRUCTION - KAPIOLANI COMMUNITY COLLEGE					
		OPERATING					
47.	UOH312	- PUBLIC SERVICE-KAPIOLANI COMMUNITY COLLEGE					
		OPERATING					
48.	UOH313	- ACADEMIC SUPPORT-KAPIOLANI COMMUNITY COLLEGE					
		OPERATING					
49.	UOH314	- STUDENT SERVICES-KAPIOLANI COMMUNITY COLLEGE					
		OPERATING					
50.	UOH315	- INSTITUTIONAL SUPPORT - KAPIOLANI CC					
		OPERATING					
51.	UOH320	- LEEWARD COMMUNITY COLLEGE					
		OPERATING	UOH	299.00*		300.00*	
				14,568,659A		14,643,119A	
				10.00*		10.00*	
			UOH	1,644,959B		1,666,966B	
			UOH	125,000N		125,000N	
				4.00*		4.00*	
			UOH	726,675W		737,598W	
52.	UOH321	- INSTRUCTION-LEEWARD COMMUNITY COLLEGE					
		OPERATING					
53.	UOH322	- PUBLIC SERVICE-LEEWARD COMMUNITY COLLEGE					
		OPERATING					
54.	UOH323	- ACADEMIC SUPPORT-LEEWARD COMMUNITY COLLEGE					
		OPERATING					
55.	UOH324	- STUDENT SERVICES-LEEWARD COMMUNITY COLLEGE					
		OPERATING					
56.	UOH325	- INSTITUTIONAL SUPPORT - LEEWARD CC					
		OPERATING					
57.	UOH330	- WINDWARD COMMUNITY COLLEGE					
		OPERATING	UOH	103.40*		103.40*	
				4,874,431A		4,870,845A	
			UOH	470,598B		485,331B	
			UOH	19,907N		19,907N	
			UOH	82,816W		84,929W	
		INVESTMENT CAPITAL	AGS	1,375,000C		C	
58.	UOH331	- INSTRUCTION-WINDWARD COMMUNITY COLLEGE					
		OPERATING					
59.	UOH332	- PUBLIC SERVICE-WINDWARD COMMUNITY COLLEGE					

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PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
OPERATING							
60.	UOH333	- ACADEMIC SUPPORT-WINDWARD COMMUNITY COLLEGE					
OPERATING							
61.	UOH334	- STUDENT SERVICES-WINDWARD COMMUNITY COLLEGE					
OPERATING							
62.	UOH335	- INSTITUTIONAL SUPPORT - WINDWARD CC					
OPERATING							
63.	UOH400	- HAWAII COMMUNITY COLLEGE					
OPERATING							
			UOH	121.50*		121.50*	
			UOH	6,355,579A		6,358,640A	
			UOH	480,000B		480,000B	
			UOH	70,000N		70,000N	
			UOH	492,735W		503,447W	
64.	UOH401	- INSTRUCTION - HAWAII CC					
OPERATING							
65.	UOH402	- PUBLIC SERVICE - HAWAII CC					
OPERATING							
66.	UOH403	- ACADEMIC SUPPORT - HAWAII CC					
OPERATING							
67.	UOH404	- STUDENT SERVICES - HAWAII CC					
OPERATING							
68.	UOH405	- INSTITUTIONAL SUPPORT - HAWAII CC					
OPERATING							
69.	UOH500	- MAUI COMMUNITY COLLEGE					
OPERATING							
			UOH	156.00*		156.00*	
			UOH	8,284,855A		8,296,855A	
			UOH	6.50*		6.50*	
			UOH	1,232,906B		1,249,743B	
			UOH	88,000N		88,000N	
			UOH	3.00*		3.00*	
			UOH	639,491W		659,653W	
70.	UOH501	- INSTRUCTION-MAUI COMMUNITY COLLEGE					
OPERATING							
71.	UOH502	- PUBLIC SERVICE-MAUI COMMUNITY COLLEGE					
OPERATING							
72.	UOH503	- ACADEMIC SUPPORT-MAUI COMMUNITY COLLEGE					
OPERATING							
73.	UOH504	- STUDENT SEVICES-MAUI COMMUNITY COLLEGE					
OPERATING							
74.	UOH505	- INSTITUTIONAL SUPPORT-MAUI COMMUNITY COLLEGE					
OPERATING							
75.	UOH600	- KAUAI COMMUNITY COLLEGE					
OPERATING							
			UOH	140.00*		140.00*	
			UOH	6,496,063A		6,496,063A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
			UOH	627,833B		843,389B	
			UOH	36,000N		36,000N	
				2.00*		2.00*	
			UOH	310,645W		320,301W	
		INVESTMENT CAPITAL	AGS	500,000R		R	
76.	UOH601	- INSTRUCTION-KAUAI COMMUNITY COLLEGE OPERATING					
77.	UOH602	- PUBLIC SERVICE - KAUAI COMMUNITY COLLEGE OPERATING					
78.	UOH603	- ACADEMIC SUPPORT-KAUAI COMMUNITY COLLEGE OPERATING					
79.	UOH604	- STUDENT SERVICES-KAUAI COMMUNITY COLLEGE OPERATING					
80.	UOH605	- INSTITUTIONAL SUPPORT - KAUAI CC OPERATING					
81.	UOH700	- UNIVERSITY OF HAWAII AT WEST OAHU OPERATING		35.50*		35.50*	
			UOH	2,061,800A		2,067,823A	
			UOH	86,433B		91,590B	
			UOH	25,000W		25,000W	
82.	UOH701	- INSTRUCTION-UOH AT WEST OAHU OPERATING					
83.	UOH703	- PUBLIC SERVICE - UOH AT WEST OAHU OPERATING					
84.	UOH704	- ACADEMIC SUPPORT-UOH AT WEST OAHU OPERATING					
85.	UOH705	- STUDENT SERVICES-UOH AT WEST OAHU OPERATING					
86.	UOH706	- INSTITUTIONAL SUPPORT-UOH AT WEST OAHU OPERATING					
87.	UOH900	- UOH, SYSTEM WIDE SUPPORT OPERATING		346.50*		346.50*	
			UOH	27,863,358A		24,799,856A	
				4.20*		4.20*	
			UOH	200,000B		200,000B	
				4.00*		4.00*	
			UOH	450,560N		457,667N	
				96.00*		96.00*	
		INVESTMENT CAPITAL	UOH	34,322,498W		37,093,729W	
			UOH	300,000C		C	
88.	UOH901	- ACADEMIC SUPPORT-UOH, SYSTEM-WIDE SUPPORT OPERATING					
89.	UOH902	- STUDENT SERVICES-UOH, SYSTEM-WIDE SUPPORT OPERATING					
90.	UOH903	- INSTITUTIONAL SPPT-UOH, SYSTEM-WIDE SPPT					

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PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
OPERATING							
91.	UOH904 - VOCATIONAL EDUCATION,STATEWIDE COORDINATION						
OPERATING							
92.	UOH905 - STATEWIDE PLAN & COORD FOR POST-SECONDARY ED						
OPERATING							
93.	UOH906 - COMMUNITY COLLEGE SYSTEMWIDE SUPPORT						
OPERATING							
		UOH		66.75*		66.75*	
				7,713,566A		7,599,129A	
				10.00*		10.00*	
		UOH		1,057,089B		1,070,872B	
				19.60*		19.60*	
		UOH		2,078,912N		2,095,960N	
		UOH		139,040W		149,950W	

H. CULTURE AND RECREATION

1.	UOH881 - AQUARIA						
OPERATING							
		UOH		13.00*		13.00*	
				783,610A		687,206A	
				3.00*		7.00*	
		UOH		975,406B		1,154,155B	
2.	CCA701 - HAWAII PUBLIC BROADCASTING						
OPERATING							
		CCA		46.00*		46.00*	
		CCA		2,555,050A		2,558,125A	
				2,697,148W		2,697,148W	
3.	AGS881 - PERFORMING & VISUAL ARTS EVENTS						
OPERATING							
		AGS		19.00*		19.00*	
				6,450,071A		6,398,071A	
				1.00*		1.00*	
		AGS		2,050,249B		2,050,249B	
		AGS		571,489N		571,489N	
		AGS		15,000R		15,000R	
		AGS		400,000C		C	
4.	AGS818 - ETHNIC GROUP PRESENTATIONS						
OPERATING							
		AGS		1.00*		1.00*	
				97,008A		97,008A	
5.	LNR802 - HISTORIC PRESERVATION						
OPERATING							
		LNR		18.00*		18.00*	
		LNR		1,798,465A		1,288,465A	
		LNR		75,000B		35,000B	
		LNR		419,487N		419,487N	
		LNR		1,070,000C		C	
6.	LNR804 - FOREST RECREATION						
OPERATING							
		LNR		49.00*		49.00*	
		LNR		1,809,434A		1,905,434A	
		LNR		576,506N		576,506N	
		LNR		150,000W		150,000W	
7.	LNR805 - RECREATIONAL FISHERIES						
OPERATING							
		LNR		8.00*		8.00*	
				222,541A		222,541A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
			LNR		374,064N		374,064N
8.	LNR806 - PARK DEVELOPMENT AND OPERATION				138.00*		138.00*
	OPERATING		LNR		6,763,500A		6,563,500A
	INVESTMENT CAPITAL		LNR		3,250,000C		50,000C
9.	LNR801 - OCEAN-BASED RECREATION				82.00*		82.00*
	OPERATING		LNR		9,529,640B		10,553,555B
	INVESTMENT CAPITAL		LNR		500,000N		500,000N
			LNR		906,000C		C
			LNR		2,384,000N		N
10.	TRN801 - OCEAN-BASED RECREATION						
	OPERATING						
11.	AGS889 - SPECTATOR EVENTS & SHOWS - ALOHA STADIUM				40.00*		40.00*
	OPERATING		AGS		5,443,510B		4,903,510B
	INVESTMENT CAPITAL		AGS		3,621,000B		2,250,000B
			AGS		22,000,000C		C
12.	LNR807 - PARK INTERPRETATION				3.00*		3.00*
	OPERATING		LNR		1,019,310B		1,019,310B
13.	LNR809 - PARKS ADMINISTRATION				15.00*		15.00*
	OPERATING		LNR		671,551A		671,551A
			LNR		285,201N		285,201N

I. PUBLIC SAFETY

1.	PSD402 - HALAWA CORRECTIONAL FACILITY				413.00*		413.00*
	OPERATING		PSD		14,937,964A		14,937,964A
	INVESTMENT CAPITAL		PSD		523,255W		549,418W
			AGS		975,000C		C
2.	PSD403 - KULANI CORRECTIONAL FACILITY				87.50*		87.50*
	OPERATING		PSD		3,561,004A		3,441,032A
	INVESTMENT CAPITAL		AGS		637,000C		C
3.	PSD404 - WAIWAIA CORRECTIONAL FACILITY				75.00*		75.00*
	OPERATING		PSD		2,780,672A		2,780,672A
			PSD		137,087W		143,941W
4.	PSD405 - HAWAII COMMUNITY CORRECTIONAL CENTER				76.00*		111.00*
	OPERATING		PSD		2,612,286A		3,956,559A
	INVESTMENT CAPITAL		AGS		3,000,000C		C
5.	PSD406 - MAUI COMMUNITY CORRECTIONAL CENTER				189.00*		203.00*
	OPERATING		PSD		4,209,905A		6,594,381A
			PSD		46,000S		35,000S

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				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
6.	PSD407	- OAHU COMMUNITY CORRECTIONAL CENTER		466.00*		466.00*	
	OPERATING		PSD	17,618,835A		17,580,195A	
			PSD	413,637W		434,319W	
7.	PSD408	- KAUAI COMMUNITY CORRECTIONAL CENTER		44.00*		44.00*	
	OPERATING		PSD	1,550,858A		1,550,858A	
	INVESTMENT CAPITAL		AGS	350,000C		C	
8.	PSD409	- WOMEN'S COMMUNITY CORRECTIONAL CENTER		82.00*		82.00*	
	OPERATING		PSD	3,445,705A		3,443,683A	
9.	PSD410	- INTAKE SERVICE CENTERS		40.00*		40.00*	
	OPERATING		PSD	1,658,747A		1,658,747A	
10.	PSD420	- CORRECTION PROGRAM SERVICES		226.93*		226.93*	
	OPERATING		PSD	16,862,440A		16,822,440A	
11.	PSD501	- PROTECTIVE SERVICES		92.50*		92.50*	
	OPERATING		PSD	3,038,185A		3,034,209A	
			PSD	13.00*		13.00*	
			PSD	1,250,848U		1,268,851U	
12.	PSD502	- NARCOTICS ENFORCEMENT		12.00*		12.00*	
	OPERATING		PSD	480,196A		480,196A	
			PSD	76,000N		N	
13.	PSD503	- SPECIAL SERVICES		154.00*		154.00*	
	OPERATING		PSD	4,340,613A		4,340,613A	
14.	PSD504	- HARBOR PATROL & MARINE PATROL SERVICES		29.00*		29.00*	
	OPERATING		PSD	707,165A		707,165A	
			PSD	215,078N		215,078N	
			PSD	46.00*		46.00*	
			PSD	1,979,978U		1,993,618U	
15.	PSD801	- HARBOR PATROL SERVICES		2.00*		2.00*	
	OPERATING						
16.	PSD411	- ADULT PAROLE DETERMINATION		2.00*		2.00*	
	OPERATING						
17.	PSD611	- ADULT PAROLE DETERMINATIONS		2.00*		2.00*	
	OPERATING		PSD	176,100A		176,100A	
18.	PSD413	- ADULT PAROLE SUPERVISION & COUNSELING		43.00*		43.00*	
	OPERATING						
19.	PSD612	- ADULT PAROLE SUPERVISION & COUNSELING		43.00*		43.00*	
	OPERATING		PSD	1,517,173A		1,542,035A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
			PSD	159,500N		74,500N	
20.	PSD414 - CRIMINAL INJURIES COMPENSATION OPERATING						
21.	PSD613 - CRIMINAL INJURIES COMPENSATION OPERATING		PSD	7.00*		7.00*	
			PSD	270,521A		270,521A	
			PSD	276,000U		276,000U	
22.	PSD900 - GENERAL ADMINISTRATION OPERATING		PSD	172.10*		172.10*	
			PSD	9,179,456A		9,179,456A	
			PSD	367,250N		158,000N	
			PSD	25,065T		25,065T	
			PSD	9.00*		9.00*	
			PSD	2,500,000W		2,750,000W	
			PSD	726,624X		726,624X	
	INVESTMENT CAPITAL		AGS	250,000C		C	
23.	ATG231 - STATE CRIMINAL JUSTICE INFO & IDENTIFICATION OPERATING		ATG	44.00*		44.00*	
			ATG	1,825,303A		1,825,303A	
24.	LNR810 - PREVENTION OF NATURAL DISASTERS OPERATING		LNR	6.00*		6.00*	
			LNR	310,859A		310,859A	
			LNR	40,000N		40,000N	
	INVESTMENT CAPITAL		LNR	420,000C		C	
25.	DEF110 - AMELIORATION OF PHYSICAL DISASTERS OPERATING		DEF	153.05*		153.05*	
			DEF	7,357,169A		7,330,169A	
			DEF	11.45*		11.45*	
			DEF	1,757,097N		1,842,568N	
	INVESTMENT CAPITAL		AGS	3,672,000C		C	
			AGS	4,867,000N		N	

J. INDIVIDUAL RIGHTS

1.	AGR810 - TESTING & CERTIFICATION OF CONSUMER GOODS OPERATING	AGR	26.25*	26.25*
		AGR	940,751A	940,751A
		AGR	26.25*	26.25*
		AGR	1,230,068N	1,230,068N
2.	CCA102 - CABLE TELEVISION OPERATING	CCA	4.00*	4.00*
		CCA	615,693X	630,215X
3.	CCA103 - CONSUMER ADVOCATE FOR COMM, UTIL & TRANS SVC OPERATING	CCA	19.00*	19.00*
		CCA	1,153,734A	1,153,734A
4.	CCA104 - FINANCIAL INSTITUTION SERVICES OPERATING	CCA	31.00*	31.00*
		CCA	1,229,699A	1,229,699A
5.	CCA105 - PROFESSIONAL, VOCATIONAL & PERSONAL SVCS 55.00*			55.00*

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PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		OPERATING	CCA	2,126,463A		2,126,463A	
			CCA	1,349,750T		1,431,000T	
6.	BUF901 - TRANSPORTATION, COMMUNICATIONS, & UTILITIES				42.00*		42.00*
	OPERATING		BUF	1,960,980A		1,960,980A	
7.	CCA106 - INSURANCE SERVICES				43.00*		43.00*
	OPERATING		CCA	1,494,843A		1,874,843A	
			CCA	1,380,000B		1,380,000B	
			CCA	123,000T		85,000T	
			CCA	4.00*		4.00*	
			CCA	650,000W		650,000W	
8.	CCA110 - OFFC OF CONSUMER PROT - ADV & TERMS OF SALE				29.00*		29.00*
	OPERATING		CCA	1,037,168A		1,037,168A	
			CCA	10,000T		10,000T	
9.	AGR812 - MEASUREMENT STANDARDS				24.00*		24.00*
	OPERATING		AGR	838,195A		838,195A	
10.	CCA111 - BUSINESS REGISTRATION				32.00*		32.00*
	OPERATING		CCA	960,614A		960,614A	
			CCA	14.00*		14.00*	
			CCA	846,725B		861,564B	
11.	CCA191 - GENERAL SUPPORT-PROTECTION OF THE CONSUMER				57.00*		57.00*
	OPERATING		CCA	3,159,996A		3,159,996A	
			CCA	4,657,351B		4,751,820B	
12.	BUF151 - LEGAL ASSISTANCE IN CRIMINAL ACTIONS				89.00*		89.00*
	OPERATING		BUF	6,485,888A		6,485,888A	
			BUF	55,000N		N	
13.	LNR111 - CONVEYANCES AND RECORDINGS				61.00*		61.00*
	OPERATING		LNR	2,060,302A		2,060,302A	
14.	HMS888 - COMMISSION ON THE STATUS OF WOMEN				2.00*		2.00*
	OPERATING		HMS	147,015A		147,015A	
K. GOVERNMENT-WIDE SUPPORT							
1.	GOV100 - OFFICE OF THE GOVERNOR				56.00*		56.00*
	OPERATING		GOV	4,033,459A		4,008,459A	
	INVESTMENT CAPITAL		GOV	1,000C		1,000C	
2.	LTG100 - OFFICE OF THE LIEUTENANT GOVERNOR				19.00*		19.00*
	OPERATING		LTG	4,634,253A		3,983,405A	
			LTG	500T		300,000T	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
3.	GOV102 - GOV - OTH POLICY DEVELOPMENT & COORDINATION			10.00*		10.00*	
	OPERATING		GOV		5,674,805A		5,652,225A
4.	GOV103 - STATEWIDE PLAN AND COORDINATION			48.00*		48.00*	
	OPERATING		GOV		3,803,610A		3,803,610A
					4.00*		4.00*
	INVESTMENT CAPITAL		GOV		773,403N		773,652N
			BED		4,900,000C		C
			GOV		100,000C		C
5.	BED103 - LAND USE AND COASTAL MANAGEMENT			7.00*		7.00*	
	OPERATING		BED		546,063A		521,438A
6.	BED104 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY			5.00*		5.00*	
	OPERATING		BED		308,003A		308,003A
			BED		1,500,000B		1,500,000B
	INVESTMENT CAPITAL		BED		21,335,000C		2,502,000C
7.	BUFI01 - BUF - PRGM PLANNING, ANALYSIS & BUDGETING			84.00*		84.00*	
	OPERATING		BUF		159,162,285A		190,040,852A
			BUF		15,278,000T		T
8.	TAX102 - INCOME ASSESSMENT AND AUDIT			128.00*		128.00*	
	OPERATING		TAX		4,211,869A		4,211,869A
9.	TAX103 - TAX COLLECTIONS ENFORCEMENT			109.00*		109.00*	
	OPERATING		TAX		2,710,927A		2,647,432A
			TAX		500,000B		500,000B
10.	TAX105 - TAX SERVICES & PROCESSING			106.00*		106.00*	
	OPERATING		TAX		5,076,481A		5,076,481A
11.	TAX107 - SUPPORTING SERVICES - REVENUE COLLECTION			64.00*		64.00*	
	OPERATING		TAX		5,051,195A		4,976,195A
12.	AGS101 - ACCT SYSTEM DEVELOPMENT & MAINTENANCE			11.00*		11.00*	
	OPERATING		AGS		452,465A		450,793A
13.	AGS102 - EXPENDITURE EXAMINATION			23.00*		23.00*	
	OPERATING		AGS		1,009,147A		1,009,147A
14.	AGS103 - RECORDING AND REPORTING			15.00*		15.00*	
	OPERATING		AGS		643,004A		644,651A
15.	AGS104 - INTERNAL POST AUDIT			16.00*		16.00*	
	OPERATING		AGS		1,341,663A		1,341,663A

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PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
16.	BUF111	- FINANCIAL PLANNING, POLICY & INVESTMENTS OPERATING					
17.	BUF115	- FINANCIAL ADMINISTRATION DIVISION OPERATING		33.00*		33.00*	
			BUF	343,926,130A		365,045,515A	
			BUF	6,700B		6,700B	
			BUF	5,605,000T		12,145,000T	
			BUF	5,525U		5,525U	
18.	BUF112	- TREASURY OPERATIONS OPERATING					
19.	ATG100	- LEGAL SERVICES OPERATING		215.08*		215.08*	
			ATG	17,663,090A		17,676,662A	
				18.10*		18.10*	
			ATG	4,123,141N		4,123,141N	
			ATG	3,318,000T		3,318,000T	
				34.82*		34.82*	
			ATG	3,576,080U		3,580,887U	
			ATG	3,000,000W		3,000,000W	
20.	BUF131	- ELECTRONIC DATA PROCESSING SERVICES OPERATING		251.00*		251.00*	
			BUF	14,981,407A		15,014,268A	
				36.00*		36.00*	
			BUF	1,939,052U		1,939,052U	
21.	BUF161	- COMMUNICATION OPERATING		13.00*		13.00*	
			BUF	5,260,419A		4,925,519A	
			BUF	1,543,705U		1,676,456U	
22.	BUF162	- HAWAII INFORMATION NETWORK CORP. OPERATING		549,977A		549,977A	
23.	PER102	- WORK FORCE ATTR, SELECT, CLASS, & EFFECT OPERATING		160.00*		160.00*	
			PER	19,971,438A		19,971,438A	
			PER	1,098,496U		1,186,376U	
			PER	385,694W		415,694W	
24.	PER191	- SUPPORTING SERVICES-PERSONNEL SERVICES OPERATING		17.00*		17.00*	
			PER	1,483,241A		1,483,241A	
			PER	30,000B		30,000B	
25.	BUF141	- RETIREMENT OPERATING		35.65*		35.65*	
			BUF	274,312,070A		219,470,616A	
				10.35*		10.35*	
			BUF	621,942S		621,942S	
26.	BUF142	- HEALTH & LIFE INSURANCE BENEFITS OPERATING		15.00*		15.00*	
			BUF	679,833A		679,833A	
			BUF	254,150,000T		292,272,500T	
27.	LNR101	- PUBLIC LANDS MANAGEMENT					

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
				43.00*		43.00*	
		OPERATING	LNR	1,341,732A		1,341,732A	
			LNR	1,253,000B		1,248,000B	
		INVESTMENT CAPITAL	LNR	1,745,000B		B	
			LNR	650,000C		C	
28.	AGS203 - RISK MANAGEMENT			5.00*		5.00*	
		OPERATING	AGS	270,715A		270,715A	
			AGS	27,078,158W		8,208,067W	
		INVESTMENT CAPITAL	AGS	10,248,000W		W	
29.	AGS211 - LAND SURVEY			28.00*		28.00*	
		OPERATING	AGS	992,117A		992,117A	
30.	AGS223 - OFFICE LEASING			5.00*		5.00*	
		OPERATING	AGS	18,776,536A		18,782,653A	
			AGS	2,500,000U		2,500,000U	
31.	AGS221 - CONSTRUCTION			23.00*		23.00*	
		OPERATING	AGS	1,161,242A		1,155,212A	
			AGS	288,000W		303,000W	
		INVESTMENT CAPITAL	AGS	8,234,000C		330,000C	
32.	AGS231 - CUSTODIAL SERVICES			167.50*		167.50*	
		OPERATING	AGS	9,675,606A		9,694,348A	
			AGS	430,501U		430,501U	
33.	AGS232 - GROUNDS MAINTENANCE			39.00*		39.00*	
		OPERATING	AGS	1,204,773A		1,208,343A	
34.	AGS233 - BUILDING REPAIRS AND ALTERATIONS			30.00*		30.00*	
		OPERATING	AGS	3,690,843A		3,357,425A	
35.	AGS240 - CENTRAL PURCHASING			18.00*		18.00*	
		OPERATING	AGS	632,908A		632,908A	
36.	AGS244 - SURPLUS PROPERTY MANAGEMENT			34,409A		34,409A	
		OPERATING	AGS	5.00*		5.00*	
			AGS	192,487W		192,487W	
37.	AGS251 - MOTOR POOL			12.50*		12.50*	
		OPERATING	AGS	1,278,787W		880,148W	
38.	AGS252 - PARKING CONTROL			22.50*		22.50*	
		OPERATING	AGS	2,490,712W		2,614,896W	
39.	AGS111 - RECORDS MANAGEMENT			29.00*		29.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		OPERATING	AGS	809,010A		809,010A	
40.	AGS901 - GENRL ADM SVCS - ACCOUNTING & GENERAL SVCS			55.00*		55.00*	
	OPERATING		AGS	2,105,237A		2,105,237A	
41.	SUB101 - GRANTS-IN-AID TO COUNTIES						
	OPERATING						
42.	SUB201 - CITY AND COUNTY OF HONOLULU						
	OPERATING		SUB	868,286A			A
	INVESTMENT CAPITAL		CCH	2,126,000C			C
43.	SUB301 - COUNTY OF HAWAII						
	OPERATING		SUB	839,622A			A
	INVESTMENT CAPITAL		COH	6,810,000C			C
44.	SUB401 - COUNTY OF MAUI						
	OPERATING		SUB	437,673A			A
	INVESTMENT CAPITAL		COM	4,000,000C			C
45.	SUB501 - COUNTY OF KAUAI						
	OPERATING		SUB	237,890A			A
	INVESTMENT CAPITAL		COK	2,035,000C			C

PART III. PROGRAM APPROPRIATION PROVISIONS

ECONOMIC DEVELOPMENT

SECTION 4. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$250,000 for fiscal year 1993-1994 and the sum of \$260,000 for fiscal year 1994-1995 shall be used for the small business innovation program.

SECTION 5. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$80,000 for fiscal year 1993-1994 and the sum of \$80,000 for fiscal year 1994-1995 shall be used to support the activities of the Hawaii chapter of the Pacific congress on marine science and technology international.

SECTION 6. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$50,000 for fiscal year 1993-1994 shall be used for the toward other planetary systems conference; provided further that no funds shall be made available unless matched on a dollar-for-dollar basis with federal funds.

SECTION 7. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$10,000 for fiscal year 1993-1994 and the sum of \$90,000 for fiscal year 1994-1995 shall be used to promote Hawaii as a sporting events host, with the intent that the promotion will attract an international Pacific rim sporting event to the State.

SECTION 8. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$140,000 for fiscal year 1993-1994 and the sum of \$60,000 for fiscal year 1994-1995 shall be used to assist businesses in Hawaii in:

- (1) Exploring foreign markets;
- (2) Improving trade, export, or import management; or
- (3) Financing trade;

for the purposes of expanding overseas trade in the State and overseas trade activities that take place in the State; provided further that these funds may be used for, but are not limited to:

- (1) Securing federal, private, or other matching funds; and
- (2) Researching market opportunities for international business services that support international trade.

SECTION 9. Provided that of the general fund appropriation for commerce and industry (BED 102), the department of business, economic development and tourism is authorized to fund the establishment and filling of one economic development specialist position and one sports coordinator position, exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes, to assist in programs in the special projects branch of the business development and marketing division; provided further that a report on these positions shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 10. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$450,000 for fiscal year 1993-1994 shall be used for the multimedia software industry development effort and shall not be expended for any other purpose; provided further that the sum of \$450,000 shall be matched by private sector sources to create a minimum of \$900,000 in projects to be undertaken fully or in part by Hawaii's multimedia software development industry; provided further that in order to ensure the proper expenditure of appropriate funds the department of business, economic development and tourism shall submit a status and detailed expenditure report to the legislature no later than twenty days prior to the convening of the 1994 regular session.

SECTION 11. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$750,000 for fiscal year 1993-1994 shall be used for the job creation program administered by both the department of business, economic development and tourism, and the department of labor and industrial relations; provided further that the sum of \$750,000 shall be matched by private sector sources and shall not be used to fund positions; provided further that in order to ensure the proper expenditure of appropriate funds the department of business, economic development and tourism shall submit a status and detailed expenditure report to the legislature no later than twenty days prior to the convening of the 1994 regular session.

SECTION 12. Provided that of the general fund appropriation for commerce and industry (BED 102), the sum of \$150,000 for fiscal year 1993-1994 shall be used for long-term economic development efforts in the Hilo-Hamakua region on the island of Hawaii.

SECTION 13. Provided that of the general fund appropriation for commerce and industry (BED 102), the department of business, economic development and tourism is authorized to fund the establishment and filling of two positions,

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exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes, to assist in the management of the marketing promotion and development program; provided further that a report shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 14. Provided that of the general fund appropriation for commerce and industry (BED 102), the department of business, economic development and tourism is authorized to establish and fill an additional four positions, exempt from the provisions of chapters 76 and 77, Hawaii Revised Statutes, for the high technology development corporation, to manage and operate the Defense Center of Excellence for Research in Ocean Sciences and other federally funded projects; provided further that these positions shall be funded by federal grants.

SECTION 15. Provided that of the general fund appropriation for state tourism office (BED 113), the sum of \$8,500,000 for fiscal year 1993-1994 and the sum of \$8,500,000 for fiscal year 1994-1995 shall be used for advertising, marketing, and promotion; provided further that of the above sum, \$100,000 for fiscal year 1993-1994 shall be used to send a hula halau on a worldwide exhibition tour which retraces the route of King David Kalakaua; provided further that the hula halau shall be composed of selected participants of the 1994 merrie monarch hula festival; provided further that of the above sum, \$300,000 for fiscal year 1993-1994 shall be used for general operating expenses of the Hawaii film festival; provided further that of the above sum, \$250,000 for fiscal year 1993-1994 shall be used for the aloha festivals; provided further that no funds shall be made available for the aloha festivals unless matched on a dollar-for-dollar basis by private contributions; provided further that of the above sum, \$250,000 for fiscal year 1993-1994 shall be used for the Oahu attractions association to promote tourism on Oahu; provided further that of the above sum, \$50,000 for fiscal year 1993-1994 and the sum of \$40,000 for fiscal year 1994-1995 shall be used for the hawaii plantation village; provided further that of the above sum, \$190,000 for fiscal year 1993-1994 shall be used for destination Hilo; provided further that of the above sum \$647,000 for fiscal year 1993-1994 shall be used for sports promotion activities as follows:

FY 1993-1994

Great Aloha Run	\$ 25,000
Honolulu Marathon	\$100,000
Aloha Bowl	\$ 50,000
Hula Bowl	\$ 72,000
Hawaii Pro Bowl	\$ 60,000
Senior PGA Tour Kaanapali Classic	\$200,000
PGA Grand Slam of Golf	\$ 75,000
Royal Hawaiian Masters Rugby Festival	\$ 25,000
World Cup Youth Soccer Tour	\$ 10,000
AYSO World Games	\$ 10,000
World university Rowing Association	\$ 20,000

provided further that of the above sum of \$25,000 for fiscal year 1993-1994 for the second annual Royal Hawaiian Masters Rugby Festival, no funds shall be made available unless matched on a dollar-for-dollar basis by private contributions.

SECTION 16. Provided that of the general fund appropriation for state tourism office (BED 113), the sum of \$50,000 for fiscal year 1993-1994 shall be

used for tourism awareness workshops, media campaigns, teacher/counselor internship programs, curriculum materials, and kindergarten workshops, performed or produced by the visitor industry education council; provided further that a report shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 regular sessions.

SECTION 17. Provided that of the general fund appropriation for state tourism office (BED 113), the sum of \$250,000 for fiscal year 1993-1994 and the sum of \$150,000 for fiscal year 1994-1995 shall be expended to establish and operate a State visitor information office in Osaka, Japan.

SECTION 18. Provided that of the general fund appropriation for state tourism office (BED 113), the department of business, economic development and tourism is authorized to fund the establishment and filling of two 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; provided further that the department shall submit a report on the activities of these positions to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 19. Provided that of the general fund appropriation for state tourism office (BED 113), sums used for contracts with the Hawaii visitors bureau for the fiscal biennium 1993-1995 shall be accounted for through a report to be submitted to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions to include, but not be limited to:

- (1) An expenditure and projected expenditure report identifying the application of funds to activities conducted and/or planned;
- (2) A summary of activities planned, underway, or completed;
- (3) An explanation of the approach/strategy utilized in determining priorities in the allocation of funds to the activities undertaken;
- (4) An assessment of the effectiveness of the Hawaii visitors bureau in meeting identified objectives and goals of its promotions and marketing plan; provided that the effectiveness shall be determined by the use of specific, quantitative measures that will include:
 - (a) The direct benefits of promotional and marketing dollars on the visitor count;
 - (b) Visitor expenditures;
 - (c) State and local tax revenues;
 - (d) State employment; and
 - (e) Underutilized destinations.
- (5) A report on personnel expense and requirements.

SECTION 20. Provided that of the general fund appropriation for plant pest and disease control (AGR 122), the sum of \$71,000 for fiscal year 1993-1994 shall be used to support the emergency eradication and control program of apple snails; provided further that the department of agriculture may consider various methods of eradicating and controlling apple snails such as utilizing inmates or contracting private parties for biocontrol, or other methods.

SECTION 21. Provided that for any expenditure of funds for fiscal year 1993-1994 and fiscal year 1994-1995 the department of business, economic development and tourism and the department of agriculture shall ensure that maximum efforts shall be made to promote products made in Hawaii.

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SECTION 22. Provided that of the general fund appropriation for forestry-products development (LNR 172), the sum of \$100,000 for fiscal year 1993-1994 and the sum of \$100,000 for fiscal year 1994-1995 shall be used by the department of land and natural resources for the establishment of a Hamakua sustainable forest management area to support a stable forest product industry based on high value tropical hardwoods and other unique Hawaiian forest products; provided further that the goals of the forest products industry shall be to redevelop the rural economy, expand local business activity, and improve opportunities for the Hamakua community; provided further that these funds may be supplemented by federal funds available through matching grants from the United States Forest Service.

EMPLOYMENT

SECTION 23. Provided that of the general fund appropriation for unemployment compensation (LBR 171), the sum of \$4,700,000 for fiscal year 1993-1994 and the sum of \$4,800,000 for fiscal year 1994-1995 shall be used to cover unemployment compensation claims of former state employees; provided further that the funds shall not be transferred for any other purpose; provided further that funds shall not be transferred in; and provided further that the department shall submit a detailed report of all expenditures no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 24. Provided that of the general fund appropriation for office of community services (LBR 903), the sum of \$25,000 for fiscal year 1993-1994 shall be used for the development and implementation of a comprehensive, long range plan for immigrants and refugees.

SECTION 25. Provided that of the general fund appropriation for office of community services (LBR 903), the sum of \$25,000 for fiscal year 1993-1994 shall be used for the development and implementation of a comprehensive, long range plan for early childhood education of the economically disadvantaged.

SECTION 26. Provided that for the office of community services (LBR 903), one special assistant, PNP (06088E), one secretary (00762E), one accountant IV(13861E), one senior community services planner (07133E), one planning coordinator (06992E), and one accountant (06477E), shall be conferred permanent civil service status within the meaning of chapters 76 and 77, Hawaii Revised Statutes, without the necessity of examination, without any reduction in pay and without any loss of seniority, prior service credit, vacation and sick leave credits earned, or loss of any other benefits accorded a civil serviced employee.

SECTION 27. Provided that in an effort to more efficiently address program needs, the labor and industrial relations appeals board (LBR 812) shall convert a legal stenographer I, position number 32534, to a secretary III and clerk steno III, position number 39443, to a legal stenographer I.

TRANSPORTATION

SECTION 28. Provided that of the special fund appropriation for airports administration (TRN 195), the sum of \$285,809,826 for the fiscal biennium 1993-1995 shall be used for only the following purposes:

<u>Purpose</u>	<u>FY 1993-1994</u>	<u>FY 1994-1995</u>
Interest and Principal on General Obligation Bonds	\$ 5,140,052	\$ 4,976,774
Interest and Principal on Revenue Bonds	\$127,120,000	\$148,573,000

provided further that the funds shall not be transferred for any other purpose; provided further that the department shall prepare a detailed report of all expenditures as of December 31 and June 30 for each fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 29. Provided that of the special fund appropriation for harbors administration (TRN 395), the sum of \$39,226,000 for the fiscal biennium 1993-1995 shall be used for only the following purposes:

<u>Purpose</u>	<u>FY 1993-1994</u>	<u>FY 1994-1995</u>
Interest and Principal on General Obligation Bonds	\$ 1,714,000	\$ 1,693,000
Interest and Principal on Revenue Bonds	\$ 15,704,000	\$ 20,115,000

provided further that the funds shall not be transferred for any other purpose; provided further that the department shall prepare a detailed report of all expenditures as of December 31 and June 30 for each fiscal year; provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 and 1995 legislative sessions.

SECTION 30. Provided that of the special fund appropriation for highways administration (TRN 595), the sum of \$65,721,000 for the fiscal biennium 1993-1995 shall be used for only the following purpose:

<u>Purpose</u>	<u>FY 1993-1994</u>	<u>FY 1994-1995</u>
Interest and Principal on Revenue Bonds	\$ 31,571,000	\$ 34,150,000

provided further that the funds shall not be transferred for any other purpose; and provided further that the department shall prepare a detailed report of all expenditures as of December 31 and June 30 for each fiscal year; provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 31. Provided that of the special fund appropriation for general administration (TRN 995), the sum of \$250,000 shall be used by the Oahu Metropolitan Planning Organization for the development of an exclusive high occupancy vehicle transit lane system for the City and County of Honolulu; provided further that the system shall be physically separated from mixed use vehicular lanes;

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provided further that the feasibility assessment and implementation plan shall include, but not be limited to the following:

- (1) Route;
- (2) System description;
- (3) Identification of park and ride lots;
- (4) System operational management criteria;
- (5) System enforcement program;
- (6) Ridership forecast;
- (7) Travel time savings;
- (8) Implementation timetable;
- (9) Other transportation system management initiatives needed to enhance the system's viability;
- (10) Total system cost;
- (11) Cost per new rider;
- (12) Identification of available federal funding sources;
- (13) Recommended capital financial plan; and
- (14) Recommended operations and maintenance financial plan;

provided further that the Oahu Metropolitan Planning Organization shall submit a report of its findings and recommendations to the governor, the legislature, the mayor and the council of the city and county of honolulu by November 15, 1994; and provided further that no funds shall be made available unless the City and County of Honolulu provides a dollar-for-dollar match of funds for the purpose for which this sum is appropriated.

HEALTH

SECTION 32. The legislative auditor shall perform an audit of STD/AIDS prevention services (HTH 121); provided that the auditor shall consider as part of the audit:

- (1) A review of pertinent background data;
- (2) A review of contractual records to verify the accuracy of financial reports; and
- (3) A determination of the adequacy of the reporting system used by the contractual parties;

and provided further that the auditor shall submit the audit to the legislature no later than twenty days prior to the convening of the 1994 regular session.

SECTION 33. Provided that of the general fund appropriation for STD/AIDS prevention services (HTH 121), the sum of \$495,000 for fiscal year 1993-1994 and the sum of \$495,000 for fiscal year 1994-1995 shall be expended for the community health outreach work (CHOW) program; provided further that the CHOW program shall:

- (1) provide outreach, health education and prevention services and referrals to injection drug users and high risk prevention of transmission of HIV;
- (2) augment and expand resources to become the lead program for needle exchange services on a statewide basis, including coordination, monitoring, reporting and evaluation of all needle exchange programs;
- (3) cooperate, coordinate and avoid duplication with other agencies and non-profit programs involved in HIV prevention and treatment services;
- (4) continue data collection on injection drug users in the state of Hawaii to include ethnographic information on high risk behaviors, drug use patterns, and geographic mapping;

- (5) encourage HIV counseling/testing for high risk substance abusers and sexual partners in the state of Hawaii;

provided further that of the general fund appropriation for STD/AIDS prevention services (HTH 121), the sum of \$150,000 for fiscal year 1993-1994 and the sum of \$150,000 for fiscal year 1994-95 shall be used by the CHOW program for needle exchange, related services and retention of current employees; provided further that the CHOW program shall continue to be administered by the research corporation of the university of Hawaii (RCUH) because of the unusual program design, work hours, and research necessary to successfully meet its mandate.

SECTION 34. Provided that one temporary clerk steno II position located in health promotion and education, injury prevention and control (HTH 180) 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 seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges; provided further that subsequent changes in the status may be made pursuant to applicable civil service and compensation laws.

SECTION 35. Provided that excess special funds for Hilo hospital (HTH 211) for fiscal biennium 1993-1995 shall be used to augment the general funds on a dollar-for-dollar basis for Honokaa hospital (HTH 212), Ka'u hospital (HTH 213), and Kohala hospital (HTH 214); and provided further that excess special funds shall not exceed the general fund appropriation for Honokaa hospital (HTH 212), Ka'u hospital (HTH 213), and Kohala hospital (HTH 214) for fiscal year biennium 1993-1995.

SECTION 36. Provided that of the general fund appropriation for Honokaa hospital (HTH 212), the sum of \$110,000 for fiscal year 1993-1994 shall be used for additional reimbursement for emergency room coverage.

SECTION 37. Provided that excess special funds for Maui memorial hospital (HTH 221) for fiscal biennium 1993-1995 shall be used to augment the general funds on a dollar-for-dollar basis for Hana medical center (HTH 222), Kula hospital (HTH 223), and Lanai community hospital (HTH 224); and provided further that excess special funds shall not exceed the general fund appropriation for Hana medical center (HTH 222), Kula hospital (HTH 223), and Lanai community hospital (HTH 224) for fiscal biennium 1993-1995.

SECTION 38. Provided that of the general funds appropriated for Honokaa hospital (HTH 212), Ka'u hospital (HTH 213), Kohala hospital (HTH 214), Kona hospital (HTH 215), Hana medical center (HTH 222), Kula hospital (HTH 223), Lanai community hospital (HTH 224), Kauai veterans memorial hospital (HTH 231), Samuel Mahelona memorial hospital (HTH 232), Maluhia hospital (HTH 241), Leahi hospital (HTH 242), and community hospitals administration (HTH 295), the funds shall be expended in quarterly allotments not to exceed thirty per cent of the total appropriated sum; and provided further that the allotment for each year of the fiscal biennium 1993-1995 shall not exceed one hundred per cent of the available general fund appropriation for fiscal year 1993-1994 or fiscal year 1994-1995 respectively.

SECTION 39. Provided that the department of health shall submit a revenue and expenditure report on the magnetic resonance imagery and angiographic services for Maui memorial hospital (HTH 221) to the legislature no later than twenty days prior to the convening of the 1994 regular session.

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SECTION 40. Provided that of the special fund appropriation for Leahi hospital (HTH 242), one laboratory assistant III (position no. 18365) shall be converted to one personnel management specialist III and one loss control specialist (position no. 92331) shall be converted to one assistant administrator.

SECTION 41. Provided that of the special fund appropriation for Leahi hospital (HTH 242), one quality assurance and safety director (position no. 31877E) shall be exempt from chapters 76 and 77.

SECTION 42. Provided that of the general fund appropriation for private hospitals and medical services (SUB 601), the sum of \$140,000 for fiscal year 1993-1994, shall be used for subsidizing the operation of the Hamakua medical center, or its successor organization.

SECTION 43. Provided that of the general fund appropriation for child and adolescent mental health (HTH 460), the department of health shall be required to generate medicaid billings of two dollars for every five dollars in operating funds appropriated for fiscal year 1994-1995. If additional funds are redirected or appropriated to the child and adolescent mental health division, the department shall likewise be required to generate medicaid billings of one dollar for every five dollars so redirected or appropriated; provided further that of the general fund appropriation for adult mental health (HTH 420), the department of health shall be required to generate medicaid billings of two dollars for every five dollars in operating funds that qualify for medicaid billing appropriated for fiscal year 1994-1995. If additional funds are redirected or appropriated to the medicaid eligible activities of the adult mental health division, the department shall likewise be required to generate medicaid billings of two dollars for every five dollars so redirected or appropriated; and provided further that the behavioral health services administration shall submit quarterly reports to the director of finance on medicaid billings and funds received by the department of health. The department of budget and finance shall monitor the behavioral health services administration to ensure that the intent of this provision is implemented. It is the intent of this provision that funds generated shall enhance the mental health services of the State of Hawaii.

SECTION 44. Provided that of the general fund appropriation for developmental disabilities (HTH 501), the sum of \$4,891,412 for fiscal year 1993-1994 and the sum of \$4,891,412 for fiscal year 1994-1995 may be used for purchases of services as provided in Chapter 42D, Hawaii Revised Statutes, or matching funds for Title XIX Medicaid community-based programs or both.

SECTION 45. Provided that of the general fund appropriation for developmental disabilities (HTH 501), the sum of \$400,000 or that amount that is excessive due to deinstitutionalization and savings for fiscal year 1993-1994 and fiscal year 1994-1995 may be used for purchases of services, matching funds for Title XIX Medicaid community-based programs, or to establish small community ICF/MR's.

SECTION 46. Provided that of the Title XIX Medicaid ICF/MR reimbursements for developmental disabilities (HTH 501), the sum of \$1,800,000 or so much thereof related to institutional services for fiscal year 1993-1994 and for fiscal year 1994-1995 shall be placed in the State treasury, and shall be designated for expansion and establishment of community based programs.

SECTION 47. Provided that developmental disabilities, (HTH 501), shall:

- (1) Continue to place residents into community-based programs;

- (2) Take actions to decrease total expenses related to the reduced client census at Waimano as indicated in the Waimano training school and hospital study, January 1993, section VI, "Waimano and community system net operating costs;
- (3) Decrease staffing positions and reallocate those appropriate positions from Waimano into the community as specified in the Waimano training school and hospital study, January 1993, section III, "Projected and Recommended Waimano Costs at Two Census Levels";
- (4) Use excess funds resulting from the decrease in census for the creation of transition homes for individuals with medically fragile conditions, behavioral treatment programs, crisis management teams, treatment and support services for persons with developmental disabilities as described in the Waimano training school and hospital study, January 1993, section VII, community program models and transitional issues; and

provided further that a report on these actions and the deinstitutionalization progress and the usage of excess funds resulting from the decrease in census shall be made and submitted to the legislature no later than twenty days prior to the convening of the 1994 regular session.

SECTION 48. Provided that of the general fund appropriation for family health services (HTH 530), the sum of \$60,000 for fiscal year 1993-1994 shall be used for a contract consultant who shall:

- (1) Review current services provided by the family health services division of the department of health to determine which services are medicaid eligible;
- (2) Develop a mechanism for medicaid certification and implement necessary action, including but not limited to contract revision and provider training, to obtain federal matching funds; and
- (3) Review all non-medicaid eligible services to determine whether delivery design change will render them certifiable and eligible for federal matching funds;

provided further that the contract shall remain in effect until the consultant's work is completed or until June 30, 1994, whichever comes first; provided further that the consultant shall review all state delivered and purchased family health services to determine medicaid eligibility; provided further that all information and system changes implemented pursuant to the consultant contract shall be shared with all other divisions of the department of health, including the alcohol and drug abuse division; and provided further that a report shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 regular session.

SECTION 49. Provided that of the general fund appropriation for developmental disabilities (HTH 501), the sum of \$75,000 for fiscal year 1993-1994 shall be expended to attempt to recover Medicaid funds which may be due to the State in payment for services since 1985 at Waimano training school and hospital according to the Waimano training school and hospital study done by the Public Consulting Group, Inc. and dated January 15, 1993; and provided further that a report on the amount to be recovered shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 regular session.

SECTION 50. Provided that from the general fund appropriation made for the environmental health services (HTH 610) for fiscal year 1993-1994, sufficient resources shall be expended to ensure that the only uses of saccharin in food products sold in Hawaii are those listed in Title 21, Code of Federal Regulations,

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Section 180.37; and provided further that priority in investigation and regulatory action shall be given to those food products for which the department of health has received complaints regarding the use of saccharin.

SECTION 51. Provided that the health resources administration (HTH 795) shall conduct follow up activities involving the entire community on the work of the governor's blue ribbon panel on health care quality and cost containment and report on the findings and recommendations of this effort to the legislature no later than twenty days prior to the convening of the 1994 regular session.

SECTION 52. Provided that the department of health is authorized to trade off, transfer, or establish positions within the existing authorized position counts for the purpose of maximizing the utilization of personnel resources and staff productivity for fiscal year 1993-1994; and provided further that the department shall submit a report to the legislature no later than twenty days prior to the convening of the 1994 regular session regarding:

- (1) the status of all positions provided for in this Act;
- (2) the status and number of temporary positions authorized by the director of health through delegated gubernatorial authority for fiscal year 1993-1994; and
- (3) the action plans employed by the department to correct deficiencies in such areas as staff utilization, staffing patterns, and other external forces limiting program efficiencies for both general fund and special fund positions;

provided further that if any of the newly approved positions created by trade off, transfer, or establishment by the department within the existing authorized position counts are not filled by the end of fiscal year 1993-1994 as applicable, the position counts and funds authorized for such positions shall lapse; and provided further that the department shall submit to the legislature by January 1, 1994;

- (1) a plan for all reorganizations, if any, within which the aforementioned new positions shall be placed;
- (2) an explanation of the advantages of the reorganizations; and
- (3) a plan indicating how positions are to be traded off, transferred, or established within the provisions of this Act.

SECTION 53. 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.

SOCIAL SERVICES

SECTION 54. Provided that in order to ensure the proper expenditure of funds for the families together initiative (FTI) project, the legislative auditor shall conduct an evaluation of the project during each fiscal year of the fiscal biennium 1993-1995 which shall include, but not be limited to, the following:

- (1) a detailed status and expenditure report of the entire project by means of financing;
- (2) a special review of all federal fund expenditures and federal fund reimbursements to the State, including those funds under Title IV-E and Title IV-A;

- (3) a detailed review of all private providers and private services contracted;
- (4) recommendations as to whether the project and funding mechanism should be continued; and

provided further that the auditor shall submit an interim report to the legislature no later than January 31, 1994 and a final report no later than twenty days prior to the convening of the 1995 regular session.

SECTION 55. Provided that in order to determine the effectiveness of family preservation services and homebased services, the legislative auditor shall conduct an assessment of these services which shall include, but not be limited to, the following:

- (1) a detailed history of family preservation services and homebased services in the state of Hawaii;
- (2) a detailed status and expenditure report on family preservation services and homebased services;
- (3) an evaluation of program guidelines and statements regarding the purposes, goals, and effectiveness of the family preservation services and homebased services;
- (4) a follow-up on the families who have gone through family preservation services and homebased services;

and provided further that the auditor shall submit a report to the legislature no later than twenty days prior to the convening of the 1994 regular session.

SECTION 56. Provided that in order to determine the current status of the Hawaii Youth Correctional Facility (HYCF), the department of human services (DHS) and office of youth services (OYS) shall provide a follow-up report to The Youth Corrections Project: Final Training Evaluation and Summary Report. The report shall include, but not be limited to, updated information on the following:

- (1) a profile of HYCF youths and HYCF staff;
- (2) a focus on peer networks and physical abuse;
- (3) a detailed report on the extent that community-based programs have been utilized as an alternative to the HYCF;

and provided further that the follow-up report shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 regular session.

SECTION 57. Provided that in order to ensure accurate reporting of child support collections, the child support enforcement agency (CSEA) of the department of the attorney general and the department of human services shall conduct a joint-study related to developing and implementing a standard means of reporting actual Aid to Families with Dependent Children (AFDC) child support collection figures for fiscal year 1992-1993; provided further that this study shall include, but not be limited to:

- (1) an agreement between CSEA and the department of human services determining the amount of AFDC child support collections during fiscal year 1992-1993;
- (2) a statement from CSEA and the department of human services determining the projected percentage growth of AFDC child support collections for fiscal years 1993-1994, 1994-1995, and 1995-1996 and justification for how the percentage growth is determined;
- (3) a statement by CSEA and the department of human services detailing the sequence of events of AFDC child support collections from the collection by CSEA, the distribution to AFDC recipients, and the federal reimbursements to the department of human services;

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- (4) a statement from CSEA reporting the amount received in pass-through payments and federal incentive payments during fiscal year 1992-1993 and projected amounts for fiscal years 1993-1994 and 1994-1995;
- (5) a statement from the department of human services reporting the amount received in AFDC child support payments during fiscal year 1992-1993 from CSEA, the amount distributed to AFDC recipients, and the amount received from federal reimbursements and projected amounts for fiscal years 1993-1994 and 1994-1995;

provided further that this report shall be certified by the director of the child support enforcement agency and the director of the department of human services; and provided further that this report be submitted to the legislature no later than twenty days prior to the convening of the 1994 regular session.

SECTION 58. Provided that of the general fund appropriation for private housing development and ownership (BUF 225), the sum of \$100,000 for fiscal year 1993-1994 shall only be used by the Hamakua Housing Corporation to provide housing assistance for residents affected by the closing of Hamakua Sugar Company.

SECTION 59. Provided that of the general fund appropriation for housing finance and development administration (BUF 229), the sum of \$476,051 for fiscal year 1993-1994 and the sum of \$476,051 for fiscal year 1994-1995 shall be used for lease payments at the Pohulani Elderly project.

SECTION 60. Provided that a sum of the general fund appropriation for health care payments (HMS 230) may be transferred to general support for health care payments (HMS 902) to ensure adequate administrative funds necessary to implement and maintain the Section 1115 Medicaid Demonstration Waiver Project, Hawaii Health QUEST.

SECTION 61. Provided that in establishing fees for individual practitioners for health care payments (HMS 230) for fiscal year 1993-1994 and for fiscal year 1994-1995, the department of human services shall use sixty per cent of the most recent available profile of the customary fees of health care practitioners adjusted to the seventy-fifth percentile within the limits of this appropriation.

SECTION 62. Provided that of the general fund appropriation for health care payments (HMS 230), the sum of \$600,000 in FY 1993-1994 and the sum of \$600,000 in FY 1994-1995 shall be expended to maintain at prevailing rates the level of Medicaid reimbursement to physicians and certified nurse midwives for comprehensive perinatal care and delivery services provided to Medicaid-eligible women.

SECTION 63. 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 64. Provided that of the funds appropriated for the department of Hawaiian home lands, from the Hawaiian home administration account, the sum of \$200,000 in special funds for fiscal year 1993-1994 and the sum of \$200,000 in special funds for fiscal year 1994-1995 shall be expended for the purpose of analysis, evaluation, selection and implementation of a system to provide perma-

ment and secure storage and recordkeeping of all documents including but not limited to, original leases, agreements, deeds, lease amendments, beneficiary claims and other documents, which are part of the department's recordkeeping responsibilities; provided further that the funds shall be used for a program which will determine the need for, and evaluate, select, purchase and install, new and additional computer equipment, software and related supplies necessary to create a modern database and accounting systems necessary to provide for effective support and administration of the department's programs; provided further that the department shall complete a report on the progress of the these projects, to include but not be limited to the status of implementation, expenditure of funds and identification of any changes to funding needed for fiscal year 1994-1995 based on the results of the study; provided further that the study shall be submitted to the legislature for review no later than twenty days prior to the convening of the 1994 regular session.

SECTION 65. Provided that the office of the auditor shall perform financial and management audits of the department of Hawaiian home lands; provided further that the financial audit shall include, but not be limited to, an evaluation of the internal controls, use and expenditures, transfers and investment practices, and adequacy, effectiveness and efficiency of the financial accounting system of the department, relating to loan, revolving, special, and general funds, and other means of financing such as donations and grants, if applicable, and recommendations for any changes necessary; provided further that the management audit shall include an assessment of the effectiveness of the department's management practices, including but not limited to an assessment of its recordkeeping, accounting and database information, the department's practices relative to the use of temporary hires, transfers between funds and use of funds, from all sources, the department's management of its homestead awards program and management practices relating to the proper support of the department's programs; provided further that the legislative reference bureau shall complete a study to review and recommend more meaningful definitions of the terms: special funds, revolving funds, and trust funds; provided further that the study shall include but not be limited to a discussion and implications of the use of a trust as it applies to trust funds; provided further that the study shall define, evaluate and recommend, if applicable, other types of funds that may be suitable for consideration, for whatever reasons by the State; provided further that the results of this study shall have general applicability to the State; and provided further that these audits and study shall be submitted to the legislature for review no later than twenty days prior to the convening of the 1994 regular session.

SECTION 66. Provided that of the funds appropriated for the department of Hawaiian home lands, the sum of \$580,566 in special funds for fiscal year 1993-1994 and the sum of \$580,566 in special funds for fiscal year 1994-1995 from the Hawaiian home administration account shall be expended for the purpose of funding personnel costs and related operating costs to reflect the restoration of funding and transfer of fifteen positions from general to special funding.

FORMAL EDUCATION

SECTION 67. Provided that of the general fund appropriation for school based budgeting (EDN 100), the sum of \$1,518,472 for fiscal year 1993-1994 and the sum of \$1,565,520 for fiscal year 1994-1995 shall be used to provide incentive and innovative grant awards to individual schools; provided further that for fiscal year 1993-1994, innovative grants shall be awarded to Waialae elementary school, Castle high school, Kapaa complex special needs schools and for the purposes of planning, development, and implementation of year round school programs, if

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requested, for Waimea elementary school, Kealakehe elementary school, and Kilohana elementary school.

SECTION 68. Provided that of the general fund appropriation for school based budgeting (EDN 100), the sum of \$100,000 for fiscal year 1993-1994 shall be used to replace books at the August Ahrens elementary school library.

SECTION 69. Provided that of the general fund appropriation for school based budgeting (EDN 100), the sum of \$50,000 for fiscal year 1993-1994 shall be used for additional textbooks at William P. Jarrett intermediate school.

SECTION 70. Provided that of the general fund appropriation for school based budgeting (EDN 100), 4.0 permanent positions and the sum of \$93,701 for fiscal year 1993-94, and 4.0 permanent positions and the sum of \$99,213 for fiscal year 1994-1995 shall be used to provide a separate administrative staff for Pahoa elementary and intermediate school.

SECTION 71. Provided that of the general fund appropriation for school based budgeting (EDN 100), the sum of \$249,736 for fiscal year 1993-1994 and the sum of \$249,736 for fiscal year 1994-1995 shall be used for the year-round school program at Waihee elementary school.

SECTION 72. Provided that of the general fund appropriation for school based budgeting (EDN 100), 1.0 permanent position and the sum of \$25,000 for fiscal year 1993-1994 and 1.0 permanent position and the sum of \$25,000 for fiscal year 1994-1995 shall be used for an additional teacher position at Aliiolani elementary school.

SECTION 73. Provided that of the general fund appropriation for school based budgeting (EDN 100), the sum of \$15,000 for fiscal year 1993-1994 and the sum of \$15,000 for fiscal year 1994-1995 shall be used for the teacher exchange program between the department of education and European schools.

SECTION 74. Provided that of the general fund appropriation for instructional support (EDN 200), the sum of \$157,912 for fiscal year 1993-1994 and the sum of \$157,912 for fiscal year 1994-1995 shall be expended for graduate level outreach programs on the island of Kauai.

SECTION 75. Provided that of the general fund appropriation for school community service (EDN 500), 1.50 permanent positions and the sum of \$23,616 for fiscal year 1993-1994, and 1.50 permanent positions and \$26,568 for fiscal year 1994-1995 shall be used for clerk-typist II positions at the Maui community school for adults.

SECTION 76. Provided that during fiscal years 1993-1994 and 1994-1995, the department of education is authorized to convert to permanent status 436.0 full time equivalent general funded temporary positions; provided further that any incumbent non-permanent employee 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, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided further that such employee shall possess the minimum qualifications for the position to which transferred or appointed; and provided further that the department of education shall submit a listing of positions converted under this

section by position number, position title, and program area to the legislature on or before the convening of the 1994 and 1995 regular sessions.

SECTION 77. Provided that in order to efficiently monitor and evaluate incentive and innovative grant programs, the department of education shall transfer special needs schools, educational innovations, incentive grants and Ahuimanu mastery in learning programs to be included under the incentive and innovative grant program to ensure adequate evaluations on a regular basis.

SECTION 78. Provided that the department of education shall follow legislative intent and use the 1993 regular session budget worksheets as a guide in executing the following programs: school based budgeting (EDN 100), instructional support (EDN 200), state and district administration (EDN 300), school support (EDN 400), and school community service (EDN 500); provided further that the transfer of positions and funds from EDN 100 to EDN 200, EDN 300, EDN 400, and EDN 500 shall only be allowed for directly related school/student services; and provided further that the department shall submit a report to the legislature detailing all transfers between programs, along with appropriate, approved justification forms no later than twenty days prior to the convening of the 1995 regular session.

SECTION 79. Provided that the department of education shall during fiscal biennium 1993-1995, develop and implement a new operating budget preparation and allocation process which shall hereinafter be referred to as school based budgeting; provided further that the intent of school based budgeting is to simplify the budgeting process and ensure that maximum flexibility is extended to individual schools in the preparation and execution of their operating budgets; provided further that the purpose of school based budgeting is to facilitate each school's ability to request and allocate fiscal resources so that the school can determine the best way to attain its educational goals and objectives; provided further that funds appropriated to the department that are not reallocated to schools and are used for support service administrative activities, e.g. district and state office staff support service activities, shall not exceed 7% of the department's total operating budget; and provided further that the department of education shall submit a status report on the school based budgeting process to the legislature no later than twenty days prior to the convening of the 1995 regular session.

SECTION 80. Provided that in order to facilitate the legislative review process, the department of education shall submit a report on the status of the weighted pupil allocation system (WPAS) and the planning-budgeting-accountability system (PBAS); and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 81. Provided that the department of education, by December 31, 1994, shall make accessible to the legislature, the computer data and program files for the financial management system, personnel system, and school information system so that the legislative committees and individual legislators, rather than requesting hard copy documents, can electronically access and directly extract information they deem necessary for analysis and decision-making including, but not limited to expenditures, allocations, budgets, staff positions, and student achievement information by programs, schools, districts or on a systemwide basis.

SECTION 82. Provided that in order to facilitate the legislative review process, the department of education shall provide a report relating to the allocation of positions and funds for each school according to school based budgeting; provided further that this report shall include, but not be limited to, the following:

- (1) a detailed expenditure report for each school broken down by means of financing;
- (2) departmental policies and program standards for school based budgeting;
- (3) a detailed expenditure report on the actual funds allotted to state and district offices;

provided further that a status report on school based budgeting shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 regular session; and provided further that these reports shall be submitted to the legislature no later than twenty days prior to the convening of the 1995 regular session.

SECTION 83. Provided that in order to allow schools to adjust to changing conditions and to meet their unique needs as well as to facilitate the implementation of school based budgeting, the schools may use their school level allocations flexibly for the acquisition of personnel and the purchase of supplies, equipment, textbooks and other resources.

SECTION 84. Provided that of the general fund appropriation for physical plant operations and maintenance (AGS 807) for fiscal year 1993-1994, the department of accounting and general services may convert twelve building maintenance worker positions from the second repair and maintenance roving crew of the east and west Honolulu district from temporary to permanent; provided further that any incumbent non-permanent employee 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 shall possess the minimum qualifications for the position to which transferred or appointed; and provided further that the department of accounting and general services shall submit a listing of positions converted under this section by position number, position title, and program area to the legislature on or before the convening of the 1994 regular session.

SECTION 85. Provided that in order to address the needs of Hawaiian students utilizing services conducted by student transportation (AGS 808), the department of accounting and general services shall implement a pilot transportation service for eligible students in the Hawaiian language immersion program; provided further that the service shall be evaluated before any expansion takes place; and provided further that the department of accounting and general services shall submit a status report of the pilot transportation service to the legislature no later than twenty days prior to the convening of the 1994 regular session.

SECTION 86. Provided that of the general fund appropriation for university of Hawaii, Manoa (UOH 100), the sum of \$831,721 and 23 positions in fiscal year 1993-94 and \$759,119 and 25 positions in fiscal year 1994-1995 shall be expended for the purpose of control and compliance required as a condition of receiving further federal funds; provided further that the university of Hawaii shall submit a report to the legislature on the use of the appropriated funds and the status and location of the positions authorized; provided further that the university of Hawaii

shall submit this report to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 87. Provided that of the general fund appropriation for university of Hawaii at Manoa (UOH 100), the sum of \$100,000 for fiscal year 1993-1994 and the sum of \$100,000 for fiscal year 1994-1995 shall be used to establish a graduate program in family practice at the John A. Burns school of medicine.

SECTION 88. Provided that of the general fund governor's message appropriation for university of Hawaii, Manoa (UOH 100), the sum of \$4,963,708 and 74 permanent positions for fiscal year 1993-1994 and the sum of \$6,191,336 and 88 permanent positions for fiscal year 1994-1995 shall be expended to help offset the impact of the university's internal and systemwide reallocations; provided further that none of the 74 positions provided for fiscal year 1993-1994 shall be employed for administrative purposes at the University; provided further that the university of Hawaii shall submit a report to the legislature on the use of the appropriated funds and the status and location of the positions authorized; and provided further that the university of Hawaii shall submit this report to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 89. Provided that of the general fund appropriation for university of Hawaii, Manoa (UOH 100), the sum of \$3,573,252 for fiscal year 1993-1994 and \$3,555,639 for fiscal year 1994-1995 shall be allocated to the school of nursing to maintain current services; and provided further that current existing positions at the school of nursing will not be reallocated within the 1993-1995 biennium.

SECTION 90. Provided that of the general fund appropriation for Maui community college, (UOH 500), the sum of \$85,770 for fiscal year 1993-1994 and the sum of \$97,770 for fiscal year 1994-1995 shall be expended for the hiring of lectures for science, foreign languages, social sciences, and humanity courses.

SECTION 91. Provided that of the general fund appropriation for university of Hawaii, systemwide support (UOH 900), the sum of \$3,748,716 and 5 positions for fiscal year 1993-1994 and the sum of \$1,921,791 and 5 positions for fiscal year 1994-95 shall be expended for the purpose of replacing the University's financial management system; provided further that the university of Hawaii shall submit a report on the progress of implementing the new system including the use of the appropriated funds and the status and location of the positions authorized; and provided further that the university of Hawaii shall submit this report to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 92. Provided that of the general fund appropriation for university of Hawaii, systemwide support (UOH 900), the sum of \$1,755,482 and 20 positions for fiscal year 1993-1994 and \$549,862 and 20 positions in fiscal year 1994-1995 shall be expended for various control and compliance functions for systemwide programs; provided further that the university of Hawaii shall submit a report on the use of the appropriated funds and the status and location of the positions authorized; and provided further that the university of Hawaii shall submit this report to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 93. Provided that of the general fund appropriation for university of Hawaii, community college systemwide support (UOH 906), the sum of \$7,500

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for fiscal year 1993-1994 and the sum of \$7,500 for fiscal year 1994-1995 may be expended at the discretion of the chancellor of community colleges.

SECTION 94. Provided that the university of Hawaii shall submit a report illustrating the programmatic impact of authorized positions and dollar amounts that were restricted by executive order or other restrictions in the previous fiscal year; and provided further that the university of Hawaii shall submit this report to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 95. Provided that the university of Hawaii shall submit a report verifying the status of all general funded budget items appropriated to the University in Act 296, Session Laws of Hawaii 1991, as amended by Act 300, Session Laws of Hawaii 1992, and address each sequence number of the budget worksheets as to whether the appropriated funds are included in the department's FY 1993 allocation; provided further that if the funds have not been allocated, the University shall provide a justification and rationale for restricting the funds; provided further that for funds that have been allocated, the University shall identify by specific level V programs the final amounts expended including the status of each position established; and provided further that the university of Hawaii shall submit this report to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 96. Provided that to ensure the proper and efficient expenditure of the university of Hawaii housing assistance revolving fund, the university of Hawaii shall submit a report substantiating all revenues, expenditures, and transfers made to or from the University of Hawaii housing assistance revolving fund; provided further that this report shall also provide the status of all authorized positions located within this program; and provided further that the University shall document the effectiveness of this fund in meeting the stated objectives of recruiting and retaining qualified university faculty; and provided further that the university of Hawaii shall submit this report to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

Section 97. Provided that the university of Hawaii, in cooperation with the department of health and the department of human services, shall conduct a study on the feasibility of training university of Hawaii medicine, family practice, pediatrics, psychiatry, and other post-graduate resident trainees, as well as doctoral and master's candidates in psychology, at state facilities, including but not limited to the division of community hospitals, Hawaii state hospital, and community long-term care facilities, as part of their training requirements; provided further that the study shall assess how the services provided by such trainees, and any subsequent employment after completion of training may be used to fulfill their student loan payback obligations as well as possibly reducing the expense of purchase of service contracts with private providers; and provided further that the university shall submit this study with specific recommendations on implementation strategies and expected costs and benefits to the legislature no later than twenty days prior to the convening of the 1994 regular session.

CULTURE AND RECREATION

SECTION 98. Provided that of the general fund appropriation for aquaria (UOH 881), the sum of \$100,000 for fiscal year 1993-1994 shall be expended for the emergency operating costs of the Waikiki aquarium.

SECTION 99. Provided that of the general fund appropriation for historic preservation (LNR 802), the sum of \$500,000 for fiscal year 1993-1994 shall be expended for the Kaka'ako heritage education center of the historic Hawaii foundation; provided further that no funds shall be made available unless matched on a dollar-for-dollar basis by private contributions.

PUBLIC SAFETY

SECTION 100. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$1,000,000 for fiscal year 1993-1994 and the sum of \$1,000,000 for fiscal year 1994-1995 shall be expended for the following nonrecurring repair and maintenance projects:

	<u>FY 1993-1994</u>	<u>FY 1994-1995</u>
Halawa correctional facility Enhancement to facility hot water system	\$425,000	\$250,000
Hawaii community correctional center Replacement of security retrofits in main building	\$225,000	\$ 0
Maui community correctional center Replacement of security retrofits in main building	\$ 0	\$250,000
Oahu community correctional center Major repairs to in- tercom, audio/video and security electronics sys- tems	\$350,000	\$250,000
Kauai community correc- tional center Replacement of security retrofits in main building	\$ 0	\$250,000

provided further that, unless otherwise prohibited by law, the department of public safety may make expenditures and enter into contracts for necessary equipment, supplies, materials, labor, professional services, and technical assistance to satisfy the objectives of this appropriation; provided further that unrequired funds from the repair and maintenance projects authorized under this section may be expended for other institutional repair and maintenance needs; provided further that the funds shall not be expended for any purpose other than repair and maintenance; and provided further that the department of public safety shall submit a detailed expenditure and status report of each of these repair and maintenance projects and expenditures to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 101. Provided that of the general fund appropriation for amelioration of physical disasters (DEF 110), the sum of \$1,000,000 for fiscal year

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1993-1994 and the sum of \$1,000,000 for fiscal year 1994-1995 shall be used only for the purposes provided for under section 127-11, Hawaii Revised Statutes.

SECTION 102. Provided that of the general fund appropriation for the department of public safety, the sum of \$1,086,732 for fiscal year 1993-1994 and the sum of \$1,086,732 for fiscal year 1994-1995 shall be expended for salary adjustments of adult corrections officers pursuant to the approval of the department of personnel services and section 77-9, Hawaii Revised Statutes; provided further that the funds shall not be expended for any other purpose; and provided further that the department of public safety shall submit for each program ID, a detailed expenditure and status report to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 103. Provided that the department of public safety shall submit a detailed expenditure and status report of the following programs: health care services, food services, educational services, library services, substance abuse treatment, sex offender assessment and treatment; and provided further that the department of public safety shall submit the report to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 104. Provided that of the positions and funds authorized to the department of public safety, the department may transfer positions within the department's authorized position ceiling for the purpose of maximizing the utilization of personnel resources and staff productivity in fiscal year 1993-1994 and fiscal year 1994-1995; 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; and provided further that the governor shall submit a report to the legislature of all transfers as of December 31 and June 30 for each fiscal year.

GOVERNMENT WIDE

SECTION 105. Provided that of the general fund appropriation for office of the governor (GOV 100), the sum of \$150,000 for fiscal year 1993-1994 and the sum of \$150,000 for fiscal year 1994-1995 may be deposited into 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 106. Provided that of the general fund appropriation for office of the governor (GOV 100), the sum of \$7,500 for fiscal year 1993-1994 and the sum of \$7,500 for fiscal year 1994-1995 may be used by its administrative director for protocol purposes; and provided further, that the sum of \$7,500 for fiscal year 1993-1994 and the sum of \$7,500 for fiscal year 1994-1995 may be used by the director of the office of international relations for protocol purposes.

SECTION 107. Except as otherwise provided, the appropriation for office of the governor (GOV 100), shall be expended at the discretion of the governor.

SECTION 108. Provided that any reimbursement of the sums expended from the general fund appropriation for office of the lieutenant governor (LTG 100) for the purpose of conducting any county-associated elections in fiscal biennium 1993-1995, shall be deposited into the general fund.

SECTION 109. Except as otherwise provided, the appropriation for office of lieutenant governor (LTG 100) shall be expended at the discretion of the lieutenant governor.

SECTION 110. Provided that of the general fund appropriation for other policy development and coordination (GOV 102), the sum of \$1,509,670 for fiscal year 1993-1994 and the sum of \$1,100,090 for fiscal year 1994-1995 shall be expended on the following:

	<u>FY 1993-1994</u>	<u>FY 1994-1995</u>
Pesticide Program	\$ 40,000	\$ 40,000
State Farm Fair	\$ 30,000	\$ 30,000
Demonstration Predator		
Augmentation Pro- gram (Diamondback Moth)	\$156,300	\$151,300
Low-Input Sustainable		
Agriculture Project	\$ 95,000	\$ 95,000
Noni Plant Research	\$ 65,000	\$ 65,000
Study of Benlate on		
Various Crops	\$150,000	\$ 0
Biomass Research	\$190,000	\$ 0
Fruit Fly Control and		
Eradication Projects	\$196,370	\$203,790
Firetree Research &		
Control	\$ 96,000	\$100,000
Anthurium Blight Re- search	\$ 30,000	\$ 30,000
Papaya Research	\$ 65,000	\$ 65,000
Melastome Plant Pests	\$ 27,500	\$ 76,500
Yellow Sugarcane		
Aphid and Webworm	\$ 63,500	\$ 43,500
Pineapple Pest Prob- lems	\$200,000	\$200,000
Alien Species Action		
Plan	\$105,000	\$ 0

provided further that the governor's agriculture coordinating committee shall be the expending agency; 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 1994 and 1995 regular sessions; provided further that similar updated itemized reports shall also be submitted to the legislature at the end of each fiscal year; provided further that the governor's agriculture coordinating committee shall submit a progress report which shall include but not be limited to: the progress being made with each specific commodity that is funded for research, and projected funding (if necessary) for the continuation of each of these research projects with justification for the recommended funding in future years; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions; and provided further that complete and final reports concerning this provision shall also be submitted to the legislature at the end of each fiscal year.

SECTION 111. Provided that 50% of all funds designated for research in FY 1993-1994 for the Hawaii sugar planters' association shall be spent on diversi-

fied agriculture; provided further that 60% of all funds designated for research in FY 1994-1995 for the Hawaii sugar planters' association shall be spent on diversified agriculture; provided further that the governor's agriculture coordinating committee shall be the expending agency; 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 1994 and 1995 regular sessions; provided further that the governor's agriculture coordinating committee shall submit progress reports which shall include but not be limited to: the progress being made with each specific commodity that is funded for research, and projected funding (if necessary) for the continuation of each of these research projects with justification for the recommended funding in future years; provided further that these reports shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions; provided further that a complete and final report concerning this provision shall also be submitted to the legislature at the end of each fiscal year.

SECTION 112. Provided that of the general fund appropriation for statewide plan and coordination (GOV 103), the sum of \$7,500 for fiscal year 1993-1994 and the sum of \$7,500 for fiscal year 1994-1995 may be used by the director of the office of state planning for protocol purposes.

SECTION 113. Provided that of the general fund appropriation in FY 1992-1993 for statewide plan and coordination (GOV 103), the sum of \$5,000,000 shall lapse back into the general fund on June 30, 1993.

SECTION 114. Provided that of the general fund appropriation for program planning, analysis and budgeting (BUF 101), the sum of \$152,994,011 for fiscal year 1993-1994 and the sum of \$183,884,874 for fiscal year 1994-1995 shall be used for only the following purposes:

<u>Purpose</u>	<u>FY 1993-1994</u>	<u>FY 1994-1995</u>
Health fund premiums active and retirees	\$146,899,394	\$177,790,257
Witness fees & Related Expenses	\$ 3,052,262	\$ 3,052,262
Court appointed counsel	\$ 3,042,355	\$ 3,042,355

provided further that the funds shall not be transferred for any other purpose.

SECTION 115. In the event that expenses incurred for 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 for program planning, analysis and budgeting program (BUF 101) for fiscal year 1993-1994 and for fiscal year 1994-1995 for the purposes stated therein, the director of finance, with approval of the governor, is hereby authorized to utilize savings determined to be available by the governor, from any other state program for the purpose of meeting deficits incurred by the department of budget and finance.

SECTION 116. Provided that of the general fund appropriation for supporting services-revenue collection (TAX 107), the sum of \$372,828 for fiscal year 1993-1994 and the sum of \$297,828 for fiscal year 1994-1995 shall be used for the processing of natural disaster claims applications for the victims of Hurricane Iniki.

SECTION 117. Provided that of the general fund appropriation for recording and reporting (AGS 103), the sum of \$52,000 for fiscal year 1993-1994 and the sum of \$52,000 for fiscal year 1994-1995 shall be expended for claims on escheated warrants pursuant to section 40-68, Hawaii Revised Statutes; and provided further that in the event such claims exceed the general fund appropriation, the governor is authorized to utilize savings as may be available from any other state program for the purpose of meeting deficits incurred for this purpose.

SECTION 118. With the approval of the governor, agencies that use appropriations authorized in Part II of this Act for audit services, may delegate that responsibility and transfer funds authorized for that purpose to internal post audit (AGS 104), when it is determined by such agencies that it is advantageous to do so; provided further that the governor shall submit a report to the legislature of all such delegations and transfers made as of June 30 of each fiscal year.

SECTION 119. Provided that of the general fund appropriation for financial administration division (BUF 115), the sum of \$338,315,454 for fiscal year 1993-1994 and the sum of \$357,092,155 for fiscal year 1994-1995 shall be used for only the following purposes:

<u>Purpose</u>	<u>FY 1993-1994</u>	<u>FY 1994-1995</u>
Interest and Principal on general obligation bonds	\$336,715,454	\$355,492,155
Bond Underwriter's Fee	\$ 1,600,000	\$ 1,600,000

provided further that the funds shall not be transferred for any other purpose; and provided further that the department shall submit to the legislature a detailed report of all expenditures no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 120. Provided that of the general fund appropriation for financial administration division (BUF 115), the sum of \$950,000 for each fiscal year of the fiscal biennium 1993-1995 shall be used to meet the requirements of the uniform disposition of unclaimed property program pursuant to chapter 523A, Hawaii Revised Statutes.

SECTION 121. Provided that of the general fund appropriation for retirement (BUF 141), the sum of \$272,384,078 for fiscal year 1993-1994 and the sum of \$217,786,215 for fiscal year 1994-1995 shall be used only for pension accumulation, minimum pension, pensioner's bonus, and social security; provided further that the funds shall not be transferred for any other purpose; and provided further that the department shall submit to the legislature a detailed report of all expenditures no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 122. 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; provided further that the transfer of positions and funds shall be reported to the legislature within ten days of each occurrence; provided further that sum-

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mary reports shall be submitted to the legislature which detail all transfers as of December 31 and June 30 for each fiscal year.

SECTION 123. Provided that of the general fund appropriation for work force attraction, selection, classification, and effectiveness (PER 102), the sum of \$13,968,213 for fiscal year 1993-1994 and the sum of \$13,968,213 for fiscal year 1994-1995 shall be expended to cover workers' compensation claims; provided further that in the event such claims exceed general fund appropriations, the governor is authorized to utilize savings as may be available from any other state program for the purpose of meeting deficits incurred by the department of personnel services.

SECTION 124. Provided that of the general fund appropriation for supporting services-personnel services (PER 191), the sum of \$25,000 for fiscal year 1993-1994 and the sum of \$25,000 for fiscal year 1994-1995 shall be expended for the celebration of the Dr. Martin Luther King, Jr. holiday.

SECTION 125. Provided that the department of accounting and general services shall submit an up-to-date listing of all leases budgeted for and centralized within office leasing (AGS 223); provided further that this listing shall include, but not be limited to, a breakdown, by department and agency, of all individual leases, including the lessor, square footage, begin and end date of the lease, the amount budgeted for each lease per fiscal year, the actual rent paid, and the address of each lease; provided further that all expenditures which exceed what is budgeted for office leasing shall be clearly identified; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 126. With the approval of the governor, expending agencies that use appropriations authorized in Part II of this Act for repair and alterations, may delegate responsibility and transfer funds to construction (AGS 221) for the implementation of such repair and alterations, when it is determined by such agencies that it is advantageous to do so; provided further that the governor shall submit a report to the legislature which shall include but not be limited to the title of the project and the dollar amount transferred; provided further that this report shall be submitted no later than ten days after each transfer; and provided further that the governor shall submit to the legislature a summary of all transfers as of December 31 and June 30 of each fiscal year.

PART IV. CAPITAL IMPROVEMENTS PROGRAM PROJECTS

SECTION 127. CAPITAL IMPROVEMENTS PROGRAM PROJECTS AUTHORIZED. The sums of money appropriated or authorized in Part II of this Act for the capital improvements program 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 projects thus combined shall not exceed the total of the sum specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this Part are in thousands of dollars.)

CAPITAL IMPROVEMENT PROJECTS

APPROPRIATIONS
(IN 000's)

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
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A. ECONOMIC DEVELOPMENT

BED102 - COMMERCE AND INDUSTRY

1. FIB861 DIAMOND HEAD FILM STUDIO, OAHU

CONSTRUCTION FOR A SOUNDSTAGE,
ADMINISTRATION BUILDING, CONSTRUCTION
MILL, AND LANDSCAPING FOR THE FILM
FACILITY.

CONSTRUCTION		5,500	
TOTAL FUNDING	BED	5,500C	C

2. MALAMA CULTURAL PARK, MOLOKAI

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR
THE MALAMA CULTURAL PARK.

DESIGN		10	
CONSTRUCTION		989	
EQUIPMENT		1	
TOTAL FUNDING	BED	1,000C	C

AGR132 - ANIMAL DISEASE CONTROL

3. LIVESTOCK EXPORT/STAGING AND IMPORT/QUARANTINE FACILITIES,
STATEWIDE

PLANS, DESIGN, AND CONSTRUCTION FOR A
LIVESTOCK EXPORT/STAGING AND IMPORT/
QUARANTINE FACILITY IN PANAEEWA, HAWAII,
AND MAUI.

PLANS		25	
DESIGN		25	
CONSTRUCTION		50	
TOTAL FUNDING	AGS	100C	C

AGR141 - AGRICULTURAL RESOURCE MANAGEMENT

4. PANAEEWA PRODUCE PROCESSING AND MARSHALLING FACILITY, HAWAII

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR
A PRODUCE PROCESSING AND MARSHALLING
FACILITY TO INCLUDE GRADING, UTILITIES
CONNECTION, PAVING, SECURITY FENCING,
AND OTHER RELATED WORK.

DESIGN		1	
CONSTRUCTION		498	
EQUIPMENT		1	
TOTAL FUNDING	AGR	500C	C

AGR192 - GENERAL ADMINISTRATION FOR AGR

5. VL-01 HEALTH AND SAFETY REQUIREMENTS, HALAWA, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR
A NECROPSY INCINERATOR TO MEET HEALTH
CODES (INCLUDES NEW ROOM FOR
INCINERATOR).

DESIGN		24	
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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		CONSTRUCTION			226		
		EQUIPMENT			100		
		TOTAL FUNDING	AGS		350C		C

BED120 - ENERGY DEVELOPMENT AND MANAGEMENT**6. P90006 BIOMASS GASIFICATION AND GAS-CLEANUP RESEARCH PLANT, MAUI**

CONSTRUCTION FOR A PRECOMMERCIAL BIOMASS GASIFICATION AND GAS-CLEANUP RESEARCH PLANT ON MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		16,000	2,000
TOTAL FUNDING	BED	2,000C	2,000C
	BED	9,000N	N
	BED	5,000R	R

7. NELHII NELHA INFRASTRUCTURE IMPROVEMENTS, HAWAII

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INFRASTRUCTURE UPGRADES AND SITE IMPROVEMENTS, SEAWATER INTAKE AND DISTRIBUTION SYSTEMS (INCLUDING PIPELINES), PARKING AREAS AND BEACH PARK INFRASTRUCTURE, AND LABORATORY

BUILDING NO. 3.

PLANS		1	
DESIGN		1	
CONSTRUCTION		997	
EQUIPMENT		1	
TOTAL FUNDING	BED	350B	B
	BED	650C	C

8. SPARK M. MATSUNAGA RENEWABLE ENERGY AND OCEAN TECHNOLOGY CENTER, HAWAII

PLANS, DESIGN, AND CONSTRUCTION FOR THE SPARK M. MATSUNAGA LABORATORY IN THE DEVELOPMENT OF RENEWABLE ENERGY AND OCEAN TECHNOLOGY RESEARCH.

PLANS		150	
DESIGN		150	
CONSTRUCTION		900	
TOTAL FUNDING	BED	1,200C	C

LNR141 - WATER AND LAND DEVELOPMENT**9. J32 WAIMANALO WASTEWATER TREATMENT PLANT, OAHU**

PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS AT THE WAIMANALO WASTEWATER TREATMENT PLANT TO MEET DEPARTMENT OF HEALTH'S STATE WATER QUALITY STANDARDS.

PLANS		50	
DESIGN		100	
CONSTRUCTION		1,000	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		TOTAL FUNDING	LNR		1,150C		C

10. HILO-POHAKULOA WATERLINE SYSTEM, HAWAII

DESIGN FOR DEVELOPMENT TO INCLUDE SURVEYS, SOIL INVESTIGATION, SCHEMATIC DESIGN, ENVIRONMENTAL IMPACT STATEMENT AND WATER RESOURCE INVESTIGATION FOR A SADDLE ROAD PIPELINE WATERLINE SYSTEM FROM HILO TO POHAKULOA.

DESIGN		1,500	
TOTAL FUNDING	LNR	1,500C	C

B. EMPLOYMENT**LR903 - OFFICE OF COMMUNITY SERVICES**

1. HAWAII COUNTY ECONOMIC OPPORTUNITY COUNCIL, HAWAII

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE CONSTRUCTION OF A FACILITY FOR THE HAWAII COUNTY ECONOMIC OPPORTUNITY COUNCIL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42D, HRS.

DESIGN		1	
CONSTRUCTION		2,498	
EQUIPMENT		1	
TOTAL FUNDING	LBR	2,500C	C

2. MAUI ECONOMIC OPPORTUNITY, MAUI

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MAUI ECONOMIC OPPORTUNITY BUILDING RENOVATION AND RELOCATION. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42D, HRS.

DESIGN		43	
CONSTRUCTION		295	
EQUIPMENT		1	
TOTAL FUNDING	LBR	339C	C

3. KAPOLEI CHILD CARE FACILITY, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW CHILD CARE FACILITY AT KAPOLEI, TO BE EXPENDED BY SEAGULL SCHOOLS, INC. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42D, HRS.

DESIGN		1	
CONSTRUCTION		998	
EQUIPMENT		1	
TOTAL FUNDING	LBR	1,000C	C

C. TRANSPORTATION FACILITIES**TRN102 - HONOLULU INTERNATIONAL AIRPORT**

1. A10 HIA ROADWAYS AND PARKING, OAHU

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		CONSTRUCTION FOR ROADS AND 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, NEW PARKING STRUCTURE, RELOCATION OF EXISTING TENANTS, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					2,315
		TOTAL FUNDING	TRN		E	1,815E	
			TRN		N	500N	
2.	A11 HIA INTERISLAND COMPLEX, OAHU						
		DESIGN AND CONSTRUCTION FOR THE INTERISLAND COMPLEX INCLUDING BLDGS, APRONS AND TAXIWAYS, ROADWAYS, PARKING AND OTHER MISC IMPROVEMENTS. RELOCATION OF EXISTING INTERISLAND MAINTENANCE, CARGO AND ADMIN OFFICES. ALTERATIONS TO EXISTING BLDGS, APRONS, ROADWAYS AND PARKING. INSTALL FURNITURE, LANDSCAPING, AND MISC EQUIPMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				918	
		CONSTRUCTION				13,500	
		TOTAL FUNDING	TRN		11,918B	13,050B	
			TRN		1,000E	E	
			TRN		1,500N	2,500N	
3.	A23 HIA AIRFIELD IMPROVEMENTS, OAHU						
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO AIRFIELD FACILITIES INCLUDING TAXIWAYS, RUNWAYS, SIGNS, ENGINE RUN UP PAD, SERVICE ROADS, SAFETY AREAS, LIGHTING SYSTEMS, EMERGENCY GENERATOR, DRAINAGE IMPROVEMENTS, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				26	
		CONSTRUCTION				9,970	
		TOTAL FUNDING	TRN		26E	9,470E	
			TRN		N	500N	
4.	A30 ELECTRICAL SYSTEM IMPROVEMENTS, HONOLULU INTERNATIONAL AIRPORT, OAHU						

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		CONSTRUCTION FOR THE MODIFICATION OF ELECTRICAL SYSTEMS AT HONOLULU INTERNATIONAL AIRPORT, CONSISTING OF SWITCH GEARS, DISTRIBUTION SYSTEMS, TRANSFORMER STATIONS, EMERGENCY GENERATOR SYSTEM, AND OTHER RELATED FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		13,235			
		TOTAL FUNDING	TRN	11,735E			E
			TRN	1,500N			N
5.	A31	ENERGY CONTROL SYSTEM, HONOLULU INTERNATIONAL AIRPORT, OAHU					
		CONSTRUCTION FOR THE INSTALLATION, ALTERATION, AND EXPANSION OF FACILITIES TO MONITOR AND CONTROL VARIOUS UTILITY AND SUPPORT SYSTEMS AT HONOLULU INTERNATIONAL AIRPORT.					
		CONSTRUCTION		2,022			
		TOTAL FUNDING	TRN	2,022E			E
6.	A32	SECURITY SYSTEM IMPROVEMENTS, HONOLULU INTERNATIONAL AIRPORT, OAHU					
		CONSTRUCTION FOR SECURITY SYSTEM EXTENSION AND IMPROVEMENTS, INCLUDING WIRING SYSTEMS, SUPPORTING COMPUTERS AND SOFTWARE, POWER SUPPLIES, BUILDING MODIFICATIONS, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		4,322			
		TOTAL FUNDING	TRN	3,822E			E
			TRN	500N			N
7.	A33	PUBLIC ADDRESS SYSTEM IMPROVEMENTS, HONOLULU INTERNATIONAL AIRPORT, OAHU					
		CONSTRUCTION FOR THE INSTALLATION, ALTERATION, AND EXPANSION OF THE PUBLIC ADDRESS SYSTEM AT THE HONOLULU INTERNATIONAL AIRPORT. PROJECT INCLUDES THE UPGRADE AND EXTENSION OF EXISTING SYSTEMS AND THE INSTALLATION OF NEW SYSTEMS IN SUPPORT OF THE TERMINAL EXPANSION PLANNED AND CURRENTLY UNDER CONSTRUCTION.					
		CONSTRUCTION		4,595			
		TOTAL FUNDING	TRN	4,595E			E
8.	A34	FIRE ALARM SYSTEM IMPROVEMENTS, HONOLULU INTERNATIONAL AIRPORT, OAHU					

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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		CONSTRUCTION FOR THE EXTENSION OF FIRE ALARM SYSTEMS, INCLUDING ALARM CIRCUITS, CONTROL PANELS, POWER SUPPLIES, AND OTHER RELATED EQUIPMENT.					
		CONSTRUCTION				1,390	
		TOTAL FUNDING	TRN			1,390E	E
9.	A35	SIGNAGE AND GRAPHIC IMPROVEMENTS; HONOLULU INTERNATIONAL AIRPORT, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION AND UPGRADE OF SIGNAGE AND GRAPHICS AT HONOLULU INTERNATIONAL AIRPORT COMPLEX, INCLUDING TERMINAL, SUPPORT BUILDINGS AND STRUCTURES, AIRFIELD AND ROADWAYS.					
		DESIGN				450	
		CONSTRUCTION				2,300	
		TOTAL FUNDING	TRN			2,750E	E
10.	A37	AIRPORT SYSTEMS IMPROVEMENTS AT HIA, OAHU					
		CONSTRUCTION FOR SYSTEM IMPROVEMENTS INCLUDING ENERGY MANAGEMENT, SIGNS, FLIGHT INFORMATION, FIRE ALARM, SECURITY, OPERATIONAL CONTROLS, LOADING BRIDGES, UTILITIES, RAMP AIR, FUELING, ELECTRICAL DISTRIBUTION, AIR CONDITIONING, EMERGENCY POWER, AND OTHER MISC IMPROVEMENTS. IMPROVE OPERATIONAL AND ENERGY EFFICIENCY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				4,470	
		TOTAL FUNDING	TRN			3,970E	
						500N	N
11.	A41	HIA TERMINAL MODIFICATIONS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO FACILITIES INCLUDING GATES AND HOLDROOMS, AIRCRAFT PARKING APRONS, BUILDINGS, PARKING, ROADS, AIR CARGO COMPLEX, SIGNS, FURNISHINGS, WALKWAYS, CEILING, LANDSCAPING, RELOCATE EXISTING TENANTS, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				15,995	
		CONSTRUCTION				66,068	
		TOTAL FUNDING	TRN			78,563E	
						3,500N	N
12.	A43	SERVICE SUPPORT FACILITIES AT HIA, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		DESIGN FOR BUILDINGS, ROADS, PARKING, UTILITIES, APRONS, LANDSCAPING, TELEPHONE, NON-POTABLE WATER, LEASE LOTS, TAXIWAY, AIRCARGO, AIRCRAFT MAINTENANCE, GENERAL AVIATION, HELICOPTER, AIR TAXI, AIRCRAFT FUELING, WASTE DISPOSAL, DRAINAGE IMPROVEMENTS, HANGARS, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			1,550		
		TOTAL FUNDING	TRN		1,450E		E
			TRN		100N		N

TRN111 - HILO INTERNATIONAL AIRPORT

13. B10 HILO INTERNATIONAL AIRPORT IMPROVEMENTS, HAWAII

DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AND MODIFICATIONS TO BUILDINGS, ROADS, PARKING, UTILITIES, TAXIWAYS, APRONS, CARGO AND GENERAL AVIATION FACILITIES, LEASE LOTS, HELICOPTER FACILITIES, AND OTHER MISC IMPROVEMENTS. RELOCATION OF TENANTS AND SOUND ATTENUATE THE WAIAKEA HEALTH CENTER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN		530		
CONSTRUCTION		5,480		
TOTAL FUNDING	TRN	5,510B		B

N

TRN114 - KE-AHOLE AIRPORT

14. C03 KEAHOLE AIRPORT IMPROVEMENTS, HAWAII

CONSTRUCTION FOR IMPROVEMENTS TO FACILITIES TO INCLUDE TERMINAL EXPANSION, BUILDINGS, ROADS, PARKING, APRONS, RUNWAYS, TAXIWAYS, LEASE LOTS, GENERAL AVIATION FACILITIES, UTILITIES, LANDSCAPING, FURNITURE, AND OTHER MISC IMPROVEMENTS. ALTERATIONS TO EXISTING FACILITIES AND RELOCATION OF TENANTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/ OR REIMBURSEMENT.

CONSTRUCTION		314		I,120
TOTAL FUNDING	TRN	314B		1,020B

N

100N

TRN131 - KAHULUI AIRPORT

15. D04 KAHULUI AIRPORT EXPANSION, MAUI

ACT 289**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O
		DESIGN AND CONSTRUCTION FOR ADDITIONS AND ALTERATIONS TO BUILDINGS, ROADS, PARKING, APRONS, NEW TERMINAL, TAXIWAYS, RUNWAYS, LANDSCAPING, FURNITURE, SITE WORK, CARGO TERMINAL, OFFSITE DRAINAGE, UTILITIES, ACCESS ROAD, RELOCATE CONTROL TOWER, RELOCATE TENANTS, BUFFER ZONE IMPROVEMENTS, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			1,296		
		CONSTRUCTION			13,633		49,148
		TOTAL FUNDING	TRN		14,429B		18,000B
			TRN		E		27,148E
			TRN		500N		4,000N
16.	D08	SERVICE SUPPORT FACILITIES AT KAHULUI AIRPORT, MAUI					
		DESIGN AND CONSTRUCTION FOR BUILDINGS, ROADS, PARKING, APRONS, TAXIWAYS, LEASE LOTS, CARGO TERMINAL, HELIPADS, AIRLINE MAINTENANCE FACILITIES, FUEL STORAGE SITE, GENERAL AVIATION FACILITIES, UTILITIES, FLIGHT KITCHEN, ARFF FACILITIES, AIR TOUR FACILITIES, PARK, LANDSCAPING, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/ OR REIMBURSEMENT.					
		DESIGN			1,160		470
		CONSTRUCTION			7,150		10,118
		TOTAL FUNDING	TRN		7,310B		8,588B
			TRN		1,000N		2,000N
17.	D10	KAHULUI AIRFIELD IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION FOR EXTENSION TO EXISTING RUNWAY AND TAXIWAYS INCLUDING SITWORK, PAVING, PAINTING, ELECTRICAL, STRENGTHEN EXISTING PAVEMENT, SERVICE ROADS, AIRCRAFT PARKING APRONS, ALTERATION OR RELOCATION OF EXISTING FACILITIES AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			455		
		CONSTRUCTION			19,490		
		TOTAL FUNDING	TRN		17,945E		
			TRN		2,000N		E N
TRN161 - LIHUE AIRPORT							
18.	E03	LIHUE AIRPORT COMPLEX, KAUAI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F

DESIGN AND CONSTRUCTION FOR AIRPORT FACILITIES, TO INCLUDE BUILDINGS, ROADS, PARKING, UTILITIES, AIRCRAFT APRONS, TAXIWAYS, RUNWAYS, CARGO TERMINAL, LEASE LOTS AND HANGARS, ALTERATION TO EXISTING FACILITIES, HELIPORT FACILITIES, AND OTHER MISCELLANEOUS IMPROVEMENTS. RELOCATION OF TENANTS AND MODIFICATION TO EXISTING FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN	1,535
CONSTRUCTION	15,980
TOTAL FUNDING	15,415B
	2,100N

B
N**TRN195 - AIRPORTS ADMINISTRATION****19. F04 AIRPORT PLANNING, STATEWIDE**

PLANS FOR THE PROVISION OF BASIC DATA AND INFORMATION FOR PROPER PLANNING, PRELIMINARY DESIGNS, 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 DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS	1,545	1,225
TOTAL FUNDING	1,445E	1,125E
	100N	100N

20. F06 LAND ACQUISITION, STATEWIDE

LAND ACQUISITION FOR AIRPORT FACILITIES AND LEASE RIGHTS FOR STATEWIDE AIRPORTS.

LAND	13,000	30
TOTAL FUNDING	13,000E	30E

21. F08 AIRPORT IMPROVEMENTS, STATEWIDE

DESIGN AND CONSTRUCTION FOR MISC IMPROVEMENTS AT VARIOUS AIRPORTS. IMPROVEMENTS FOR SAFETY AND CERTIFICATION REQUIREMENTS, AND OPERATIONAL EFFICIENCY, INCLUDING FIRE ALARM, FLIGHT INFORMATION, COMMUNICATIONS, SECURITY, ENERGY MONITORING, WEATHER OBSERVING & AIRPORT OPERATIONS SYSTEMS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN	180
CONSTRUCTION	3,695

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		TOTAL FUNDING	TRN TRN		3,375E 500N		E N

TRN301 - HONOLULU HARBOR

22. J06 CONTAINER FACILITIES AT SAND ISLAND, OAHU

DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF SAND ISLAND CONTAINER YARD AREAS, PIERS, AND OTHER IMPROVEMENTS.

DESIGN	200		
CONSTRUCTION	3,000		
TOTAL FUNDING	TRN TRN	200B 3,000E	B E

23. J20 IMPROVEMENTS TO PIERS 39-40 COMPLEX, HONOLULU HARBOR, OAHU

CONSTRUCTION FOR PIERS, YARDS, SHEDS, AND OTHER IMPROVEMENTS AT PIERS 39-40.

CONSTRUCTION	20,000		
TOTAL FUNDING	TRN	20,000E	E

TRN303 - BARBERS POINT HARBOR

24. J11 BARBERS POINT HARBOR IMPROVEMENTS, OAHU

DESIGN AND CONSTRUCTION FOR THE INCREMENTAL DEVELOPMENT OF BARBERS POINT HARBOR, INCLUDING PIERS, YARDS AND SHED FACILITIES, UTILITIES, LAND ACQUISITION, ROADWAYS AND OTHER IMPROVEMENTS.

DESIGN	1,000		
CONSTRUCTION	30,000		
TOTAL FUNDING	TRN TRN	B 30,000E	1,000B E

TRN311 - HILO HARBOR

25. L10 HILO HARBOR IMPROVEMENTS, HAWAII

DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT HILO HARBOR INCLUDING PIERS, YARDS, SHEDS, UTILITIES, ROADWAYS AND OTHER IMPROVEMENTS.

DESIGN	100		
CONSTRUCTION	100B		
TOTAL FUNDING	TRN TRN	E	750B 750E

TRN313 - KAWAIHAE HARBOR

26. L05 BARGE TERMINAL IMPROVEMENTS AT KAWAIHAE HARBOR, HAWAII

PLANS FOR IMPROVEMENTS TO BARGE TERMINAL PIER, SHED, YARD, UTILITIES, ROADWAYS AND OTHER IMPROVEMENTS.

PLANS	300		
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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		TOTAL FUNDING	TRN		300B		B

TRN331 - KAHULUI HARBOR

27. M06 PIER IMPROVEMENTS AT KAHULUI HARBOR, MAUI

DESIGN AND CONSTRUCTION FOR
IMPROVEMENTS TO PIERS, HARBOR DREDGING
AND OTHER IMPROVEMENTS.

DESIGN	200		
CONSTRUCTION		3,500	
TOTAL FUNDING	TRN	200B	B

TRN	E	3,500E
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28. M09 KAHULUI HARBOR IMPROVEMENTS, MAUI

PLANS AND LAND ACQUISITION FOR
CONTAINER YARD, YARD IMPROVEMENTS, AND
OTHER IMPROVEMENTS.

PLANS	300		
LAND	6,300		
TOTAL FUNDING	TRN	300B	B

TRN	6,300E
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E

TRN341 - KAUNAKAKAI HARBOR

29. M07 KAUNAKAKAI HARBOR IMPROVEMENTS, MOLOKAI

DESIGN AND CONSTRUCTION FOR LIGHTING OF
CAUSEWAY, EXTEND SHED UTILITY
IMPROVEMENTS, AND OTHER IMPROVEMENTS.

DESIGN	50		
CONSTRUCTION		300	
TOTAL FUNDING	TRN	300B	B

E

TRN361 - NAWILIWILI HARBOR

30. K01 NAWILIWILI HARBOR IMPROVEMENTS, KAUAI

CONSTRUCTION FOR THE DEVELOPMENT OF
PIER ONE, INCLUDING IMPROVEMENTS TO THE
YARD, SHED, PIER, UTILITIES, AND OTHER
IMPROVEMENTS.

CONSTRUCTION	12,000		
TOTAL FUNDING	TRN	12,000E	E

E

31. K11 NAWILIWILI HARBOR, REPLACEMENT OF DEMOLISHED BUILDINGS, KAUAI

DESIGN AND CONSTRUCTION FOR THE
RELOCATION AND REPLACEMENT OF
STRUCTURES DEMOLISHED BY HURRICANE
INIKI.

DESIGN	100		
CONSTRUCTION	900		
TOTAL FUNDING	TRN	1,000E	E

E

TRN363 - PORT ALLEN HARBOR

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
32.	K12	K12 PORT ALLEN HARBOR, RECONSTRUCTION OF SHED, KAUAI					
DESIGN AND CONSTRUCTION FOR MODIFICATIONS AND RECONSTRUCTION OF SHED STRUCTURE AND OTHER IMPROVEMENTS NEEDED DUE TO HURRICANE INIKI.							
		DESIGN			200		
		CONSTRUCTION			1,100		
		TOTAL FUNDING	TRN		1,300E		E
TRN351 - KAUMALAPAU HARBOR							
33.	M11	M11 KAUMALAPAU HARBOR IMPROVEMENTS, LANAI					
LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR TRANSIT SHED, PAVING, UTILITIES AND OTHER IMPROVEMENTS.							
		LAND			1		
		DESIGN			150		
		CONSTRUCTION				1,000	
		TOTAL FUNDING	TRN		151B		B
			TRN		E	1,000E	
34.	M12	M12 KAUMALAPAU HARBOR BREAKWATER IMPROVEMENTS, LANAI					
DESIGN FOR RECONSTRUCTION OF BREAKWATER AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/ OR REIMBURSEMENT.							
		DESIGN			700		
		TOTAL FUNDING	TRN		200B		B
			TRN		500N		N
TRN395 - HARBORS ADMINISTRATION							
35.	I01	I01 STATEWIDE HARBOR PLANNING, STATEWIDE					
PLANS FOR CONTINUING HARBOR STUDIES, RESEARCH AND ADVANCE PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS.							
		PLANS			250		
		TOTAL FUNDING	TRN		250B		250B
36.	I02	I02 STATEWIDE WAVE AND CURRENT MONITORING, STATEWIDE					
PLANS FOR MONITORING OF WAVES AND CURRENTS AT VARIOUS STATE COMMERCIAL HARBORS.							
		PLANS			400		
		TOTAL FUNDING	TRN		400B		B
37.	I03	I03 MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT NEIGHBOR ISLAND PORTS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS AND OTHER FACILITIES.					
		DESIGN			75		75
		CONSTRUCTION			200		200
		TOTAL FUNDING	TRN		275B		275B

38. I05 MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT OAHU PORTS, OAHU

DESIGN AND CONSTRUCTION FOR
IMPROVEMENTS TO YARD AREAS, SHEDS,
PIERS, UTILITIES, WATER AREAS AND OTHER
FACILITIES.

DESIGN		55	60
CONSTRUCTION		165	170
TOTAL FUNDING	TRN	220B	230B

TRN501 - OAHU HIGHWAYS

39. Q58 INTERSTATE ROUTE H-1, KUNIA INTERCHANGE IMPROVEMENTS, OAHU

LAND ACQUISITION, DESIGN, AND
CONSTRUCTION FOR THE RECONFIGURATION
OF THE KUNIA INTERCHANGE RAMPS, OAHU.
THIS PROJECT IS DEEMED NECESSARY TO
QUALIFY FOR FEDERAL AID FINANCING AND/
OR REIMBURSEMENT.

LAND		600	
DESIGN		900	
CONSTRUCTION			6,000
TOTAL FUNDING	TRN	900E	858E
	TRN	J	5,742J

40. Q60 HIGHWAY LIGHTS ON INTERSTATE H-1 FROM WAIWAIA TO PALAILAI
INTERCHANGES, OAHU

CONSTRUCTION OF LIGHTING IMPROVEMENTS
ON INTERSTATE ROUTE H-1, WAIWAIA
INTERCHANGE TO PALAILAI INTERCHANGE.
THIS PROJECT IS DEEMED NECESSARY TO
QUALIFY FOR FEDERAL AID FINANCING AND/
OR REIMBURSEMENT.

CONSTRUCTION		3,900	
TOTAL FUNDING	TRN	507E	
	TRN	3,393J	J

41. R52 CASTLE JUNCTION INTERCHANGE, KOOLAUPOKO, OAHU

DESIGN FOR A HIGHWAY INTERCHANGE TO
REPLACE THE EXISTING GRADE SEPARATION
AT THE INTERSECTION OF KALANIANAOLE,
PALI AND KAMEHAMEHA HIGHWAYS. THIS
PROJECT IS DEEMED NECESSARY TO QUALIFY
FOR FEDERAL AID FINANCING AND/OR
REIMBURSEMENT.

DESIGN		2,400	
TOTAL FUNDING	TRN	2,400E	E

ACT 289**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
42.	S16	RELOCATION OF THE KANEOEHE BASEYARD, PHASE II, OAHU					
CONSTRUCTION FOR A NEW BASEYARD FACILITY TO REPLACE THE EXISTING BASEYARD, PHASE II, IN KANEOEHE.							
		CONSTRUCTION			1,004		
		TOTAL FUNDING	TRN		1,004E		E
43.	S18	KAMEHAMEHA HIGHWAY, KIPAPA GULCH TOWARDS MILILANI, SAFETY IMPROVEMENTS, OAHU					
LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR SAFETY IMPROVEMENTS AT KIPAPA GULCH TO CONTROL HILLSIDE EROSION ONTO KAMEHAMEHA HIGHWAY.							
		LAND			20		
		DESIGN			60		
		CONSTRUCTION			1,200		
		TOTAL FUNDING	TRN		1,280E		E
44.	S131	KALAELOA BOULEVARD TRUCK WEIGHING STATION, OAHU					
CONSTRUCTION FOR A ROADWAY, INSPECTION AREA, WEIGHT STATION PAD, AND A WEIGHT HOUSE. PROJECT TO INCLUDE FURNISHING AND INSTALLATION OF A WEIGHT SCALE, COMPUTER EQUIPMENT, SIGNALS, SIGNS, AND OTHER APPURTENANCES.							
		CONSTRUCTION			2,000		
		TOTAL FUNDING	TRN		2,000E		E
45.	S132	KAMEHAMEHA HIGHWAY, WAIPIO UKA STREET TO KA UKA BOULEVARD, OAHU					
CONSTRUCTION FOR THE WIDENING OF KAMEHAMEHA HIGHWAY FROM WAIPIO UKA STREET TO KA UKA BOULEVARD.							
		CONSTRUCTION			3,790		
		TOTAL FUNDING	TRN		3,790E		E
46.	S133	PALI HIGHWAY SIDEWALKS, PHILIPPINE CONSULATE TO PUIWA ROAD, OAHU					
DESIGN AND CONSTRUCTION FOR SIDEWALKS ON PALI HIGHWAY FROM THE PHILIPPINE CONSULATE TO PUIWA ROAD AND ON THE OPPOSITE SIDE OF THE HIGHWAY FROM AHI PLACE TO COUNTRY CLUB ROAD, OAHU.							
		DESIGN			70		
		CONSTRUCTION			70		
		TOTAL FUNDING	TRN		70E		E
47.	S219	HIGHWAY CONNECTOR AT THE ENTRANCE TO HALEIWA AND WAIALUA TOWNS, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A HIGHWAY CONNECTOR AT THE ENTRANCE TO HALEIWA AND WAIALUA TOWNS WITH THE HALEIWA BYPASS ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			300		
		DESIGN			50		
		CONSTRUCTION			5,500		
		TOTAL FUNDING	TRN		1,384E		E
			TRN		4,466N		N
48.	S220	KALANIANAOLE HIGHWAY, ROCK WALL FROM HANAUMA BAY TO SANDY BEACH, OAHU					
		DESIGN AND CONSTRUCTION FOR A ROCK RETAINING/GUARD WALL TO ELIMINATE THE RECURRING PROBLEM OF METAL GUARDRAIL EROSION FROM HANAUMA BAY TO SANDY BEACH AREA.					
		DESIGN			140		
		CONSTRUCTION			1,860		
		TOTAL FUNDING	TRN		2,000E		E
49.	S221	INOAOLE STREAM BRIDGE, KALANIANAOLE HIGHWAY, WAIMANALO, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE INOAOLE STREAM BRIDGE ON THE KALANIANAOLE HIGHWAY IN WAIMANALO. DESIGN SHOULD ALLOW FOR FREE SPAN CONSTRUCTION OF THE APERTURE UNDER THE BRIDGE.					
		DESIGN			75		
		CONSTRUCTION			2,000		
		TOTAL FUNDING	TRN		2,075E		E
50.	S222	MALAEKAHANA STREAM BRIDGE, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A NEW BRIDGE ON KAMEHAMEHA HIGHWAY AT MALAEKAHANA STREAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			250		
		DESIGN			1		
		CONSTRUCTION			2,470		
		TOTAL FUNDING	TRN		694E		E
			TRN		2,027N		N
51.	S224	KAMEHAMEHA HIGHWAY, HIGHWAY LIGHTS, POAMOHO TO WEED CIRCLE, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF HIGHWAY LIGHTS ON KAMEHAMEHA HIGHWAY, FROM POAMOHO TO WEED CIRCLE.					

ACT 289**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		DESIGN CONSTRUCTION TOTAL FUNDING	TRN	200			
						1,800	
				200E			1,800E
52.	S225	KAMEHAMEHA HIGHWAY, DRAINAGE IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS BETWEEN DOLE PAVILION AND POAMOHO BRIDGE. PROJECT TO UPGRADE THE DRAINAGE FACILITIES BY IMPROVING THE CUT SLOPE AND CONSTRUCTING LINED GUTTERS.		20			
		DESIGN CONSTRUCTION TOTAL FUNDING	TRN			180	
						180E	
53.	S226	FARRINGTON HIGHWAY, PILIOKOE BRIDGE TO ALA HEMA STREET, OAHU					
		CONSTRUCTION FOR SAFETY IMPROVEMENTS AND MODIFICATIONS TO FARRINGTON HIGHWAY FROM PILIOKOE BRIDGE TO ALA HEMA STREET.					
		CONSTRUCTION TOTAL FUNDING	TRN		E	1,000	
						1,000E	
54.	S227	ALA MOANA BOULEVARD, INSTALL DOUBLE RIGHT-TURN LANES, PUNCHBOWL STREET, OAHU					
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF DOUBLE RIGHT-TURN LANES FROM PUNCHBOWL STREET ONTO ALA MOANA BOULEVARD.		40			
		DESIGN CONSTRUCTION TOTAL FUNDING	TRN			250	
						250E	
55.	S229	KAMEHAMEHA HIGHWAY, DRAINAGE IMPROVEMENTS, SUNSET BEACH, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF DRAINAGE SYSTEM IMPROVEMENTS IN THE VICINITY OF SUNSET BEACH ELEMENTARY SCHOOL. PROJECT TO INCLUDE THE INSTALLATION OF DRAINAGE SYSTEM OF GRATED DROP INTAKES, CULVERTS, PIPE SYSTEM, AND CONCRETE LINED GUTTERS.					
		DESIGN CONSTRUCTION TOTAL FUNDING	TRN	150			
						1,350	
						1,350E	
56.		INTERSECTION IMPROVEMENTS AT FARRINGTON HIGHWAY AND PUHANO STREET, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE INTERSECTION OF FARRINGTON HIGHWAY AND PUHANO STREET. PROJECT TO INCLUDE THE INSTALLATION OF A TRAFFIC SIGNAL SYSTEM.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		DESIGN CONSTRUCTION TOTAL FUNDING	TRN		30 370 400B		B
57.		HIGHWAY SAFETY IMPROVEMENTS ON FORT WEAVER ROAD, OAHU					
		DESIGN AND CONSTRUCTION FOR HIGHWAY SAFETY IMPROVEMENTS ON FORT WEAVER ROAD BETWEEN PAPIPI ROAD AND NORTH ROAD. PROJECT TO INCLUDE THE INSTALLATION OF FLASHING SCHOOL SPEED LIMIT SIGNS.					
		DESIGN CONSTRUCTION TOTAL FUNDING	TRN		10 50 60B		B
58.		KAMEHAMEHA HIGHWAY, DRAINAGE IMPROVEMENTS, KAHUKU, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF DRAINAGE SYSTEM IMPROVEMENTS IN THE VICINITY OF KAHUKU HIGH SCHOOL. PROJECT TO INCLUDE THE INSTALLATION OF DRAINAGE SYSTEM OF GRATED DROP INTAKES, CULVERTS, PIPE SYSTEM, AND CONCRETE LINED GUTTERS.					
		DESIGN CONSTRUCTION TOTAL FUNDING	TRN		100 1,000 1,000B		
59.		INTERSECTION IMPROVEMENTS AT FARRINGTON HIGHWAY AND MAIPALAOA ROAD, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE INTERSECTION OF FARRINGTON HIGHWAY AND MAIPALAOA ROAD. PROJECT TO INCLUDE THE INSTALLATION OF A TRAFFIC SIGNAL SYSTEM.					
		DESIGN CONSTRUCTION TOTAL FUNDING	TRN		25 225 250B		B
TRN511 - HAWAII HIGHWAYS							
60.		T75 KEAAU-PAHOA ROAD, PUNA, HAWAII					
		DESIGN AND CONSTRUCTION FOR RECONSTRUCTION OF HIGHWAY FROM HAWAIIAN PARADISE PARK TO VICINITY OF KEONEPOKO HOMESTEADS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN CONSTRUCTION TOTAL FUNDING	TRN TRN		75 32E 43N		
						4,338 998E 3,340N	

ACT 289**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
61.	T77	GUARDRAIL AND SHOULDER IMPROVEMENTS ON VARIOUS STATE HIGHWAYS, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING. PROJECT TO INCLUDE THE INSTALLATION OF METAL GUARDRAILS AND MODERNIZATION OF EXISTING GUARDRAILS AT VARIOUS STATE HIGHWAY LOCATIONS ON HAWAII. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		40			
		CONSTRUCTION					1,000
		TOTAL FUNDING	TRN		17E		230E
					23N		770N
62.	T79	HAWAII BELT ROAD, DRAINAGE IMPROVEMENTS DISTRICT OF KAU, HAWAII					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR HYDROLOGIC STUDIES OF DRAINAGE BASINS WHICH CAUSE FLOODING OF HBR, AND SUBSEQUENT DRAINAGE IMPROVEMENTS INCLUDING NEW STRUCTURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND					50
		DESIGN		100			50
		CONSTRUCTION					600
		TOTAL FUNDING	TRN		100E		700E
63.	T85	KEALAKEHE PARKWAY AND INTERCHANGE, HAWAII					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A NEW MAUKA-MAKAI ROADWAY FROM MAMALAHOA HIGHWAY TRaversing THROUGH KEALAKEHE AND CONNECTING TO QUEEN KAAHUMANU HIGHWAY WITH AN INTERCHANGE. THE ROADWAY WILL CONTINUE MAKAI ALONG THE COAST AND CONNECT TO KAILUA, KONA.					
		LAND		2,500			
		DESIGN		2,598			
		CONSTRUCTION		3,500		28,000	
		TOTAL FUNDING	TRN	8,598E			28,000E
64.	PUAINAKO STREET WIDENING, KOMOHANA ROAD TO KANOELIHUA AVENUE, HAWAII						
		DESIGN AND CONSTRUCTION FOR THE WIDENING OF PUAINAKO STREET, FROM KOMOHANA ROAD TO KANOELIHUA AVENUE.					
		DESIGN			1		
		CONSTRUCTION		2,499			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		TOTAL FUNDING	TRN		2,500E		E
TRNS31 - MAUI HIGHWAYS							
65.	V42	HALEAKALA HIGHWAY WIDENING, PUKALANI BYPASS TO HANA HIGHWAY, MAUI					
		CONSTRUCTION FOR THE WIDENING OF HALEAKALA HIGHWAY FROM THREE TO FOUR LANES BETWEEN HALIIMAILE ROAD AND HANA HIGHWAY.					
		CONSTRUCTION			6,000		
		TOTAL FUNDING	TRN		6,000E		E
66.	V48	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MAUI					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING. PROJECT TO INCLUDE THE INSTALLATION OF METAL GUARDRAILS AND MODERNIZATION OF EXISTING GUARDRAILS AT VARIOUS STATE HIGHWAY LOCATIONS ON MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			1		I20
		CONSTRUCTION			1,400		
		TOTAL FUNDING	TRN		323E		52E
			TRN		1,078N		68N
67.	V49	HONOAPIILANI HIGHWAY ROCKFALL PROTECTION ALONG PALI SECTION, MAUI					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF CHAINLINK DRAPERY TO PREVENT ROCKS FROM FALLING ONTO HIGHWAY.					
		DESIGN			70		
		CONSTRUCTION					800
		TOTAL FUNDING	TRN		70E		800E
68.	V52	HANA HIGHWAY, REPLACEMENT OF THREE TIMBER BRIDGES, HAiku, MAUI					
		CONSTRUCTION FOR THE REPLACEMENT OF THREE TIMBER BRIDGES, KAUPAKALUA BRIDGE, UAOA BRIDGE, AND HOOLAWA BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			12,000		
		TOTAL FUNDING	TRN		2,761E		
			TRN		9,239N		E N

ACT 289

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
69.	V53	HONOAPIILANI HIGHWAY, REVETMENT PROTECTION AT LAUNIUPOKO, MAUI					
CONSTRUCTION FOR THE REVETMENT AT LAUNIUPOKO TO PROTECT A 1,000 FOOT LONG SECTION OF THE HIGHWAY ALONG THE SHORELINE FROM EROSION DUE TO WAVE ACTIVITY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
		CONSTRUCTION			1,000		
		TOTAL FUNDING	TRN		500E		
			TRN		500N		E
70.		INTERSECTION IMPROVEMENTS AT PIILANI HIGHWAY AND LIPOA STREET, MAUI					
DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE INTERSECTION OF PIILANI HIGHWAY AND LIPOA STREET. PROJECT TO INCLUDE THE INSTALLATION OF A TRAFFIC SIGNAL SYSTEM.							
		DESIGN			30		
		CONSTRUCTION			270		
		TOTAL FUNDING	TRN		300B		B
71.		INTERSECTION IMPROVEMENTS AT KULA HIGHWAY AND OLD KULA ROAD, MAUI					
DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE INTERSECTION OF KULA HIGHWAY AND OLD KULA ROAD. PROJECT TO INCLUDE THE INSTALLATION OF HIGHWAY LIGHTING.							
		DESIGN			3		
		CONSTRUCTION			17		
		TOTAL FUNDING	TRN		20B		B
72.		INTERSECTION IMPROVEMENTS AT HONOAPIILANI HIGHWAY, MAU					
DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE INTERSECTION OF HONOAPIILANI HIGHWAY AND LOWER HONOAPIILANI ROAD. PROJECT TO INCLUDE THE INSTALLATION OF A TRAFFIC SIGNAL SYSTEM.							
		DESIGN			20		
		CONSTRUCTION			280		
		TOTAL FUNDING	TRN		300B		B
73.		MOKULELE HIGHWAY WIDENING, KIHEI TO PUUNENE, MAU					
DESIGN AND CONSTRUCTION FOR THE WIDENING OF MOKULELE HIGHWAY TO A FOUR LANE HIGHWAY FROM KIHEI TO PUUNENE.							
		DESIGN			1		
		CONSTRUCTION			14,999		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		TOTAL FUNDING	TRN		15,000E		E

74. HALEAKALA HIGHWAY, CANE HAUL CROSSING, MAUI

DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO HALEAKALA HIGHWAY FOR CANE HAUL CROSSING. PROJECT TO INCLUDE THE INSTALLATION OF TWO TRAFFIC SIGNAL LIGHTS AND OTHER RELATED WORK.

DESIGN	1
CONSTRUCTION	399
TOTAL FUNDING	400B
TRN	B

TRN541 - MOLOKAI HIGHWAYS

75. W08 GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MOLOKAI

DESIGN AND CONSTRUCTION FOR THE UPGRADE OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING. PROJECT TO INCLUDE THE INSTALLATION OF METAL GUARDRAILS AND MODERNIZATION OF EXISTING GUARDRAILS AT VARIOUS STATE HIGHWAY LOCATIONS ON MOLOKAI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN	60
CONSTRUCTION	600
TOTAL FUNDING	138E
TRN	462N
TRN	

76. MOLOKAI HIGHWAY BEAUTIFICATION, MOLOKAI

CONSTRUCTION FOR HIGHWAY BEAUTIFICATION IMPROVEMENTS. PROJECT TO INCLUDE BEAUTIFICATION IMPROVEMENTS TO MAUNALOA HIGHWAY.

CONSTRUCTION	100
TOTAL FUNDING	100B
TRN	B

TRN561 - KAUAI HIGHWAYS

77. X51 GUARDRAIL AND SHOULDER IMPROVEMENTS ON VARIOUS STATE HIGHWAYS, KAUAI

DESIGN AND CONSTRUCTION FOR THE UPGRADE OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING. PROJECT TO INCLUDE THE INSTALLATION OF METAL GUARDRAILS AND MODERNIZATION OF EXISTING GUARDRAILS AT VARIOUS STATE HIGHWAY LOCATIONS ON KAUAI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		DESIGN			100		100
		CONSTRUCTION				2,000	
		TOTAL FUNDING	TRN		100E	446E	
			TRN		N		1,654N
78.	X100	KUHIO HIGHWAY RETAINING WALLS AT LUMAHAI AND WAINIHA, KAUAI					
		DESIGN AND CONSTRUCTION FOR RETAINING WALLS TO PREVENT SPILLAGE OF THE ROADWAY.					
		DESIGN			150		
		CONSTRUCTION				1,450	
		TOTAL FUNDING	TRN			1,600E	
							E
		TRN595 - HIGHWAYS ADMINISTRATION					
79.	X98	IMPROVEMENTS TO INTERSECTIONS AND HIGHWAY FACILITIES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR TRAFFIC SAFETY. PROJECT TO INCLUDE THE ELIMINATION OF CONSTRICTIONS ON-AND OFF-SITE, AFFECTING EFFICIENT FLOW OF TRAFFIC ON INTERSTATE HIGHWAYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			400		400
		CONSTRUCTION				7,800	7,800
		TOTAL FUNDING	TRN		1,966E	1,966E	
			TRN		6,234N	6,234N	
80.	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			4,849		5,099
		TOTAL FUNDING	TRN		1,890E	2,540E	
			TRN		2,959N	2,559N	
81.	X220	INSTALLATION OF EMERGENCY TELEPHONES AT VARIOUS LOCATIONS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF SOLAR POWERED TELEPHONES TO PROVIDE ACCESS TO EMERGENCY TELEPHONES.					
		DESIGN			15		15
		CONSTRUCTION				900	900
		TOTAL FUNDING	TRN		915E	915E	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F

D. ENVIRONMENTAL PROTECTION**HTH840 - ENVIRONMENTAL MANAGEMENT**

1. 840001 WASTEWATER TREATMENT REVOLVING FUND FOR POLLUTION CONTROL, STATEWIDE

CONSTRUCTION FOR FUNDS TO MATCH FEDERAL CAPITALIZATION GRANTS FOR WASTEWATER PROJECTS. FUNDS APPROPRIATED TO BE TRANSFERRED TO WATER POLLUTION CONTROL REVOLVING FUND ESTABLISHED PURSUANT TO CHAPTER 342-D, HRS.

CONSTRUCTION		3,900	
TOTAL FUNDING	HTH	3,900C	C

LNR405 - CONSERVATION & RESOURCES ENFORCEMENT

2. A10 DOCARE ADMINISTRATIVE BUILDING, MAUNA KEA, HAWAII

CONSTRUCTION FOR THE RENOVATION OF EXISTING STRUCTURE TO SERVE AS AN ADMINISTRATIVE AND TRAINING FACILITY FOR DOCARE AND OTHER DEPARTMENTAL PERSONNEL, INCLUDING PARKING LOT, FENCING, INSTALLATION OF SEPTIC TANK, LEACH FIELD AND OTHER INCIDENTAL AND RELATED WORK.

CONSTRUCTION		120	
TOTAL FUNDING	LNR	120C	C

E. HEALTH**HTH111 - HANSEN'S DISEASE INSTITUTIONAL SERVICES**

1. 111002 HALE MOHALU HOSPITAL, ASBESTOS REMOVAL, OAHU

DESIGN AND CONSTRUCTION FOR THE REMOVAL OF ASBESTOS MATERIALS. PROJECT TO INCLUDE THE REPLACEMENT OF CEILING AND LIGHT FIXTURES IN VARIOUS AREAS OF THE HOSPITAL.

DESIGN		29	
CONSTRUCTION		275	
TOTAL FUNDING	AGS	304C	C

2. 111004 KALAUPAPA MAIN KITCHEN REFRIGERATION FACILITY, PHASE II, MOLOKAI

DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO KALAUPAPA MAIN KITCHEN REFRIGERATION FACILITY AND OTHER RELATED AREAS.

DESIGN		I	
CONSTRUCTION		221	
TOTAL FUNDING	AGS	222C	C

ACT 289**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F

3. 111005 KALAUPAPA STORE WAREHOUSE, PHASE II, MOLOKAI

DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE KALAUPAPA STORE WAREHOUSE, PHASE II. PROJECT TO INCLUDE ELECTRICAL AND VENTILATION SYSTEMS.

DESIGN	27
CONSTRUCTION	224
TOTAL FUNDING	251C

C

HTH212 - HONOKAA HOSPITAL**4. 212002 HONOKAA HOSPITAL, NEW HOSPITAL FACILITY, HAWAII**

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW HOSPITAL WITH APPROXIMATELY 50 BEDS AT HONOKAA TO REPLACE PRESENT STRUCTURE AND TO MEET MEDICARE STANDARDS.

DESIGN	1
CONSTRUCTION	6,699
EQUIPMENT	1
TOTAL FUNDING	6,701C

C

HTH214 - KOHALA HOSPITAL**5. 214001 KOHALA HOSPITAL, WASTE WATER TREATMENT PLANT, HAWAII**

DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A WASTE WATER TREATMENT SYSTEM TO REPLACE DUAL CESSPOOL SYSTEM TO PROCESS 10,000 GALLONS OF EFFLUENT A DAY.

DESIGN	22
CONSTRUCTION	200
TOTAL FUNDING	222C

C

HTH215 - KONA HOSPITAL**6. 215201 KONA HOSPITAL RENOVATION AND EXPANSION, PHASE II, HAWAII**

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND EXPANSION OF THE EXISTING HOSPITAL.

DESIGN	1
CONSTRUCTION	7,018
EQUIPMENT	1
TOTAL FUNDING	7,020C

C

HTH221 - MAUI MEMORIAL HOSPITAL**7. 221004 MAUI MEMORIAL HOSPITAL, EMERGENCY GENERATOR FACILITY, MAUI**

DESIGN AND CONSTRUCTION FOR A GENERATOR ROOM TO HOUSE THE EMERGENCY GENERATOR AND EQUIPMENT FOR MAUI MEMORIAL HOSPITAL.

DESIGN	20
CONSTRUCTION	280

CAPITAL IMPROVEMENT PROJECTS

APPROPRIATIONS
(IN 000's)

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		TOTAL FUNDING	AGS			300C	C

8. 221001 MAUI MEMORIAL HOSPITAL, SECOND INCREMENT/RENOVATION, MAUI
DESIGN FOR THE SECOND INCREMENT OF THE
RENOVATION OF MAUI MEMORIAL HOSPITAL.

DESIGN		123
TOTAL FUNDING	AGS	123C

9. 221008 MAUI MEMORIAL HOSPITAL, AIR CONDITIONING IMPROVEMENTS,
MAUI

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR
A NEW AIR CONDITIONING TOWER AND
CHILLER FOR MAUI MEMORIAL HOSPITAL.

DESIGN		48
CONSTRUCTION		100
EQUIPMENT		400
TOTAL FUNDING	AGS	548C

HTH223 - KULA HOSPITAL

10. KULA HOSPITAL, OUTPATIENT CLINIC RENOVATION, MAUI

PLANS, DESIGN, CONSTRUCTION, AND
EQUIPMENT FOR THE RENOVATION OF THE
OUTPATIENT CLINIC.

PLANS		1
DESIGN		1
CONSTRUCTION		397
EQUIPMENT		1
TOTAL FUNDING	AGS	400C

HTH231 - KAUAI VETERANS MEMORIAL HOSPITAL

11. KAUAI VETERANS MEMORIAL HOSPITAL, LONG TERM CARE WING/KITCHEN
RENOVATION, KAUAI

DESIGN FOR THE RENOVATION OF THE
KITCHEN AREA TO COMPLY WITH MEDICARE
REGULATIONS AND OTHER RELATED WORK.
PROJECT TO INCLUDE THE RENOVATION OF
THE LONG TERM CARE WING TO ENLARGE THE
ACTIVITIES AND DINING ROOM AREA TO
COMPLY WITH MEDICARE REGULATIONS AND
THE MODIFICATION OF SHOWERS AND
BATHROOMS TO COMPLY WITH FEDERAL
EQUAL OPPORTUNITY REGULATIONS.

DESIGN		60
TOTAL FUNDING	AGS	60C

HTH232 - SAMUEL MAHELONA MEMORIAL HOSPITAL

12. 232003 SAMUEL MAHELONA MEMORIAL HOSPITAL, EXPANSION AND
RENOVATION, KAUAI

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		PLANS FOR CERTIFICATE OF NEED TO CONSTRUCT 25 SNF/ICF, 6 HOSPICE BEDS, MEDICAL DIRECTOR'S OFFICE, NURSES STATION, SPACE FOR DAY HEALTH PROGRAM, EMPLOYEES' CHILD CARE PROGRAM, AND OTHER RELATED AREAS.					
		PLANS				125	
		TOTAL FUNDING	AGS			125C	C
13.	232001	SAMUEL MAHELONA MEMORIAL HOSPITAL, SEWER LINE AND TREATMENT PLANT, KAUAI					
		DESIGN AND CONSTRUCTION FOR SEWER LINE CONNECTIONS AND IMPROVEMENTS TO THE SEWAGE TREATMENT PLANT.					
		DESIGN				14	
		CONSTRUCTION				70	
		TOTAL FUNDING	AGS			84C	C
HTH241 - MALUHIA HOSPITAL							
14.	241001	MALUHIA HOSPITAL, RENOVATION AND MODERNIZATION, OAHU					
		DESIGN FOR THE RENOVATION AND MODERNIZATION OF MALUHIA HOSPITAL TO MEET THE REQUIREMENTS OF MEDICARE AND OTHER PROGRAM NEEDS.					
		DESIGN				300	
		TOTAL FUNDING	AGS			300C	C
SUB601 - PRIVATE HOSPITALS & MEDICAL SERVICES							
15.	POHAI NANI LONG-TERM HEALTH CARE FACILITY, OAHU						
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A LONG-TERM HEALTH CARE FACILITY.					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				47	
		EQUIPMENT				1	
		TOTAL FUNDING	HTH			50C	C
16.	WAIANAE COAST COMPREHENSIVE HEALTH CENTER, OAHU						
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE WAIANAE COAST COMPREHENSIVE HEALTH CENTER.					
		PLANS				1	
		DESIGN				1	
		CONSTRUCTION				997	
		EQUIPMENT				1	
		TOTAL FUNDING	HTH			1,000C	C
HTH440 - ALCOHOL & DRUG ABUSE							
17.	RESIDENTIAL SUBSTANCE ABUSE FACILITY, OAHU						

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW RESIDENTIAL SUBSTANCE ABUSE FACILITY FOR HINA MAUKA. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42D, HRS.					
		DESIGN			1		
		CONSTRUCTION			1,987		
		EQUIPMENT			1		
		TOTAL FUNDING	HTH		1,989C		C

HTH610 - ENVIRONMENTAL HEALTH SERVICES

18. 610301 NEW VECTOR CONTROL FACILITY, OAHU

CONSTRUCTION AND EQUIPMENT FOR A NEW VECTOR CONTROL FACILITY TO REPLACE EXISTING FACILITY. FACILITY TO INCLUDE LABORATORY FACILITIES AND OFFICES FOR THE VECTOR ADMINISTRATION AND FIELD OPERATIONS.

CONSTRUCTION	999
EQUIPMENT	1
TOTAL FUNDING	1,000C

C

F. SOCIAL SERVICES HMS502 - YOUTH SERVICES PROGRAM

I. BOYS AND GIRLS CLUB OF HONOLULU, OAHU

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION, REMODELING, AND UPGRADE OF THE EXISTING BOYS AND GIRLS CLUB FACILITY IN MCCULLY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42D, HRS.

PLANS	1
DESIGN	1
CONSTRUCTION	497
EQUIPMENT	1
TOTAL FUNDING	500C

C

DEF112 - SERVICES TO VETERANS

2. OVS931 VETERANS' CEMETERIES UPGRADE AND DEVELOPMENT, STATEWIDE

PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE UPGRADE AND DEVELOPMENT OF VETERANS' CEMETERIES AT VARIOUS NEIGHBOR ISLAND SITES INCLUDING KAUAI, MAUI, MOLOKAI, LANAI, HILO, AND WEST HAWAII. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS	1
LAND	1
DESIGN	300
CONSTRUCTION	3,158
TOTAL FUNDING	1,500C

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ACT 289**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95

BUF225 - PRIVATE HOUSING DEVELOPMENT & OWNERSHIP**3. M34 PAWAA MASTER PLAN DEVELOPMENT, OAHU**

PLANS, DESIGN, AND CONSTRUCTION FOR THE PAWAA MASTER PLAN DEVELOPMENT PROJECT. ULTIMATE PLAN WILL INCLUDE AFFORDABLE HOUSING UNITS, MARKET HOUSING UNITS, COMMERCIAL, PARKING, AND PUBLIC USES.

PLANS	300	
DESIGN	699	
CONSTRUCTION	1	
TOTAL FUNDING	BUF	1,000C

HHL602 - PLANNING, DEV, MGT & GEN SPPT FOR HAWN HMSTDs**4. LMD001 HAWAII HOME LANDS DEVELOPMENT, STATEWIDE**

CONSTRUCTION FOR THE DEVELOPMENT OF HAWAII 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 AND OFF-SITE IMPROVEMENTS.

CONSTRUCTION	13,880	
TOTAL FUNDING	HHL	13,880C

G. FORMAL EDUCATION**EDN100 - SCHOOL BASED BUDGETING****1. 005 LUMP SUM CIP-ARCHITECTURAL BARRIERS AND SPECIAL EDUCATION CLASSROOMS, STATEWIDE**

DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TO HANDICAPPED PERSONS.

DESIGN	400	400
CONSTRUCTION	4,600	4,600
TOTAL FUNDING	AGS	5,000B

2. 010 LUMP SUM CIP-ASBESTOS REMOVAL IN SCHOOL BUILDINGS, STATEWIDE

DESIGN AND CONSTRUCTION FOR CORRECTION, IMPROVEMENT AND RENOVATION TO ALL EXISTING SCHOOL BUILDINGS WITH IDENTIFIED HEALTH AND SAFETY HAZARDS.

DESIGN	50	50
CONSTRUCTION	450	450
TOTAL FUNDING	AGS	500B

3. 020 LUMP SUM CIP-COUNTY BUILDING PERMIT REQUIREMENTS, STATEWIDE

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
DESIGN AND CONSTRUCTION FOR ON-SITE AND OFF-SITE IMPROVEMENTS, AS REQUIRED BY THE COUNTIES.							
		DESIGN			50		
		CONSTRUCTION			250		
		TOTAL FUNDING	AGS		300B		B
4.	008	LUMP SUM CIP-FIRE PROTECTION SYSTEMS AND FIRE ALARM SYSTEMS, STATEWIDE					
DESIGN AND CONSTRUCTION FOR FIRE PROTECTION SYSTEMS TO MEET COUNTY FIRE PROTECTION STANDARDS.							
		DESIGN			50		
		CONSTRUCTION			450		
		TOTAL FUNDING	AGS		500B		500B
5.	003	LUMP SUM CIP-MASTER PLANS, SITE STUDIES AND MINOR LAND ACQUISITIONS, STATEWIDE					
PLANS AND LAND ACQUISITION FOR MASTER PLANNING, SITE SELECTION, PRE-LAND ACQUISITION STUDIES, ACQUISITION OF SMALL PARCELS, FEASIBILITY STUDIES TO MEET FUTURE AND UNFORESEEN NEEDS AND CIP ASSISTANCE FROM DAGS IN PROVIDING COST ESTIMATES FOR BUDGETING AND EXPENDITURE PLANNING.							
		PLANS			595		
		LAND			5		
		TOTAL FUNDING	AGS		600B		600B
6.	002	LUMP SUM CIP-MINOR RENOVATIONS TO BUILDINGS AND SCHOOL SITES, STATEWIDE					
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MINOR ADDITIONS, RENOVATIONS, AND IMPROVEMENTS TO BUILDINGS AND SCHOOL SITES.							
		DESIGN			40		
		CONSTRUCTION			1,450		
		EQUIPMENT			10		
		TOTAL FUNDING	AGS		1,500B		1,500B
7.	011	LUMP SUM CIP-PROJECT ADJUSTMENT FUND, STATEWIDE					
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR 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			200		
		CONSTRUCTION			2,450		
		EQUIPMENT			50		
		TOTAL FUNDING	AGS		2,700B		2,000B

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
8.	001	LUMP SUM CIP-RELOCATION OR CONSTRUCTION OF PORTABLE CLASSROOMS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF PORTABLE CLASSROOMS EACH SCHOOL YEAR TO MEET ENROLLMENT SHIFTS AMONG SCHOOLS, PROGRAM DEMANDS, UNFORESEEN EMERGENCIES, AND TO PROVIDE TEMPORARY FACILITIES WHILE NEW SCHOOLS ARE BEING PLANNED AND/OR UNDER CONSTRUCTION. THESE FUNDS ARE ALSO FOR SECONDARY SCHOOLS.					
		DESIGN		175		175	
		CONSTRUCTION		3,665		3,665	
		EQUIPMENT		160		160	
		TOTAL FUNDING	AGS	4,000B		4,000B	
9.	009	LUMP SUM CIP-RENOVATIONS FOR NOISE ABATEMENT, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR CORRECTIVE MEASURES TO SCHOOLS AFFECTED BY EXCESSIVE NOISE AND VENTILATION PROBLEMS.					
		DESIGN		50		50	
		CONSTRUCTION		450		450	
		TOTAL FUNDING	AGS	500B		500B	
10.	014	LUMP SUM CIP-REQUIREMENTS FOR HEALTH AND SAFETY/LAWS AND ORDINANCES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO SCHOOL FACILITIES AND GROUNDS TO MEET HEALTH, SAFETY REQUIREMENTS/LAWS AND ORDINANCES.					
		DESIGN		50		50	
		CONSTRUCTION		450		450	
		TOTAL FUNDING	AGS	500B		500B	
11.	013	LUMP SUM CIP-SPECIAL EDUCATION PROGRAM, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OR CONSTRUCTION OF CLASSROOMS FOR SPECIAL EDUCATION.					
		DESIGN		35		35	
		CONSTRUCTION		215		215	
		TOTAL FUNDING	AGS	250B		250B	
12.	015	LUMP SUM CIP-STATE/DISTRICT RELOCATIONS AND IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR STATE AND DISTRICT OFFICE IMPROVEMENTS.					
		DESIGN		25			
		CONSTRUCTION		75			
		TOTAL FUNDING	AGS	100B			B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
13.	012	LUMP SUM CIP-TELECOMMUNICATIONS & POWER INFRASTRUCTURE IMPROVEMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TELECOMMUNICATION AND POWER INFRASTRUCTURE REQUIREMENTS.					
		DESIGN			50		50
		CONSTRUCTION			600		600
		EQUIPMENT			50		50
		TOTAL FUNDING	AGS		700B		700B
14.	700001	ELELE ELEMENTARY SCHOOL, KAUAI					
		DESIGN FOR CLASSROOMS; EQUIPMENT AND APPURTEANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN			185		
		TOTAL FUNDING	AGS		185B		B
15.	303005	EWA ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.					
		CONSTRUCTION			2,700		
		EQUIPMENT			40		
		TOTAL FUNDING	AGS		2,740B		B
16.	343005	EWA GENTRY ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.					
		CONSTRUCTION			2,825		
		EQUIPMENT			40		
		TOTAL FUNDING	AGS		2,865B		
17.	343006	EWA GENTRY ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.					
		DESIGN			195		
		TOTAL FUNDING	AGS		195B		
18.	207002	HELEMANO ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.					
		DESIGN			185		
		TOTAL FUNDING	AGS		185B		B
19.	502007	HILO HIGH SCHOOL, HAWAII					

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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; COVERED WALKWAYS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.							
		CONSTRUCTION EQUIPMENT				3,245 35	
		TOTAL FUNDING	AGS		B		3,280B
20.	508001	HOOKENA ELEMENTARY SCHOOL, HAWAII					
CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES.							
		CONSTRUCTION EQUIPMENT		3,000		2,970 30	
		TOTAL FUNDING	AGS			3,000B	3,000B
21.	406001	KAAWA ELEMENTARY SCHOOL, OAHU					
PLANS AND LAND ACQUISITION FOR SITE SELECTION AND LAND ACQUISITION.							
		PLANS			25		
		LAND			50		
		TOTAL FUNDING	AGS		75B		B
22.	532006	KAHAKAI ELEMENTARY SCHOOL, HAWAII					
CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.							
		CONSTRUCTION EQUIPMENT		2,440 30			
		TOTAL FUNDING	AGS			2,470B	B
23.	435005	KAHUKU ELEMENTARY SCHOOL, OAHU					
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ADMINISTRATION/LIBRARY BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. RENOVATE TEMPORARY FACILITIES TO CLASSROOMS.							
		DESIGN			215		
		CONSTRUCTION				2,950 75	
		EQUIPMENT					
		TOTAL FUNDING	AGS		215B		3,025B
24.	410025	KAHUKU HIGH SCHOOL, OAHU					
DESIGN FOR ON-SITE DRAINAGE IMPROVEMENTS.							
		DESIGN				100	
		TOTAL FUNDING	AGS		B		100B
25.	716002	KAPAA II ELEMENTARY SCHOOL, KAUAI					

CAPITAL IMPROVEMENT PROJECTS

APPROPRIATIONS
(IN 000's)

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		DESIGN FOR FIRST INCREMENT; CLASSROOMS; PLAYFIELD; PARKING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEENCIES.					
		DESIGN					
		TOTAL FUNDING	AGS				
							675
							675B
26.	717002	KAPAA INTERMEDIATE SCHOOL (NEW), KAUAI					
		CONSTRUCTION AND EQUIPMENT FOR FIRST INCREMENT OF THE NEW SCHOOL TO INCLUDE GROUND AND SITE IMPROVEMENTS.					
		CONSTRUCTION					15,315
		EQUIPMENT					185
		TOTAL FUNDING	AGS				15,500B
27.	718002	KAUAI INTERMEDIATE SCHOOL (NEW), KAUAI					
		DESIGN FOR FIRST INCREMENT OF NEW SCHOOL; CLASSROOMS; TEMPORARY OFFICE; LIBRARY; DINING; PLAYFIELD; EQUIPMENT AND APPURTEENCIES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN					
		TOTAL FUNDING	AGS				
							750
							750B
28.	513007	KEAAU ELEMENTARY AND INTERMEDIATE SCHOOL, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; COVERED WALKWAYS; EQUIPMENT AND APPURTEENCIES; GROUND AND SITE IMPROVEMENTS.					
		CONSTRUCTION					1,832
		EQUIPMENT					10
		TOTAL FUNDING	AGS				1,842B
29.	538002	KEAAU HIGH SCHOOL, HAWAII					
		PLANS AND LAND ACQUISITION FOR MASTER PLAN AND LAND ACQUISITION.					
		PLANS					
		LAND					
		TOTAL FUNDING	AGS				
							100
							1,200
							1,200B
30.	537002	KEAAU II ELEMENTARY SCHOOL, HAWAII					
		PLANS AND LAND ACQUISITION FOR MASTER PLAN AND LAND ACQUISITION.					
		PLANS					
		LAND					
		TOTAL FUNDING	AGS				
							100
							600
							600B
31.	533007	KEALAKEHE INTERMEDIATE SCHOOL, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEENCIES.					
		CONSTRUCTION					
							3,275

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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		EQUIPMENT TOTAL FUNDING	AGS			25	
32.	630002	KIHEI II ELEMENTARY SCHOOL, MAUI			B	3,300B	
		CONSTRUCTION AND EQUIPMENT FOR FIRST INCREMENT; CLASSROOMS; PLAYFIELD; PARKING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS			8,815 185 9,000B	
33.	630003	KIHEI II ELEMENTARY SCHOOL, MAUI					
		DESIGN FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN TOTAL FUNDING	AGS		225 225B		B
34.	708003	KILAUEA ELEMENTARY SCHOOL, KAUAI					
		DESIGN FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN TOTAL FUNDING	AGS			175 175B	
35.	517004	KONAWAENA ELEMENTARY SCHOOL, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR FIRST INCREMENT: CLASSROOMS, COVERED WALKWAYS, ACCESS ROAD, PARKING, GROUND AND SITE IMPROVEMENTS, PLAYFIELDS, PORTABLE RELOCATION, AND APPURTENANCES.					
		CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS		8,000 150 8,150B		B
36.	420005	LAIE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ADMINISTRATION BUILDING AND RENOVATE EXISTING OFFICE TO CLASSROOMS.					
		DESIGN CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS		175 2,150 25 2,175B		
37.	341009	LEIHOKU ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN TOTAL FUNDING	AGS			185 185B	

CAPITAL IMPROVEMENT PROJECTS

APPROPRIATIONS
(IN 000's)

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
38.	213005	LEILEHUA HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTEANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN			5		
		CONSTRUCTION			140		
		EQUIPMENT			5		
		TOTAL FUNDING	AGS		150B		B
39.	135002	LINAPUNI ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR A CAFETERIORUM, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEANCES.					
		CONSTRUCTION			720		
		EQUIPMENT			30		
		TOTAL FUNDING	AGS		750B		B
40.	626001	MAUI WAENA INTERMEDIATE SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MUSIC BUILDING; EQUIPMENT AND APPURTEANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN			175		
		CONSTRUCTION				1,840	
		EQUIPMENT				10	
		TOTAL FUNDING	AGS		175B		1,850B
41.	626008	MAUI WAENA INTERMEDIATE SCHOOL, MAUI					
		DESIGN FOR CLASSROOMS; EQUIPMENT AND APPURTEANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN				195	
		TOTAL FUNDING	AGS			195B	
42.	315005	MAUKA LANI ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ADMINISTRATION/LIBRARY; EQUIPMENT AND APPURTEANCES; GROUND AND SITE IMPROVEMENTS. RENOVATE TEMPORARY FACILITIES TO CLASSROOMS.					
		DESIGN			215		
		CONSTRUCTION				2,950	
		EQUIPMENT				75	
		TOTAL FUNDING	AGS		215B		3,025B
43.	215008	MILILANI HIGH SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTEANCES.					
		CONSTRUCTION			2,950		

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		EQUIPMENT TOTAL FUNDING	AGS		40		
					2,990B		B
44.	215009	MILILANI HIGH SCHOOL, OAHU DESIGN FOR FOUR CLASSROOM ADDITION; RENOVATE CLASSROOMS IN BUILDING D; EQUIPMENT AND APPURTENANCES. DESIGN TOTAL FUNDING	AGS			175	
						175B	
45.	423001	MOKAPU ELEMENTARY SCHOOL, OAHU CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES. CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS		2,365 40 2,405B		B
46.	520005	MT. VIEW ELEMENTARY AND INTERMEDIATE SCHOOL, HAWAII CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS, COVERED WALKWAYS, EQUIPMENT AND APPURTENANCES. CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS		5,230 40 5,270B		B
47.	520006	MT. VIEW ELEMENTARY AND INTERMEDIATE SCHOOL, HAWAII DESIGN FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS. DESIGN TOTAL FUNDING	AGS			225	
						225B	
48.	318007	NANAKULI HIGH SCHOOL, OAHU PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES. PROJECT SHALL BE IMPLEMENTED ON A DESIGN/BUILD BASIS. PLANS DESIGN CONSTRUCTION EQUIPMENT TOTAL FUNDING	AGS AGS		35 190 2,810 40 71B 3,004C		C
49.	318008	NANAKULI HIGH SCHOOL, OAHU DESIGN AND CONSTRUCTION FOR BASEBALL FIELD; GROUND AND SITE IMPROVEMENTS. DESIGN CONSTRUCTION			60 500		

CAPITAL IMPROVEMENT PROJECTS

APPROPRIATIONS
(IN 000's)

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		TOTAL FUNDING	AGS		60B		500B
50.	350001	NANAKULI III ELEMENTARY SCHOOL, OAHU					
		PLANS AND LAND ACQUISITION FOR SITE SELECTION; ENVIRONMENTAL IMPACT STATEMENT; MASTER PLAN; AND LAND ACQUISITION.					
		PLANS			100		
		LAND			600		
		TOTAL FUNDING	AGS		700B		B
51.	350002	NANAKULI III ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR FIRST INCREMENT; CLASSROOMS; ADMINISTRATION; LIBRARY; DINING; PLAYFIELD; PARKING; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN				675	
		TOTAL FUNDING	AGS			675B	
52.	158001	PAWAA AREA SCHOOL, OAHU					
		PLANS FOR A NEW SCHOOL.					
		PLANS					
		TOTAL FUNDING	AGS			150	
						150B	
53.	627006	PRINCESS NAHENAENA ELEMENTARY SCHOOL, MAUI					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES. PROJECT SHALL BE IMPLEMENTED ON A DESIGN/BUILD BASIS.					
		PLANS			35		
		DESIGN			190		
		CONSTRUCTION			2,680		
		EQUIPMENT			40		
		TOTAL FUNDING	AGS		2,945C		C
54.	351002	ROYAL KUNIA ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR FIRST INCREMENT OF NEW SCHOOL; GROUND AND SITE IMPROVEMENTS AND APPURTENANCES.					
		DESIGN			675		
		TOTAL FUNDING	AGS		675B		B
55.	628004	UPCOUNTRY HIGH SCHOOL, MAUI					
		CONSTRUCTION FOR FIRST INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			12,800		
		TOTAL FUNDING	AGS		12,800B		B
56.	628005	UPCOUNTRY HIGH SCHOOL, MAUI					

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				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
DESIGN FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.							
		DESIGN					425
		TOTAL FUNDING	AGS		B		425B
57.	628007	UPCOUNTRY HIGH SCHOOL, MAUI					
CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.							
		CONSTRUCTION					6,575
		EQUIPMENT					175
		TOTAL FUNDING	AGS		B		6,750B
58.	525008	WAIKEA HIGH SCHOOL, HAWAII					
CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; COVERED WALKWAYS; EQUIPMENT AND APPURTENANCES.							
		CONSTRUCTION					3,325
		EQUIPMENT					40
		TOTAL FUNDING	AGS				3,365B
59.	325005	WAIANAE HIGH SCHOOL, OAHU					
CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.							
		CONSTRUCTION					4,735
		EQUIPMENT					50
		TOTAL FUNDING	AGS				4,785B
60.	326001	WAIANAE INTERMEDIATE SCHOOL, OAHU					
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.							
		DESIGN					185
		CONSTRUCTION					2,820
		EQUIPMENT					30
		TOTAL FUNDING	AGS				2,850B
61.	539001	WAIKOLOA ELEMENTARY SCHOOL, HAWAII					
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FIRST INCREMENT; EQUIPMENT; GROUND AND SITE IMPROVEMENTS; PARKING; AND OTHER APPURTENANCES.							
		DESIGN					400
		CONSTRUCTION					8,100
		EQUIPMENT					150
		TOTAL FUNDING	AGS				8,650B
62.	539002	WAIKOLOA ELEMENTARY SCHOOL, HAWAII					

CAPITAL IMPROVEMENT PROJECTS

APPROPRIATIONS
(IN 000's)

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
DESIGN FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.							
		DESIGN					225
		TOTAL FUNDING	AGS		B		225B
63.	528005	WAIMEA ELEMENTARY AND INTERMEDIATE SCHOOL, HAWAII					
CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; COVERED WALKWAYS; EQUIPMENT AND APPURTENANCES.							
		CONSTRUCTION		3,505			
		EQUIPMENT		40			
		TOTAL FUNDING	AGS	3,545	B		
64.	330006	WAIPAHU HIGH SCHOOL, OAHU					
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN ADMINISTRATION BUILDING AND RENOVATION OF EXISTING ADMINISTRATION AREAS INTO CLASSROOMS.							
		DESIGN		1			
		CONSTRUCTION		3,839			
		EQUIPMENT		10			
		TOTAL FUNDING	AGS	3,850	B		
65.	331007	WAIPAHU INTERMEDIATE SCHOOL, OAHU					
DESIGN FOR CLASSROOMS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.							
		DESIGN		225			
		TOTAL FUNDING	AGS	225B	B		
66.	238001	WHEELER INTERMEDIATE SCHOOL, OAHU					
CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; CONVERT BUILDING D TO CLASSROOMS; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.							
		CONSTRUCTION		800			
		EQUIPMENT		20			
		TOTAL FUNDING	AGS	820	B		
67.	HANALEI ELEMENTARY SCHOOL, KAUAI						
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CAFETERIUM, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.							
		DESIGN		224			
		CONSTRUCTION				3,247	
		EQUIPMENT			C	1	
		TOTAL FUNDING	AGS	224B		2,705B	
						543C	
68.	HANALEI ELEMENTARY SCHOOL, KAUAI						

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A LIBRARY, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEENCIES.							
		DESIGN				196	
		CONSTRUCTION				2,815	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS		196B		2,816B
69.	KALAHEO ELEMENTARY SCHOOL, KAUAI						
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A LIBRARY, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEENCIES.							
		DESIGN				200	
		CONSTRUCTION				2,864	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS		200B		2,865B
70.	KAPAA ELEMENTARY SCHOOL, KAUAI						
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN AUDITORIUM, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEENCIES.							
		DESIGN				72	
		CONSTRUCTION				732	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS		72B		464B
			AGS		C		269C
71.	KAPAA ELEMENTARY SCHOOL, KAUAI						
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CLASSROOM BUILDING, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEENCIES.							
		DESIGN				100	
		CONSTRUCTION				1,132	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS		100B		1,133B
72.	KAPAA ELEMENTARY SCHOOL, KAUAI						
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CLASSROOM BUILDING, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTEENCIES.							
		DESIGN				85	
		CONSTRUCTION				892	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS		85B		893B
73.	WAIMEA HIGH SCHOOL, KAUAI						

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CLASSROOM BUILDING, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.					
		DESIGN			75		
		CONSTRUCTION				753	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS		75B		754B
74.	ALIIOLANI ELEMENTARY SCHOOL, OAHU						
		DESIGN AND CONSTRUCTION FOR RENOVATIONS INCLUDING RESTROOMS IN BUILDING A.					
		DESIGN			15		
		CONSTRUCTION			70		
		TOTAL FUNDING	AGS		85C		C
75.	402002 JAMES B. CASTLE HIGH SCHOOL, OAHU						
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW GYMNASIUM.					
		DESIGN			1		
		CONSTRUCTION			4,998		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		5,000C		C
76.	ENCHANTED LAKE ELEMENTARY SCHOOL, OAHU						
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF AN AIR CONDITIONING SYSTEM FOR THE LIBRARY.					
		DESIGN			10		
		CONSTRUCTION			189		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		200C		C
77.	GOVERNOR WALLACE RIDER FARRINGTON HIGH SCHOOL, OAHU						
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND/OR EXPANSION OF THE VOCATIONAL BUILDING AT FARRINGTON HIGH SCHOOL.					
		DESIGN			1		
		CONSTRUCTION			748		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		750C		C
78.	MAYOR JOSEPH J. FERN ELEMENTARY SCHOOL, OAHU						
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CEILING FANS AND OTHER RELATED IMPROVEMENTS.					
		DESIGN			10		
		CONSTRUCTION			29		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		40C		C

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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
79.	HIGHLANDS INTERMEDIATE SCHOOL, OAHU	DESIGN AND CONSTRUCTION FOR GROUND AND SITE IMPROVEMENTS FOR EROSION AND DRAINAGE CONTROLS AT HIGHLANDS INTERMEDIATE SCHOOL.					
		DESIGN			50		
		CONSTRUCTION			580		
		TOTAL FUNDING	AGS		630C		C
80.	HILO HIGH SCHOOL, HAWAII	DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION, RENOVATION, AND AIR CONDITIONING OF THE LIBRARY.					
		DESIGN			100		
		CONSTRUCTION			899		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		1,000C		C
81.	WILLIAM P. JARRETT INTERMEDIATE SCHOOL, OAHU	DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS TO THE LOCKER/SHOWER FACILITY AT JARRETT INTERMEDIATE SCHOOL.					
		DESIGN			1		
		CONSTRUCTION			68		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		70C		C
82.	KAHULUI ELEMENTARY SCHOOL, MAUI	DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A LIBRARY/ADMINISTRATION FACILITY, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND THE RENOVATION OF EXISTING LIBRARY/ADMINISTRATION FACILITY TO CLASSROOMS.					
		DESIGN			90		
		CONSTRUCTION			1,109		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		90C		1,110C
83.	KAIMILOA ELEMENTARY SCHOOL, OAHU	DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A LIBRARY/ADMINISTRATION FACILITY, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND THE RENOVATION OF THE EXISTING LIBRARY/ADMINISTRATION SPACES TO CLASSROOMS.					
		DESIGN			204		
		CONSTRUCTION			3,545		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		3,750C		C
84.	SAMUEL ENOKA KALAMA INTERMEDIATE SCHOOL, MAUI						

CAPITAL IMPROVEMENT PROJECTS

APPROPRIATIONS
(IN 000's)

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A COVERED PLAYCOURT.							
		DESIGN			20		
		CONSTRUCTION			179		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		200C		C
85.	KAPALAMA ELEMENTARY SCHOOL, OAHU						
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CAFETERIA FANS AT KAPALAMA ELEMENTARY SCHOOL.							
		DESIGN			15		
		CONSTRUCTION			44		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		60C		C
86.	KAUMANA ELEMENTARY SCHOOL, HAWAII						
DESIGN AND CONSTRUCTION FOR A COVERED WALKWAY, PARKING AND DROP OFF AREA FOR KAUMANA ELEMENTARY SCHOOL.							
		DESIGN			30		
		CONSTRUCTION			270		
		TOTAL FUNDING	AGS		300C		C
87.	KONAWAENA HIGH SCHOOL, HAWAII						
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A COMMUNITY/SCHOOL ALL-WEATHER TRACK FOR WEST HAWAII. PROJECT TO INCLUDE A LIGHTING SYSTEM FOR THE TRACK AND FOOTBALL FIELD.							
		DESIGN			1		
		CONSTRUCTION			598		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		600C		C
88.	PRINCESS MIRIAM K. LIKELIKE ELEMENTARY SCHOOL, OAHU						
DESIGN AND CONSTRUCTION FOR A GROUND SPRINKLER SYSTEM AT LIKELIKE ELEMENTARY SCHOOL.							
		DESIGN			20		
		CONSTRUCTION			130		
		TOTAL FUNDING	AGS		150C		C
89.	KING WILLIAM LUNALILO ELEMENTARY SCHOOL, OAHU						
DESIGN AND CONSTRUCTION FOR A BUS DROP-OFF AREA FOR LUNALILO ELEMENTARY SCHOOL.							
		DESIGN			18		
		CONSTRUCTION			200		
		TOTAL FUNDING	AGS		218C		C
90.	MAKAKILO ELEMENTARY SCHOOL, OAHU						

ACT 289**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF AN AIR CONDITIONING SYSTEM FOR THE LIBRARY.							
		DESIGN			10		
		CONSTRUCTION			189		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		200C		C
91.	MANANA ELEMENTARY SCHOOL, OAHU						
DESIGN AND CONSTRUCTION FOR THE EXPANSION OF THE SCHOOL PARKING LOT AND EROSION AND DRAINAGE IMPROVEMENTS.							
		DESIGN			16		
		CONSTRUCTION			184		
		TOTAL FUNDING	AGS		200C		C
92.	MAUI WAENA INTERMEDIATE SCHOOL, MAUI						
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A LIBRARY FACILITY, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND THE RENOVATION OF TEMPORARY LIBRARY TO CLASSROOMS.							
		DESIGN			150		
		CONSTRUCTION			1,949		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		150C		1,950C
93.	140007 PRESIDENT WILLIAM MCKINLEY HIGH SCHOOL, OAHU						
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF BUILDING A AND AUDITORIUM.							
		DESIGN			200		
		CONSTRUCTION			16,700		
		EQUIPMENT			100		
		TOTAL FUNDING	AGS		17,000C		C
94.	MILILANI HIGH SCHOOL, OAHU						
DESIGN AND CONSTRUCTION FOR AN ALL-WEATHERIZED TRACK AND OTHER IMPROVEMENTS.							
		DESIGN			1		
		CONSTRUCTION			159		
		TOTAL FUNDING	AGS		160C		C
95.	MOANALUA INTERMEDIATE SCHOOL, OAHU						
DESIGN AND CONSTRUCTION FOR PARKING AREA IMPROVEMENTS FOR ADDITIONAL STALLS TO INCLUDE VISITOR AND HANDICAPPED PARKING AREAS. PROJECT TO INCLUDE LANDSCAPING IMPROVEMENTS TO THE AREA AND OTHER RELATED WORK.							
		DESIGN			31		
		CONSTRUCTION			285		

CAPITAL IMPROVEMENT PROJECTS

APPROPRIATIONS
(IN 000's)

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		TOTAL FUNDING	AGS			316C	C
96.		MOKULELE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE LIBRARY FACILITY AND OTHER RELATED WORK.					
		DESIGN			100		
		CONSTRUCTION			999		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS			1,100C	C
97.		NOELANI ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PORTABLE CLASSROOM FOR NOELANI ELEMENTARY SCHOOL.					
		DESIGN			1		
		CONSTRUCTION			98		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS			100C	C
98.		PALOLO ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS IN BUILDING B. PROJECT TO INCLUDE IMPROVEMENTS TO CABINETS AND SINKS.					
		DESIGN			5		
		CONSTRUCTION			29		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS			35C	C
99.		PRINCESS NAHİENAENA ELEMENTARY AND LAHAINA INTERMEDIATE SCHOOLS, MAUI					
		DESIGN FOR A CAFETERIA FACILITY FOR PRINCESS NAHİENAENA AND LAHAINA INTERMEDIATE SCHOOLS. PROJECT TO INCLUDE SEPARATE DINING AREAS AND A SHARED PREPARATION KITCHEN.					
		DESIGN			400		
		TOTAL FUNDING	AGS			400C	C
100.		PUOHALA ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR LIBRARY IMPROVEMENTS TO INCLUDE THE EXPANSION AND/OR AIR CONDITIONING OF THE FACILITY.					
		DESIGN			35		
		CONSTRUCTION			314		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS			350C	C
101.		PRESIDENT THEODORE ROOSEVELT HIGH SCHOOL, OAHU					

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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PORTABLE FACILITY TO ACCOMMODATE THE WRESTLING PROGRAM.					
		DESIGN			1		
		CONSTRUCTION			68		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		70C		C
102.	SALT LAKE ELEMENTARY SCHOOL, OAHU						
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A FACULTY CENTER FOR SALT LAKE ELEMENTARY SCHOOL.					
		DESIGN			37		
		CONSTRUCTION			305		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		343C		C
103.	409003 SUNSET BEACH ELEMENTARY SCHOOL, OAHU						
		CONSTRUCTION AND EQUIPMENT FOR A CAFETERIA AT SUNSET BEACH ELEMENTARY SCHOOL.					
		CONSTRUCTION			794		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		795C		C
104.	WAIHEE ELEMENTARY SCHOOL, MAUI						
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CAFETERIA/MULTI-PURPOSE BUILDING, COVERED WALKWAYS, GROUND AND SITE IMPROVEMENTS, AND OTHER RELATED WORK.					
		DESIGN			180		
		CONSTRUCTION			2,299		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		2,480C		C
105.	WAIPAHU ELEMENTARY SCHOOL, OAHU						
		DESIGN AND CONSTRUCTION FOR PARKING AREA IMPROVEMENTS TO INCLUDE ADDITIONAL STALLS, DRAINAGE IMPROVEMENTS, DRIVEWAY, FENCING, DROP-OFF AND PICK-UP AREAS, AND RELATED WORK.					
		DESIGN			14		
		CONSTRUCTION			126		
		TOTAL FUNDING	AGS		140C		C
106.	WAIPAHU INTERMEDIATE SCHOOL, OAHU						
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PLAYCOURTS AT WAIPAHU INTERMEDIATE SCHOOL.					
		DESIGN			58		
		CONSTRUCTION			148		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		207C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F

EDN407 - PUBLIC LIBRARIES

107. HS-LIB HEALTH AND SAFETY REQUIREMENTS, STATEWIDE

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HEALTH AND SAFETY PROJECTS AT LIBRARY FACILITIES. PROJECT TO INCLUDE IMPROVEMENTS FOR LIBRARY PATRONS, EMPLOYEES, AND MATERIALS WHICH INCLUDE, BUT NOT LIMITED TO, ASBESTOS ABATEMENT, FIRE PROTECTION, REMOVAL OF ARCHITECTURAL BARRIERS, IMPROVEMENTS TO BUILDINGS AND GROUNDS, PROVISIONS FOR ENVIRONMENTAL CONTROLS, AND THE REPLACEMENT OF HAZARDOUS FACILITIES.

PLANS	60		
DESIGN	300		
CONSTRUCTION	2,000		
EQUIPMENT	40		
TOTAL FUNDING	AGS	2,400C	C

108. 059-3 KIHEI PUBLIC LIBRARY, MAUI

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY, AND ACOUSTICAL CONTROLS.

DESIGN	1		
CONSTRUCTION	4,998		
EQUIPMENT	1		
TOTAL FUNDING	AGS	5,000C	C

109. 110-1 KOHALA PUBLIC LIBRARY, HAWAII

PLANS, LAND ACQUISITION, AND DESIGN FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY, AND ACCOUSTICAL CONTROLS.

PLANS	30		
LAND	100		
DESIGN	70		
TOTAL FUNDING	AGS	200C	C

110. 037-1 WAIPAHU PUBLIC LIBRARY, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY, AND ACCOUSTICAL CONTROLS.

DESIGN	1		
CONSTRUCTION	4,498		
EQUIPMENT	1		
TOTAL FUNDING	AGS	4,500C	C

111. 109-1 MANOA PUBLIC LIBRARY, OAHU

PLANS, LAND ACQUISITION, AND DESIGN FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY, AND ACCOUSTICAL CONTROLS.

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		PLANS			30		
		LAND			1		
		DESIGN			69		
		TOTAL FUNDING	AGS		100C		C

UOH100 - UNIVERSITY OF HAWAII, MANOA

112. 181 UHM, KRAUSS HALL COMPLEX RENOVATION, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE KRAUSS HALL COMPLEX. PROJECT TO INCLUDE EQUIPMENT REMOVAL, DEMOLITION, FACILITY RENOVATION, NEW FURNITURE AND EQUIPMENT FOR OLD KRAUSS HALL AND FOR KRAUSS ANNEX.

DESIGN	70
CONSTRUCTION	1,858
EQUIPMENT	945
TOTAL FUNDING	2,873B

113. 279 UHM, REPLACEMENT OF TRANSFORMERS WITH PCB, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR THE REPLACEMENT OF TRANSFORMERS WITH PCB, A RECOGNIZED CARCINOGEN, TO MEET EPA STANDARDS.

PLANS	1
DESIGN	1
CONSTRUCTION	98
TOTAL FUNDING	100C

114. 280 UHM, MODIFICATIONS TO EXISTING AND/OR ADDITION OF FACIL TO MEET HOSHA, OAHU

DESIGN AND CONSTRUCTION FOR MODIFICATIONS TO EXISTING FACILITIES AND OR CONSTRUCTION OF NEW FACILITIES TO MEET HAWAII OCCUPATIONAL SAFETY AND HEALTH ACT, OTHER CODE REQUIREMENTS, AND HEALTH AND SAFETY IMPROVEMENTS.

DESIGN	210
CONSTRUCTION	1,470
TOTAL FUNDING	1,680C

115. 691 UHM, WIALEE LIVESTOCK RESEARCH CENTER, SEWAGE SYSTEM, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR A SECOND OXIDATION POND, REHABILITATION OF THE EXISTING POND AND OTHER NECESSARY IMPROVEMENTS TO PROVIDE A SEWAGE DISPOSAL SYSTEM THAT MEETS HEALTH CODE REQUIREMENTS.

PLANS	1
DESIGN	1
CONSTRUCTION	263
TOTAL FUNDING	265C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)						
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F			
116. M73 UHM, ELECTRICAL POWER DISTRIBUTION, PHASE II, OAHU										
DESIGN AND CONSTRUCTION FOR THE NECESSARY ELECTRICAL INFRASTRUCTURE AS DETERMINED BY THE ELECTRICAL POWER DISTRIBUTION MASTER PLAN.										
		DESIGN			157					
		CONSTRUCTION			2,743					
		TOTAL FUNDING	AGS		2,900C		C			
117. 532 UHM, INSTITUTE FOR ASTRONOMY, UNIVERSITY PARK FACILITY IN HILO, HAWAII										
DESIGN AND CONSTRUCTION FOR A HEADQUARTER FACILITY FOR INSTITUTE FOR ASTRONOMY PERSONNEL AT THE UNIVERSITY PARK IN HILO. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.										
		DESIGN			1,181					
		CONSTRUCTION			13,006					
		TOTAL FUNDING	AGS		4,187C		C			
			AGS		10,000N		N			
UOH210 - UNIVERSITY OF HAWAII, HILO										
118. 440 UHH, UNIVERSITY PARK, PHASE II, HAWAII										
PLANS, DESIGN, AND CONSTRUCTION FOR INFRASTRUCTURE IMPROVEMENTS AT THE UHH MAUKA CAMPUS SITE TO ACCOMMODATE THE FUTURE DEVELOPMENT AND EXPANSION OF UHH'S STUDENT HOUSING, ACADEMIC AND RESEARCH PROGRAMS. IMPROVEMENTS TO INCLUDE A TWO LANE ROADWAY IN EACH DIRECTION WITH MEDIAN THAT CONNECTS THE UNIVERSITY PARK TO KAWILI STREET. FUNDS MAY BE USED FOR THE RELOCATION OF EXISTING FACILITIES AFFECTED BY PROJECT.										
		PLANS			1					
		DESIGN			549					
		CONSTRUCTION			2,450					
		TOTAL FUNDING	AGS		3,000C		C			
119. 450 UHH, SEWER CONNECTION AND SANITARY IMPROVEMENTS, HAWAII										
DESIGN AND CONSTRUCTION FOR SEWER CONNECTIONS TO THE COUNTY SEWAGE LINE AND OTHER SANITARY IMPROVEMENTS.										
		DESIGN			70					
		CONSTRUCTION			300					
		TOTAL FUNDING	AGS		370C		750C			
UOH310 - KAPIOLANI COMMUNITY COLLEGE										
120. B102 KDH, NEW CAMPUS DEVELOPMENT, OAHU										

ACT 289**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)		
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR NEW FACILITIES INCLUDING SITWORK, UTILITIES AND BUILDINGS, AND OFFSITE ROADWAY IMPROVEMENTS.				
		DESIGN		139		
		CONSTRUCTION		3,022		
		EQUIPMENT		1		
		TOTAL FUNDING	AGS	3,162C		

UOH330 - WINDWARD COMMUNITY COLLEGE**121. W100 WIN, CAMPUS DEVELOPMENT, PHASE I, OAHU**

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR
NEW FACILITIES INCLUDING SITWORK,
UTILITIES AND BUILDINGS, AND RENOVATIONS
TO EXISTING FACILITIES.

DESIGN		1
CONSTRUCTION		1
EQUIPMENT		1,373
TOTAL FUNDING	AGS	1,373C

UOH600 - KAUAI COMMUNITY COLLEGE**122. K-53 KAU, PACIFIC CENTER FOR HUMAN DEVELOPMENT, KAUAI**

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR
THE PACIFIC CENTER FOR HUMAN
DEVELOPMENT.

DESIGN		1
CONSTRUCTION		498
EQUIPMENT		1
TOTAL FUNDING	AGS	500R

UOH900 - UOH, SYSTEM WIDE SUPPORT**123. SYS, LONG RANGE DEVELOPMENT PLANS, WEST HAWAII CAMPUS, HAWAII**

PLANS FOR LONG RANGE DEVELOPMENT
PLANS FOR THE WEST HAWAII CAMPUS.

PLANS		300
TOTAL FUNDING	UOH	300C

H. CULTURE AND RECREATION**AGS881 - PERFORMING & VISUAL ARTS EVENTS****I. PALACE THEATRE, HILO, HAWAII**

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR
THE RESTORATION, RENOVATION, AND
IMPROVEMENTS TO THE PALACE THEATRE TO
BE USED AS A MULTIPURPOSE PERFORMING
ARTS CENTER IN HILO.

DESIGN		1
CONSTRUCTION		398
EQUIPMENT		1
TOTAL FUNDING	AGS	400C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F

LNR802 - HISTORIC PRESERVATION

2. SALT PONDS AT HANAPEPE, KAUAI

PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO DRAINAGE AND LANDSCAPING AT THE SALT PONDS AT HANAPEPE.

PLANS	10	
DESIGN	12	
CONSTRUCTION	48	
TOTAL FUNDING	70C	C

3. ACQUISITION OF MOUNT OLOMANA, OAHU

LAND ACQUISITION FOR APPROXIMATELY 368.78 ACRES OF LAND AT MOUNT OLOMANA.

LAND	1,000	
TOTAL FUNDING	1,000C	C

LNR806 - PARK DEVELOPMENT AND OPERATION

4. F82 WAIMEA PIER, KAUAI

DESIGN AND CONSTRUCTION FOR PIER DUE TO HURRICANE DAMAGE. DEVELOPMENT OF ONSHORE PARK FACILITIES TO SERVICE VISITORS TO WAIMEA FISHING PIER. THE PROJECT INCLUDES IMPROVEMENTS TO A RECENTLY ACQUIRED AREA.

DESIGN	50	
CONSTRUCTION	600	
TOTAL FUNDING	650C	C

5. H09 LANDSCAPING AND PARK IMPROVEMENTS, STATEWIDE

DESIGN AND CONSTRUCTION FOR MINOR ADDITIONS, RENOVATIONS, AND REPLACEMENTS TO PARK GROUNDS AND FACILITIES INCLUDING FACILITIES TO AID THE HANDICAPPED.

DESIGN	150	
CONSTRUCTION	1,000	
TOTAL FUNDING	1,150C	C

6. F46 KOKEE/WAIMEA CANYON COMPLEX, KAUAI

DESIGN AND CONSTRUCTION FOR PARK DEVELOPMENT AND REPLACEMENT OF OLDER FACILITIES, IMPROVEMENT AND DEVELOPMENT OF THE PARK, AND THE ADDITION OF INTERPRETIVE FACILITIES.

DESIGN	100	
CONSTRUCTION	1,000	
TOTAL FUNDING	1,100C	C

7. HULIHEE PALACE, HAWAII

ACT 289**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		DESIGN AND CONSTRUCTION FOR THE RESTORATION AND RECONSTRUCTION OF HULIHEE PALACE.					
		DESIGN			25		
		CONSTRUCTION			225		
		TOTAL FUNDING	LNR		250C		C

8. H91 WAIOLA STATE PARK, OAHU

PLANS AND DESIGN FOR THE FEASIBILITY AND PURCHASE OF WAIOLA IN CENTRAL OAHU TO BE USED TO DEVELOP A MULTI-PURPOSE RECREATIONAL, CULTURAL, AND SPORTS PARK COMPLEX.

PLANS		1	
DESIGN		99	
TOTAL FUNDING	LNR	100C	C

LNR801 - OCEAN-BASED RECREATION**9. HC4171 KAHULUI LIGHT DRAFT NAVIGATION IMPROVEMENTS, MAUI**

PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO EXISTING RAMP FACILITY TO INCLUDE AN ADDITIONAL RAMP LANE, LOADING DOCK, DEEPENING OF ENTRANCE CHANNEL, TURNING BASIN, AND RECONSTRUCTION OF THE BREAKWATER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS		1	
DESIGN		318	
CONSTRUCTION		2,971	
TOTAL FUNDING	LNR	906C	
	LNR	2,384N	N

AGS889 - SPECTATOR EVENTS & SHOWS - ALOHA STADIUM**10. S401 CORRECT CORRODED CONDITIONS AND OTHER DEFICIENCIES, PHASE III, OAHU**

CONSTRUCTION FOR THE RENOVATION OF CORRODED CONDITIONS AND/OR REPLACE CORRODED STRUCTURES AND OTHER DEFICIENCIES INCLUDING ACCESSIBILITY FOR HANDICAPPED PERSONS, SAFETY, REMOVAL OF ASBESTOS MATERIALS AND OTHER MINOR IMPROVEMENTS FOR OPERATIONAL AND SECURITY REQUIREMENTS.

CONSTRUCTION		24,181	
TOTAL FUNDING	AGS	2,181B	
	AGS	22,000C	C

11. S402 ALOHA STADIUM - MOVEMENT SYSTEM IMPROVEMENTS, PHASE I, OAHU

CONSTRUCTION FOR STRENGTHENING PIVOT POINTS.

CONSTRUCTION	400
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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		TOTAL FUNDING	AGS	400B			B
12.	S408	ALOHA STADIUM - RESURFACE ACCESS ROADS, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RESURFACING OF THE DETERIORATED ACCESS ROADS, PROVIDING IMPROVED DRAINAGE AND SAFER CONDITIONS FOR PEDESTRIAN TRAFFIC.					
		DESIGN		40			
		CONSTRUCTION				350	
		TOTAL FUNDING	AGS	40B			350B
13.	S411	ALOHA STADIUM LOCKER ROOM IMPROVEMENTS, PHASE II, OAHU					
		CONSTRUCTION FOR THE RENOVATION OF LOCKERS INCLUDING SHOWERS, RESTROOMS, FLOORING, ELECTRICAL AND MECHANICAL SYSTEMS, AND OTHER ANCILLARY ROOMS.					
		CONSTRUCTION				1,900	
		TOTAL FUNDING	AGS		B		1,900B
14.	S405	ALOHA STADIUM, CHILLER PLANT REPLACEMENT, OAHU					
		CONSTRUCTION FOR THE REPLACEMENT OF CHILLER PLANT AT ALOHA STADIUM FOR LOCKER ROOMS AND ADMINISTRATIVE OFFICES.					
		CONSTRUCTION				1,000	
		TOTAL FUNDING	AGS			1,000B	
					B		
I. PUBLIC SAFETY							
PSD402 - HALAWA CORRECTIONAL FACILITY							
1.	P9401	HALAWA CORRECTIONAL FACILITY EXPANSION/RENOVATION PROJECT, OAHU					
		PLANS FOR A 200-BED HIGH SECURITY FACILITY. PROJECT TO INCLUDE RENOVATIONS, ADDITIONS, AND IMPROVEMENTS THROUGHOUT THE EXISTING FACILITY TO MAKE ACCOMMODATIONS FOR THIS NEW COMPOUND.					
		PLANS				975	
		TOTAL FUNDING	AGS			975C	
					C		
PSD403 - KULANI CORRECTIONAL FACILITY							
2.	919301	KULANI CORRECTIONAL FACILITY IMPROVEMENTS AND RENOVATIONS, HAWAII					
		PLANS AND DESIGN FOR MAJOR INFRASTRUCTURE REQUIREMENTS TO INCLUDE THE INSTALLATION OF A NEW WATER SEWER SYSTEM, NEW SEWAGE FACILITIES, POWER, ELECTRICAL, DRAINAGE, INTERIOR ROADWAYS, AND PARKING.					
		PLANS				1	
		DESIGN				636	

ACT 289**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		TOTAL FUNDING	AGS	637C			C

PSD405 - HAWAII COMMUNITY CORRECTIONAL CENTER**3. HAWAII COMMUNITY CORRECTIONAL CENTER, HAWAII**

CONSTRUCTION FOR THE HALE NANI
SATELLITE FACILITY, PHASE II.

CONSTRUCTION	1,000
TOTAL FUNDING	1,000C

4. HAWAII COMMUNITY CORRECTIONAL CENTER, HAWAII

PLANS, DESIGN, CONSTRUCTION, AND
EQUIPMENT FOR AN INMATE HOUSING
FACILITY AT THE HAWAII COMMUNITY
CORRECTIONAL CENTER.

PLANS	220
DESIGN	1
CONSTRUCTION	1,778
EQUIPMENT	1
TOTAL FUNDING	2,000C

PSD408 - KAUAI COMMUNITY CORRECTIONAL CENTER**5. P9305 KAUAI COMMUNITY CORRECTIONAL CENTER, KAUAI**

PLANS FOR ADDITIONAL HOUSING TO
ACCOMMODATE 80 MEDIUM-SECURITY
DETENTION BEDSPACES ALONG WITH RELATED
SUPPORT SPACES. CONVERSION OF INTERIOR
SPACES WITHIN THE MAIN BUILDING TO
ALLOW FEMALE INMATES TO BE
ACCOMMODATED.

PLANS	350
TOTAL FUNDING	350C

PSD900 - GENERAL ADMINISTRATION**6. NEW CORRECTIONAL FACILITY, HAWAII**

PLANS FOR A SITE SELECTION AND
FEASIBILITY STUDY OF A NEW 1,000 BED
CORRECTIONAL FACILITY ON THE BIG ISLAND.

PLANS	250
TOTAL FUNDING	250C

LNR810 - PREVENTION OF NATURAL DISASTERS**7. WAILUPE STREAM FLOOD CONTROL PROJECT, OAHU PLANS AND DESIGN FOR
A SOIL STABILIZATION AND FLOOD CONTROL FEASIBILITY STUDY FOR
WAILUPE STREAM.**

PLANS	10
DESIGN	410
TOTAL FUNDING	420C

DEF110 - AMELIORATION OF PHYSICAL DISASTERS

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)						
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F			
8. HS-DOD HEALTH AND SAFETY REQUIREMENTS, STATEWIDE										
PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS OF DISASTER WARNING AND COMMUNICATION DEVICES, ALSO INCLUDES IMPROVEMENTS TO NATIONAL GUARD ARMORIES TO MEET OSHA DEFICIENCIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.										
		PLANS			2					
		LAND			2					
		DESIGN			111					
		CONSTRUCTION			1,010					
		EQUIPMENT			320					
		TOTAL FUNDING	AGS		1,245C		C			
			AGS		200N		N			
9. A-26 WAIWAIA ARMY NATIONAL GUARD ARMORY ADDITION, OAHU										
DESIGN AND CONSTRUCTION FOR AN ADDITION AND UPGRADING OF THE EXISTING WAIWAIA ARMORY. ADDITION WILL BE A 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			310					
		CONSTRUCTION			6,659					
		TOTAL FUNDING	AGS		2,402C		C			
			AGS		4,567N		N			
10. A-33 ARMY NATIONAL GUARD ARMORY, KAUNAKAKAI, MOLOKAI										
DESIGN AND CONSTRUCTION FOR A NATIONAL GUARD ARMORY FACILITY TO INCLUDE ALL UTILITIES, ACCESS ROAD, PARKING AREAS, AND OTHER SUPPORTING FEATURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.										
		DESIGN			25					
		CONSTRUCTION			100					
		TOTAL FUNDING	AGS		25C		C			
			AGS		100N		N			

K. GOVERNMENT-WIDE SUPPORT**GOV100 - OFFICE OF THE GOVERNOR**

1. G01 PROJECT ADJUSTMENT FUND, STATEWIDE

ACT 289**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F

DESIGN FOR THE ESTABLISHMENT OF 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	1
TOTAL FUNDING	1C

GOV103 - STATEWIDE PLAN AND COORDINATION**2. SAND ISLAND MARINE EDUCATION AND TRAINING CENTER, OAHU**

PLANS, DESIGN, AND CONSTRUCTION FOR THE
SAND ISLAND MARINE EDUCATION AND
TRAINING CENTER; TO INCLUDE THE BOAT
MAINTENANCE, PHASE I; MARINE PROPULSION
FACILITY, PHASE II; AND ASSOCIATED
INFRASTRUCTURE AND OTHER IMPROVEMENTS.

PLANS	1
DESIGN	399
CONSTRUCTION	4,500
TOTAL FUNDING	4,900C

3. ROOSEVELT/STEVENSON AND LINCOLN RECREATIONAL COMPLEX, OAHU

PLANS FOR THE ROOSEVELT/STEVENSON AND
LINCOLN RECREATION COMPLEX MASTER
PLAN.

PLANS	100
TOTAL FUNDING	100C

BED104 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY**4. H73 KAKAAKO WATERFRONT PARK, OAHU**

PLANS, LAND ACQUISITION AND DESIGN FOR
THE DEVELOPMENT OF A WATERFRONT PARK,
RECREATIONAL FACILITIES ON THE FORT
ARMSTRONG-KEWALO PENINSULA, AND THE
RELOCATION OF EXISTING USERS AND
FACILITIES IN THE KAKAAKO WATERFRONT.

PLANS	1
LAND	7,700
DESIGN	1,199
TOTAL FUNDING	8,900C

5. HCD001 KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, OAHU

PLANS, LAND ACQUISITION, DESIGN, AND
CONSTRUCTION FOR PLANNING, DEVELOPMENT
AND PROJECT COSTS, AS DEFINED IN CHAPTER
206E, HAWAII REVISED STATUES, FOR
KAKAAKO COMMUNITY DEVELOPMENT
DISTRICT. FUNDS MAY BE USED TO MATCH
FEDERAL AND NON-STATE FUNDS, AS MAY BE
AVAILABLE.

PLANS	2,432	2,499
LAND	1	1

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		DESIGN			1		1
		CONSTRUCTION			1		1
		TOTAL FUNDING	BED		2,435C		2,502C

6. KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, INCREMENTS 2 AND 3, OAHU

LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE ROADWAY, DRAINAGE, SEWER, WATER, ELECTRICAL, TELEPHONE, AND CABLE TELEVISION SYSTEM.

LAND	1		
DESIGN		1	
CONSTRUCTION		9,998	
TOTAL FUNDING	BED	10,000C	C

LNR101 - PUBLIC LANDS MANAGEMENT

7. E85 INDUSTRIAL PARKS, STATEWIDE

PLANS FOR FEASIBILITY AND DEVELOPMENT STUDIES FOR THE DEVELOPMENT OF INDUSTRIAL PARKS STATEWIDE.

PLANS	1,200		
TOTAL FUNDING	LNR	1,200B	B

8. E58 WAIKIKI SEAWALL WALKWAY REHABILITATION, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR THE REHABILITATION AND RENOVATION OF EXISTING SEAWALL WALKWAY TO INCLUDE THE INSTALLATION AND REPAIR OF RAILINGS.

PLANS	10		
DESIGN	35		
CONSTRUCTION	500		
TOTAL FUNDING	LNR	545B	B

9. RESIDENTIAL SUBDIVISION FOR HAWAII STATE HOSPITAL AND FEE SIMPLE LOTS, OAHU

PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE SUBDIVISION OF THE PROPERTY INTO STATE HOSPITAL DOCTORS' RESIDENCES AND FEE SIMPLE RESIDENTIAL LOTS TO FIRST TIME HOMEBUYERS.

PLANS	1		
LAND		1	
DESIGN		50	
CONSTRUCTION		598	
TOTAL FUNDING	LNR	650C	C

AGS203 - RISK MANAGEMENT

10. C104 HURRICANE INIKI RELIEF, KAUAI

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ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REPLACEMENT OF STATE BUILDINGS TOTALLY DESTROYED BY HURRICANE INIKI WITH IN-KIND AND UPGRADED STRUCTURES.					
		DESIGN		1,026			
		CONSTRUCTION		9,221			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	10,248W			W

AGS221 - CONSTRUCTION**11. B27 ADVANCE PLANNING, STATEWIDE**

PLANS FOR THE PROVISION OF ASSISTANCE TO THE PUBLIC, STATE AND COUNTIES IN MATTERS RELATING TO PUBLIC WORKS DIVISION. IT INCLUDES PREPARATION OF REPORTS, STUDIES, INVENTORIES, REVIEWS AND PERFORMANCE OF ALL NECESSARY ACTIVITIES TO CARRY OUT DAGS FUNCTIONS.

PLANS	300	300
TOTAL FUNDING	AGS	300C

12. A39B KAUNAKAKAI CIVIC CENTER, PHASE IIB, MOLOKAI

CONSTRUCTION AND EQUIPMENT FOR INTERIOR IMPROVEMENTS AND OTHER RELATED AREAS OF THE KAUNAKAKAI CIVIC CENTER, PHASE IIB.

CONSTRUCTION	1,770	
EQUIPMENT		30
TOTAL FUNDING	AGS	30C

13. HS-AGS HEALTH AND SAFETY REQUIREMENTS, STATEWIDE

DESIGN AND CONSTRUCTION FOR MITIGATION OF HAZARDOUS MATERIALS FROM STATE FACILITIES, STATEWIDE.

DESIGN	160	
CONSTRUCTION	101	
TOTAL FUNDING	AGS	261C

14. C10409 STATE CAPITOL DIST ASBESTOS MITIGATION, AIR COND, AND OTHER IMPROVEMENTS, OAHU

CONSTRUCTION FOR THE MITIGATION OF ASBESTOS CONTAINING MATERIALS IN THE STATE CAPITOL. REMOVE THE ASBESTOS CONTAMINATED JOINT COMPOUND IN GYPSUM BOARD WALLS AND REPLACE WITH NON-ASBESTOS MATERIAL. THE WORK MAY REQUIRE THE REMOVAL AND REPLACEMENT OF OTHER WALL COMPONENTS SUCH AS GYPSUM BOARD, SOUND BOARD, WALL STUDS, CONDUITS, ETC.

CONSTRUCTION	2,518	
TOTAL FUNDING	AGS	2,518C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
15.	C10410	STATE CAPITOL BUILDING, OAHU					
		PLANS, DESIGN, AND EQUIPMENT FOR INTERIOR SPACE PLANNING/DESIGN TO ACCOMMODATE THE RELOCATION OF STAFF TO THE STATE CAPITOL BUILDING, CAPITOL CENTER, AND LEIOPAPA A KAMEHAMEHA BUILDING. THE WORK INCLUDES SPACE ASSIGNMENTS, MOVE-BACK COORDINATION, FURNITURE AND EQUIPMENT LAYOUTS, AND OTHER RELATED TASKS.					
		PLANS			1		
		DESIGN			1,383		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		1,385C		C
16.		HAWAII THEATRE CENTER RESTORATION AND RENOVATION, OAHU					
		CONSTRUCTION FOR THE RESTORATION AND RENOVATION OF THE HAWAII THEATRE CENTER, TO BE EXPENDED BY THE HAWAII THEATRE CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42D, HRS.					
		CONSTRUCTION			2,000		
		TOTAL FUNDING	AGS		2,000C		C
SUB201 - CITY AND COUNTY OF HONOLULU							
17.		MOANALUA ROAD, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO MOANALUA ROAD.					
		LAND			1		
		DESIGN			375		
		CONSTRUCTION			1,750		
		TOTAL FUNDING	CCH		2,126C		C
SUB301 - COUNTY OF HAWAII							
18.		ALENAIO FLOOD CONTROL, HAWAII					
		CONSTRUCTION FOR A FLOOD CONTROL SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL/AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			4,500		
		TOTAL FUNDING	COH		4,500C		C
19.		OLD KONA AIRPORT PARK CANOE SHEDS AND CLUBHOUSES, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS AND IMPROVEMENTS FOR THE OLD KONA AIRPORT PARK CANOE SHEDS AND/ OR CLUBHOUSES.					
		DESIGN			1		
		CONSTRUCTION			498		
		EQUIPMENT			1		

ACT 289**CAPITAL IMPROVEMENT PROJECTS**

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
		TOTAL FUNDING	COH		500C		C
20.	KOHALA WATER SYSTEM, HAWAII	PLANS, DESIGN, AND CONSTRUCTION FOR WELLS, RESERVOIRS AND TRANSMISSION PIPELINE AND OTHER INCIDENTAL AND APPURTENANT WORK.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			998		
		TOTAL FUNDING	COH		1,000C		C
21.	PUUKAPU WELL DEVELOPMENT AND WATER SYSTEM, HAWAII	DESIGN AND CONSTRUCTION FOR WELL DEVELOPMENT AND WATER SYSTEM FOR THE RESIDENTIAL HOME LOTS AT PUUKAPU.					
		DESIGN			10		
		CONSTRUCTION			800		
		TOTAL FUNDING	COH		810C		C
SUB401 - COUNTY OF MAUI							
22.	MAUI COMMUNITY ARTS AND CULTURAL CENTER, MAUI	DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MAUI COMMUNITY ARTS AND CULTURAL CENTER.					
		DESIGN			1		
		CONSTRUCTION			998		
		EQUIPMENT			1		
		TOTAL FUNDING	COM		1,000C		C
23.	LOWER KULA WATER SYSTEM, MAUI	DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE PIIHOLO RESERVOIR AND RELATED IMPROVEMENTS FOR THE LOWER KULA WATER SYSTEM. PROJECT SHALL INCLUDE WATER IMPROVEMENTS FOR AGRICULTURE, HAWAIIAN HOME LANDS, AND OTHER STATE PROJECTS.					
		DESIGN			200		
		CONSTRUCTION			1,800		
		TOTAL FUNDING	COM		2,000C		C
24.	FRONT STREET INFRASTRUCTURE IMPROVEMENTS IN LAHAINA, MAUI	DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE EXISTING INFRASTRUCTURE IN LAHAINA'S HISTORIC DISTRICT.					
		DESIGN			200		
		CONSTRUCTION			800		
		TOTAL FUNDING	COM		1,000C		C
SUB501 - COUNTY OF KAUAI							

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1993-94	M O F	FISCAL YEAR 1994-95	M O F
25.	KOLOA REFUSE TRANSFER STATION, KAUAI						
	PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A SOLID WASTE TRANSFER STATION MAKAI OF KOLOA ROAD.						
	PLANS			1		1	
	LAND			996		1	
	DESIGN			1		1	
	CONSTRUCTION			1			
	EQUIPMENT			1		200	
	TOTAL FUNDING	COK		1,000C		2,000C	
26.	EMERGENCY HOUSING, KAUAI						
	PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR EMERGENCY HOUSING ON KAUAI.						
	PLANS			1		1	
	LAND			650		550	
	DESIGN			347		1	
	CONSTRUCTION			1		447	
	EQUIPMENT			1		1	
	TOTAL FUNDING	COK		1,000C		1,000C	
27.	MOLOAA FARMERS COOPERATIVE, KAUAI						
	DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MOLOAA FARMER'S COOPERATIVE PACKING HOUSE.						
	DESIGN			1			
	CONSTRUCTION			33			
	EQUIPMENT			1			

PART V. CAPITAL IMPROVEMENTS PROGRAM PROVISIONS

SECTION 128. Provided that in the implementation of capital improvements program projects funded by the state educational facilities improvement special fund, the 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 129. After the objectives of appropriations made in this Act for capital improvements program purposes from the state educational facilities improvement special fund have been met, any unrequired balances shall be transferred to the special fund project adjustment fund for state educational facilities appropriated in Part II and described further in Part IV, and shall be considered a supplemental appropriation.

SECTION 130. In the event that currently authorized appropriations specified for capital improvements program purposes listed in this Act or in any other

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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 fund project adjustment fund for state educational facilities appropriated in Part II and described further in Part IV; 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.

SECTION 131. Provided that of the general obligation bond fund and special fund appropriations for school based budgeting (EDN 100), all Federal Emergency Management Agency (FEMA) fund amounts related to the upgrade of department of education facilities destroyed by hurricane Iniki shall be deposited into the general fund as FEMA funds become available.

SECTION 132. Provided that of the general obligation bond fund appropriation for the University of Hawaii at Hilo (UOH 210), the sum of \$3,000,000 for fiscal year 1993-1994 shall be used for plans, design, and construction for infrastructure improvements at the university park; provided further that the improvements shall include a two lane roadway in each direction with median; provided further that this roadway shall connect the university park to Kawili street; and provided further that funds may be used for the relocation of existing facilities affected by this project.

SECTION 133. Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 6, is amended:

(1) By amending Item C-42 to read:

"42. R63 PUULOA ROAD-KAMEHAMEHA HIGHWAY TO PELTIER AVENUE, OAHU

LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR WIDENING THE EXISTING TWO-LANE FACILITY FROM KAMEHAMEHA HIGHWAY TO SALT LAKE BOULEVARD.
(SPECIAL FUNDS FROM DUTY FREE)

LAND	2,500	
<u>DESIGN</u>		416
<u>CONSTRUCTION</u>	[4,000]	3,584
TOTAL FUNDING TRN	2,500 B	4,000 B"

(2) By amending Item C-60 to read:

"60. TO9 KANOELIHUA AVENUE WIDENING BETWEEN KAMEHAMEHA AVE AND PUAINAKO ST, HAWAII

LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR AN ADDITIONAL LANE NORTHBOUND TO RELIEVE TRAFFIC CONGESTION AND PROVIDE A LANE FOR THRU TRAFFIC AND TURNING MOVEMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND OR REIMBURSEMENT.
(SPECIAL FUNDS FROM DUTY FREE)

<u>LAND</u>		<u>180</u>
<u>DESIGN</u>	70	<u>300</u>
<u>CONSTRUCTION</u>		<u>6,528</u>
<u>TOTAL FUNDING TRN</u>	[2,007]	<u>2,007 B</u>
<u>TRN</u>	<u>N</u>	<u>5,001 N'</u>

(3) By amending Item E-14 to read:

"14. FRIENDSHIP HOUSE, KAUAI
PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION
FOR THE FRIENDSHIP HOUSE ON KAUAI.

<u>PLANS</u>	1	
<u>LAND</u>	<u>1</u>	
<u>DESIGN</u>	<u>1</u>	
<u>CONSTRUCTION</u>	[1,198]	<u>1,197</u>
<u>TOTAL FUNDING AGS</u>		<u>1,200C</u>

C"

(4) By amending Item G-83 to read:

"83. WAIAKEA ELEMENTARY SCHOOL, HAWAII

CONSTRUCTION AND EQUIPMENT FOR A SIX CLASSROOM
BUILDING AT WAIAKEA ELEMENTARY SCHOOL.

<u>CONSTRUCTION</u>	[2,000]	<u>1,999</u>	
<u>EQUIPMENT</u>		<u>1</u>	
<u>TOTAL FUNDING AGS</u>		<u>2,000C</u>	C"

(5) By amending Item G-84 to read:

"84. KAUAI ENVIRONMENTAL EDUCATION FACILITY/CAMP,
KAUAI

PLANS, [AND] DESIGN, AND CONSTRUCTION FOR AN ENVIRONMENTAL EDUCATION FACILITY/CAMP ON KAUAI.

<u>PLANS</u>	20	
<u>DESIGN</u>	[130]	<u>24</u>
<u>CONSTRUCTION</u>		<u>106</u>
<u>TOTAL FUNDING AGS</u>		<u>150C</u>

C"

(6) By amending Item G-122 to read:

"122. 042 UHM, COLLEGE OF EDUCATION COMPLEX, [PHASE I,]
OAHU

CONSTRUCTION FOR THE COLLEGE OF EDUCATION COMPLEX[, PHASE I,] INCLUDING LABORATORY SCHOOL FACILITIES FOR THE PRESCHOOL, THE ELEMENTARY, AND HIGH SCHOOLS, ALSO, FOR DEMOLITION, RENOVATION, RELOCATION OF FACILITIES FOR PROGRAMS AFFECTED BY THIS PROJECT. THIS PROJECT WILL BE IMPLEMENTED IN INCREMENTS AS FUNDS BECOME AVAILABLE. THIS PROJECT IS

DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		16,000
TOTAL FUNDING AGS	C	11,000 C
AGS	N	5,000 N"

(7) By amending Item K-25 to read:

"25. A48 LIHUE MULTI-AGENCY MAINTENANCE AND SERVICE FACILITY, KAUAI

CONSTRUCTION AND EQUIPMENT FOR A MULTI-AGENCY MAINTENANCE AND SERVICE FACILITY FOR KAUAI STATE AND COUNTY AGENCIES, INCLUDING SEWER, WATER LINE, AND OTHER INFRASTRUCTURE IMPROVEMENTS.

CONSTRUCTION	[1,690]	<u>1,689</u>	
<u>EQUIPMENT</u>		1	
TOTAL FUNDING AGS		1,690C	C"

SECTION 134. Any law to the contrary notwithstanding, the appropriations under Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 6, authorizing general funds in the amounts indicated or balances thereof, are hereby amended to read as follows:

<u>"Item No.</u>	<u>Amount (MOF)</u>
HMS 229-13A	\$ 1,000,000 [A] C
HMS 229-13B	4,760,000 [A] C
HMS 229-13C	2,360,000 [A] C
BUF 225-14	12,750,000 [A] C
BUF 225-17	770,000 [A] C
BUF 225-18	1,595,798 [A] C
BUF 225-18A	28,000,000 [A] C
GOV 602-28A	973,000 [A] C
GOV 602-28B	174,000 [A] C
EDN 105-91A	24,000 [A] C
EDN 204-97A	150,000 [A] C
EDN 204-97B	230,000 [A] C
PSD 403-2	1,387,000 [A] C
PSD 405-4A	3,450,000 [A] C
PSD 405-4B	35,000 [A] C
PSD 406-5	2,500,000 [A] C
PSD 406-5A	1,612,000 [A] C
PSD 407-6A	4,125,000 [A] C
PSD 408-7A	500,000 [A] C
PSD 409-7B	570,000 [A] C
GOV 100-1	1,000 [A] C
SUB 201-32	7,000,000 [A] C
SUB 201-34A	300,000 [A] C
SUB 301-37	310,000 [A] C

<u>"Item No.</u>	<u>Amount (MOF)</u>
SUB 301-39A	800,000 [A] C
SUB 301-39B	1,200,000 [A] C
SUB 301-39C	120,000 [A] C
SUB 301-39D	189,000 [A] C
SUB 401-41A	5,000,000 [A] C
SUB 401-41B	2,000,000 [A] C
SUB 401-41C	50,000 [A] C
SUB 501-44A	2,000,000 [A] C
SUB 501-44B	301,000 [A] C
SUB 501-44C	326,000 [A] C"

SECTION 135. Any law to the contrary notwithstanding, the appropriations under Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 6, in the amounts indicated or balances thereof are hereby lapsed:

<u>"Item No.</u>	<u>Amount (MOF)</u>
BED 120-15	\$ 400,000 C
BED 120-16	750,000 C
TRN 501-58I	36,900,000 E
TRN 511-65E	24,500,000 E
TRN 531-72B	40,000,000 E
TRN 541-72F	300,000 B
TRN 561-87	200,000 B
TRN 561-89B	30,800,000 E
HTH 420-15	550,000 C
EDN 105-75	250,000 C
EDN 105-80	100,000 C
EDN 105-90	800,000 C
EDN 105-91D	400,000 A
LNR 806-26	10,000 C
PSD 900-8	150,000 C
PSD 900-11A	500,000 A
PSD 900-11B	5,300,000 A
BUF 131-7	300,000 C
BUF 161-10	19,000 C
BUF 161-12	100,000 C"

SECTION 136. Any law to the contrary notwithstanding, the appropriations under Act 316, Session Laws of Hawaii 1992, section 10, in the sum of \$13,880,000 in general revenues or the balance thereof is hereby lapsed.

SECTION 137. Any law to the contrary notwithstanding, the appropriations under Act 317, Session Laws of Hawaii 1991, section 2, in the amounts indicated or balances thereof are hereby lapsed:

<u>"Item No.</u>	<u>Amount (MOF)</u>
TRN 501-2	\$ 167,000 C
TRN 501-3	28,000 C
TRN 501-4	26,000 C
HTH 211-1	10,000 C

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<u>"Item No.</u>	<u>Amount (MOF)</u>
HTH 214-2	35,000 C
HTH 907-7	15,000 C
EDN 105-17	18,000 C
EDN 105-19	15,000 C
EDN 105-24	35,000 C
EDN 105-25	14,000 C
EDN 105-28	19,000 C
EDN 105-31	18,000 C
EDN 105-36	10,000 C
EDN 105-41	30,000 C
EDN 105-42	4,000 C
EDN 105-58	5,000 C
EDN 105-62	50,000 C
EDN 105-63	42,000 C
EDN 105-65	21,586 C
EDN 105-70	64,000 C
EDN 105-78	140,000 C
EDN 105-86	20,000 C
EDN 105-90	28,000 C
EDN 105-91	10,000 C
EDN 105-93	28,000 C
EDN 204-113	16,000 C
EDN 204-117	15,000 C
EDN 204-120	80,000 C
EDN 204-121	29,782 C
EDN 204-124	150,000 C
EDN 305-129	10,000 C
EDN 305-130	2,000 C
EDN 305-137	70,000 C
EDN 306-140	45,000 C
EDN 307-154	28,035 C
EDN 307-164	5,000 C
UOH 215-169	10,000 C
UOH 332-171	60,000 C
AGS 881-1	250,000 C
AGS 221-2	100,000 C
AGS 221-4	5,000 C
SUB 301-10	45,000 C"

SECTION 138. Any law to the contrary notwithstanding, the appropriations under Act 316, Session Laws of Hawaii 1989, section 222, as amended and re-numbered by Act 299, Session Laws of Hawaii 1990, section 6, in the amounts indicated or balances thereof are hereby lapsed:

<u>"Item No.</u>	<u>Amount (MOF)</u>
BED 120-12	\$ 489,000 C
TRN 903-34A	84,000 C
HTH 907-17	118,000 C
HMS 220-3	32,126 A
HMS 220-9	1,000 A
HMS 220-13	1,240 A
HMS 220-14	1,850 A

<u>"Item No.</u>	<u>Amount (MOF)</u>
HMS 220-15	4,950 A
HMS 220-16	1,350 A
HMS 220-18	775 A
TRN 801-23	50,000 C
GOV 103-5	53,547 C
GOV 103-5	356,805 A"

SECTION 139. Any law to the contrary notwithstanding, the appropriations under Act 314, Session Laws of Hawaii 1989, section 2, in the amounts indicated or balances thereof are hereby lapsed:

<u>"Item No.</u>	<u>Amount (MOF)</u>
EDN 105-191	\$ 17,561 C
EDN 204-215	45,089 C
EDN 204-219	11,032 C
EDN 204-225	58,899 C"

SECTION 140. 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 balances thereof are hereby lapsed:

<u>"Item No.</u>	<u>Amount (MOF)</u>
LNR 806-21	\$ 873 C
LNR 806-25	3,900 C
LNR 809-62	489 C"

SECTION 141. Any law to the contrary notwithstanding, the appropriations under Act 300, Session Laws of Hawaii 1985, section 136, as amended and renumbered by Act 345, Session Laws of Hawaii 1986, section 6, in the amounts indicated or balances thereof are hereby lapsed:

<u>"Item No.</u>	<u>Amount (MOF)</u>
PED 120-11	\$ 352,000 C
LNR 806-37	21,895 C
LNR 806-41	18,133 C"

SECTION 142. Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 187.9, is amended to read as follows:

"SECTION 187.9. [Any provision of this Act to the contrary notwithstanding,] Provided that if the amount specified for any capital improvement project in the State educational facilities capital improvement special fund, formal education, Part G, is not required to complete the work of such project, such unrequired amounts may be expended with the approval of the Governor for any or all of the following projects and purposes, up to the amount specified:

- [1] Mokapu elementary school, Oahu
\$3,140,000 for design and construction for classrooms, equipment, site improvements, and appurtenances.]

- (1) Enchanted lake elementary school, Oahu
\$205,000 for design, construction, and equipment for air conditioning improvements and other related work.
- (2) Lokelani intermediate school, Maui
\$2,500,000 for design and construction for P.E. locker/shower, site improvements, playcourt, site improvements, and equipment.
- (3) Waimea elementary and intermediate school, Hawaii
\$2,100,000 for design and construction for the expansion of the cafeteria.
- (4) Keaau elementary and intermediate school, Hawaii
\$150,000 for design and construction of cafeteria, serving kitchen, dining room, site improvements, and equipment.
- (5) Nanakuli high and intermediate school, Oahu
\$3,100,000 for design and construction of cafeteria/multipurpose room, site improvements, and equipment.
- (6) Hilo high school, Hawaii
\$1,500,000 for plans, design, and construction for the renovation and extension of the library and multi-purpose room.
- (7) Castle high school, Oahu
\$2,600,000 for design, construction, and equipment for the gymnasium, site improvements, equipment, and appurtenances."

PART VI. ISSUANCE OF BONDS

SECTION 143. 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 improvements program 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 improvements program projects with general obligation reimbursable bond funds, when the expenditure of such general obligation reimbursable bond funds is deemed appropriate for the project.

SECTION 144. AIRPORT REVENUE BONDS. The department of transportation is authorized to issue airport revenue bonds for airport capital improvements program projects authorized in Part II and listed in Part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with the debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such airport revenue bonds during the estimated period of construction of the capital improvements program project for which such airport revenue bonds are issued, to establish, maintain, or increase reserves for such airport revenue bonds or airport revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay all or any part of the expenses related to the issuance of such airport revenue 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 of and interest on such airport revenue bonds, to the extent not paid from the proceeds of such airport revenue bonds, shall be payable from and secured by the revenues derived from airports and related

facilities under the ownership of the State or operated and managed by the department and from the aviation fuel taxes levied and paid pursuant to sections 243-4(a)(2) and 248-8, Hawaii Revised Statutes, or such part of either thereof as the department may determine, including rents, landing fees, and other fees or charges currently 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 related to the issuance of such airport revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the airport revenue fund.

The governor, in his discretion, is authorized to use moneys in the airport revenue fund to finance those airport capital improvements program projects authorized in Part II and listed in Part IV of this Act where the method of financing is designated to be by revenue bond funds.

SECTION 145. HARBOR REVENUE BONDS. The department of transportation is authorized to issue harbor revenue bonds for harbor capital improvements program projects authorized in Part II and listed in Part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with the debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such harbor revenue bonds during the estimated period of construction of the capital improvements program project for which such harbor revenue bonds are issued, to establish, maintain, or increase reserves for such harbor revenue bonds or harbor revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay all or any part of the expenses related to the issuance of such harbor revenue 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 of and interest on such harbor revenue bonds, to the extent not paid from the proceeds of such harbor revenue bonds, shall be payable from and secured by the revenues derived from harbors and related facilities under the ownership of the State or operated and managed by the department, including rents, mooring, wharfage, dockage, and pilot fees, and other fees or charges currently or hereafter derived from or arising through the ownership, operation, and management of harbors and related facilities and the furnishing and supplying of the services thereof. The expenses related to the issuance of such harbor revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the harbor special fund.

The governor, in his discretion, is authorized to use moneys in the harbor special fund to finance those harbor capital improvements program projects authorized in Part II and listed in Part IV of this Act where the method of financing is designated to be revenue bond funds.

SECTION 146. HIGHWAY REVENUE BONDS. The department of transportation is authorized to issue highway revenue bonds for highway capital improvements program projects authorized in Part II and listed in Part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond fund with the debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such highway revenue bonds during

the estimated period of construction of the capital improvements program project for which such highway revenue bonds are issued, to establish, maintain, or increase reserves for such highway revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay all or any part of the expenses related to the issuance of such highway revenue bonds. The aforementioned highway revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on such highway revenue bonds, to the extent not paid from the proceeds of such highway revenue bonds, shall be payable from and secured by the revenues derived from highways and related facilities under the ownership of the State or operated and managed by the department, and from the highway fuel taxes, vehicle weight taxes, and vehicle registration fees, levied and paid pursuant to sections 243-4, 248-8, 249-31, and 249-33, Hawaii Revised Statutes, and federal moneys received by the State or any department thereof which are available to pay principal of and/or interest on indebtedness of the State, or such part of any thereof as the department may determine, and other user taxes, fees or charges currently or hereafter derived from or arising through the ownership, operation, and management of highways and related facilities and the furnishing and supplying of the services thereof. The expenses related to the issuance of such highway revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the State highway fund.

The governor, in his discretion, is authorized to use moneys in the State highway fund to finance those highway capital improvements program projects authorized in Part II and listed in Part IV of this Act where the method of financing is designated to be by revenue bond funds.

SECTION 147. HOSPITAL REVENUE BONDS. The department of health is authorized to issue hospital revenue bonds for hospital capital improvements program projects authorized in Part II and listed in Part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with the debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such hospital revenue bonds during the estimated period of construction of the capital improvements program project for which such hospital revenue bonds are issued, to establish, maintain, or increase reserves for such hospital revenue bonds, and to pay all or any part of the expenses related to the issuance of such hospital revenue bonds. The aforementioned hospital revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on such hospital revenue bonds, to the extent not paid from the proceeds of such hospital revenue bonds, shall be payable from and secured by the revenues derived from one or more public health facility and related facilities under the ownership of the State or operated and managed by the department, and from federal moneys received by the State or any department thereof which are available to pay principal of and/or interest on indebtedness of the State, or such part of any thereof as the department may determine, including other rates, rents, fees or charges currently or hereafter derived from or arising through the ownership, operation, and management of hospitals and related facilities and the furnishing and supplying of the services thereof. The expenses related to the issuance of such hospital revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the facility administration fund of the department.

SECTION 148. CONVENTION CENTER REVENUE BONDS. The Convention Center Authority is authorized to issue convention center revenue bonds for capital improvements program projects authorized in Part II and listed in Part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with the debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and, if so determined by the authority and approved by the governor, such additional principal amount as may be deemed necessary by the authority to pay interest on such convention center revenue bonds during the estimated period of construction of the capital improvements program project for which such convention center revenue bonds are issued, to establish, maintain, or increase reserves for such convention center revenue bonds, and to pay all or any part of the expenses related to the issuance of such convention center revenue bonds. The aforementioned convention center revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on such convention center revenue bonds, to the extent not paid from the proceeds of such convention center revenue bonds, shall be payable from and secured by the revenues derived from a convention center facility or facilities and related facilities under the ownership of the State or operated and managed by the authority, and other rates, rents, fees or charges currently or hereafter derived from or arising through the ownership, operation, and management of convention center facilities and related facilities and the furnishing and supplying of the services thereof.

PART VII. SPECIAL PROVISIONS

SECTION 149. 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 obligations 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; provided further that the legislature shall, under procedures established in section 10 of article III of the Hawaii State Constitution, meet in special session to comply with 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 150. 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 University of Hawaii at Manoa, programs shall be appropriately reduced by the amounts such receipts exceed the federal funds authorized in each year of fiscal biennium 1993-1995.

SECTION 151. 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

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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, 1993 to June 30, 1995. 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 152. 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 agency; provided further that the governor shall submit a report of all such transfers to the legislature no less than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 153. 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 article VIII of the Hawaii State Constitution, such authorization shall be void and, in the case of capital improvements program project 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 154. 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 hereby 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 155. Unless otherwise provided in this Act, the governor is authorized to transfer funds between appropriations within an expending agency for operating purposes; provided further that such transfers shall be authorized only for fiscal year 1993-1994; and provided further that the governor shall submit a report on all such transfers no later than twenty days prior to the convening of 1994 regular session.

SECTION 156. 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; provided further that this transfer flexibility shall be authorized only for fiscal year 1993-1994; and provided further that the governor shall submit a report on all such transfers no later than twenty days prior to the convening of the 1994 regular session.

SECTION 157. 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; provided further that such gubernatorial exemptions shall be reported to the legislature within ten days of each occurrence; provided further that summary reports shall be submitted to the legislature which detail all adjustments as of December 31 and June 30 of each fiscal year.

SECTION 158. 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; provided further that when program savings are utilized pursuant to this section, the governor shall submit a report to the legislature no later than ten days after each such transfer.

SECTION 159. Provided that, of the respective appropriation for each principal state department as defined by section 26-4, Hawaii Revised Statutes, the sum of \$7,500 for each year of fiscal biennium 1993-1995 shall be made available in each department to be established as a separate account for a protocol fund to be expended at the discretion of the executive heads of such departments which are respectively known as its directors, chairpersons, comptroller, adjutant-general, superintendent, president and attorney general.

SECTION 160. The governor is hereby authorized to establish two permanent positions during each year of the fiscal biennium 1993-1995 to be allocated by the governor to any of the program areas included in this Act as the governor shall deem proper, provided that the governor shall submit a report to the legislature on the creation of all such positions no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 161. The governor is hereby authorized to establish two positions in each year of the fiscal biennium 1993-1995 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; provided further that the governor shall submit a report to the legislature on the creation of all such positions no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 162. Where any agency is authorized by general law 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 agency with the governor's approval, shall have the power to enter into such undertaking, provided that the provisions of this section are consistent with State Constitutional and statutory requirements.

SECTION 163. 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-

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governmental agency. This credit shall be applicable regardless of when such acquisition takes place.

SECTION 164. Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital improvements program 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 1993-1995 which are unencumbered as of June 30, 1996, shall lapse as of that date; provided further that this lapsing date shall not apply to the appropriations for the projects described in section 127 of this Act 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 165. With the approval of the governor, designated expending agencies for capital improvements program projects 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; provided further that summary reports shall be submitted to the legislature which detail all delegated projects as of December 31 and June 30 for each fiscal year.

SECTION 166. All general obligation bond funds used for highway, harbor, boating, airport, parking facilities, land development capital improvements program projects, 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 and housing projects shall be reimbursed, as provided by section 174-21 and chapter 201E, Hawaii Revised Statutes, respectively.

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 the funds; provided that the governor shall submit a report to the legislature no later than ten days after each such change in the method of financing for such projects.

SECTION 167. Where county capital improvements program 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 168. Except as otherwise provided by general law, negotiations for the purchase of land by state agencies shall be subject to the approval of the governor and the department of land and natural resources. Private lands may be acquired for the purpose of exchange for federal lands when the department of land and natural resources and the governor determine that such acquisition and exchange are necessary for the completion of any projects authorized by this Act.

SECTION 169. After the objectives of appropriations made in this Act from the general obligation bond fund or the general fund for capital improvements

program projects 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, 1996, as provided in section 164 of this Act.

SECTION 170. In the event that currently authorized appropriations specified for capital improvements program projects listed in this Act or in any other act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the general obligation bond fund 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 the 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 171. Any law or any provision to the contrary notwithstanding, the governor may supplement funds for any cost element for a capital improvements program project authorized under this Act by transferring such sums as may be needed from the funds appropriated for other cost elements of the same project by this Act or by any other prior or future act which have not lapsed, provided that the total expenditure of funds for all cost elements for the project shall not exceed the total appropriations for that project.

SECTION 172. In the event that the amount specified for a capital improvements program 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; and provided further that the governor shall submit a report to the legislature on all such supplemental allotments no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 173. The governor may authorize the expenditure of funds for capital improvements program projects not previously authorized in this Act to cope with the effects of recession, unemployment, natural disasters, unforeseen emergencies, and for any federal aid portion of any capital improvements program project described in this Act where application for such aid has been made and approval has been denied; provided that the effects of recession, unemployment, natural disaster, 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.

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SECTION 174. The governor is authorized to transfer savings as may be available from the appropriated funds of any programs in this Act to supplement the appropriation for any other program in this Act to cope with the effects of recession, unemployment, natural disasters, and other unforeseen emergencies; provided that the effects of recession, unemployment, natural disaster, or such emergencies create an urgent need to pursue a course of action which is in the best interest of the State.

SECTION 175. 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 improvements program project described in this Act, the governor may authorize such reduction or project scope.

SECTION 176. In the event that requirements associated with the removal of asbestos such as rental, renovation, and moving costs, exceed appropriations made for such purpose, the comptroller with the approval of the governor or the director of finance, if so delegated, is authorized to utilize savings from appropriations in this Act to meet such purposes.

SECTION 177. In releasing funds for capital improvements program projects, the governor shall consider the legislative intent and the objectives 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 178. Provided that in order to ensure that the state executive departments are appropriately and efficiently expending funds for computer systems, information systems and information/communication technology projects under this Act, all departments shall issue a request for proposal (RFP) and invitation for bid in order to select consultants for such applications when the system or project cost is over \$100,000; provided further that the information and communication services division (ICSD) of the department of budget and finance shall review all requests for proposals prior to their release, and all consulting service contracts (CSC) prior to issuance, for the purpose of determining whether the action represents an appropriate and efficient use of funding; provided further that the division shall prepare a report which shall include, but not be limited to, the division's evaluation of and recommendation for each RFP and CSC reviewed by the division as December 31 and June 30 for each fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 1994 and 1995 legislative sessions.

SECTION 179. Provided that all executive departments shall prepare a report of all computer systems, information systems, and information/communication technology projects planned for the 1993-1995 fiscal biennium when the biennium cost is projected to exceed \$100,000; provided further that this report shall include, but not be limited to:

1. detailed project descriptions; scope; specific project phases; goals and objectives for the project and for each phase of the project;
2. budget and personnel needs for the development and maintenance of the project once completed and for each phase individually; and

3. timetables for implementation; provided further that should a revision become necessary to the planning or implementation of a project for which a report was previously submitted to the 1994 and 1995 legislature, this revision shall clearly point out the differences between the revision and the original report; provided further that the department of budget and finance shall coordinate and compile these reports and submit them to the legislature no later than twenty days prior to the convening of the 1994 and 1995 regular sessions.

SECTION 180. The department of budget and finance shall be the lead agency to coordinate the executive agencies to:

1. provide electronic access to executive budget data (such as BJ tables, FAMIS reports, and biennium or supplemental budget bill numbers, including but not limited to, base numbers and other budget data stored on computer) via computer industry standard network protocols and computer industry standard data formats (such as Lotus 123);
2. provide support to facilitate the electronic access to this data; and
3. aid in the creation of a program-to-program type interface; provided further that should the legislature deem it necessary, the department shall allow supervised on-line or other types of review of program codes, data structures, and other types of information that the legislature may deem important; provided further that the department shall offer full and complete cooperation and support to the legislature.

SECTION 181. Provided that proposed amendments to this Act pursuant to section 37-72(a), Hawaii Revised Statutes, shall be accompanied by supporting documentation; provided further that the documentation shall include, but not be limited to:

- (1) detailed descriptions and justifications for each workload and program change request;
- (2) operating cost summaries of each request, by cost elements and means of financing; and
- (3) the appropriate contact person for each request.

SECTION 182. Provided that in the supplemental budget request for fiscal year 1994-1995 for purchase of service activities, each executive agency may identify the island for which services will be contracted in separate request for proposals.

PART VIII. MISCELLANEOUS AND EFFECTIVE DATE

SECTION 183. 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 every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be expended to fulfill the objective of such appropriation to the extent possible.

SECTION 184. In the event manifest clerical, typographical or other mechanical errors are found in the Act, the governor is hereby authorized to correct such errors.

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SECTION 185. Material to be repealed is bracketed. New material in prior enacted laws is underscored.

SECTION 186. EFFECTIVE DATE. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 290

H.B. NO. 1372

A Bill for an Act Relating to Police Departments.

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

SECTION 1. Chapter 52D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§52D- Off-duty police officers; benefits for personal injuries. For the purposes of chapters 88 and 386, a police officer who is injured, disabled, or killed while actually engaged in the apprehension or attempted apprehension of law violators or suspected law violators, or in the preservation of peace, or in the protection of the rights or property of persons shall be deemed to have been injured, disabled, or killed while in the actual performance of duty, and the injury, disability, or death shall be deemed to have been caused by accident arising out of and in the course of the police officer’s employment, notwithstanding that the accident causing the injury, disability, or death occurred at a time, place, or time and place, not within the police officer’s regular tour of duty and notwithstanding that the police officer was not acting under the direction of the police officer’s superiors at the time and place of the accident; provided that the accident occurs within the jurisdiction wherein the police officer is commissioned and while the police officer is acting solely as a police officer.”

SECTION 2. New statutory material is underscored.¹

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

(Approved June 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 291

H.B. NO. 1534

A Bill for an Act Relating to Teachers.

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

SECTION 1. The legislature finds that the schools along the Waianae coast from Nanakuli to Makaha, and in the communities of Kahuku, Kau, Naalehu, Hana, Lanai, and Molokai have had long histories of excessively high teacher turnover. As such, a large proportion of the teachers in these schools are inexperienced college graduates who, out of necessity, must teach subjects in which they do not have credentials. The legislature also finds that in some communities, there are

approximately twice the number of students in every grade level who are doing below average work as compared to state and national averages. Moreover, recent statistics point out that approximately fifty per cent of the students in schools situated along the Waianae coast fail to graduate. Oftentimes graduates from these areas are unable to read, write, or compute mathematical problems. These examples of low academic achievement are reflective of the socio-economic problems of those communities having, among other characteristics, a large percentage of its residents:

- (1) Employed in low paying jobs;
- (2) Requiring government support;
- (3) Having health related problems; and
- (4) Experiencing high incidences of crime, teenage pregnancies, and single parent families.

The legislature believes that the only way to break the cycle of low academic achievement is to provide meaningful incentives for experienced and qualified teachers to accept or continue assignments at schools with high teacher turnover, and to reward teachers who excel at motivating students and raising scholastic achievement.

The purpose of this Act is to allow quality teachers to accept incentives provided by local communities for the purpose of retaining those teachers at high turnover schools.

SECTION 2. Chapter 297, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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

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

SECTION 3. New statutory material is underscored.¹

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

(Approved June 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act to Establish a Pilot Program to Create and Test a Model of Water Quality Surveying and Sampling Using Volunteers.

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

SECTION 1. The legislature finds that clean water is essential to sustaining life and has a tremendous impact on the well-being of the State. However, due to limited resources, there has been much public concern regarding the inadequacy of

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the current water quality monitoring program administered by the department of health.

The legislature also finds that along with the commitment to protect our surface and coastal waters, there must also come the recognition that our state resources are under great strain and must be utilized with great care. Accordingly, creative efforts that can maximize the rich and varied resources of the State need to be developed and implemented. In this regard, the legislature recognizes that carefully constructed programs which utilize volunteers are being implemented in many areas in the United States and are increasingly cost-effective. These programs also serve as educational alternatives to traditional methods.

The United States Environmental Protection Agency (EPA) encourages the use of volunteers in water monitoring, and has produced a practical guide, Volunteer Water Monitoring: A Guide for State Managers, to help the states implement volunteer water quality monitoring programs. At least twenty states have implemented volunteer programs.

The EPA report recommends and the legislature finds that a pilot program is a necessary starting point in a carefully designed effort towards better and more efficient water quality monitoring. The legislature therefore finds that the establishment of a pilot volunteer surveying and sampling water program to examine water systems and sources of contamination would be an invaluable investment that could supply necessary water quality monitoring data while providing immediate as well as long term savings.

The legislature further finds that much of the coastal and surface waters draining into and surrounding Kailua and Waimanalo Bays on Oahu meet EPA guidelines for a target location for pilot program establishment. This includes having an available pool of people willing to participate, as well as physical and legal access to the water.

The purpose of this Act is to: (1) empower the department of health to establish a pilot program for surveying and sampling water quality utilizing volunteers at a selected water system in the coastal and surface waters draining into and surrounding Kailua and Waimanalo Bays on Oahu; and (2) provide a report to the legislature on the long-term feasibility and economic benefit of a state-wide volunteer water quality surveying and sampling program.

SECTION 2. (a) There is established within the department of health a pilot program to test a model of volunteer water quality surveying and sampling. The target area of the program shall be a water system in the area of the coastal and surface waters draining into and surrounding Kailua and Waimanalo Bays on Oahu. In conjunction with the foregoing, the department of health shall:

- (1) Establish a pilot water quality surveying and sampling program using volunteers to examine one or more watershed systems in the State and possible sources of contamination;
- (2) Determine those aspects of the State's coastal and surface water quality surveying and sampling program that:
 - (A) Can be performed by volunteers; and
 - (B) Will produce meaningful and useful data with regard to monitoring environmental quality;
- (3) Provide for the training of a cadre of volunteers, including the following:
 - (A) Volunteers from one or more environmental organizations with experience in conducting volunteer water quality surveying and sampling programs, such as the Surfrider Foundation and the Isaak Walton League of America;

- (B) Volunteers from educational institutions, such as Windward Community College and the Hawaii Loa campus of Hawaii Pacific University;
 - (C) Volunteers from other interested organizations; and
 - (D) Other interested individuals;
- (4) Provide for the acquisition of surveying and sampling equipment and supplies to carry out the purposes of this Act;
 - (5) Provide for the periodic collection and analysis of samples to evaluate the sampling and monitoring practices of volunteers; and
 - (6) Provide for the acquisition of laboratory, statistical, and other technical services to analyze samples and interpret data.
- (b) The department of health may contract for the services of organizations and laboratories to carry out the purposes of this Act.
- (c) The department of health shall work with the statewide volunteer services office and other agencies and organizations, as may be appropriate, to carry out the purposes of this Act.
- (d) The department of health shall prepare and submit a report to the legislature no later than twenty days prior to the convening of the 1994 regular session which documents the effectiveness of the pilot program and the feasibility of implementing additional volunteer water monitoring programs.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$45,000 or so much thereof as may be necessary for fiscal year 1993-1994, for the purposes of this Act. The sum appropriated shall be expended by the department of health.

SECTION 4. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 293

H.B. NO. 1589

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. 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 1992-1993 to be exceeded by \$1,943,659.99 or 0.062 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 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, and entities, such claims being against the State, or against the office of Hawaiian affairs, for overpayment of taxes, or for refunds, reimbursements, payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

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REFUND OF TAXES:	Amount
None.	
JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:	Amount
Rowena Akana v. Board of Trustees of the Office of Hawaiian Affairs, et al. Civ. No. 92-0685-02, First Circuit	\$ 10,781.68 Order for attorney fees & costs
Fernando G. Caday, et al. v. Henry Rivera, et al. Civ. No. 90-0502-02, First Circuit	\$150,000.00 Settlement
Agnes L. Carroll and James L. Carroll v. State of Hawaii, et al. Civ. No. 91-3540-10, First Circuit	\$ 50,000.00 Settlement
Mary Caseres Tort Claim: Attorneys' fees:	\$ 34,272.50 Settlement
George Clark Tort Claim	\$ 39,928.63 Settlement
Renee Coester v. Harold Falk, et al. Civ. No. 89-00350 DAE, U.S.D.C.	\$135,000.00 Settlement
Renee Coester v. George Sumner, et al. Civ. No. 90-00801 DAE, U.S.D.C. (Consolidated cases)	
Mary L. Gueble v. State of Hawaii, et al. Civ. No. 90-00713 DAE, U.S.D.C.	\$ 24,000.00 Settlement
Douglas A. Hirano v. Glenn Kakuda, Civ. No. 92-15854 & 92-16398, Ninth Circuit Court of Appeals	\$125,000.00 Judgment
Hawaii Helicopter Operators Association, et al. v. State of Hawaii, et al. Civ. No. 90-00369 ACK, U.S.D.C.	\$ 20,000.00 Settlement
Marilyn Jardine v. State of Hawaii, et al. Civ. No. 89-3907-12, First Circuit	\$ 15,000.00 Settlement
La France Kaneholani, et al. v. State of Hawaii, et al. Civ. No. 91-0031, Fifth Circuit	\$ 20,000.00 Settlement
Calvin K. Kuahiwinui v. Glen Hisashima Civ. No. 91-266, Third Circuit	\$ 18,039.44 Judgment
Amount of Judgment: \$17,196.37 Interest at 4% from 5/11/92: \$ 843.07	
Ernez Ling Wo Leong, et al. v. Kaiser Foundation Hospitals, et al. Civ. No. 88-0280(1), Second Circuit	\$100,000.00 Settlement
Lopez v. Akana, et al. Civil No. 91-0329-01, First Circuit	\$ 75,000.00 Settlement
Civil No. 91-0186-01, First Circuit	

John K. Moniz, et al. v. State of Hawaii, et al.	\$ 40,000.00
Civ. No. 90-241K, Third Circuit	Settlement
Hoolehua Naone & George Naone v. State of Hawaii	\$ 15,000.00
Civ. No. 55105, First Circuit	Settlement
Henry R. Reese, Jr.	\$ 17,690.12
Tort Claim	Settlement
Arthur Ritchie, et al. v. Sheena Baniaga, et al.	\$170,000.00
Civ. No. 88-114K, Third Circuit	Settlement
Darrel A. Smith v. Charles Toguchi, et al.	\$ 46,063.29
Civil No. 91-559 HMF, U.S.D.C.	Settlement
Amount of Judgment:	\$45,000.00
Interest at 3.67% from 1/9/93:	\$ 1,063.29
Kenneth B. Smith, et al. v. Charlene T. Goo, et al.	\$150,000.00
Civil No. 88-083(K), Third Circuit	Settlement
Carl Spear v. State of Hawaii, et al.	\$290,000.00
Civ. No. 91-0141-01, First Circuit	Settlement
Spear v. Waihee	\$196,144.00
Civ. No. 84-1104	Conditional settlement for attorney fees
Lyle Steven, et al. v. State of Hawaii, et al.	\$ 49,441.08
Civ. No. 91-3742-11, First Circuit	Judgment
Amount of Judgment:	\$47,273.33
Interest at 4% from 6/8/92:	\$ 2,167.75
William E.H. Tagupa v. Office of Hawaii Affairs, et al.	\$ 55,192.52
Civ. No. 88-616, First Circuit	Judgment
Manuel Valin, et al. v. State of Hawaii, et al.	\$ 20,000.00
Civ. No. 89-4015-12, First Circuit	Settlement
Claim of Wendy Wilson	\$ 66,000.00
	Settlement
MISCELLANEOUS CLAIMS:	
City & County of Honolulu	
Amount of Claim:	\$ 8,277.60
Joseph Kwong-Yue Cheng	
Amount of Claim:	\$ 338.27
Gerald Louis Kaaa	
Amount of Claim:	\$ 44.65
Carolyn K.W. Lim	
Amount of Claim:	\$ 30.72
Craig T. Nakaishi	
Amount of Claim:	\$ 18.61
Susan Segawa	
Amount of Claim:	\$ 2,396.88

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SECTION 3. The sums hereinabove appropriated may 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 refunds of taxes, and (2) upon vouchers approved by the attorney general as to all other claims.

The attorney general may use the sums appropriated for the Hirano v. Kakuda claim to achieve a stay of the adverse judgment and further may, in the attorney general's discretion, pay less than the entire \$125,000 to satisfy any final adverse judgment or settlement agreement.

SECTION 4. Notwithstanding the sums hereinabove appropriated as interest upon judgments against the State and settlements of claims, payment of interest, at any 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 to which that statute applies.

SECTION 5. All unexpended and unencumbered balances of the appropriations made by section 2 of this Act as of the close of business on June 30, 1994, shall lapse into the general fund of the State.

SECTION 6. If any provision of this Act or the application thereof to any person or entity or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

(Approved June 21, 1993.)

ACT 294

H.B. NO. 1597

A Bill for an Act Relating to Child Support Enforcement.

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- Orders for payment of child support. The director of public safety shall comply with orders for payment of child support from inmate individual trust accounts to the child support enforcement agency pursuant to section 571-52, 571-52.2, or 576E-16 and this section. When the total of all new deposits and credits to the inmate's individual trust account in a given month is less than or equal to \$15, no payment shall be made for child support that month out of the trust account. When the total of all new deposits and credits to the inmate's individual trust account in a given month exceeds \$15, no more than thirty per cent of the total new deposit or credit to the individual's trust account shall be paid for child support out of the account for that month.”

SECTION 2. Section 353-22, Hawaii Revised Statutes, is amended to read as follows:

"§353-22 Earnings exempt from garnishment, etc. No moneys earned by a committed person and held by the department, to any amount whatsoever, shall be subject to garnishment, levy, or any like process of attachment for any cause or claim against the committed person, except for restitution to victims and child support payments by order of the court."

SECTION 3. New statutory material is underscored.¹

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

(Approved June 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 295

H.B. NO. 1610

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. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the fiscal biennium 1993-1995 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 2:

	<u>FY 1993-94</u>	<u>FY 1994-95</u>
General Funds	\$139,751	\$365,683
Special Funds	\$ 40,817	\$117,593
Federal Funds	\$ 1,880	\$ 6,089
Other Funds	\$ 325	\$ 1,400

SECTION 2. 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 II

SECTION 3. There are 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 fiscal biennium 1993-1995 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 2:

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	<u>FY 1993-94</u>	<u>FY 1994-95</u>
General Funds	\$ 879	\$ 2,655

SECTION 4. 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 III

SECTION 5. 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 6. Funds appropriated or authorized by this Act which are not expended or encumbered by June 30, 1994, and June 30, 1995, of the respective fiscal years, shall lapse as of those dates.

SECTION 7. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 296

H.B. NO. 1613

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. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the fiscal biennium 1993-1995 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 5:

	<u>FY 1993-94</u>	<u>FY 1994-95</u>
General Funds	\$2,718,196	\$11,478,245
Federal Funds	\$ 68,922	\$ 290,351

SECTION 2. 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 II

SECTION 3. 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 4. Funds appropriated or authorized by this Act which are not expended or encumbered by June 30, 1994, and June 30, 1995, of the respective fiscal years, shall lapse as of those dates.

SECTION 5. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 297

H.B. NO. 1614

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. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the fiscal biennium 1993-1995 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 6:

	<u>FY 1993-94</u>	<u>FY 1994-95</u>
General Funds	\$326,958	\$978,040
Federal Funds	\$ 6,650	\$ 20,051

SECTION 2. 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 II

SECTION 3. 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 4. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 1994, and June 30, 1995, of the respective fiscal years, shall lapse as of those dates.

SECTION 5. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 298

H.B. NO. 1616

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. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the fiscal

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biennium 1993-1995 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 8:

	<u>FY 1993-94</u>	<u>FY 1994-95</u>
General Funds	\$285,188	\$861,009
Special Funds	\$ 8,846	\$ 26,706
Federal Funds	\$ 2,094	\$ 6,317
Other Funds	\$ 32,978	\$ 99,547

SECTION 2. 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 II

SECTION 3. 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 4. Funds appropriated or authorized by this Act which are not expended or encumbered by June 30, 1994, and June 30, 1995, of the respective fiscal years, shall lapse as of those dates.

SECTION 5. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 299

H.B. NO. 1621

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. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the fiscal biennium 1993-1995, the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 1993-94</u>	<u>FY 1994-95</u>
General Funds	\$182,219	\$549,969
Special Funds	\$ 1,709	\$ 5,160
Other Funds	\$ 746	\$ 2,249

SECTION 2. 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 II

SECTION 3. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from special or other funds, shall be paid wholly or proportionately, as the case may be, from the respective fund.

SECTION 4. Funds appropriated or authorized by this Act which are not expended or encumbered by June 30, 1994, and June 30, 1995, of the respective fiscal years, shall lapse as of those dates.

SECTION 5. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 300

H.B. NO. 1653

A Bill for an Act Relating to the Environment.

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

PART I

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER HAWAII EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT”

§ -1 Definitions. As used in this chapter, unless the context otherwise requires:

“Administrator” means the Administrator of the United States Environmental Protection Agency.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended 42 U.S.C. §§9601-9675.

“Commission” means the Hawaii state emergency response commission.

“Committee” means the local emergency planning committee within each county responsible for preparing hazardous material plans and performing other functions under EPCRA and HEPCRA.

“County agency” means a county or any officer or agency thereof.

“Department” means the department of health.

“Director” means the director of health.

“EPCRA” means the Emergency Planning and Community Right-to-Know Act of 1986, as amended, 42 U.S.C. §§11001-11050.

“Environment” means any waters, including surface water, ground water, or drinking water; any land surface or any subsurface strata; or any ambient air, within the State or under the jurisdiction of the State.

“Extremely hazardous substance” means any substance listed in Appendix A of 40 C.F.R. 355, as amended, or as defined by rules adopted by the commission.

“Facility” means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor carrier,

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rolling stock, aircraft, site, or area where a hazardous substance or pollutant or contaminant has been deposited, stored, disposed of, or placed, or otherwise comes to be located. The term does not include any consumer product in consumer use.

“Hazardous material” or “hazardous substance” means any hazardous substance as defined in chapter 128D.

“HEPCRA” means the Hawaii Emergency Planning and Community Right-to-Know Act.

“Person” means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state, county, commission, or, to the extent the United States or an interstate body is subject to this chapter, the United States or the interstate body.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any hazardous substance, or pollutant or contaminant into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing a hazardous substance, or pollutant or contaminant. The term does not include:

- (1) Any release that results in the exposure of persons solely within a workplace, with respect to claims that these persons may assert against their employer;
- (2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;
- (3) Release of a source, by product, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2011 et seq., if this release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under 42 U.S.C. §2210;
- (4) Any release resulting from the normal application of fertilizer;
- (5) Any release resulting from the legal application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended; or
- (6) Any release from sewerage systems collecting and conducting primarily domestic wastewater.

“Reportable quantity” means the quantity of a hazardous material stated on the various lists of hazardous substances as defined in chapter 128D.

“Threshold planning quantity” means the threshold planning quantity for an “extremely hazardous substance” as defined in 40 C.F.R. Part 355.

“Toxic chemical” means a substance appearing on the list of chemicals described in section 313 of EPCRA, as set forth in 40 C.F.R. Part 372.

§ -2 Designation and functions of the Hawaii state emergency response commission. (a) There is created the Hawaii state emergency response commission, which shall be placed within the department for administrative purposes and carry out the requirements of this chapter.

(b) The commission shall consist of the following members, who shall be appointed by the governor as provided in section 26-34:

- (1) The director of health;
- (2) The chairperson of the board of agriculture;
- (3) The adjutant general;
- (4) The director of labor and industrial relations;
- (5) The chairperson of the board of land and natural resources;
- (6) The director of the office of environmental quality control;
- (7) The director of business, economic development, and tourism;
- (8) The director of transportation;

- (9) The dean of the University of Hawaii school of public health;
- (10) The director of the environmental center of the University of Hawaii;
- (11) One representative from each committee designated by the mayor of each respective county; and
- (12) Other persons appointed by the governor to meet the minimum requirements of EPCRA.

(c) A state officer who serves as a member of the commission may designate, in writing, another person to act in place of the officer. The designated person shall have all the powers of a commission member.

(d) The director shall be the chairperson of the commission. A vice-chairperson shall be designated by the chairperson to serve in the chairperson's absence. The chairperson or the vice-chairperson may assign, delegate, or transfer tasks, duties, and responsibilities to members of the commission.

(e) Commission members shall serve without compensation, but shall be reimbursed for actual and necessary expenses, including travel expenses, incurred in carrying out their duties.

(f) Commission and committee support personnel shall be supervised and administered by the chairperson as the primary agent responsible for performing the functions and duties of the commission. The department shall employ such professional, technical, administrative, and other staff personnel as may be deemed necessary to carry out the purposes of this chapter.

(g) The commission shall:

- (1) Carry out the duties and responsibilities of a state emergency response commission as specified in EPCRA;
- (2) Develop state contingency plans relating to the implementation of this chapter;
- (3) Supervise, coordinate, and provide staff support to the committees for the implementation of this chapter and EPCRA;
- (4) Develop a public information, education, and participation program for the public and facility owners covering the requirements of this chapter, and the interpretation of the chemical information collected pursuant to this chapter and the risks that these chemicals pose to the public health and environment;
- (5) Appoint the members of the committees;
- (6) Develop a state chemical inventory form to be used in lieu of the federal Tier II form and chemical list requirements; and
- (7) Do all other things necessary for the implementation of this chapter and the requirements of EPCRA.

§ -3 Powers; rulemaking; appointment of hearing officers. (a) The commission may adopt rules in accordance with chapter 91 to implement this chapter. The rules shall include, but not be limited to, requirements for reporting releases. Any person heard at a public hearing on the adoption of any rule shall be given written notice of the action taken by the commission with respect to the rule.

(b) In addition to other specific powers provided in this chapter, the commission may appoint, without regard to chapters 76 and 77, hearing officers to conduct public participation activities, including public hearings and public informational meetings.

§ -4 Establishment of emergency planning districts. Each county is designated as an emergency planning district for the purposes of this chapter; provided that the department shall be responsible for Kalawao county.

§ -5 Establishment and functions of local emergency planning committees. (a) A minimum of one local emergency planning committee shall be established in each county. The committee shall be subject to the requirements of this chapter and section 303 of EPCRA, 42 U.S.C. §11003.

(b) The members of a committee shall be appointed by the commission, based upon the recommendations of the respective mayor of a county. The list of recommended persons shall contain at least one person from each of the groups listed in subsection (c). The commission may reject any recommendation made by the mayor of a county and appoint persons who did not receive a recommendation from the mayor.

(c) A committee shall be composed of at least one person from each of the following groups:

- (1) Elected state and county officials;
- (2) Law enforcement, first aid, health, environmental, hospital, and transportation personnel;
- (3) Firefighting personnel;
- (4) Civil defense and emergency management personnel;
- (5) Broadcast and print media personnel;
- (6) Community groups not affiliated with emergency service groups;
- (7) Owners and operators of facilities subject to the requirements of EPCRA; and
- (8) Other groups recommended by the mayor and appointed by the commission.

(d) Not more than sixty days after the occurrence of a vacancy, the commission, based upon the recommendations of the mayor, shall appoint a successor member to the committee, unless the requirements of subsection (c) have been fulfilled.

(e) Upon the failure of the mayor of a county to submit a list of nominees to the commission not more than forty-five days after notice of a vacancy, the commission shall make the appointment on its own initiative unless the requirements of subsection (c) have been fulfilled.

(f) Each committee shall:

- (1) Adopt bylaws and other administrative procedures to carry out the duties, requirements, and responsibilities set forth in this chapter, and as required by the commission and EPCRA;
- (2) Take appropriate actions to ensure the preparation, implementation, and annual update and review of the local emergency response plan required by this chapter and EPCRA. The local emergency response plans shall include, but not be limited to, the following:
 - (A) Identification of each facility subject to the requirements of section 303 of EPCRA, 42 U.S.C. §11003 and within the emergency planning district; identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances; and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this section, such as hospitals or natural gas facilities;
 - (B) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel in responding to any release of these substances;
 - (C) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan;

- (D) Procedures providing reliable, effective, and timely notification by facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and the public, that a release has occurred, consistent with the notification requirements of this chapter and section 304 of EPCRA, 42 U.S.C. §11004;
 - (E) Methods for determining the occurrence of a release, and the area or population likely to be affected by the release;
 - (F) A description of emergency equipment and facilities in the county and at each facility in the county subject to the requirements of this section, and the identification of the persons responsible for the equipment and facilities;
 - (G) Evacuation plans, including provisions for precautionary evacuation and alternate traffic routes;
 - (H) Training programs, including schedules for training of local emergency response and medical personnel; and
 - (I) Methods and schedules for exercising the emergency plan;
- (3) Request additional information from the facilities, if necessary, to develop emergency response plans;
- (4) Submit local emergency response plans to the commission for review, and to other affected agencies upon request;
- (5) Report to the commission on alleged violations of this chapter;
- (6) Prepare reports, recommendations, and other information related to the implementation of this chapter, as requested by the commission;
- (7) Have the primary responsibility for receiving, processing, and managing hazardous chemical information forms and data, trade secrets, and public information requests pursuant to this chapter;
- (8) Accept and deposit into the state treasury any grants, gifts, or other funds received for the purpose of carrying out this chapter; and
- (9) Evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and make recommendations with respect to additional resources that may be required and the means for providing these additional resources.

(g) The administrative and operational expenses of a committee may be paid by the State.

§ -6 Reporting requirements. (a) The owner or operator of a facility in the State that stores, uses, or manufactures any hazardous substance shall comply with the following requirements:

- (1) Each owner or operator of a facility in the State shall comply with the emergency planning and notification requirements of sections 302 and 303 of EPCRA, 42 U.S.C. §§11002 and 11003, if an extremely hazardous substance is present at the facility in an amount in excess of the threshold planning quantity established for the substance;
- (2) Each owner or operator of a facility in this State that is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970, as amended, 15 U.S.C. §651 et seq., and regulations promulgated under that Act, for all hazardous substances present at the facility in amounts not less than 10,000 pounds, and extremely hazardous substances present at the facility in amounts not less than 500 pounds, or the threshold planning quantity for that substance, whichever is less, shall comply with the following reporting requirements:

- (A) Complete a chemical list by March 1 of each year and submit material safety data sheets not more than thirty days after a request;
- (B) Complete the state chemical inventory form by March 1 of each year; provided that a Tier II list shall be used until a state form is available;
- (C) Submit facility diagrams and location area maps by March 1 of each year, and update the maps annually as needed; and
- (D) Upon request, submit emergency response plans required under state or federal law.

The information described in subparagraphs (A) through (D) shall be submitted to the commission, the respective committee, and the fire department upon request by the same;

- (3) Each owner or operator of a facility in this State that is subject to section 313 of EPCRA, 42 U.S.C. §11023, shall comply with the toxic chemical release form requirements of section 323 of EPCRA by July 1 of each year; and
- (4) Each owner or operator of a facility in this State covered under section 304 of EPCRA, 42 U.S.C. §11004, shall comply with the notification requirements of section 304 of EPCRA, and section -7, if a release of an extremely hazardous substance occurs from the facility.

(b) The commission shall adopt rules in accordance with chapter 91 establishing the specific information required on the state chemical inventory form. The chemical inventory form shall facilitate ease in complying with the requirements of HEPCRA by consolidating the necessary information into one form. The chemical inventory form may include, but is not limited to:

- (1) The chemical name;
- (2) Quantity stored on the site;
- (3) Hazardous components;
- (4) Health and physical hazards; and
- (5) Storage information.

§ -7 Emergency notification requirements. The commission shall adopt rules in accordance with chapter 91 establishing the contents of hazardous substance release reports. The rules shall address, but are not limited to, the following:

- (1) The quantities of designated hazardous substances that are deemed reportable pursuant to this chapter when released;
- (2) The specific periods of time within which these quantities are deemed reportable pursuant to this chapter after being released;
- (3) The agencies to which reports of releases must be made; and
- (4) The format in which the release is to be reported.

§ -8 Funds for operation. (a) All moneys to meet the general operating needs and expenses of the emergency planning and community right-to-know program of the department shall be allocated by the legislature through appropriations out of the state general fund. The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this chapter.

(b) The department of health, with the assistance of the department of budget and finance and department of accounting and general services, shall prepare a report for the legislature concerning the amount of moneys collected during the preceding fiscal year, the amount of moneys collected to date during the current fiscal year, and the amount of moneys to be collected during the upcoming fiscal year, pursuant to sections -9 and -11, and accruing to the credit of the state

general fund. The department shall submit the foregoing report to the legislature not less than twenty days prior to the convening of each regular session of the legislature.

§ -9 Filing fees. Facilities that are required to report according to section -6(a)(2), shall remit \$100 with each submission of chemical inventory forms or Tier II forms to the commission by March 1 of each year. All moneys collected by the department pursuant to this section shall be deposited in the state treasury and accrue to the credit of the state general fund.

§ -10 Immunity from civil liability. (a) No employee, representative, or agent of a state or county agency, or persons requested by a state or county agency to engage in any emergency service or response activities involving a hazardous material release at a facility or transportation accident site, shall be liable for the death of or any injury to persons, or the loss of or damage to property, resulting from that hazardous material release, except for any acts or omissions that constitute wilful misconduct.

(b) No commission or committee member shall be liable for the death of or any injury to persons, the loss of or damage to property, or any civil damages, resulting from any act or omission arising out of the performance of the functions, duties, and responsibilities of the commission or a committee, except for acts or omissions that constitute wilful misconduct.

§ -11 Penalties and fines. (a) Any person who violates any of the emergency reporting, planning, or notification requirements of sections -6 or -7, or fails to pay the fees required by section -9, shall be subject to a civil penalty of not less than \$1,000 but not more than \$25,000 for each separate offense. Each day of each violation shall constitute a separate offense.

(b) Any person who:

- (1) Knowingly fails to report the release of a hazardous substance or extremely hazardous substance, as required by section -7, shall be guilty of a misdemeanor and, upon conviction, be fined not less than \$1,000 but not more than \$25,000 for each separate offense, or imprisoned for not more than one year, or both. For the purposes of this paragraph, each day of each violation shall constitute a separate offense; or
- (2) Intentionally obstructs or impairs, by force, violence, physical interference, or obstacle, a representative of the department, a hazardous materials response team, or a committee attempting to perform the duties and functions set forth in section -5, shall be guilty of a misdemeanor and, upon conviction, be fined not less than \$5,000 but not more than \$25,000 for each separate offense, or be imprisoned for not more than one year, or both.

(c) All moneys collected under this section shall be deposited in the state treasury and accrue to the credit of the state general fund.

§ -12 Enforcement. If the commission determines that any person has violated or is violating this chapter, or any rule adopted pursuant to this chapter, the commission:

- (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 the facility shall submit the required reports, forms, and notifications;

- (2) May require the alleged violator or violators to appear before the commission for a hearing at a time and place specified in the notice or to be set later, and to answer the charges complained of; and
- (3) May impose penalties as provided in section -11 by sending a written notice describing the violation, either by certified mail or personal service, to the alleged violator or violators.

§ -13 Relationship to other laws. (a) This chapter shall be read in conjunction with the federal statutes and regulations providing for the identification, labeling, and reporting of information concerning hazardous material releases, and any other health and safety provisions relating to hazardous materials, and is intended to supplement federal statutes and regulations in the interest of protecting the health and safety of the citizens of the State.

(b) Nothing in this chapter shall affect or modify in any way the obligations or liabilities of any person under other laws of the State.

(c) This chapter shall preempt any ordinances passed or adopted by any county that are effective on, before, or after the effective date of this chapter, to the extent that these ordinances conflict or are inconsistent with the provisions of this chapter."

PART II

SECTION 2. Chapter 243, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§243- Environmental response tax. (a) In addition to any other taxes provided by law, subject to the exemptions set forth in section 243-7, there is hereby imposed at times provided in section 128D-2 a state environmental response tax of 5 cents on each barrel or fractional part of a barrel of petroleum product sold by a distributor to any retail dealer or end user, other than a refiner, of petroleum product. The tax imposed by this subsection shall be paid by the distributor of the petroleum product.

(b) Each distributor subject to the tax imposed by subsection (a), on or before the last day of each calendar month, shall file with the director, on forms prescribed, prepared, and furnished by the director, a return statement of the tax under this section for which the distributor is liable for the preceding month. The form and payment of the tax shall be transmitted to the department of taxation in the appropriate district.

(c) Notwithstanding section 248-8 to the contrary, the environmental response tax collected under this section shall be paid over to the director of finance for deposit into the environmental response revolving fund established by section 128D-2.

(d) Every distributor shall keep in the State and preserve for five years a record in such form as the department of taxation shall prescribe showing the total number of barrels and the fractional part of barrels of petroleum product sold by the distributor during any calendar month. The record shall show such other data and figures relevant to the enforcement and administration of this chapter as the department may require."

SECTION 3. Section 243-1, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read as follows:

"Barrel" means forty-two United States gallons of crude oil or petroleum product.

"Crude oil" means petroleum in an unrefined state or natural state, including condensates and natural gasoline.

"End user" means any person or government entity who acquires petroleum products for their own use and not for resale.

"Petroleum product" means any liquid hydrocarbon at standard temperature and pressure that is the product of the fractionalization, distillation, or other refining or processing of crude oil."

SECTION 4. Section 128D-2, Hawaii Revised Statutes, is amended to read as follows:

"§128D-2 Environmental response revolving fund. (a) There is created within the state treasury an environmental response revolving fund [within the department], which shall consist of moneys appropriated to the fund by the legislature, moneys paid to the fund as a result of departmental compliance proceedings, moneys paid to the fund pursuant to court-ordered awards or judgments, moneys paid to the fund in court-approved or out-of-court settlements, all interest attributable to investment of money deposited in the fund, moneys generated by the environmental response tax established in section 243-, and moneys allotted to the fund from other sources; provided that when [deposits of fines and penalties pursuant to sections 342B-50, 342D-39, 342F-11.5, 342H-10.5, 342J-10.5, and 342N-9.5 exceed \$3,000,000, that amount of deposited fines and penalties in excess of \$3,000,000 shall be transferred to the general fund.] the total balance of the fund exceeds \$7,000,000, the department of health shall notify the department of taxation of this fact in writing within ten days. The department of taxation then shall notify all distributors liable for collecting the tax imposed by section 243- of this fact in writing, and the imposition of the tax shall be discontinued beginning the first day of the second month following the month in which notice is given to the department of taxation. If the total balance of the fund thereafter declines to less than \$3,000,000, the department of health shall notify the department of taxation which then shall notify all distributors liable for collecting the tax imposed by section 243- of this fact in writing, and the imposition of the tax shall be reinstated beginning the first day of the second month following the month in which notice is given to the department of taxation.

(b) Moneys from the fund shall be expended by the department for response actions, including removal and remedial actions, consistent with this chapter[.]; provided that the revenues generated by the "environmental response tax" and deposited into the environmental response revolving fund:

- (1) Shall be used:
 - (A) For oil spill planning, prevention, preparedness, education, research, training, removal, and remediation; and
 - (B) For direct support for county used oil recycling programs; and
- (2) May also be used to address concerns related to underground storage tanks, including support for the underground storage tank program of the department and funding for the acquisition by the State of a soil remediation site and facility."

SECTION 5. The department of health is authorized to spend out of the environmental response revolving fund of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 1993-1994. A report on the use of these funds shall be made to the 1994 legislature.

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SECTION 6. This part does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

PART III

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 8. This Act shall take effect upon its approval; provided that sections 2, 3, and 4 shall take effect on July 1, 1993, and sections 2 and 3 shall apply to the sale of petroleum products made after June 30, 1993.

(Approved June 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 301

H.B. NO. 1662

A Bill for an Act Relating to Workers' Compensation.

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

SECTION 1. Section 386-94, Hawaii Revised Statutes, is amended to read as follows:

"§386-94 Attorneys, physicians, other health care providers, and other fees. Claims [of attorneys and physicians and other health care providers for services under this chapter and claims for any other services rendered in respect of a claim for compensation, to or on account of any person] for services shall not be valid unless approved by the director or, if an appeal is had, by the appellate board or court deciding the appeal. Any [claims] claim so approved shall be a lien upon [such] the compensation in the manner and to the extent fixed by the director, the appellate board, or the court.

Any person who receives any fee, other consideration, or gratuity on account of services so rendered, without approval [of such fee, other consideration, or gratuity], in conformity with the preceding paragraph, shall be fined by the director not more than \$10,000[, or imprisoned not more than one year, or both]."

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 21, 1993.)

ACT 302

H.B. NO. 1686

A Bill for an Act Making an Appropriation for Compensation of 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 \$882,353.24, or so much thereof as may be necessary for

fiscal year 1993-1994, for the purpose of compensating certain persons or their providers of services pursuant to chapter 351, Hawaii Revised Statutes.

SECTION 2. The sum appropriated shall be deposited in the criminal injuries compensation fund to be used for payments as authorized by the criminal injuries compensation commission. The sum appropriated shall be expended by the department of public safety for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 303

H.B. NO. 1771

A Bill for an Act Relating to Correctional Industries.

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

SECTION 1. Section 354D-10, Hawaii Revised Statutes, is amended to read as follows:

"§354D-10 Correctional industries revolving fund. There is created the correctional industries revolving fund to be administered by the department. All moneys collected by the department from the sale or disposition of goods and services produced in accordance with this chapter and any inmate deductions shall be deposited into the correctional industries revolving fund. The proceeds in the correctional industries revolving fund shall be used for: the purchase or lease of supplies, equipment, and machinery; the construction, leasing, or renovating of buildings used to carry out the purposes of this chapter; the salaries of personnel necessary to administer the enterprises established in accordance with this chapter; payment of inmates for work assignments; the reimbursement of incarceration costs of the inmates related to the inmates' participation in correctional industries; and other necessary expenses; provided that the correctional industries revolving fund shall not be maintained in excess of the amount necessary to carry out the purposes of this chapter."

SECTION 2. Section 354D-12, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Proceeds and wages owed to a qualified, able-bodied inmate from the sale of goods or services that were produced by the qualified, able-bodied inmate under a program authorized by this chapter shall be held in an account maintained by the department and paid:

- (1) To the criminal injuries compensation fund on a quarterly basis in amounts representing not less than five per cent nor more than twenty per cent of the earnings of all inmates in the State incarcerated for a violent crime listed in section 351-32; provided that these payments shall be mandatory and shall in no way relate to any claim filed under chapter 351; and provided further that the director shall submit timely annual reports to the legislature and the criminal injuries compensation commission on the amounts paid pursuant to this paragraph during the previous fiscal year;

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- (2) To support the qualified, able-bodied inmate's dependents in amounts deemed appropriate by the department after consultation with the department of human services;
- (3) Into trust funds that may be established for the qualified, able-bodied inmate and shall be payable upon the inmate's release; and
- (4) [For] Into the correctional industries revolving fund, for costs incident to the qualified, able-bodied inmate's confinement in an amount determined by the department, but not to exceed twenty per cent of the proceeds and wages."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$65,000, or so much thereof as may be necessary for fiscal year 1993-1994, for the purpose of recovering moneys previously withheld and deposited to the general fund of the State of Hawaii from wages earned by inmates in private sector ventures. The sum appropriated shall be deposited into the correctional industries revolving 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, except that Section 3 shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 304

H.B. NO. 1988

A Bill for an Act Relating to Elections.

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

SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§11- Petitions; withdrawal of signatures. Wherever in this chapter the signatures of registered voters are required on a petition, any voter who, after signing a petition, seeks to withdraw the voter's signature may do so by providing notice in writing to the chief election officer any time before the filing of the petition. The notice shall include the name, social security number, address, and birthdate of the voter and must be signed by the voter with the name under which the voter is registered to vote. Upon receipt of that notice containing the information required by this section, the chief election officer shall notify the group or individual to whom the petition was issued and the signature of the individual shall not be counted.”

SECTION 2. Chapter 15, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§15- Absentee postage. The mailed distribution and return of absentee ballots shall be at no cost to the voter. The State and counties shall share in the cost of all postage associated with the distribution and return of absentee ballots pursuant to sections 11-182, 11-183, and 11-184, if the costs are not covered by the federal government.”

SECTION 3. Chapter 16, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§16- Election services, provisions, and charges. The chief election officer may make voting systems and election services available to state agencies and private entities pursuant to rules adopted in accordance with chapter 91. Reasonable fees may be charged for the provision of such systems or services."

SECTION 4. Section 11-62, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The petition shall be subject to hearing under chapter 91, if any objections are raised by the chief election officer or any other political party. All objections shall be made not later than 4:30 p.m. on the tenth business day after the petition has been filed. If no objections are raised by 4:30 p.m. on the tenth business day, the petition shall be approved. If an objection is raised, a decision shall be rendered not later than 4:30 p.m. on the thirtieth day after filing of the petition or not later than 4:30 p.m. on the one hundredth day prior to the primary, whichever shall first occur."

SECTION 5. Section 11-92.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In the event of a flood, tsunami, earthquake, volcanic eruption, high wind, or other natural disaster occurring prior to an election which makes a precinct inaccessible, the chief election officer or county clerk in the case of county elections may consolidate precincts within a representative district. If the extent of damage caused by any natural disaster is such that the ability of voters, in any precinct, district, or county to exercise their right to vote is substantially impaired, the chief election officer or county clerk in the case of county elections may postpone the conducting of an election in a precinct, district, or county for no more than seven days; provided that any such postponement shall not affect the conduct of the election, tabulation, or distribution of results for those precincts, districts, or counties not designated for postponement. The chief election officer or county clerk in the case of county elections shall give notice of the consolidation or postponement in the affected county prior to the opening of the precinct polling place by whatever possible news or broadcast media[.] are available. Precinct officials and workers affected by [the] any consolidation shall not forfeit their pay."

SECTION 6. Section 11-113, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) All candidates for [president] President and [vice president] Vice President of the United States shall be qualified for inclusion on the general election ballot under either of the following procedures:

- (1) In the case of candidates of political parties which have been qualified to place candidates on the primary and general election ballots, the appropriate official of those parties shall file a sworn application with the chief election officer not later than 4:30 p.m. on the sixtieth day prior to the general election, which shall include:
 - (A) The name and address of each of the two candidates;
 - (B) A statement that each candidate is legally qualified to serve under the provisions of the United States Constitution;

- (C) A statement that the candidates are the duly chosen candidates of both the state and the national party, giving the time, place, and manner of the selection.
- (2) In the case of candidates of parties or groups not qualified to place candidates on the primary or general election ballots, the person desiring to place the names on the general election ballot shall file with the chief election officer not later than 4:30 p.m. on the sixtieth day prior to the general election:
- (A) A sworn application which shall include the information required under paragraph (1)(A) and (B) [above], and (C) where applicable;
- (B) A petition which shall be upon the form prescribed and provided by the chief election officer containing the signatures of currently registered voters which constitute not less than one per cent of the votes cast in the State at the last presidential election. The petition shall contain the names of the candidates, a statement that the persons signing intend to support those candidates, the address of each signatory, the date of the signer's signature and other information as determined by the chief election officer.

Prior to being issued the petition form, the person desiring to place the names on the general election ballot shall submit a notarized statement from each candidate of that person's intent to be a candidate for [president] President or [vice president] Vice President of the United States on the general election ballot in the State of Hawaii. Such statements may be withdrawn by a prospective candidate for Vice President and an alternative candidate for Vice President be substituted anytime prior to the notification of qualification or disqualification provided in subsection (d). Any such substitutions shall be accompanied by a notice of substitution satisfying subparagraph (A), a statement of intent as required by this paragraph, and a letter by the candidate for President endorsing the substitute candidate for Vice President. Upon receipt of a notice of substitution and all other required documents, the substitute shall replace the original candidate for Vice President on the general election ballot. The petitions issued in the names of the original candidates will remain valid for the purposes of this section.

(d) Each applicant¹ and the candidates named, shall be notified in writing of the applicant's or candidate's eligibility or disqualification for placement on the ballot not later than 4:30 p.m. on the tenth business day after filing [or not later than 4:30 p.m. on the fiftieth day prior to the presidential election, whichever is less]. The chief election officer may extend the notification period up to an additional five business days, if the applicants and candidates are provided with notice of the extension and the reasons therefore.”

SECTION 7. Section 11-152, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In those precincts using the electronic voting system, the ballots shall be taken in the sealed ballot boxes to the counting center according to the procedure and schedule promulgated by the chief election officer to promote the security of the ballots. In the presence of official observers, counting center employees may start to count the ballots prior to the closing of the polls provided there shall be no printout by the computer or other disclosure of the number of votes cast for a

candidate or on a question prior to the closing of the polls. For the purposes of this section, the closing of the polls is that time identified in section 11-131 as the closing hour of voting."

SECTION 8. Section 15-5, Hawaii Revised Statutes, is amended to read as follows:

“§15-5 Delivery of ballots. (a) Immediately upon receipt of a request within the time limit specified in section 15-4, the clerk shall examine the records to ascertain whether or not the voter is lawfully entitled to vote as requested. As soon as the printed official ballots are available, the clerk shall mail in a forwarding envelope or deliver in person if the voter appears at the office of the clerk, an official ballot and other materials prescribed in section 15-6 except that an incapacitated voter may send a representative to obtain the voter's ballots pursuant to the rules promulgated by the chief election officer. All requests received upon the last day specified in section 15-4 for receipt shall be mailed to the voter requesting the same as soon as reasonably practicable, but in no event later than twenty-four hours after receipt thereof.

(b) If mailed absentee ballots are not received by the voter within five days of an election, the voter may request that absentee ballots be forwarded by facsimile. Upon receipt of such a request and confirmation that proper application was made, the clerk may transmit appropriate ballots by facsimile together with a form requiring the affirmations and information required by section 15-6, and a form containing a waiver of the right to secrecy, as provided by section 11-137. The voter may return the voted ballots and executed forms by facsimile or mail; provided that they are received by the issuing clerk no later than the close of polls on election day. Upon receipt, the clerk shall verify compliance with the requirements of section 15-9(c), and prepare the ballots for counting pursuant to section 15-10.

SECTION 9. Section 15-7, Hawaii Revised Statutes, is amended to read as follows:

“§15-7 Absentee polling place. [An absentee polling place] Absentee polling places shall be established at the office of the respective clerks [or a place], and may be established at such other sites as may be designated by the clerk under the provisions prescribed in the rules [promulgated] adopted by the chief election officer. [The provisions of section] Section 11-21 relating to changes and transfers of registration shall apply to the absentee polling place as though it were the precinct at which a person's name properly appears on the list of registered voters. The absentee polling [place] places shall be open before election day to handle the absentee voters who are voting in person.”

SECTION 10. Section 15-9, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The return envelope shall be:

- (1) Mailed and must be received by the clerk issuing the absentee ballot not later than the closing of the polls on any election day; [or]
- (2) Delivered other than by mail to the clerk issuing the absentee ballot, or another election official designated by the clerk to act on the clerk's behalf, not later than the closing of polls on any election day; or
- (3) Delivered other than by mail to any polling place within the county in which the voter is registered and deposited by a precinct official in the ballot box before the closing of the polls on any election day.

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(b) Upon receipt of the return envelope from any person voting under this chapter, the clerk [or the officials of the absentee voting place shall deposit it in the correct absentee ballot box. Return envelopes which arrive after the closing of the polls shall be time stamped. The absentee ballot box shall be opened by the officials of the absentee ballot team as provided by rules adopted pursuant to chapter 91.] may prepare the ballots for counting pursuant to this section and section 15-10."

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of \$47,000, or so much thereof as may be necessary for fiscal year 1994-1995, to provide for the cost of postage associated with the mailed distribution and return of absentee ballots.³

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.⁴

SECTION 13. This Act shall take effect upon its approval; provided that Section 11 shall take effect on July 1, 1993.

(Approved June 21, 1993.)

Notes

1. Prior to amendment “,” appeared here.
2. Prior to amendment “the” appeared here.
3. No expending agency designated.
4. Edited pursuant to HRS §23G-16.5.

ACT 305

H.B. NO. 2045

A Bill for an Act Relating to Release of Pretrial Inmates.

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

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

“§353- Release of pretrial inmates to prevent overcrowding. (a) Notwithstanding the provisions of chapter 804 and any other law to the contrary and except as provided in subsection (b), the director may order the release of pretrial inmates on recognizance to prevent overcrowding when a community correctional center has reached capacity, as determined by the director. The director's order shall supersede and have the same force and effect as an order entered by a court pursuant to chapter 804. A copy of the director's order shall be filed with the court in which the charge against the inmate is pending.

(b) No person who has been denied bail or whose bail has been set at more than \$5,000 pursuant to chapter 804, or who has been charged with or convicted of or is on probation or parole for a serious crime, as defined in section 804-3, involving violence against a person shall be eligible for release pursuant to this section.

(c) The power to release an inmate pursuant to this section is granted solely for the purpose of managing the population of the community correctional centers and nothing herein shall be construed as granting any person the right to be released. An order releasing an inmate pursuant to this section shall not operate to dismiss or otherwise terminate any charges then pending against the inmate.

(d) The State, its officers, and employees, shall not be subject to any civil liability or penalty, nor to any criminal prosecution, for any error in judgment or discretion made in good faith and upon reasonable grounds in any action taken or omitted by the State, its officers, and employees, in an official capacity under this section.

(e) The director shall adopt rules in accordance with chapter 91 for the release of inmates pursuant to this section.

§353- Terms and conditions of release; violations; sanctions. (a) A pretrial inmate released pursuant to section 353- shall be subject to the conditions stated in section 804-7.4. In addition, the director may impose any of the conditions which a court is authorized to impose pursuant to section 804-7.1 and shall impose any conditions contained in any court order superseded by the director's order.

(b) Intentional violations of the conditions of release shall be disposed of as provided in sections 804-7.2 and 804-7.3."

SECTION 2. No less than twenty days prior to the convening of the regular session of the legislature in 1994 and 1995, the director shall report the progress of the program, and make recommendations for further legislative action.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 1993, and shall be repealed on June 30, 1995.

(Approved June 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 306

S.B. NO. 363

A Bill for an Act Making an Appropriation to the City and County of Honolulu for the No Hope in Dope Program.

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

SECTION 1. The "No Hope in Dope" program is a worthwhile educational program that seeks to teach students and their families about the dangers and effects of drug and alcohol abuse. The Honolulu police department's component of the project includes workshops for students and their families, parades, concerts, patches, discount cards, and comic books. The proposed van will be used to transport students to drug and alcohol treatment facilities and correctional facilities. Travel expenses are needed to take this program throughout the State. The Honolulu police department proposes to take twenty people on these neighbor island trips. The travel expenses include airfares, hotel rooms, meals, and van rentals.

SECTION 2. 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 1993-1994, for a grant-in-aid to the city and county of Honolulu police department's component of the "No Hope in Dope" program.

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SECTION 3. The sum appropriated shall be expended by the city and county of Honolulu for the purposes of this Act for the following:

- (1) School/community projects
- (2) Van
- (3) Travel expenses.

SECTION 4. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 307

S.B. NO. 448

A Bill for an Act Making an Appropriation to the Department of Public Safety for the No Hope in Dope Program.

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

SECTION 1. The "No Hope in Dope" program is a worthwhile educational program that seeks to teach students and their families about the dangers and effects of drug and alcohol abuse. The department of public safety's component of the project includes hiring guards to transport inmates to various sites for workshops. As part of these workshops, the inmates discuss how drug and alcohol abuse have led to their present difficulties. These workshops are provided for students and their families. The proposed van will be used to transport the inmates to the workshops. Travel expenses are needed to take this program throughout the State. The travel expenses include airfares, hotel rooms, meals, and van rental.

SECTION 2. 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 1993-1994, for the department of public safety's component of the "No Hope in Dope" program.

SECTION 3. The sum appropriated shall be expended by the department of public safety for the purposes of this Act for the following:

- (1) Adult corrections officer positions
- (2) Van
- (3) Equipment, supplies, and travel expenses

SECTION 4. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 308

S.B. NO. 552

A Bill for an Act Relating to Persons with Disabilities.

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

SECTION 1. The legislature finds that Congress passed the Americans with Disabilities Act (ADA), Public Law 101-336, which directs the Architectural and Transportation Barriers Compliance Board (ATBCB) to promulgate design guidelines for privately-owned places of public accommodation, and state and county

government facilities. These guidelines are known as the ADA Accessibility Guidelines, 36 C.F.R. Pt. 1191.

The legislature finds that the ADA Accessibility Guidelines, as the singular standard, will ensure that privately-owned places of public accommodation, and state and county government facilities are accessible to persons with disabilities by requiring planners, designers, and contractors to design and construct accessible features conforming to a uniform standard.

The purpose of this Act is to conform Hawaii's law relating to the expenditure of public money and public contracts with the ADA Accessibility Guidelines. In addition, this Act increases the number of members on the architectural access committee to five members.

SECTION 2. Section 103-50, Hawaii Revised Statutes, is amended to read as follows:

"§103-50 Building design to consider needs of [handicapped.] persons with disabilities. (a) Notwithstanding any other law to the contrary, all plans and specifications for the construction of public buildings and facilities by the State or any [political subdivision thereof] county, or on behalf of the State or any county subject to this chapter, shall be prepared so the buildings and facilities are accessible to and usable by [the physically handicapped.] persons with disabilities. The buildings and facilities shall conform to the [Uniform Federal Accessibility Standards, 41 C.F.R. §101-19.6, Appendix A.] Americans with Disabilities Act Accessibility Guidelines, 36 C.F.R. Pt. 1191.

(b) The comptroller and the director of finance shall provide the legislature with an annual report of the number and types of buildings or facilities donated or being donated to the State and counties during the year, and the costs, if any, of bringing those buildings or facilities into compliance with the guidelines. The report shall be submitted to each house of the legislature no later than twenty days before the convening of each regular legislative session.

[**(b)] (c)** All agencies subject to this section shall seek advice and [recommendation] recommendations from the commission [on the handicapped] on persons with disabilities on any construction plans."

SECTION 3. Section 103-50.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) There is established within the department of health for administrative purposes, an architectural access committee to be composed of [three] five 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.] Americans with Disabilities Act Accessibility Guidelines, 36 C.F.R. Pt. 1191."

SECTION 4. This Act does not affect buildings and facilities constructed prior to its effective date, in conformance to the Uniform Federal Accessibility Standards, 41 C.F.R. §101-19.6, Appendix A.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$103,000, or so much thereof as may be necessary for fiscal

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year 1993-1994, and the sum of \$94,000, or so much thereof as may be necessary for fiscal year 1994-1995, for the purposes of this Act.

The sums appropriated shall be expended by the department of health.

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

SECTION 7. This Act shall take effect on January 1, 1994, provided that sections 3 and 5 shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 309

S.B. NO. 789

A Bill for an Act Relating to General Excise Tax Exemptions for Affordable Housing.

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

SECTION 1. Act 303, Session Laws of Hawaii 1992, is amended by amending section 1 to read as follows:

“SECTION 1. Chapter 237, Hawaii Revised Statutes is amended by adding a new section to be appropriately designated and to read as follows:

“§237- Affordable housing development exemption. (a) There shall be an exemption from the taxes imposed by this chapter for the development of affordable housing. The housing finance and development corporation may certify for exemption any qualified person involved with the planning, design, financing, construction, or sale of affordable housing units developed by a private developer [who is fulfilling an affordable housing requirement imposed by the state land use commission or by a county land use decision-making body.]; provided that in the case of projects involving the development of market-price as well as affordable housing units, the exemption under this section shall apply exclusively to the units developed as affordable housing units as defined in subsection (e).

(b) All claims for exemption shall be filed with and certified by the housing finance and development corporation and forwarded to the department of taxation. The housing finance and development corporation shall not be considered a governmental contracting party when approving any claim for exemption for the purposes of section 104-2[, Hawaii Revised Statutes].

(c) The exemption shall apply to all amounts received by any certified person for the planning, design, financing, construction, or sale in the State of affordable housing units as described under subsection (a), and on which actual construction has started between July 1, 1992, and December 31, 1993, and which is completed by December 31, 1994, as verified by the housing finance and development corporation; provided that in the event that the developer is delayed or hindered from completing the project by reason of floods, earthquakes (or other acts of nature), strikes, lockouts, inability to procure materials, failure of power, riots, insurrection, war, civil or criminal proceedings, injunctions, writs, appeals, stays, or other reason of a like nature, which is not the fault of or capable of being prevented by the developer, then the December 31, 1994, completion deadline may be extended for a period equivalent to the period of the delay. In the event of a delay, the developer shall be required to submit to the housing finance and develop-

ment corporation verification of the date of commencement of any of the delaying events, as well as the date on which the event ended.

(d) The exemption shall apply to projects containing the first ten thousand affordable housing units which are certified and completed by December 31, 1994.

(e) For the purposes of this section:

“Actual construction” means construction of residential improvements, as well as grubbing, grading, or leveling of the land, construction of roads, installation of utilities, or otherwise preparing undeveloped land for the construction of improvements. “Actual construction” does not mean and shall exclude project planning, design, or obtaining necessary permits for construction.

“Affordable housing units” means housing units which are sold at prices or rented at rates affordable to households earning up to one hundred forty per cent of the area median income as determined by the United States Department of Housing and Urban Development.

(f) The provisions of this section shall apply to property subject to chapter 238.”

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

SECTION 3. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 310

S.B. NO. 930

A Bill for an Act Making an Appropriation for a Resource and Technical Assistance Project on Autism.

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

SECTION 1. Findings and purpose. The legislature finds that current services available in Hawaii frequently do not meet the unique needs of persons with autism. While it is impossible to determine the exact number of persons with autism or autistic-like characteristics due to the absence of an effective system of diagnosis and follow-up, it is estimated that there are about eleven hundred people with autism in Hawaii. The lack of a diagnosis, or an inaccurate diagnosis, frequently results in inappropriate and insufficient support services at home, work, and in school for persons with autism. Families of persons with autism need to be supported because they are the primary providers of services. Without effective intervention and appropriate support to families, large numbers of persons with autism are at great risk of costly and long-term, or even lifetime institutionalization.

In 1991, the state planning council on developmental disabilities submitted a report on autism in response to H.C.R. No. 212, H.D. 1, entitled, “Requesting the State Developmental Disabilities Planning Council to do a Feasibility Study of Comprehensive Services for People with Autism and Autistic-like Behaviors.” This report found that:

- (1) The most effective interventions known in autism now are early identification and diagnosis, effective educational and behavioral interventions, and appropriate support services with an emphasis on continuity;

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- (2) Hawaii presently does not have adequate expertise in the field of autism, and lacks a comprehensive coordinated system of services for this population; and
- (3) Due to the lack of consistently available and appropriate services, Hawaii has spent over \$500,000 a year in 1990 and 1991 on just four adolescents with autism.

The report's major recommendation was that Hawaii establish and fund a three-year pilot program under the auspices of the University of Hawaii's university affiliate program, to be known as the Hawaii resource and technical assistance project on autism. The 1992 legislature provided \$200,000 funding for the project for fiscal year 1992-1993.

The purpose of this Act is to express strong legislative support and provide continuing funding so that this newly established autism project will continue to support and assist families, professionals, and persons with autism. The project shall provide:

- (1) Diagnostic expertise and a team of trained professionals to work in collaboration with parents throughout the child's evaluation;
- (2) Coordination of the development and implementation of meaningful service plans;
- (3) On-site training for families, community agencies, and schools to provide appropriate services for persons with autism;
- (4) Assistance to families in locating and accessing appropriate services;
- (5) Advocacy for individuals with autism and autistic-like characteristics to further develop and improve services; and
- (6) Facilitation of research, networking, information exchanges, and agreements among agencies and parents dealing with autism.

SECTION 2. The autism advisory committee, established within the University of Hawaii's university affiliate program, shall continue to assure appropriate coordination of activities and provide support and direction to the project.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$175,385, or so much thereof as may be necessary for fiscal year 1993-1994, and the sum of \$182,263, or so much thereof as may be necessary for fiscal year 1994-1995, to provide continuing funding for efforts to establish support and assistance to families, professionals, and persons with autism through the resource and technical assistance project on autism.

SECTION 4. The sums appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 5. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 311

S.B. NO. 1063

A Bill for an Act Relating to Community Development.

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

SECTION 1. Severe financial problems have shut down Hamakua Sugar company and threaten the economic and social stability of the entire Hamakua coast of the island of Hawaii.

The Hawaii community development authority, established pursuant to Chapter 206E, Hawaii Revised Statutes, determines long-range community planning, development, and redevelopment programs in cooperation with private enterprise and various components of federal, state, and county governments.

Section 206E-5 provides that the "legislature, by statute, may designate an area as a community development district if it determines that there is need for replanning, renewal, or redevelopment of that area."

Having found a need, the purpose of this Act is to designate the Hamakua planning region, as described in the Hamakua regional plan published by the Hamakua steering committee in November, 1990, a community development district within the meaning of chapter 206E.

SECTION 2. Chapter 206E, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . HAMAKUA COMMUNITY
DEVELOPMENT DISTRICT**

§206E- District established; boundaries. The Hamakua community development district is established comprised of all land within the north Hilo and Hamakua judicial districts, from Kaiaakea in the south to the rim of Waipio Valley in the north, as provided in the Hamakua regional plan.

§206E- Hamakua community development district; development guidance policies. The following shall be the development guidance policies generally governing the authority's action in the Hamakua community development district:

- (1) Development shall seek to promote economic stability and employment opportunities by fostering diversified land uses in addition to continuing agricultural practices. Urban and rural design policies should be established to provide guidelines for ensuring that the nature and pattern of public and private development is in keeping with the existing sense of community and the rural character and quality of life of the Hamakua coast.
- (2) While the authority's development responsibilities apply only to the area within the district, the authority may engage in any studies or coordinative activities permitted in this chapter which affect areas lying outside the district, where the authority, in its discretion, decides that those activities are necessary to implement the intent of this chapter. The studies or coordinative activities may address facility systems, resident and industrial relocation, and other activities with the county and appropriate state agencies. The authority may engage in construction activities outside of the district; provided that such construction relates to infrastructure development or residential or business relocation activities; provided further, notwithstanding sec-

- tion 206E-7, that such construction shall comply with the general plan, development plan, ordinances, and rules of the county in which the district is located;
- (3) No plan or implementation strategy shall prevent continued activity or redevelopment of existing agricultural and other uses which meet reasonable performance standards;
 - (4) Major scenic, cultural, environmental, and open space resources such as the Waipio Valley rim shall be preserved through appropriate regulation and design review;
 - (5) Historic sites and culturally significant facilities, settings, or locations shall be preserved;
 - (6) Land use and redevelopment activities within the district shall be coordinated with and, to the extent possible, complement existing county and state policies, plans, and programs affecting the district; and
 - (7) Public facilities within the district shall be planned, located, and developed so as to support the redevelopment policies for the district established by this chapter and plans and rules adopted pursuant to it.

§206E- Hamakua community development district plan. No community development district plan developed pursuant to this part shall take effect until the county enacts an ordinance establishing a community facilities district pursuant to section 46-80.1 or a tax increment financing district pursuant to section 46-103 to finance special improvements in the Hamakua community development district.”

SECTION 3. Section 206E-1, Hawaii Revised Statutes, is amended to read as follows:

“§206E-1 Findings and purpose. The legislature finds that many [urban] areas of the State are substantially undeveloped [or], blighted, or economically depressed, and are or are potentially in need of [urban] renewal, renovation, or improvement to alleviate such conditions as dilapidation, deterioration, age, and other such factors or conditions which make such areas an economic or social liability.

The legislature further finds that there exists within the State vast, unmet community development needs. These include, but are not limited to, a lack of suitable affordable housing [for person of low income]; insufficient commercial and industrial facilities for rent; residential areas which do not have facilities necessary for basic liveability, such as parks and open space; and areas which are planned for extensive land allocation to one, rather than mixed uses.

It is further determined that the lack of planning and coordination in such areas has given rise to these community development needs and that existing laws and public and private mechanisms have either proven incapable or inadequate to facilitate timely redevelopment and renewal.

The legislature finds that a new and comprehensive authority for community development must be created to join the strengths of private enterprise, public development and regulation into a new form capable of long-range planning and implementation of improved community development. The purpose of this chapter is to establish such a mechanism in the Hawaii community development authority, a public entity which shall determine community development programs and cooperate with private enterprise and the various components of federal, state, and county governments in bringing plans to fruition. For such areas designated as community development districts, the legislature believes that the planning and implementation program of the Hawaii community development authority will

result in communities which serve the highest needs and aspirations of Hawaii's people.

The legislature finds that the creation of the Hawaii community development authority, the establishment of community development districts, and the issuance of bonds pursuant to this chapter to finance public facilities serve the public interest and are matters of statewide concern."

SECTION 4. Section 206E-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The authority shall consist of eleven voting members. The director of finance, the director of business, economic development, and tourism, the comptroller, and the director of transportation, or their respective designated representatives shall serve as ex officio, voting members. Seven members shall be appointed by the governor for staggered terms pursuant to section 26-34; provided that four members shall be appointed at large and, initially, three members, hereinafter referred to as county members, shall be selected from a list of ten prospective appointees recommended by the local governing body of the county in which the initial designated district is situated; and provided further that when vacancies occur in any of the three positions for which the members were selected from a list of county recommendations, the governor shall fill such vacancies on the basis of one from a list of four recommendations, two from a list of seven recommendations, or three from a list of ten recommendations. The list of recommendations shall be made by the local governing body of the county. If an additional district is designated by the legislature in a county other than the county in which the initial designated district is situated, the total membership of the authority shall be increased as prescribed above by the appointment of three additional members. Notwithstanding section 92-15, a majority of all members shall constitute a quorum to do business, and the concurrence of a majority of all members shall be necessary to make any action of the authority valid; except that, on any matter relating solely to a specific community development district, the county members representing districts other than that specific community development district shall not vote, and concurrence shall be required of a majority of that portion of the authority made up of all ex officio voting members, members at large, and county members representing the district for which action is being proposed in order for such action to be valid. All members shall continue in office until their respective successors have been appointed and qualified. Except as herein provided, no member appointed under this subsection shall be an officer or employee of the State or its political subdivisions."

SECTION 5. Section 206E-151, Hawaii Revised Statutes, is amended to read as follows:

"§206E-151 Findings and declarations. The legislature finds and declares that the health, safety, and general welfare of the people of the State require that every opportunity be taken to assist the redevelopment of community development districts; that [because of their location within or proximity to the urban core,] the redevelopment and revitalization of these districts will alleviate community needs for employment, housing, parks, open space, and commercial and industrial facilities; that a significant deterrent to redevelopment is the cost of public facilities; that interest rates on moneys necessary to finance such public facilities add significantly to the cost of such facilities and that more favorable interest rates would be available through the issuance of tax-exempt bonds; and that the availability of

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revenue bonds to finance the cost of public facilities will facilitate redevelopment of community development districts.

The legislature further finds that the powers conferred, the issuance of revenue bonds, and the expenditure of public moneys under this part constitute a serving of a valid public purpose, and that this enactment is in the public interest and is so declared as an express legislative determination."

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 1993-1994, to carry out the purposes of this Act. The sum appropriated shall be expended by the department of business, economic development, and tourism for purposes of this Act.

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

SECTION 8. This Act shall take effect upon its approval except that Section 6 shall take effect on July 1, 1993.

(Approved June 21, 1993.)

ACT 312

S.B. NO. 1410

A Bill for an Act Relating to the Environment.

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

SECTION 1. The legislature finds that Act 324, Session Laws of Hawaii (SLH) 1991, established a comprehensive approach to integrated solid waste management in Hawaii. Codified as chapter 342G, Hawaii Revised Statutes (HRS), Act 324, among other things:

- (1) Created the office of solid waste management in the department of health to coordinate efforts relating to solid waste management;
- (2) Established the counties' responsibilities for the development of integrated solid waste management plans, under review and approval of the office of solid waste management;
- (3) Established statewide goals for waste reduction of 25 per cent by January 1995 and 50 per cent by January 2000; to be met through source reduction, recycling, and bioconversion;
- (4) Delegated the responsibility, within the office of solid waste management, for the development and support of programs aimed at achieving the waste reduction goals; and
- (5) Delegated the responsibility for the collection of household hazardous waste to the counties, while the disposal of the collected waste would be the responsibility of the state.

Federal law, 40 C.F.R Part 258, Subtitle D (1991), and chapter 342H, HRS, require the establishment of significantly more stringent solid waste facility management policies aimed at protecting and preserving the State's fragile environment. Regulations to implement these policies are scheduled to take effect in October 1993. To carry out those policies and insure proper design, operation, and closure of municipal solid waste facilities, the office must immediately expand its efforts in the areas of permitting, inspection, enforcement and environmental monitoring.

The legislature further finds that certain resources contained in the solid waste stream are difficult to extract due to market constraints. One of the materials most easily identified, yet difficult to process and market, has been identified as glass containers. Programs successfully developed and implemented at the local level must be expanded statewide in order to meet the goals of Act 324, SLH 1991, to provide equitable allocation of market benefits to all counties, and to develop the most efficient system of administering the program funding.

However, to implement chapters 342G and 342H, HRS, the legislature finds that additional funds are necessary. The counties that are responsible for implementing source reduction, recycling, and bioconversion activities mandated under chapter 342G, HRS, require State support to develop these new program activities. State programs mandated under chapter 342G, HRS, require coordination and assistance to ensure their success. The expansion of regulatory responsibilities under Subtitle D and chapter 342H, HRS, requires additional staff and training.

The legislature further finds that expansion of solid waste regulatory programs and the development of waste reduction activities to preserve the State's fragile land and limited resources merit the development of a dedicated and stable source of funding. Because county governments provide waste disposal services, the costs of waste disposal are largely hidden costs that consumers have not had to associate with direct cost of service. Moreover, due to the increased regulation of solid waste disposal facilities, the cost of waste disposal is expected to rise significantly. It is inequitable and inefficient for the general taxpayer to bear the financial burden of environmental protection and waste diversion.

It is the intent of the legislature to establish a system of funding to expand those operations of the office of solid waste management which support integrated solid waste management programs and activities, and to place the costs of those programs as directly as possible upon the waste generator.

The purpose of this Act is to provide funding to support solid waste management, statewide waste reduction, recovery, and diversion programs by:

- (1) Establishing an environmental management special fund;
- (2) Establishing a solid waste management surcharge of 25 cents per ton, payable into the environmental management special fund, for the office of solid waste management to expand its efforts in the area of environmental protection, and to promote and support state and county waste reduction, recovery, and diversion programs;
- (3) Authorizing the counties to assess a clearly identified surcharge based on partial costs of solid waste collection; and
- (4) Providing funds to improve environmental health programs by providing public outreach and education and training of department of health personnel.

SECTION 2. Chapter 342G, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . SOLID WASTE MANAGEMENT SURCHARGE

§342G- Solid waste collection surcharge. Each county may assess residential real property owners in their respective county an annual solid waste collection surcharge based on the partial costs of solid waste collection. Notice of this surcharge shall be included with the notice of assessment required by section 246-43.

§342G- Solid waste disposal surcharge. (a) There is established an initial solid waste management surcharge of 25 cents per ton of solid waste dis-

posed of within the State at permitted or unpermitted solid waste disposal facilities during the first two years of the program. The surcharge shall be paid by the person or entity doing the disposal. This surcharge shall be based on actual weight received or on volumetric assumptions as determined by the department in collaboration with the owner or operator of the facility prior to October 1, 1993. The owner or operator of the facility shall transfer all moneys collected from the surcharge to the department through a quarterly reporting and payment schedule that is developed by the department and that is transmitted to the owner or operator of the facility by October 1, 1993. Estimates of quarterly solid waste disposal shall be submitted prior to the first day of each quarter and the transfer of moneys collected shall occur within thirty days of the end of each quarter.

(b) The solid waste management surcharge shall become effective on January 1, 1994.

(c) Following two years of program operation, the department and the respective counties shall evaluate the effectiveness of the solid waste management efforts and the surcharge may be adjusted higher or lower based on that evaluation; however, in no case shall it exceed \$1.50 per ton. The department, in consultation with each of the counties, shall submit its findings and recommendations to the legislature not less than twenty days prior to the convening of the legislative session immediately following the two year period. Upon the receipt of the department's findings and recommendations, the legislature shall evaluate the effectiveness of the program and make a determination whether an adjustment of the assessment is warranted.

(d) The surcharge collected pursuant to this section shall be deposited into the environmental management special fund. All interest earned or accrued on moneys deposited in the fund shall become a part of the fund.

§342G- Establishment of the environmental management special fund. (a) There is created in the state treasury an environmental management special fund. The fund may receive legislative appropriations, grants and gifts.

(b) All moneys collected pursuant to sections 342G- shall be deposited into the environmental management special fund. All interest earned or accrued on moneys deposited into the fund shall become a part of the fund.

(c) The department shall expend moneys contained in the environmental management special fund to:

- (1) Partially fund the operating costs of the program including its regulatory functions and the development of waste reduction and diversion activities as mandated by chapter 342G;
- (2) Fund statewide education, demonstration, and market development programs, through direct contract with the counties and the department of business, economic development, and tourism, or under a grant program that may be developed under rules pursuant to chapter 91; and
- (3) Provide for annual training for municipal solid waste operators in compliance with 40 C.F.R. Part 258 and Hawaii Administrative Rules Title 11 Chapter 58 (Proposed Revision).

§342G- Administration of the environmental management special fund. (a) The department may adopt rules to administer the environmental management special fund. During the interim period until such rules are established, the department may distribute funding to the counties or the department of business, economic development, and tourism in the form of a contractual agreement pursuant to section 103-22.

(b) The office shall not award any grant or contract under this section to any county that has failed to comply with the conditions set forth in this part and any rules adopted pursuant thereto.

(c) Unexpended or unencumbered grant funds shall revert to the environmental management special fund at the end of the fiscal year following the year in which the funds were granted.”

SECTION 3. Chapter 342G, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§342G- Penalties. Any person who violates any provision of this chapter or any rule adopted pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Each day of each 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.

§342G- Enforcement. The department of health shall enforce this chapter.”

SECTION 4. Section 342G-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Environmental management special fund” means the fund created by section 342G-

“Solid waste disposal facility” is any facility which receives solid waste for disposal through landfilling or incineration, and does not include facilities utilized for transfer, storage, processing for recycling or reuse, or bioconversion.”

SECTION 5. Section 342G-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The coordinator shall prepare and submit an annual report to each county, the director, the governor, and the legislature, twenty days prior to the convening of each regular session of the legislature, describing the activities of the office. The annual report shall [include] provide the information required in this chapter, including, but not limited to:

- (1) A summary of the [progress made toward] results achieved in meeting the state waste reduction goals, including the amounts of waste disposed of, diverted, and generated in the State, and the progress toward managing waste in consideration of the state solid waste management priorities;
- (2) [Updates on the progress of] Results achieved in county integrated solid waste management planning and the state plan[;], with timetables for completion and implementation;
- (3) [Actions taken to implement] Results achieved in implementing procurement programs, including the amount of recycled goods and materials purchased by the State and counties;
- (4) Total paper consumption by state and county agencies and [progress toward] results achieved with the office paper reduction goal [established];
- (5) [Actions] Results achieved by government agencies [to establish] in establishing office paper and other materials recovery programs;
- (6) [A review of state progress] Results achieved by state and county agencies in removing barriers to the development of recycling markets

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- and in developing markets and supporting businesses that use recovered materials;
- (7) A summary of [activities] results achieved by state and county agencies in the provision and execution of the statewide public awareness and education program;
- (8) A summary of [actions taken] results achieved by agencies to improve energy efficiency and to reduce reliance on imported fuels in compliance with sections 226-18 and 226-52; [and]
- (9) A summary and schedule of the key solid waste management [activities anticipated] goals and objectives planned for the following year at state and county levels[.]; and
- (10) Revenues into and expenditures from the environmental management special fund during the previous fiscal year and projections for revenues and expenditures in the coming fiscal year.”

SECTION 6. The department of health is authorized to expend from the environmental management special fund the sum of \$400,000 for fiscal year 1993-1994, to carry out the purposes of this Act.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on July 1, 1993.

(Approved June 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 313

S.B. NO. 1531

A Bill for an Act Relating to Public Works and Contracts.

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

SECTION 1. Existing state law does not require state agencies to grant a preference to in-state contractors when awarding a contract for a special works project.

This Act requires a state agency to award a contract for a public works project to a bidder who has filed State of Hawaii employment, general excise, and income tax returns and has paid all amounts owing on such returns for a minimum of two successive years prior to submitting the bid, provided that the amount of the bid is not more than five per cent higher than the amount bid by any competing contractor who has not filed State of Hawaii taxes as specified, and the amount of the bid by the local bidder is \$5,000,000 or less; or has filed State of Hawaii employment, general excise, and income tax returns and has paid all amounts owing on such returns for a minimum of four successive years prior to submitting the bid, provided that the amount of the bid is not more than five per cent higher than the amount bid by any competing contractor who has not filed or paid State of Hawaii taxes as specified, and the amount of the bid by the bidder is more than \$5,000,000.

SECTION 2. Chapter 103, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§103- Preference to bidders on state agency contracts. (a) The requirements in this section are in addition to any other applicable requirements provided in this chapter.

(b) The preference in this section may not be utilized in combination with any other preference otherwise available to a bidder under state or federal law.

(c) In any contract for a public works project, a state agency shall award the contract to a bidder who has filed State of Hawaii employment, general excise, and income tax returns and has paid all amounts owing on such returns for two successive years prior to submitting the bid; provided that the amount of that bid is not more than five per cent higher than the amount bid by any competing contractor who has not filed or paid State of Hawaii taxes as specified, and the amount of the bid by the state tax paying bidder is \$5,000,000 or less.

(d) In any contract for a public works project, a state agency shall award the contract to a bidder who has filed State of Hawaii employment, general excise, and income tax returns and has paid all amounts owing on such returns for four successive years prior to submitting the bid; provided that the amount of that bid is not more than five per cent higher than the amount bid by any competing contractor who has not filed or paid State of Hawaii taxes as specified, and the amount of the bid by the state tax paying bidder is more than \$5,000,000.

(e) If two or more contractors who have paid state and county taxes or were required to submit a filing regarding state and county taxes are bidding on a public works contract, and those contractors meet the criteria outlined in subsection (c) or (d), the state agency shall award the contract to the contractor among them who has submitted the lowest bid.

(f) If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public works project because of preference awarded by this section, this section shall not apply insofar as its application would preclude or reduce federal assistance for that work."

SECTION 3. New statutory material is underscored.¹

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

(Approved June 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 314

S.B. NO. 1564

A Bill for an Act Relating to Comptroller to Supervise Accounts.

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

SECTION 1. 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] that may be in effect. When necessary, the comptroller shall withhold approval of any payment. Whenever approval is withheld, the department or

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agency concerned shall be promptly notified. With respect to the University of Hawaii and the department of education, the comptroller shall issue warrants for the release of funds for the operating costs of the university or the department of education, as applicable, in amounts and at times mutually agreed upon by the governor or director of finance and the university or department of education, as applicable; provided that 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; provided further that the comptroller may issue warrants as an advance from the state treasury to the University of Hawaii and the department of education to establish a checking account and provide working capital in amounts and times mutually agreed upon by the governor or director of finance and the University of Hawaii and the department of education. The University of Hawaii and the department of education shall preaudit all proposed payments to determine the propriety of expenditures and compliance with applicable laws, executive orders, and rules as may be in effect. The University of Hawaii and the department of education shall make disbursements for operating expenses from the amounts released by the comptroller and maintain records and documents necessary to support those disbursements at times mutually agreed upon by the university president or the superintendent of education, as applicable, and the comptroller; provided that when requested by the university or 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 2. Section 12 of Act 321, Session Laws of Hawaii 1986, as amended by Section 69 of Act 283, Session Laws of Hawaii 1987, as amended by Section 7 of Act 371, Session Laws of Hawaii 1989, as amended by Section 3 of Act 163, Session Laws of Hawaii 1991, is amended to read as follows:

"**SECTION 12.** This Act shall take effect on July 1, 1986, and be repealed as of June 30, [1994] 1998; 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, and sections 40-58 and 103-39, Hawaii Revised Statutes, are reenacted in the form in which they read on June 30, 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 21, 1993.)

ACT 315

S.B. NO. 1715

A Bill for an Act Relating to Health Care Provider Taxes.

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
HOSPITAL AND NURSING FACILITY TAX**

§ -1 Definitions. As used in this chapter, unless the context otherwise requires:

“Department” means the department of human services.

“Director” means the director of human services.

“Hospital” means a hospital licensed under sections 321-9 and 321-11, including state and state/county hospitals.

“Hospital income” means the total compensation received for furnishing inpatient or outpatient hospital services, including all receipts from “ancillary services” (as defined in 42 C.F.R. 413.53(b)) to the provision of inpatient and outpatient services, and receipts from items supplied in connection with these services. Hospital income also includes compensation for patients who are on a waiting list to be transferred to a nursing facility or in acute care “swing beds”. “Hospital income” shall not include the following: compensation received for services covered by Title XVIII of the federal Social Security Act (including coinsurance and deductibles received from beneficiaries of the Medicare program and Medicare health maintenance organization or risk sharing contracts); income from an affiliated entity that operates as a prepaid health maintenance organization; settlements from third party payors for services delivered or items supplied prior to the effective date of this Act (such as settlements of cost reports or decision on rate reconsideration requests); income from services provided by separately licensed units (such as distinct part nursing facilities within hospitals); income from grants, bequests, donations, endowments, or investments; income from “nonexempt hospital activities” as defined in section 237-23(b) (such as income from leased property or from parking lots); or amounts of taxes imposed by chapter 237 or this chapter and passed on, collected, and received from the consumer as part of hospital income.

“Nursing facility” means a nursing facility licensed under sections 321-9 and 321-11 and any intermediate care facility for the mentally retarded persons licensed under sections 321-9 and 321-11.

“Nursing facility income” means the total compensation received for furnishing nursing facility services, including all receipts from “ancillary services” (as defined in 42 C.F.R. 413.53 (b)) to the provision of nursing facility services, and receipts from items supplied in connection with these services. “Nursing facility income” shall not include the following: compensation received from services covered by Title XVIII of the federal Social Security Act (including copayments and deductibles received from beneficiaries of the Medicare program); income from an affiliated entity that operates as a prepaid health maintenance organization; settlements from third party payors for services delivered or items supplied prior to the effective date of this Act (such as settlements of cost reports or decisions on rate reconsideration requests); income from services provided by separately licensed units (such as distinct part intermediate care facilities for the mentally retarded); income from the provision of adult day health and adult day care

programs; income from the provision of home health agency services; income from the provision of "nursing homes without walls" programs; income from the provision of inpatient hospital services; income from grants, bequests, donations, endowments, or investments; or amounts of taxes imposed by chapter 237 or this chapter and passed on, collected, and received from the consumer as part of nursing facility income.

"Operator" means any person operating a nursing facility or hospital, whether as owner or proprietor, or as lessee, sublessee, mortgagee in possession, licensee, or otherwise, or engaging or continuing in any service business that involves the actual furnishing of nursing facility or hospital services.

§ -2 Imposition of tax and rates. (a) There is levied and shall be assessed and collected during each quarter a tax in the amount of six per cent of all nursing facility income.

(b) There is levied and shall be assessed and collected during each quarter a tax in the amount of four per cent of all hospital income, except for income subject to taxes imposed by chapter 237.

(c) Each nursing facility and hospital operator shall pay to the State the tax imposed by this section as provided by this chapter.

(d) The tax imposed by this section shall not apply to an individual facility determined by the department to be financially distressed, pursuant to the rulemaking authority authorized by this chapter; provided that this exemption does not cause the tax to fail to qualify as permissible under section 1903(w) of the federal Social Security Act.

(e) Each operator of a nursing facility shall identify separately the tax imposed by this section in all invoices or statements to persons whose payments result in nursing facility income. Notwithstanding the foregoing, the amount that a beneficiary of the Medicaid program is required to contribute toward his or her care shall not be changed as a result of the tax imposed by this section.

(f) The taxes imposed by this section shall terminate at the end of the month following the time at which the taxes no longer qualify as permissible under section 1903(w) of the federal Social Security Act.

§ -3 Return and payments; penalties. (a) On or before the fifteenth day of February, May, August, and November, or for fiscal year taxpayers on or before the forty-fifth day after the close of the fiscal quarter, every operator taxable under this chapter during the preceding calendar or fiscal quarter shall file a sworn return with the director in such form as the director shall prescribe, together with a remittance for the amount of the tax in the form of cash, bank draft, cashier's check, money order, or certificate of deposit. In lieu of the remittance, the operator may request withholding from payments made to the operator by the department under section -4. Sections 237-30 and 237-32 shall apply to returns and penalties made under this chapter to the same extent as if the sections were set forth specifically in this section.

(b) Notwithstanding subsection (a), the director, for good cause, may permit an operator to file the operator's return required under this section and make payments thereon, on a semiannual basis during the calendar or fiscal year, the return and payment to be made on or before the last day of the calendar month after the close of each six-month period, to wit: for calendar year operators, on July 31 and January 31 or, for fiscal year operators, on or before the last day of the seventh month following the beginning of the fiscal year and on or before the last day of the month following the close of the fiscal year; provided that the director is satisfied that the grant of the permit will not unduly jeopardize the collection of the taxes

due thereon and the operator's total tax liability for the calendar or fiscal year under this chapter will not exceed \$1,000.

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

(c) If an operator filing the operator's return on a semiannual basis, as provided in this section, becomes delinquent in either the filing of the operator's return or the payment of the taxes due thereon, or if the liability of an operator, who possesses a permit to file the operator's return and make payments on a semiannual basis, exceeds \$1,000 in taxes during the calendar or fiscal taxable year, or if the director determines that any such semiannual filing of a return would unduly jeopardize the proper administration of this chapter, including the assessment or collection of the taxes, the director, at any time, may revoke an operator's permit, in which case the operator then shall be required to file the operator's return and make payments thereon as provided in subsection (a).

(d) Section 232-2 shall apply to the annual return, but not to a quarterly or semiannual return.

§ -4 Withholding. As an option to making payments under section -3, the department and the operator in writing may agree that the department will withhold all or part of the amount of taxes owing for a quarter from Medicaid payments owed by the department to the operator. All reports by the department to the federal government or to the operator, of Medicaid payments made to the operator by the department shall include any amount withheld to satisfy the tax obligation imposed by this chapter.

§ -5 Annual return. On or before the twentieth day of the fourth month following the close of the calendar or fiscal taxable year, every operator who has become liable for the payment of the taxes under this chapter during the preceding tax year shall file a return summarizing that operator's liability under this chapter for the year, in such form as the director prescribes. The operator shall transmit to the Honolulu office of the department with the return, a remittance covering the residue of the tax chargeable to the operator, if any. The return shall be signed by the operator, if made by an individual, or by the president, vice-president, secretary, or treasurer of a corporation, if made on behalf of a corporation. If made on behalf of a partnership, firm, society, unincorporated association, group, hui, joint venture, joint stock company, corporation, trust estate, decedent's estate, trust, or other entity, any individual delegated by the entity shall sign the return on behalf of the operator. If for any reason it is not practicable for the individual operator to sign the return, it may be done by any duly authorized agent. The department, for good cause shown, may extend the time for making the return on the application of any operator and grant such reasonable additional time within which to make the return as the department may deem advisable.

Section 232-2 shall apply to the annual return, but not to a quarterly or semiannual return.

§ -6 Assessment of tax upon failure to make return; limitation period; exceptions; extension by agreement. (a) If any operator fails to make a return as required by this chapter, the director shall make an estimate of the tax liability of the operator from any information the director obtains, and according to the estimate so made, assess the taxes, interest, and penalty due the State from the operator; give notice of the assessment to the operator; and make demand upon the

operator for payment. The assessment shall be presumed to be correct until and unless, upon an appeal duly taken as provided in section -8, the contrary shall be clearly proved by the operator assessed. The burden of proof upon the appeal shall be upon the operator assessed to disprove the correctness of assessment.

(b) After a return is filed under this chapter the director shall cause the return to be examined, and may make such further audits or investigations as the director considers necessary. If the director determines that there is a deficiency with respect to the payment of any tax due under this chapter, the director shall assess the taxes and interest due the State, give notice of the assessment to the persons liable, and make demand upon the persons for payment.

(c) Except as otherwise provided by this section, the amount of taxes imposed by this chapter shall be assessed or levied within three years after the annual return was filed, or within three years of the due date prescribed for the filing of the return, whichever is later. No proceeding in court without assessment for the collection of any such taxes shall be begun after the expiration of the period.

(d) In the case of a false or fraudulent return with intent to evade tax, or a failure to file the annual return, the tax may be assessed or levied at any time.

(e) Where, before the expiration of the period prescribed in subsection (c) for assessments or in section -7 for credits and refunds, both the department and the operator have consented in writing to the assessment or levy of the tax after the date fixed by subsection (c) or the credit or refund of the tax after the date fixed by section -7, the tax may be assessed or levied, or the overpayment, if any, may be credited or refunded at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

§ -7 Overpayment; refunds. Upon application by an operator, if the director determines that any tax, interest, or penalty has been paid more than once, or has been erroneously or illegally collected or computed, the tax, interest, or penalty shall be credited by the director on any taxes then due from the operator under this chapter. The director shall refund the balance to the operator or the operator's successors, administrators, executors, or assigns in accordance with section 231-23. As to all tax payments for which a refund or credit is not authorized under this section (including, without prejudice to the generality of the foregoing, cases of unconstitutionality), the remedies provided by appeal or under section 40-35 are exclusive. No credit or refund shall be allowed for any tax imposed by this chapter, unless a claim for the credit or refund is filed as follows:

- (1) If an annual return is timely filed, or is filed within three years after the date prescribed for filing the annual return, then the credit or refund shall be claimed within three years after the date the annual return was filed or the date prescribed for filing the annual return, whichever is later; and
- (2) If an annual return is not filed, or is filed more than three years after the date prescribed for filing the annual return, a claim for credit or refund shall be filed within:
 - (A) Three years after the payment of the tax; or
 - (B) Three years after the date prescribed for the filing of the annual return, whichever is later.

The preceding limitation shall not apply to a credit or refund pursuant to an appeal, provided for in section -8.

§ -8 Appeals. Any operator aggrieved by any assessment of the tax imposed by this chapter for any quarter or any year, may appeal from the assessment in the manner and within the time and in all other respects, as provided in the

case of income tax appeals by section 235-114; provided the tax so assessed shall have been paid.

§ -9 Records to be kept; examination; penalties. (a) Every operator shall keep, in the English language, within the State, and preserve for a period of three years, suitable records relating to nursing facility or hospital income taxed under this chapter, and such other books, records of account, and invoices as may be required by the department. All such books, records, and invoices shall be open for examination at any time by the department or the department of taxation, or the authorized representative thereof. For the purposes of determining the amount of taxes due under this chapter, every operator shall keep its books and records of account on the accrual basis with the exception of hospitals in the state community hospital system.

(b) Any operator violating this section shall be guilty of a misdemeanor; and any officer, director, president, secretary, or treasurer of a corporation who permits, aids, or abets the corporation to violate this section shall likewise be guilty of a misdemeanor. The penalty for this misdemeanor 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.

§ -10 Disclosure of returns unlawful; destruction of returns. (a) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully permit any such return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only the operator, the operator's authorized agent, or persons with a material interest in the return, return information, or report may examine the same. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:

- (1) Trustees;
- (2) Partners;
- (3) Persons named in a board resolution or a one per cent shareholder in the case of a corporate return;
- (4) The person authorized to act for a corporation in dissolution;
- (5) A shareholder of an S corporation;
- (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in the case of the estate's or decedent's return;
- (7) The committee, trustee, or guardian of any person in paragraphs (1) to (6) who is incompetent;
- (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) to (7);
- (9) Persons duly authorized by the State in connection with their official duties; and
- (10) Any duly accredited tax official of the United States or any state or territory.

Any violation of this subsection shall be a misdemeanor. Nothing in this subsection shall prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items of the reports or returns.

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(b) The department may destroy the quarterly or semiannual returns filed pursuant to section -3, or any of them, upon the expiration of three years after the end of the calendar or fiscal year in which the taxes so returned accrued.

§ -11 Collection by suit; injunction. The department may collect taxes due and unpaid under this chapter, together with all accrued penalties, by action in assumpsit or other appropriate proceedings in the district or circuit court of the judicial circuit in which the taxes arose, regardless of the amount. After delinquency has continued for sixty days, the department may proceed in the circuit court of the judicial circuit in which the nursing facility or hospital income is taxed to obtain an injunction restraining the further furnishing of nursing facility or hospital services until full payment is made of all taxes, penalties, and interest due under this chapter.

§ -12 Application of taxes. The taxes imposed by this chapter shall be in addition to any other taxes imposed by any other laws of the State; provided that if it is held by any court of competent jurisdiction that the taxes imposed by this chapter may not legally be imposed in addition to any other tax or taxes imposed by any other law or laws with respect to the same property and the use thereof, then this chapter shall be deemed not to apply to the property and the use thereof under the specific circumstances, but the other laws shall be given full effect with respect to the property and use.

§ -13 Administration and enforcement; rules. (a) The director shall administer and enforce this chapter. With respect to:

- (1) The examinations of books and records, and operators and other persons;
- (2) Procedures and powers upon failure or refusal by an operator to make a return or proper return; and
- (3) The general administration of this chapter;

the director shall have all rights, powers, and duties conferred by chapters 231 and 237 with respect to powers and duties or with respect to taxes imposed under chapter 237. Without restriction upon these rights and powers, section 237-8 and sections 237-36 to 237-41 are made applicable to and with respect to taxes, operators, department officers, and other persons, and the matters and things affected or covered by this chapter, insofar as these sections are not inconsistent with this chapter, in the same manner, as nearly as may be, as in similar cases covered by chapter 237.

(b) The director may adopt rules under chapter 91 to carry out this chapter.

(c) The department may contract with the department of taxation for assistance in implementing and administering this chapter.

§ -14 Taxes; allowable reimbursement costs. All taxes paid pursuant to this chapter shall be deemed allowable and reimbursable costs for federal Medicaid reimbursement purposes. The department shall make appropriate adjustments to the methods and standards for reimbursing nursing facilities or hospitals under section 346-14 by a Medicaid state plan amendment which shall become effective on federal approval. In the case of any program involving federal Medicaid participation, the adjustment shall take effect no earlier than the effective date of any federally-approved Medicaid state plan amendment containing any such adjustment.

§ -15 Health care revolving fund. The department shall collect the tax and pay all tax revenues into the state general fund for deposit into the health care

revolving fund which is hereby created in the state treasury. Amounts deposited in the health care revolving fund, and any interest earned on these amounts, shall be used only for section 346-14 Medicaid purposes. Any federal Medicaid matching funds to expenditures made from funds deposited in the health care revolving fund shall not become part of the health care revolving fund. The funds in the health care revolving fund shall be expended by the department.

§ -16 Evasion of tax, etc.; penalties. It shall be unlawful:

- (1) For any operator to:
 - (A) Refuse to make the return required in section -5;
 - (B) Make any false or fraudulent return or false statement in any return, with intent to defraud the State or to evade the payment of any tax imposed by this chapter; and
 - (C) For any reason to aid or abet another in any attempt to evade the payment of any tax imposed by this chapter; or
- (2) For the president, vice-president, secretary, or treasurer of any corporation to make or permit to be made for any corporation or association any false return, or any false statement in any return required by this chapter, with the intent to evade the payment of any tax imposed by this chapter.

Any person violating this section or section 231-34 in relation to the tax imposed by this chapter, shall be punished as provided in section 231-34. Any corporation for which a false return, or return containing a false statement is made, shall be fined in the amount provided in section 231-34.”

SECTION 2. Section 237-24.7, Hawaii Revised Statutes, is amended to read as follows:

“§237-24.7 Additional amounts not taxable. In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

- (1) 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 paragraph:

“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;

- (2) Amounts received by the operator of a county transportation system operated under an operating contract with a political subdivision, where the political subdivision is the owner of the county transportation system. As used in this paragraph:

“County transportation system” means a mass transit system of motorized buses providing regularly scheduled transportation within a county[.]

“Operating contract” or “contract” means a contract to operate and manage a political subdivision’s county transportation system, which provides that:

- (A) The political subdivision shall exercise substantial control over all aspects of the operator's operation;
- (B) The political subdivision controls the development of transit policy, service planning, routes, and fares; and
- (C) The operator develops in advance a draft budget in the same format as prescribed for agencies of the political subdivision. The budget must be subject to the same constraints and controls regarding the lawful expenditure of public funds as any public sector agency, and deviations from the budget must be subject to approval by the appropriate political subdivision officials involved in the budgetary process.

"Operator" means any person who, pursuant to an operating contract with a political subdivision, operates or manages a county transportation system.

"Owner" means a political subdivision that owns or is the lessee of all the properties and facilities of the county transportation system[,] (including buses, real estate, parking garages, fuel pumps, maintenance equipment, office supplies, etc.), and that owns all revenues derived therefrom;

- (3) Surcharge taxes on rental motor vehicles imposed by chapter 251 and passed on and collected by persons holding certificates of registration under that chapter;
- (4) Amounts received by the operator of orchard properties from the owner of the orchard property 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 paragraph:

"Employee" means an employee directly engaged in the day to day operations of the orchard properties and employed by the operator.

"Orchard property" means any real property [which] that is used to raise trees with a production life cycle of fifteen years or more producing fruits or nuts having a normal period of development from the initial planting to the first commercially saleable harvest of not less than three years.

"Owner" means a fee owner or lessee under a recorded lease of orchard property.

- (5) "Operator" means a producer who, pursuant to a written contract with the owner of the orchard property, operates or manages the orchard property [of] for the owner where the property contains an area sufficient to make the undertaking economically feasible[.]; and Taxes on nursing facility or hospital income imposed by chapter and passed on and collected by operators of nursing facilities or hospitals."

SECTION 3. Section 235-55.9, Hawaii Revised Statutes, is amended by amending subsections (a), (b), (c), and (d) to read as follows:

"(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 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[.] plus six per cent of the nursing facilities expenses paid by or for the resident individual during the taxable year. For individual resident taxpayers residing for more than two hundred days of the taxable year in the aggregate in a county in which the county general excise and use tax surcharge is in effect, the medical services excise tax credit shall be four and one-half per cent of qualified medical expenses paid by the resident individual during the taxable year[.] plus six per cent of nursing facilities expenses paid by the resident individual during the taxable year. The [amount] portion of the tax credit attributable to medical expenses 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]. The preceding limitations shall not apply to the portion of the credit attributable to nursing facilities expenses; 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 paid for the taxpayer or the taxpayer's dependent 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. [Qualified medical expenses] Qualified medical expenses shall not include the following:

- (1) Capital improvements; or
- (2) Prescription drugs or prosthetic devices exempt under section 237-24(23).

"Nursing facility expenses" are amounts actually paid by the taxpayer for services provided to the taxpayer or to any individual who bears a relationship to the taxpayer as described in section 152(a) (with respect to dependent defined) of the Internal Revenue Code by a nursing facility licensed under section 321-9 and 321-11 and any intermediate care facility for mentally retarded persons under sections 321-9 and 321-11; provided that the nursing facility expense was subject to the imposition and payment of the tax imposed by chapter .

The amount of medical expenses and nursing facility 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."

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SECTION 4. Section 235-55.9, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) If the tax credit [is] claimed by an individual includes qualified medical expenses calculated at the rate of four and one-half per cent, and the individual resides in a county in which the county general excise and use tax surcharge is not in effect, or if the tax credit that includes qualified medical expenses calculated at the rate of four and one-half per cent is claimed in a county [which] that has a county general excise and use tax surcharge in effect by an individual who has resided in that county for not more than two hundred days of the taxable year in the aggregate, there shall be added to and become part of the tax liability of the individual:

- (1) The amount of the tax credit claimed under this section multiplied by three; or
- (2) Ten per cent of the income tax liability for the taxable year for which the individual income tax return is being filed,

whichever is greater.

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."

SECTION 5. The department of human services shall submit a report to the legislature no later than twenty days prior to the convening of the regular sessions of 1994 and 1995, respectively, which shall include, but is not limited to, the following:

- (1) The status of the provider tax, including the revenues realized from each facility, and any Medicaid reimbursements provided to these facilities;
- (2) An accounting of federal matching funds drawn down from the reimbursement rate resulting from the provider tax; and
- (3) An update of the administrative costs, and staffing required to carry out the purposes of this Act.

SECTION 6. 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 1993-1994, to carry out the purposes of this Act, including the hiring of necessary staff. The sum appropriated shall be expended by the department of human services.

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

SECTION 8. This Act, upon its approval, shall:

- (1) Take effect on July 1, 1993, or the effective date of reimbursement changes referred to in section -14 of section 1 of this Act, whichever is later; and
- (2) Apply to hospital and nursing facility income arising from activities occurring on and after the effective date of this Act and before July 1, 1995.

(Approved June 21, 1993.)

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S.B. NO. 1819

A Bill for an Act Relating to Sentencing.

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

SECTION 1. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§706- Expedited sentencing program. (1) A person who has committed intra-family sexual assault may be considered for the expedited sentencing program in accordance with this section. As used in this section, “intra-family” sexual assault means any criminal offense of felony sexual assault under section 707-730, 707-731, or 707-732 or of incest, as defined in section 707-741, in which the victim of the offense is related to the alleged offender by consanguinity or marriage or residing in the same dwelling unit as the alleged offender and the victim was, at the time of the sexual assault, under the age of eighteen.

(2) The police department of the county in which the sexual assault took place or any other appropriate investigative law enforcement agency shall confer with the appropriate prosecuting authority. If the prosecuting authority determines that it would be appropriate to provide notice of the expedited sentencing program to the alleged offender, the police department or other appropriate investigative law enforcement agency shall give an alleged offender written notice of the existence of the expedited sentencing program provided in this section. The providing of the notice shall not be a prerequisite to the taking of a statement from an alleged offender, nor in any manner shall it commit a prosecuting authority to issuing a statement of no objection to the alleged offender being considered for the expedited sentencing program.

(3) The written notice shall state: “YOU ARE ADVISED TO SEEK LEGAL COUNSEL IMMEDIATELY AND, IF YOU CANNOT AFFORD ONE, TO CONTACT THE OFFICE OF THE PUBLIC DEFENDER. FAILURE TO CONTACT AN ATTORNEY MAY KEEP YOU OUT OF THIS PROGRAM. A copy of section 706- , Hawaii Revised Statutes, is attached to this notice. You are under investigation for a felony sexual assault against a minor. Upon completion of this investigation, if there is sufficient basis to believe that you have committed a sexual assault, the case will be referred to the appropriate prosecuting authority for review and possible institution of criminal charges.

Hawaii law provides for a range of ordinary prison sentences for felony sexual assault ranging from five years up to twenty years imprisonment or even life imprisonment, depending upon the offense. However, section 706-

, Hawaii Revised Statutes, provides that a person who commits a sexual assault upon a minor but who admits guilt, cooperates with the prosecuting authority, and participates in appropriate assessment and treatment may be considered for the expedited sentencing program. A person who is sentenced in accordance with the expedited sentencing program may be sentenced to a term of probation, which may be revoked for failure to comply with the terms of the probation pursuant to section 706-625. To qualify for consideration for the expedited sentencing program, your legal counsel first must request from the office of the prosecuting authority named in this notice a written statement as to whether that office has any objection to your being considered for the expedited sentencing program. THE COURT WILL NOT CONSIDER YOU FOR THE EXPEDITED SENTENCING PROGRAM UNDER SECTION 706- , HAWAII REVISED STAT-

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UTES, UNLESS YOUR LEGAL COUNSEL HAS RECEIVED A WRITTEN STATEMENT THAT THE APPROPRIATE PROSECUTING AUTHORITY HAS NO OBJECTION TO YOUR BEING CONSIDERED FOR THE EXPEDITED SENTENCING PROGRAM AND THE REQUEST FOR THAT WRITTEN STATEMENT WAS MADE WITHIN FOURTEEN DAYS OF YOUR RECEIPT OF THIS NOTICE. FURTHER, THE COURT WILL NOT CONSIDER YOU FOR THE EXPEDITED SENTENCING PROGRAM UNDER SECTION 706-¹, HAWAII REVISED STATUTES, UNLESS, AFTER YOUR LEGAL COUNSEL HAS RECEIVED THIS NOTICE, YOU HAVE MADE A GOOD FAITH EFFORT TO AVOID THE NECESSITY FOR THE CHILD BEING REMOVED FROM THE FAMILY HOME, INCLUDING BUT NOT LIMITED TO MOVING AND REMAINING OUT OF THE FAMILY HOME UNTIL OTHERWISE ORDERED BY THE COURT.”

The written notice also shall provide:

- (a) Instructions on how to contact the appropriate prosecuting authority, including any necessary addresses and phone numbers; and
- (b) The name of the person delivering the notice and the date it was given to the alleged offender.

(4) A defendant shall not be considered by the court for the expedited sentencing program under this section unless the defendant's legal counsel requested, within fourteen days of the defendant's receipt of the written notice, and subsequently received a written statement from the appropriate prosecuting authority stating that office has no objection to the defendant being considered for the expedited sentencing program in accordance with this section and further, that it is established that each of the following criteria has been met:

- (a) After receiving the required written notice, the defendant has made a good faith effort to avoid the necessity for the child being removed from the family home, including but not limited to moving and remaining out of the family home until otherwise ordered by the court;
- (b) The victim of the sexual assault was under the age of eighteen at the time of the commission of the sexual assault;
- (c) The defendant has not received a prior sentence under this section and has not received a prior conviction for felony sexual assault under section 707-730, 707-731, or 707-732 or of incest, as defined in section 707-741;
- (d) A guardian ad litem appointed in a family court proceeding or a person assigned by the Children's Advocacy Center to perform the function of a guardian ad litem has agreed that it would be in the best interest of the child for the alleged offender to be considered for the expedited sentencing program. The prosecuting authority shall not issue a statement of no objection without this prior agreement; and
- (e) The defendant has complied with the requirements for consideration for the expedited sentencing program as established in subsection (6); provided that the prosecuting authority may oppose at sentencing the defendant's participation in the expedited sentencing program, if the prosecuting authority determines that the defendant has failed to satisfy the criteria under subsection (6).

(5) The prosecuting authority and the child's guardian ad litem or a person assigned to perform the function of a guardian ad litem may consult with any other appropriate agency or individual to assist in a decision whether to provide a written statement of no objection prior to the defendant being considered for sentencing under the expedited sentencing program.

(6) Within seven business days of receipt of the written notice stating that the appropriate prosecuting authority has no objection to the alleged offender being considered for the expedited sentencing program in accordance with this section, unless the prosecuting authority waives compliance with the time limit, the alleged offender shall comply with each of the following requirements:

- (a) Continue to make a good faith effort to avoid the necessity for the child being removed from the family home, including but not limited to moving and remaining out of the family home until otherwise ordered by the court;
- (b) Admit to commission of the sexual assault to the police department of the county in which the assault took place or other appropriate investigative law enforcement agency;
- (c) Provide to the appropriate prosecuting authority a written waiver of indictment and preliminary hearing for any criminal charges arising from the sexual assault; and
- (d) Enter a voluntary plea of guilty to the charge or charges alleged upon or following arraignment.

(7) Notwithstanding sections 706-606.5, 706-620, 706-659, 706-660, and 706-660.2, a defendant who may be considered for the expedited sentencing program in accordance with this section as of the date sentence is imposed may be sentenced to a term of probation upon the conditions specified in section 706-624; provided that, if the defendant is sentenced to a term of imprisonment, which may be up to one year, as a condition of probation, the term of imprisonment may allow for the defendant's retention of employment.

- (8) The term of probation under this section shall be as follows:
 - (a) For an offense under section 707-730 or 707-731, twenty years; and
 - (b) For an offense under section 707-732 or 707-741, ten years.

(9) In addition to the conditions of probation provided under section 706-624, a sentence under this section shall include that the defendant comply with the following conditions:

- (a) To participate in court approved, appropriate sex offender assessment and treatment, that must conform to the guidelines developed by the adult probation division of the appropriate circuit court, until clinically discharged; provided that the prosecuting authority shall be provided notice and the opportunity for a hearing prior to any treatment discontinuance being allowed by the court or the adult probation division; provided further that the defendant shall pay for the cost of the assessment and treatment to the extent that the defendant has the ability to do so; and provided further that a lack of assessment and treatment resources shall result in the defendant not being considered for the expedited sentencing program;
- (b) To provide a written waiver of confidentiality for any assessment, treatment, counseling, therapy, or other program ordered as a condition of probation;
- (c) To comply with all orders entered in a proceeding pursuant to chapter 587; and
- (d) Any other condition deemed by the court to be reasonably necessary for the protection of the victim of the sexual assault or the rehabilitation of the defendant.

(10) There shall be a rebuttable presumption in favor of the court imposing a sentence in accordance with this section on a person who is provided a written notice of no objection by the prosecuting authority and who qualifies for the expedited sentencing program. The court shall provide written findings of fact

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setting forth specific reasons that justified imposition of a sentence which is not in accordance with this section.

(1) The prosecuting authority shall record each request received pursuant to this section and shall report the requests and the action taken to the Children's Advocacy Center in each county. The Children's Advocacy Center Interagency Advisory Committee in each county shall monitor the expedited sentencing program. The county committees also shall identify problems relating to the expedited sentencing program within the civil and criminal legal processes and propose solutions. The state director of the Children's Advocacy Center shall compile the information from each county committee and submit a report to the appropriate legislative committees on or before January 15 of each year."

SECTION 2. Section 706-621, Hawaii Revised Statutes, is amended to read as follows:

"§706-621 Factors to be considered in imposing a term of probation.

The court, in determining whether to impose a term of probation, shall consider:

- (1) The factors set forth in section 706-606 to the extent that they are applicable;
- (2) The following factors, to be accorded weight in favor of withholding a sentence of imprisonment:
 - (a) The defendant's criminal conduct neither caused nor threatened serious harm;
 - (b) The defendant acted under a strong provocation;
 - (c) There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;
 - (d) The victim of the defendant's criminal conduct induced or facilitated its commission;
 - (e) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;
 - (f) The defendant's criminal conduct was the result of circumstances unlikely to recur;
 - (g) The character and attitudes of the defendant indicate that the defendant is unlikely to commit another crime;
 - (h) The defendant is particularly likely to respond affirmatively to a program of restitution or a probationary program or both;
 - (i) The imprisonment of the defendant would entail excessive hardship to the defendant or the defendant's dependents[.]; and
 - (j) The expedited sentencing program set forth in section 706-
, if the defendant has qualified for that sentencing program.

SECTION 3. Section 706-623, Hawaii Revised Statutes, is amended to read as follows:

"§706-623 Terms of probation. [(a)] (1) 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 sooner 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. The terms of probation provided in this part

other than in this section shall not apply to sentences of probation imposed under section 706-

[(b)] (2) When a defendant who is sentenced to probation has previously been detained in any state or [local] county correctional or other institution following arrest for the crime for which sentence is imposed, [such] the period of detention following arrest shall be deducted from the term of imprisonment if [such] the 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] county correctional or other institution, and the certificate shall be annexed to the official records of the defendant's sentence."

SECTION 4. 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 that can be given effect without the invalid provision or application, and to this end, the provisions of this Act are severable.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval and shall be repealed on June 30, 1995.

(Approved June 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 317

S.B. NO. 1874

A Bill for an Act Relating to Kaneohe Bay.

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

SECTION 1. The legislature believes that Kaneohe Bay is a treasured natural resource that must be preserved and protected for future generations to use and enjoy. Act 208, Session Laws of Hawaii 1990, created the Kaneohe Bay Master Plan Task Force to address current and future uses of the Bay. The Task Force held twenty-one public meetings and addressed such issues as public open space and access, water quality, nearshore environment, water use, long-range planning, and the roles of government and other organizations. In May 1992, the Task Force issued the Kaneohe Bay Master Plan through the office of state planning.

The purpose of this Act is to implement the recommendations of the Kaneohe Bay Master Plan Task Force related to ocean use activities and facilitate ongoing cooperation between various parties involved with ocean use activities in Kaneohe Bay.

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

**"CHAPTER
KANEOHE BAY REGIONAL COUNCIL**

§ -1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

"Council" means the Kaneohe Bay regional council.

"Lead agency" means the department of land and natural resources.

"Master plan" means the Kaneohe Bay master plan developed pursuant to Act 208, Session Laws of Hawaii 1990.

"Members" means the members of the Kaneohe Bay regional council.

§ -2 Kaneohe Bay regional council; establishment. (a) There is established within the department of land and natural resources, for administrative purposes only, the Kaneohe Bay regional council, which shall be composed of seven voting members appointed by the governor in accordance with section 26-34 and ex officio nonvoting members as provided in subsection (c). The members shall serve without compensation.

(b) The voting members of the council shall include one representative from each of the following: the Kaneohe neighborhood board, the Kahaluu neighborhood board, the Kaneohe Bay Commercial Operators Association, the Kaneohe Bay fishing panel established by this chapter, a Kaneohe Bay recreational boating association, the Hawaii institute of marine biology of the University of Hawaii, and the office of Hawaiian affairs.

(c) The director of health; the superintendent of education; two representatives of the department of land and natural resources, including one from the division of boating and ocean recreation and one from the aquatic resources division; the commanding officer of the Kaneohe Marine Corps Air Station; the director of the office of state planning; and the director of business, economic development, and tourism; or their designated representatives shall serve as ex officio nonvoting members of the council. Additionally, the council may designate representatives of other appropriate agencies as ex officio nonvoting members of the council.

(d) Four voting members shall constitute a quorum to do business and any action taken by the council shall be validated by a simple majority of the quorum.

(e) A chairperson shall be elected annually by the council from among the council's voting members; provided that:

- (1) Only a nongovernmental member shall be elected as chairperson; and
- (2) No member may serve as chairperson for more than two consecutive years.

§ -3 Kaneohe Bay regional council; general powers, duties, and functions. The council shall have the following powers and duties and perform the following functions:

- (1) Facilitate the implementation of the master plan as it relates to ocean use activities;
- (2) Serve as a central coordinative clearinghouse of public and private activities in Kaneohe Bay, and as a repository and disseminator of information on the bay;
- (3) Facilitate productive interaction between users of the bay and the general public in order to develop a common vision and make recommendations for public policy related to the bay;
- (4) Recommend research, studies, data collection, and planning activities designed to provide additional information on Kaneohe Bay, with particular reference to the specific needs of the bay, and to publicize the

- results thereof, to the extent that these functions do not duplicate or supplant activities provided by other state or county agencies;
- (5) Advise and make recommendations to the State and the county on matters regarding the use of Kaneohe Bay by the general public, marine research programs, and commercial ocean use activities, including legislative matters;
 - (6) Develop short- and long-term goals based on the master plan, resources, and programs for Kaneohe Bay;
 - (7) Educate the public and users of Kaneohe Bay on the problems and needs of the bay through public education programs;
 - (8) Serve as the public advocate for Kaneohe Bay;
 - (9) Initiate and maintain contact with public, private, county, and state organizations, agencies, and individuals engaging in activities in Kaneohe Bay;
 - (10) Establish a Kaneohe Bay fishing panel to monitor fishing activities in the bay, as recommended in the master plan as it relates to ocean use activities; and
 - (11) Hold annual public hearings until 1999 on the status of the implementation of the master plan as it relates to ocean use activities and research being conducted by the Hawaii institute of marine biology.

§ -4 Meetings. All meetings of the council shall be conducted in accordance with chapter 92, and shall be held on the first Wednesday of each calendar quarter in each year of its operation.

§ -5 Annual report. The council shall submit semi-annual reports on its activities to the governor and the legislature, which may include recommendations consistent with the purposes of this chapter.”

SECTION 3. Chapter 200, Hawaii Revised Statutes, is amended as follows:

1. By adding a new section to be appropriately designated and to read:

“§200- Kaneohe Bay ocean use activities; permits; restrictions. (a) For the purposes of this section, “ocean use activities” means commercial operation of thrill craft, high speed boating, parasailing, water sledding, sailing and snorkeling tours, and glassbottom boat tours.

(b) Any other provision of this chapter to the contrary notwithstanding, no person shall operate thrill craft, parasailing, water sledding or commercial high speed boating unless the person meets the requirements of section 200-37 and all rules adopted by the department which regulate or restrict such activities.

(c) Permits issued by the department for the commercial operation of ocean use activities shall be limited to the number, by permit type and vessel and passenger capacity, provided in the Kaneohe Bay master plan developed pursuant to Act 208, Session Laws of Hawaii 1990; provided that passenger capacity for snorkeling tours and glassbottom boat tours shall be set through rules adopted pursuant to chapter 91. No thrill craft permit may be transferred more than five years after the effective date of this section; provided that transfers of permits may be made at any time between family members.

(d) On Sundays and federal holidays, all commercial ocean use activities shall be prohibited.”

2. By amending subsections (g) and (h) of section 200-37 to read:

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"(g) During all weekends and state and federal holidays, no commercial operator shall operate a thrill craft, or engage in parasailing, water sledding, or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding or parasailing in [Kaneohe Bay and] Maunalua Bay on Oahu as provided for in section 200-38.

(h) On Sundays, all commercial ocean recreation activities, including those listed in this section, shall be prohibited on Oahu in [Kaneohe Bay and] Maunalua Bay as provided for in section 200-38."

3. By amending subsections (a) and (b) of section 200-38 to read:

"(a) Notwithstanding any other law to the contrary, no commercial operator shall operate a thrill craft, engage in parasailing, water sledding, or commercial high speed boating, operate a motorized vessel towing a person engaged in parasailing, or operate a motor vessel towing a person engaged in water sledding during all weekends and state and federal holidays on Oahu[:

- (1) In Kaneohe Bay from Mokapu Point to Makahonu Point which includes commercial zones a, b, c, d, e, f, g, i, and j; and
- (2) In] in Maunalua Bay from Kawaihoa (Portlock) Point to Wailupe Peninsula and commercial zones a, b, and c.

(b) Notwithstanding any other law to the contrary, all commercial ocean recreation activities shall be prohibited on all Sundays on Oahu in [Kaneohe Bay and] Maunalua Bay [as defined in subsection (a)(1) and (2)]."

SECTION 4. The office of state planning shall convene a Kaneohe Bay task force in 1997 to evaluate the status and effectiveness of the activities undertaken by the Kaneohe Bay regional council to improve circumstances relating to ocean use activities and well-being of the bay in light of past, present, and future research programs, implementation of the 1992 Kaneohe Bay master plan by the council, and changing public and environmental circumstances.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,500, or so much thereof as may be necessary for fiscal year 1993-1994, to support the operations of the Kaneohe Bay regional council. The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval, and shall be repealed on July 1, 1998; except that SECTION 5 shall take effect on July 1, 1993.

(Approved June 21, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 318

S.B. NO. 1906

A Bill for an Act Relating to Office of Youth Services.

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

SECTION 1. The purpose of this Act is to correct an omission which occurred when the legislature transferred the powers and duties of the juvenile justice interagency board to the office of youth services pursuant to Act 258, Session Laws of Hawaii 1991. The powers and duties of the juvenile justice interagency board included the administration of a federal program under the Juvenile Justice Delinquency Prevention Act. As a result of this transfer, two civil service-exempt positions were transferred from the office of the attorney general to the office of youth services. However, the executive director of the office of youth services does not have the power to hire civil service-exempt staff. This Act would allow the executive director to hire such staff for the purposes of administering the Juvenile Justice Delinquency Prevention Act.

SECTION 2. Section 352D-5, Hawaii Revised Statutes, is amended to read as follows:

“[§352D-5] Appointment of director; powers and duties. (a) 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 executive director may appoint such other staff as may be necessary to carry out the duties of the office of youth services.

(b) The executive director, for the administration of the Juvenile Justice Delinquency Prevention Act, may employ any other staff without regard to chapters 76 and 77.

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 21, 1993.)

ACT 319

H.B. NO. 115

A Bill for an Act Relating to Child Protection.

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

SECTION 1. Section 587-72, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notice of review hearings shall be served upon the parties and upon the present foster parent or parents, each of whom shall be entitled to participate in the proceedings as a party. Notice of the review hearing shall be served by the department upon the present foster parent or parents no less than forty-eight hours before the scheduled hearing. No hearing shall be held until the foster parent or parents are served. For purposes of this subsection, notice to foster parents may be

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effected by hand delivery or by regular mail; and may consist of the last court order, if it includes the date and time of the hearing.”

SECTION 2. New statutory material is underscored.

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

(Approved June 22, 1993.)

ACT 320

H.B. NO. 313

A Bill for an Act Relating to Time Sharing Plans.

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

SECTION 1. Chapter 514E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§514E- Time share owners association; budgets and reserves. (a)

For each fiscal year, the plan manager, or the board of the association if there is no plan manager, shall adopt an operating budget and distribute copies to all members of the association. The budget shall contain at least the following:

- (1) The estimated revenues and operating expenses of the association;
- (2) Information as to whether the budget has been prepared on a cash or accrual basis;
- (3) The total cash reserves of the association as of the date of the budget;
- (4) The estimated cash reserves the association will require to maintain the property;
- (5) A general explanation of how the estimated cash reserves are computed; and
- (6) The amount the association must collect for the year to fund the estimated cash reserves.

(b) The plan manager, or the board of the association if there is no plan manager, shall arrange for an annual independent audit of the association's financial accounts conducted by a public accountant in accordance with generally accepted auditing standards. Upon request, a copy of the audit shall be provided to the director, to any member of the association, and any prospective purchaser. The audit report shall include such information as provided by rules adopted by the director pursuant to chapter 91.”

SECTION 2. Section 26H-4, Hawaii Revised Statutes, is amended as follows:

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

“(c) The following chapters and sections are hereby repealed effective December 31, 1993:

- (1) Chapter 452 (Board of Massage)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 460 (Board of Osteopathic Examiners)
- (4) Chapter 461J (Board of Physical Therapy)
- (5) Chapter 463E (Podiatry)
- (6) [Chapter 514E (Time Sharing Plans)]

(7)] Sections 804-61 and 804-62”

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

“(i) The following chapters are hereby repealed effective December 31, 1999:

- (1) Chapter 436E (Board of Acupuncture)
- (2) Chapter 442 (Board of Chiropractic Examiners)
- (3) Chapter 444 (Contractors License Board)
- (4) Chapter 448E (Board of Electricians and Plumbers)
- (5) Chapter 464 (Professional Engineers, Architects, Surveyors and Landscape Architects)
- (6) Chapter 465 (Board of Psychology)
- (7) Chapter 468E (Speech Pathology and Audiology)
- (8) Chapter 514E (Time Sharing Plans)”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved June 22, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 321

H.B. NO. 1730

A Bill for an Act Relating to Accreditation in Insurance Regulation.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part I of article 2 to be appropriately designated and to read as follows:

“§431:2- Staff. There are established within the insurance division of the department of commerce and consumer affairs six positions for technical staff, and three positions for clerical staff, necessary to enable the State to meet and maintain National Association of Insurance Commissioners accreditation standards. These positions shall not be subject to chapters 76 and 77. The salaries for these positions shall be funded out of the insurance examiners revolving fund, as provided in section 431:2-307.”

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding four new sections to part III of article 2 to be appropriately designated and to read as follows:

“§431:2- Examiner defined. For purposes of this part, “examiner” means any individual or firm authorized by the commissioner to conduct an examination under the insurance code.

§431:2- Conflict of interest. (a) No examiner may be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest

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or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this part. This section shall not be construed to automatically preclude an examiner from being:

- (1) A policyholder or claimant under an insurance policy;
- (2) A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;
- (3) An investment owner in shares of regulated diversified investment companies; or
- (4) A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.

(b) Notwithstanding the requirements of this section, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though those persons from time to time may be similarly employed or retained by persons subject to examination under the insurance code.

§431:2- Immunity from liability. (a) No cause of action shall arise nor shall any liability be imposed against any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of the insurance code.

(b) No cause of action shall arise, nor shall any liability be imposed against any person, for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under the insurance code, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(c) This section does not abrogate nor modify in any way common law or statutory privilege or immunity heretofore enjoyed by any person identified in subsection (a).

(d) A person identified in subsection (a) shall be entitled to an award of attorneys' fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the insurance code, and the party bringing action is not substantially justified to do so. For the purposes of this section, a proceeding is substantially justified if it has a reasonable basis in law or fact at the time that it is initiated.

§431:2- Conduct of examinations. (a) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiners shall observe those guidelines and procedures set forth in the examiners' handbook adopted by the National Association of Insurance Commissioners. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.

(b) Every company or person from whom information is sought, including its officers, directors, and agents, shall provide to the examiners appointed under subsection (a) timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination insofar as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examination or to comply with any

reasonable written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of, any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. Any such proceedings for suspension, revocation, or refusal of any license or authority shall be conducted pursuant to section 431:3-217.

(c) The commissioner or any authorized examiner shall have the power to issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the subpoena may be enforced pursuant to section 431:2-207.

(d) When conducting an examination, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which shall be borne by the company that is the subject of the examination.

(e) Nothing contained in this part shall be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this State. Findings of fact and conclusions made pursuant to any examination shall be *prima facie* evidence in any legal or regulatory action.

(f) Nothing contained in this part shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers, or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the commissioner may, in the commissioner's sole discretion, deem appropriate."

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part I of article 15 to be appropriately designated and to read as follows:

"§431:15- Standards and authority. (a) The following standards, either singly or in a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer transacting insurance business in this State may be deemed to be hazardous to the policyholders, creditors, or the general public:

- (1) Adverse findings reported in financial condition and market conduct examination reports;
- (2) The National Association of Insurance Commissioners' insurance regulatory information system and its related reports;
- (3) The ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income that could lead to an impairment of capital and surplus;
- (4) The insurer's asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;
- (5) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;
- (6) The insurer's operating loss in the last twelve-month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividends paid to share-

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- holders, is greater than fifty per cent of such insurer's remaining surplus as regards policyholders in excess of the minimum required;
- (7) Whether any affiliate, subsidiary, or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations;
 - (8) Contingent liabilities, pledges, or guarantees that, either individually or collectively, involve a total amount that, in the opinion of the commissioner, may affect the solvency of the insurer;
 - (9) Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;
 - (10) The age and collectibility of receivables;
 - (11) Whether management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in such position;
 - (12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;
 - (13) Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released any false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;
 - (14) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; and
 - (15) Whether the company has experienced, or will experience in the foreseeable future, cash flow or liquidity problems or both.
- (b) For the purposes of making a determination of an insurer's financial condition under this part, the commissioner may:
- (1) Disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding;
 - (2) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;
 - (3) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or
 - (4) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period.
- (c) If the commissioner determines that the continued operation of the insurer licensed to transact business in this State may be hazardous to the policyholders or the general public, the commissioner may, upon the commissioner's determination, issue an order requiring the insurer to:
- (1) Reduce the total amount of present and potential liability for policy benefits by reinsurance;
 - (2) Reduce, suspend, or limit the volume of business being accepted or renewed;
 - (3) Reduce general insurance and commission expenses by specified methods;
 - (4) Increase the insurer's capital and surplus;

- (5) Suspend or limit the declaration and payment of dividends by an insurer to its stockholders or to its policyholders;
 - (6) File reports in a form acceptable to the commissioner concerning the market value of the insurer's assets;
 - (7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;
 - (8) Document the adequacy of premium rates in relation to the risks insured;
 - (9) File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or on such forms as approved by the commissioner.
- (d) Any insurer subject to an order under subsection (c) may request a hearing to review that order pursuant to chapter 91.”

SECTION 4. Chapter 431K, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§431K- Purchasing group taxation. Premium taxes and taxes on premiums paid for coverage of risks resident or located in this State by a purchasing group or any members of the purchasing group shall be:

- (1) Imposed at the same rate and subject to the same interest, fines, and penalties as that applicable to premium taxes and taxes on premiums paid for similar coverage from a similar insurance source by other insurers; and
- (2) Paid first by that insurance source, and if not by that source, then by the agent or broker for the purchasing group, and if not by that agent or broker, then by the purchasing group, and if not by that purchasing group, then by each of its members.”

SECTION 5. Section 431:2-301, Hawaii Revised Statutes, is amended to read as follows:

“§431:2-301 Purpose [and scope of examination]. [The commissioner shall determine the nature and scope of each examination and in doing so shall take into account all available relevant factors concerning the financial and business affairs, practices, and conditions of the examinee.] The purpose of this part is to provide an effective and efficient system for examining the activities, operations, financial condition, and affairs of all persons transacting the business of insurance in this State and all persons otherwise subject to the jurisdiction of the commissioner. The provisions of this part are intended to enable the commissioner to adopt a flexible system of examinations that directs resources as may be deemed appropriate and necessary for the administration of the insurance and insurance-related laws of this State.”

SECTION 6. Section 431:2-302, Hawaii Revised Statutes, is amended to read as follows:

“§431:2-302 [Examination of insurers.] Authority, scope, and scheduling of examinations. (a) The commissioner [may examine the affairs, transactions, accounts, records, documents, and assets of each authorized insurer as often as the commissioner deems prudent. The commissioner shall examine each domestic insurer at least once in every three years. Examination of an alien insurer may be limited to its insurance transactions in the United States.

(b) The commissioner shall examine fully each insurer applying for authority to do business in this State.

(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.] or any authorized examiner may conduct an examination of any company as often as the commissioner deems appropriate, but, at a minimum, shall conduct an examination of each domestic insurer at least once in every three years, and conduct an examination of every other insurer licensed in this State at least once every five years. In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the examiner's handbook adopted by the National Association of Insurance Commissioners and in effect, when the commissioner exercises discretion under this section.

(b) For purposes of completing an examination of any insurer, the commissioner may examine or investigate any person, or the business of any person, insofar as such examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the insurer.

(c) In lieu of an examination of any foreign or alien insurer licensed in this State, the commissioner may accept an examination report on the insurer as prepared by the state regulatory agency for insurance for the insurer's state of domicile or port-of-entry state until January 1, 1994. Thereafter, such reports may only be accepted under the following conditions:

- (1) The State's regulatory agency for insurance was, at the time of the examination, accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or
- (2) The examination was performed:
 - (A) Under the supervision of an accredited state regulatory agency for insurance; or
 - (B) With the participation of one or more examiners who are employed by an accredited state regulatory agency for insurance and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their state regulatory agency for insurance.”

SECTION 7. Section 431:2-305, Hawaii Revised Statutes, is amended to read as follows:

“§431:2-305 Examination reports. [(a) The commissioner shall make a full written report of each examination made by the commissioner.

- (b) The report shall include:

- (1) A statement of findings of fact ascertained from the books, records, documents,¹ and other evidence obtained by investigation and examination, or ascertained from the sworn testimony of its officers, agents, or other persons examined concerning the financial condition of the

examinee, its assets, obligations, ability to fulfill obligations, and compliance with all the provisions of this code; and

- (2) A summary of important points noted in the report, conclusions, recommendations and suggestions as may reasonably be warranted from the facts so ascertained in the examination.

(c) The commissioner shall furnish to the person examined a copy of the examination report by the examiner not less than sixty days prior to the filing of the report for public inspection in the division. If the person so requests in writing within the sixty day period, the commissioner shall hold a hearing to consider the person's objections to the report as proposed, and shall not file the report until after the hearing and until after any modifications in the report deemed necessary by the commissioner have been made.

(d) The report, when filed for public inspection, shall be admissible evidence in action or proceeding brought by the commissioner against the person examined, or its officers or agents; except that the commissioner or the commissioner's examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served, or filed in the division.

(e) If the commissioner or the commissioner's examiners find that any of the information ascertained is flawed, the person examined shall be subject to the penalties provided for in section 710-1060 to section 710-1062.] (a) All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the insurer, its agents, or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(b) No later than sixty days following completion of the examination, the examiner in charge shall file with the insurance division a verified written report of examination under oath. Upon receipt of the verified report, the insurance division shall transmit the report to the insurer examined, together with a notice that shall afford the insurer examined a reasonable opportunity for not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(c) Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order to:

- (1) Adopt the examination report as filed, or with modifications or corrections. If the examination report reveals that the insurer is operating in violation of any law, rule, or prior order of the commissioner, the commissioner may order the insurer to take any action the commissioner considers necessary and appropriate to cure the violation;
 - (2) Reject the examination report with directions to the examiners to reopen the examination for the purpose of obtaining additional data, documentation, or information, and refiling pursuant to subsection (a); or
 - (3) Call for an investigatory hearing with no less than twenty days notice to the insurer for purposes of obtaining additional documentation, data, information, or testimony.
- (d) Orders shall be issued and hearings conducted as follows:
- (1) All orders entered pursuant to subsection (c)(1) shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner

workpapers, and any written submissions or rebuttals. Any such order shall be considered a final administrative decision and may be appealed pursuant to chapter 91, and shall be served upon the insurer by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report, the insurer shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders; and

- (2) Any hearing conducted under subsection (c)(3) by the commissioner or authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as may be necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or raised by the written submission or rebuttal of the insurer. Within twenty days of the conclusion of any such hearing, the commissioner shall enter an order pursuant to subsection (c)(1):
- (A) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the insurer limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation, whether under the control of the division, the insurer, or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner's representative shall be under oath and preserved for the record;
- (B) The hearing shall proceed in accordance with departmental rules adopted under chapter 91; and
- (C) Nothing contained in this section shall require the insurance division to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency.
- (e) The examination report shall be disseminated as follows:
- (1) Upon the adoption of the examination report under subsection (c)(1), the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of fifteen days, except to the extent provided in subsection (b). Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication; and
- (2) Nothing contained in the insurance code shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the regulatory agency for insurance of any state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this part.
- (f) All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination, shall be confidential and not subject to

subpoena and shall not be made public by the commissioner or any other person, except to the extent provided in subsection (e). Access may be granted to the National Association of Insurance Commissioners. Any person shall agree in writing, prior to receiving the information, to provide to it the same confidential treatment as required by this part, unless the prior written consent of the insurer to which the information pertains has been obtained.”

SECTION 8. Section 431:2-307, Hawaii Revised Statutes, is amended to read as follows:

“§431:2-307 Insurance examiners revolving fund[.] and appointment of examiners. (a) The commissioner may establish a separate fund designated as the insurance examiners revolving fund.

(b) The commissioner may appoint staff examiners, not subject to chapters 76 and 77, and contract with independent contractor examiners, who shall examine the affairs, transactions, accounts, records, documents, and assets of each authorized insurer. The commissioner may also appoint administrative support personnel, not subject to chapters 76 and 77, who shall assist and support the examiners. The commissioner may pay the salaries of the staff examiners and administrative support personnel from the insurance examiners revolving fund.

[(b)] (c) The funds shall be used to compensate or reimburse 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 of per diem customary for such expenses and approved by the commissioner; and
- (3) [Per diem compensation] Compensation at a rate customary for such compensation as approved by the commissioner.

[(c)] (d) The funds may also be used to reimburse insurance division staff examiners and administrative support personnel 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] events of this nature.

[(d)] (e) The funds may also be used for other expenses relating to examinations of insurance companies.

[(e)] (f) 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. Persons shall not receive or accept any additional emolument on account of an examination. 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.

[(f)] (g) Moneys in the insurance examiners revolving fund shall not revert to the general fund.

[(g)] (h) Each authorized insurer shall [deposit at a time determined by the commissioner the sum of \$200 with] pay, on or before August 15, 1993, and each

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year thereafter, on or before July 1, a sum of \$550 to the commissioner to be credited to the insurance examiners revolving fund.

(i) The commissioner shall prepare and submit a quarterly report to the legislature on the use of the insurance examiners revolving fund. The report shall describe expenditures made from the fund including non-payroll operating expenses."

SECTION 9. Section 431:3-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Annually before March [16,] 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, the following documents are required to be filed with the commissioner:

- (1) By each insurer:
 - (A) A true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31, [in general form and context as approved by the National Association of Insurance Commissioners] shall be filed using the National Association of Insurance Commissioners' annual statement blank plus any additional information required by the commissioner[.] The annual statement shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions, following the practices and procedures prescribed by the National Association of Insurance Commissioners' practices and procedures manuals. The reported information shall be verified by oaths of at least two of the insurer's principal officers, or the attorney-in-fact in the case of a reciprocal insurer, or the United States manager in the case of an alien insurer. The statement of an alien insurer is required to relate only to its transactions and affairs in the United States. The commissioner shall annually during November furnish each domestic insurer duplicate copies of annual statement forms required to be filed;
 - (B) The tax statement provided for by section 431:7-201;
 - (C) In the event of a change in any of the other information which section 431:3-212 requires an insurer to file with the commissioner at the time of its application for a certificate of authority, the current information in the form stated in section 431:3-212;
- (2) By each insurer, the certificate of valuation provided for by section 431:5-307 and documentation of the liabilities provided for by section 431:5-203(2) and (3). The certificate of valuation and documentation of liabilities shall be accompanied by an actuarial opinion by a qualified actuary or specialist;
- (3) By each foreign or alien insurer, a certificate from the proper public official of its state or country of domicile showing that it is duly authorized to transact the classes of insurance [which] that it is transacting; and
- (4) By each alien insurer, a certificate of the proper public official as to any deposit made or held as compliance with this code."

SECTION 10. Section 431:3-306, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No insurer shall retain net any [fire or surety] risk on any one subject of insurance, whether located or to be performed in this State or elsewhere, in an amount exceeding ten per cent of its surplus to policyholders[, except that:

- (1) Domestic mutual insurers may insure up to the applicable limits provided by section 431:4-303 to section 431:4-305, if greater; or
- (2) In the case of fire risks adequately protected by automatic sprinklers or fire risks principally of noncombustible construction and occupancy, an insurer may retain fire risks as to any one subject in an amount not exceeding twenty-five per cent of the sum of:
 - (A) Its unearned premium reserve, and
 - (B) Its surplus to policyholders]."

SECTION 11. Section 431:4A-101, Hawaii Revised Statutes, is amended to read as follows:

"[§431:4A-101] Credit allowed a domestic ceding insurer.

Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on the domestic ceding insurer's financial statements on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (1), (2), (3), (4), or (5). The requirements of paragraph (6) must also be met if the reinsurer attempts to meet the requirements of paragraph (3) or (4).

- (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer [which] that is licensed to transact insurance or reinsurance in this State.
- (2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer [which] that is accredited as a reinsurer in this State. An accredited reinsurer is one [which:] that:
 - (A) Files with the commissioner evidence of its submission to this State's jurisdiction;
 - (B) Submits to this State's authority to examine its books and records;
 - (C) Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;
 - (D) Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and either:
 - (i) Maintains a surplus as regards policyholders in an amount [which] that is not less than \$20,000,000 and whose accreditation has not been denied by the commissioner within ninety days of its submission; or
 - (ii) Maintains a surplus as regards policyholders in an amount less than \$20,000,000 and whose accreditation has been approved by the commissioner.

No credit shall be allowed a domestic ceding insurer, if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.

- (3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer [which] that is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer is entered through, a state [which] that employs standards regarding credit for reinsurance

- equal to or exceeding those applicable under this article and the assuming insurer or United States branch of an alien assuming insurer:
- (A) Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and
 - (B) Submits to the authority of this State to examine its books and records;
- provided that the requirement of subparagraph (A) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.
- (4) [When insurers do not satisfy both the licensing and financial standards of paragraphs (2) and (3), credit shall be allowed when all of the following are met:] Credit shall be allowed as follows:
- (A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer [which] that maintains a trust fund in a qualified United States financial institution, as defined in section 431:4A-103(b), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000. In the case of a group of individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group; and the group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants;
 - (B) In the case of a group of incorporated insurers under common administration [which] that complies with the filing requirements contained in subparagraph (A), and [which] that has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, and [which] that submits to this State's authority to examine its books and records and bears the expense of the examination, and [which] that has aggregate policyholders' surplus of \$10,000,000,000, the trust shall be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group; [plus] and the group shall maintain a joint trustee surplus, of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities, and each member of the group shall make available to the commissioner an annual certification of the member's solvency by the mem-

- ber's domiciliary regulator and its independent public accountant;
- (C) The trust shall be established in a form approved by the commissioner. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the commissioner. The trust must remain in effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust; and
 - (D) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.
- (5) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (1), (2), (3), or (4), but only with respect to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.
- (6) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this State, the credit permitted by paragraphs (3) and (4) shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:
- (A) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give that court jurisdiction, and will abide by the final decision of that court or of any appellate court in the event of an appeal; and
 - (B) To designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

This paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement."

SECTION 12. Section 431:9B-103, Hawaii Revised Statutes, is amended to read as follows:

"[§431:9B-103] Required contract provisions; reinsurance intermediary brokers. Transactions between an RB and the insurer it represents in that capacity shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization, at a minimum, shall provide that:

- (1) The insurer may terminate the RB's authority at any time;

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- (2) The RB shall render accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the RB, and remit all funds due to the insurer within thirty days of receipt;
- (3) All funds collected for the insurer's account shall be held by the RB in a fiduciary capacity and deposited in a bank [which] that is a qualified United States financial institution;
- (4) The RB shall comply with section [431:9B-105;] 431:9B-104;
- (5) The RB shall comply with the written standards established by the insurer for the cession or retrocession of all risks; and
- (6) The RB shall disclose to the insurer any relationship with any re-insurer to which business will be ceded or retroceded."

SECTION 13. Section 431:9B-106, Hawaii Revised Statutes, is amended to read as follows:

"[§]431:9B-106[] Required contract provisions; reinsurance intermediary; managers. Transactions between an RM and the reinsurer it represents in that capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party[, which] that shall be approved by the reinsurer's board of directors. At least thirty days before the reinsurer assumes or cedes business through the RM, a true copy of the approved contract shall be filed with the commissioner for approval. The contract, at a minimum, shall provide that:

- (1) The reinsurer may terminate the contract for cause upon written notice to the RM. The reinsurer may immediately suspend the authority of the RM to assume or cede business during the pendency of any dispute regarding the cause for termination;
- (2) The RM will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the RM, and remit all funds due under the contract to the reinsurer on not less than a monthly basis;
- (3) All funds collected for the reinsurer's account will be held by the RM in a fiduciary capacity and deposited in a bank [which] that is a qualified United States financial institution. The RM may retain no more than three months estimated claims payments and allocated loss adjustment expenses. The RM shall maintain a separate bank account for each reinsurer that it represents;
- (4) For at least ten years after expiration of each contract of reinsurance transacted by the RM, the RM will keep a complete record for each transaction showing:
 - (A) The type of contract, limits, underwriting restrictions, classes or risks, and territory;
 - (B) Period of coverage, including effective and expiration dates, cancellation provisions and notice required for cancellation, and disposition of outstanding reserves on covered risks;
 - (C) Reporting and settlement requirements of balances;
 - (D) Rate used to compute the reinsurance premium;
 - (E) Names and addresses of reinsurers;
 - (F) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the RM;
 - (G) Related correspondence and memoranda;
 - (H) Proof of placement;

- (I) Details regarding retrocessions handled by the RM, as permitted by section [431:9B-108(a),] 431:9B-108(d), including the identity of retrocessionaires and percentage of each contract assumed or ceded;
- (J) Financial records, including but not limited to, premium and loss accounts; and
- (K) When the RM places a reinsurance contract on behalf of a ceding insurer:
 - (i) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
 - (ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative;
- (5) The reinsurer will have access and the right to copy all accounts and records maintained by the RM related to its business in a form usable by the reinsurer;
- (6) The contract cannot be assigned in whole or in part by the RM;
- (7) The RM will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks;
- (8) Sets forth the rates, terms, and purposes of commissions, charges, and other fees [which] that the RM may levy against the reinsurer;
- (9) If the contract permits the RM to settle claims on behalf of the reinsurer:
 - (A) All claims shall be reported to the reinsurer in a timely manner;
 - (B) A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim:
 - (i) Has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;
 - (ii) Involves a coverage dispute;
 - (iii) May exceed the RM's claims settlement authority;
 - (iv) Is open for more than six months; or
 - (v) Is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;
 - (C) All claim files shall be the joint property of the reinsurer and RM. However, upon an order of liquidation of the reinsurer, the files shall become the sole property of the reinsurer or its estate; the RM shall have reasonable access to and the right to copy the files on a timely basis; and
 - (D) Any settlement authority granted to the RM may be terminated for cause upon the reinsurer's written notice to the RM or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination;
- (10) If the contract provides for a sharing of interim profits by the RM, that such interim profits shall not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business (or a later period set by the commissioner for specified lines of insurance) and not until the adequacy of reserves on remaining claims has been verified pursuant to section 431:9B-108(c);
- (11) The RM shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant;

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- (12) The reinsurer shall at [least] a minimum semiannually conduct an on-site review of the underwriting and claims processing operations of the RM;
- (13) The RM shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to the contract; and
- (14) Within the scope of its actual or apparent authority the acts of the RM shall be deemed to be the acts of the reinsurer on whose behalf it is acting."

SECTION 14. 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, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer 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.

For purposes of this section, a domestic insurer includes any person controlling a domestic insurer unless the commissioner determines that the person, directly or through its affiliates, is primarily engaged in business other than the business of insurance. Such a person shall file a preacquisition notification with the commissioner containing the information set forth in section 431:11-104.3(b) thirty days prior to the proposed effective date of the acquisition. Failure to file is subject to section 431:11-104.5(f). This section does not apply to any securities broker holding, in the usual and customary broker's function, less than twenty per cent of the voting securities of an insurance company or of any person who controls an insurance company."

SECTION 15. Section 431:11-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every insurer who is authorized to do business in this State and who is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile [which] that are substantially similar to those contained in this section and section [431:11-106(a)(1).] 431:11-106(a)(1), (b), and (d). The insurer shall file a copy of the registration statement and summary of its registration statement as required by subsections (b) and (c) with the National Association of Insurance Commissioners. The insurer also shall file a copy of the summary of its registration statement as required by subsection (c) in each state in which that insurer is authorized to do business if requested by the commissioner of that state. Any insurer who is subject to registration under this section shall register within fifteen days after it becomes subject to registration, and annually thereafter by March 15 of each year for the

previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any insurer who is a member of a holding company system who is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority of domiciliary jurisdiction.”

SECTION 16. Section 431:11-106, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) (1) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:
 - (A) Thirty days after the commissioner has received notice of the declaration thereof and has not within the period disapproved the payment[.]; or
 - (B) The commissioner shall have approved the payment within the [thirty day] thirty-day period.
- (2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds[:] the lesser¹ of:
 - (A) Ten per cent of such insurer’s surplus as regards policyholders as of the [31st] thirty-first day of December next preceding; or
 - (B) The net gain from operations of a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the [twelve month] twelve-month period ending the [31st] thirty-first day of December next preceding.

Extraordinary dividend or distribution shall not include pro rata distributions of any class of the insurer’s own securities.

In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

Notwithstanding any other provisions of law, an insurer may declare an extraordinary dividend or distribution [which] that is conditional upon the commissioner’s approval thereof, and the declaration shall confer no rights upon shareholders until[.]:

- (i) The] the² commissioner has either approved the payment of the dividend or distribution[.] or
- [ii) The commissioner] has not disapproved the payment within the [thirty day] thirty-day period referred to above.”

SECTION 17. Section 431K-7, Hawaii Revised Statutes, is amended to read as follows:

“§431K-7 Notice and registration requirements of purchasing groups.

(a) A purchasing group [which] that intends to do business in this State shall furnish, on forms prescribed by the National Association of Insurance Commissioners, notice to the commissioner [which] that 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] that the purchasing group intends to purchase;

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- (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;
 - (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[.]; and
 - (7) Identify all other states in which the group intends to do business.
- (b) The purchasing group shall register with and designate the commissioner or other appropriate authority as its agent solely for the purpose of receiving service of legal documents or process, except that these requirements shall not apply in the case of a purchasing group [which:] that:
- (1) Was domiciled before April 1, 1986, and is domiciled on and after October 27, 1986, in any state of the United States;
 - (2) Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state, and since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state;
 - (3) Was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981, 15 United States Code 3901 et seq., before October 27, 1986; and
 - (4) Does not purchase insurance that was not authorized for purposes of an exemption under that Act, as in effect before October 27, 1986.
- (c) A purchasing group shall, within ten days, notify the commissioner of any changes in any of the items set forth in subsection (a)."

SECTION 18. Statutory material to be repealed is bracketed. New statutory material is underscored.³

SECTION 19. This Act shall take effect upon its approval.

(Approved June 22, 1993.)

Notes

1. So in original.
2. Should be underscored.
3. Edited pursuant to HRS §23G-16.5.

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H.B. NO. 1885

A Bill for an Act Relating to the Department of Commerce and Consumer Affairs.

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

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended to read as follows:

"§26-9 Department of commerce and consumer affairs. (a) The department of commerce and consumer affairs shall be headed by a single executive to be known as the director of commerce and consumer affairs.

(b) The department shall protect the interests of consumers, depositors, and investors throughout the State. It shall set standards and enforce all laws and rules

governing the licensing and operation of, and register and supervise the conduct of, trades, businesses, and professions, including banks, insurance companies, brokerage firms, and other financial institutions.

(c) The board of acupuncture, board of public accountancy, board of barbers, board of cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of professional engineers, architects, surveyors, and landscape architects, board of hearing aid dealers and fitters, board of massage[,] therapy, board of medical examiners, motor vehicle industry licensing board, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, board of examiners of nursing home administrators, board of dispensing opticians, board of examiners in optometry, board of osteopathic examiners, pest control board, board of pharmacy, board of physical therapy, board of psychology, board of private detectives and guards, real estate commission, board of veterinary examiners, board of speech pathology and audiology, and any board, commission, program, or entity created pursuant to or specified by statute in furtherance of the purpose of this section including but not limited to section 26H-4, or chapters 484, 514A, and 514E [are] shall be placed within the department of commerce and consumer affairs for administrative purposes.

(d) Except as otherwise provided by this chapter, the functions, duties, and powers, subject to the administrative control of the director of commerce and consumer affairs, and the composition of each board and commission shall be as [heretofore] provided by law.

(e) Notwithstanding any provision to the contrary, the employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees under the administrative control of this department shall be determined by the director of commerce and consumer affairs subject only to applicable personnel laws.

(f) The director of commerce and consumer affairs may appoint a hearings officer or officers not subject to chapters 76 and 77 to hear and decide any case or controversy regarding licenses and the application and enforcement of rules involving any of the boards, commissions, or regulatory programs within the department of commerce and consumer affairs. The hearings officer or officers shall have power to issue subpoenas, administer oaths, hear testimony, find facts, and make conclusions of law and a recommended decision; provided that the conclusions and decisions shall be subject to review and redetermination by the officer, board, or commission which would have heard the case in the first instance in the absence of a hearings officer. The review shall be conducted in accordance with chapter 91.

(g) The director of commerce and consumer affairs may appoint an information officer not subject to chapters 76 and 77 who shall ensure the prompt and efficient handling of consumer inquiries and the development of a strong consumer education program.

(h) The director may appoint a complaints and enforcement officer not subject to chapters 76 and 77 who shall facilitate the receipt, arbitration, investigation, prosecution, and hearing of complaints regarding any person who furnishes commodities, services, or real estate for which a license, registration, or certificate is required from the department or any board, commission, or regulatory program thereunder. In representing the State in bringing any action to enjoin unlicensed, unregistered, or uncertified activities, the department of commerce and consumer affairs' attorneys shall be empowered to exercise all authority granted to the attorney general and to the director of the office of consumer protection under sections 487-12, 487-14, 480-3.1, 480-15, 480-15.1, 480-20(c), and 480-22, as these sections now exist and as they subsequently may be amended. The attorneys also shall be empowered to exercise all authority granted to the attorney general and to the

responsible attorneys of the various counties under section [92-51] 92F-13 in all cases involving documents and records within the custody or control of the regulated industries complaints office.

(i) The functions and authority previously exercised by the treasurer (except funds custody, cash management, debt management, and administering of veterans loans transferred to the department of budget and finance) as constituted are transferred to the department of commerce and consumer affairs established by this chapter. The director of commerce and consumer affairs also shall be the commissioner of securities.

(j) In the course of an investigation of matters affecting the interest of consumers, depositors, or investors, or of any other matter within the jurisdiction of the department, the director shall have the power to subpoena witnesses, examine [them] witnesses under oath, and require the production of books, papers, documents, or objects [which] that the director deems relevant or material to the inquiry. Upon application by the director, obedience to the subpoena may be enforced by the circuit court in the county [where] in which the person subpoenaed resides or is found in the same manner as a subpoena issued by the clerk of a circuit court.

The director shall appoint and commission one or more investigators to serve subpoenas as the exigencies of the public service may require. Subpoenas served by persons appointed and commissioned by the director shall have the same force and effect as subpoenas served by police officers or deputy sheriffs. Nothing in this subsection shall be construed to entitle persons commissioned and appointed by the director to retirement benefits applicable to police officers under chapter 88.

(k) The director may adopt, amend, or repeal rules pursuant to chapter 91 to effectuate the purposes of all laws within the jurisdiction of the department of commerce and consumer affairs. The director's authority to adopt rules shall not modify, impair, or otherwise affect the power of boards and commissions placed within the department of commerce and consumer affairs for administrative purposes from adopting, amending, or repealing rules, except as provided for in subsection (l).

(l) Any law to the contrary notwithstanding, the director of commerce and consumer affairs may establish, increase, decrease, or repeal fees relating to any aspect of the registration, certification, [or] licensure, or any other administrative process for all laws within the jurisdiction of the department. The fee assessed shall bear a reasonable relationship between the revenue derived from the fee and the cost or value of services rendered. Amendments to fee assessments shall be made pursuant to chapter 91.

Effective July 1, 1994, the fees collected by the professional and vocational licensing division and the business registration division shall be deposited into the compliance resolution fund under subsection (o) and shall be used to defray administrative costs, including personnel costs associated with these two programs and costs incurred by supporting offices and divisions.

The director may appoint program specialists, not subject to chapter 76 and 77, to assist with the activities of the professional and vocational licensing division.

(m) Notwithstanding section 92-17 or any other law to the contrary, all boards, commissions, and regulatory programs placed within the department of commerce and consumer affairs for administrative purposes shall delegate their authority to receive, arbitrate, investigate, and prosecute complaints to the department.

(n) Each board and commission, as well as the director, by written order, may delegate to the executive secretary or other personnel of the department any of its powers or duties as it deems reasonable and proper for the administration of the licensing laws in section 26H-4 which are within the jurisdiction of the department of commerce and consumer affairs. The delegated powers and duties may be

exercised by the executive secretary or other personnel of the department in the name of the board, commission, or the director. The board, commission, and director shall not, however, delegate its authority to adopt, amend, or repeal rules, or take final disciplinary action against a licensee.

(o) Every person licensed under any chapter subject to section 26H-4, other than chapter 468, and every person licensed subject to chapter 485 or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee of \$10 and a subsequent annual fee of \$10, which may be collected biennially or pursuant to rules adopted under chapter 91,¹ and which shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period[, where] in which a renewal is required, a fee [which] that shall be prescribed by rules adopted under chapter 91, and [which] that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation,¹ or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, the moneys in the fund shall consist of annual fees collected under this subsection, [and] section 514A-95, [and] penalties or fines assessed as a result of action brought by department personnel, and penalties, [or] fines, or reimbursement of costs or attorneys fees assessed as a result of actions brought for violations of chapters 480 and 487. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapters 76 and 77, hearings officers, investigators, attorneys, accountants, and other necessary personnel[.] to implement this subsection. In addition, the moneys in the fund shall defray all other administrative costs, including personnel costs of operating the regulated industries complaints office and costs incurred by supporting offices and divisions. The moneys in the fund may be used to train [such] personnel as the director [finds] deems necessary,² and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to section 26H-4, other than chapter 468, has complied with that chapter;
- (2) Any person subject to chapter 485 has complied with that chapter; [or]
- (3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15);
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce[.]; or
- (5) Any person subject to chapter 467B has complied with that chapter.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses. This subsection shall be repealed effective July 1, 2001.

(p) Any law to the contrary notwithstanding, the department of commerce and consumer affairs, or any board or commission placed within it for administrative purposes, may contract with professional testing services to prepare, administer, and grade examinations and tests for license applicants. For these purposes, the

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department may require applicants to pay the examination fee directly to the testing agency.

(q) Any law to the contrary notwithstanding, when any type of bond or insurance required to be maintained by any licensee under a regulatory program of the department of commerce and consumer affairs, or of any board or commission assigned to the department of commerce and consumer affairs, cannot reasonably be secured, the department, board, or commission may provide by rule for alternative forms of security to the consumer so long as that alternate security is no less than that provided by the type of bond or insurance initially required.

(r) Notwithstanding any other law to the contrary, the department of commerce and consumer affairs, or any board or commission placed within it for administrative purposes, may change any license renewal date by rules adopted in accordance with chapter 91.

(s) The director of commerce and consumer affairs may establish advisory committees, the members of which shall serve as consultants to the boards in their review of licensees referred for possible disciplinary action and as experts to the department for investigations. Each advisory committee shall be appointed by the director from a list of licensees submitted annually by the board for which an advisory committee is appointed. 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.

All members of the advisory committee shall serve voluntarily and without compensation, but shall be paid reasonable allowances for travel and expenses that may be incurred as a result of performance of their duties on the committee. The costs shall be paid by the department.

Any member of the advisory committee shall be immune from civil liability for any act done in connection with this subsection.”

SECTION 2. Section 438-3, Hawaii Revised Statutes, is amended to read as follows:

“§438-3 Creation of state board. There shall be a state board of barbers consisting of seven members who shall be appointed and may be removed by the governor. The members shall be residents of the State and five members must have practiced barbering [in the State] for at least five consecutive years immediately preceding the member’s appointment and two shall be public members. Each member shall serve for a term of four years, and until the member’s successor is appointed and qualified.”

SECTION 3. 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 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 4. Section 442-3, Hawaii Revised Statutes, is amended to read as follows:

“§442-3 Board of examiners. There shall be a board to be known as the “state board of chiropractic examiners,” that shall consist of five members. Three members of the board shall be licensees under this chapter and two shall be public

members. As used in this chapter, "board" means the state board of chiropractic examiners.

No person connected with any chiropractic school or college is eligible to appointment as a member of the board. Each member licensed under this chapter shall have practiced chiropractic [in this State] for at least five years immediately prior to the date of appointment."

SECTION 5. Section 444-3, Hawaii Revised Statutes, is amended to read as follows:

"§444-3 Contractors license board. (a) There shall be a contractors license board of thirteen members.

(b) Of the board members:

- (1) Ten shall be contractors who have been actively engaged in the contracting business for a period of not less than five years preceding the date of their appointment;
- (2) Five shall be general engineering or building contractors, five shall be specialty contractors, and three shall be noncontractors. No member shall receive any compensation for the member's services, but each shall be reimbursed for necessary traveling expenses incurred in the performance of duties.

[(3)] (c) Each county shall be represented on the board.

[(c)] (d) No one, except the three noncontractor members, shall be eligible for appointment who does not at the time of the member's appointment hold a valid and unexpired license to operate as a contractor."

SECTION 6. Section 448-5, Hawaii Revised Statutes, is amended to read as follows:

"§448-5 Board of examiners; appointment. The board of dental examiners shall consist of eleven members, eight of whom shall be practicing dentists who have been engaged in the practice of dentistry [in the State] for a period of five years preceding their several appointments, one of whom shall be a practicing dental hygienist, duly licensed under section 447-1, who has been engaged in the practice of dental hygiene [in the State] for a period of five years preceding appointment, and two of whom shall be public members. No member shall be in any way connected with, or interested financially in, any dental supply company. One member in the practice of dentistry shall be appointed from each of the counties of Hawaii, Maui, and Kauai and five members in the practice of dentistry shall be appointed from the city and county of Honolulu. As used in this chapter, "board" means the board of dental examiners."

SECTION 7. Section 451A-3, Hawaii Revised Statutes, is amended to read as follows:²

"§451A-3 Appointment, qualifications, term. There is hereby established a board of hearing aid dealers and fitters which shall consist of seven members. Of the seven members, there shall be at least one hearing aid dealer and fitter, one otolaryngologist, and one audiologist. Each hearing aid dealer and fitter on the board shall have at least five years of experience and shall hold a valid license as a hearing aid dealer and fitter.

All members of the board shall be residents of the State."

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SECTION 8. Section 452-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:²

“(b) Three members shall have at least three years of practical experience as licensed massage therapists, who shall be actively employed as massage therapists, and two shall be public members.”

SECTION 9. Section 457-4, Hawaii Revised Statutes, is amended to read as follows:

“§457-4 Qualifications of board members. Each member of the board shall be a resident of this State.

Registered nurse members of the board shall possess the following additional qualifications:

- (1) Graduation from a state-accredited educational program to prepare for a registered nurse and at least a bachelor's degree in nursing but preferably a graduate degree in nursing; and
- (2) Have a current, unencumbered license as a registered nurse [in the State]; and
- (3) Have at least five years of experience after graduation in the practice of nursing as a registered nurse and at least three years of active nursing experience as a registered nurse immediately preceding appointment or reappointment.

Licensed practical nurse members of the board shall possess the following additional qualifications:

- (1) Graduation from a state-accredited educational program to prepare for a licensed practical nurse; and
- (2) Have a current, unencumbered license as a licensed practical nurse [in the State]; and
- (3) Have at least five years of successful experience in the practice of nursing as a licensed practical nurse after graduation and at least three years of active nursing experience as a licensed practical nurse immediately preceding appointment or reappointment.”

SECTION 10. Section 459-3, Hawaii Revised Statutes, is amended to read as follows:²

“§459-3 Board of examiners; members, appointment, qualifications. There shall be a board to be known as the board of examiners in optometry, for the State. The board shall consist of seven members, five of whom shall be licensed optometrists who have actually engaged in the practice of optometry for at least five years and two of whom shall be public members. One of the five licensed optometrist members shall be from a county other than the city and county of Honolulu. No member of the board shall be a stockholder, member of the faculty, or on a board of trustees of any school of optometry.”

SECTION 11. Section 460J-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:²

“(a) There shall be a pest control board of nine members. Six members of the board shall be appointed by the governor; of which four shall have been for a period of not less than five years preceding the date of their appointment, licensed pest control operators actively engaged in the business of pest control; and two shall be public members. Three members of the board shall serve on an ex officio

voting basis: the chairperson of the board of agriculture or the chairperson's representative, the director of health or the director's representative, and the chairperson of the department of entomology of the college of tropical agriculture and human resources of the University of Hawaii or the chairperson's representative. No two members of the board shall be employed by or associated with the same business firm engaged in pest control."

SECTION 12. Section 461-2, Hawaii Revised Statutes, is amended to read as follows:

"§461-2 Board of pharmacy; appointment; qualifications. There shall be a board of pharmacy of seven members.

Five members of the board shall be graduates of a school or college of pharmacy and shall have been licensed as pharmacists and actively engaged in the practice of pharmacy [in the State] for at least five years prior to their appointment and two shall be public members. Four members of the board shall be residents of the city and county of Honolulu and three shall be residents of counties other than the city and county of Honolulu."

SECTION 13. Section 461J-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Each physical therapist member of the board shall possess a valid permanent license as a physical therapist [in this State] and shall have, after graduation from a school of physical therapy, at least three years of full-time experience or the equivalent in any of the following areas or in any combination of the following: clinical physical therapy services, administration in physical therapy or related health fields, or teaching in an educational program to prepare practitioners of physical therapy."

SECTION 14. Section 464-6, Hawaii Revised Statutes, is amended to read as follows:²

"§464-6 Board of professional engineers, etc., members; appointment; tenure; qualifications. There shall be a state board of professional engineers, architects, surveyors, and landscape architects hereinafter called "the board". The board shall consist of fourteen members, including at least four professional engineers, three professional architects, 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 five years immediately preceding the date of the member's appointment. Any member of the board who incurs expenses in connection with the preparation and grading of examination papers shall be reimbursed for those expenses with the approval of the department."

SECTION 15. Section 465-4, Hawaii Revised Statutes, is amended to read as follows:²

"§465-4 Board of psychology; appointment, qualifications, term, expenses. There is created a board of psychology consisting of seven members. There

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shall be five members representing varied specialties of the profession, each of whom shall be licensed to practice psychology under this chapter and have a minimum of five years of post-doctoral professional experience, and two lay members from the community at large. A lay member shall not be a psychologist, an applicant, or former applicant for licensure as a psychologist."

SECTION 16. Section 467-3, Hawaii Revised Statutes, is amended to read as follows:²

"§467-3 Commission, appointments, qualifications, tenure. There shall be appointed a commission to be known as the real estate commission, to consist of nine members, at least four of whom shall be licensed real estate brokers who have been engaged in business as licensed real estate brokers or salespersons for three years immediately preceding their appointments, each of whom shall be a citizen of the United States and shall have resided in the State for at least three years preceding appointment, and one of whom shall be designated by the appointing power as chairperson. Four members shall be residents of the city and county of Honolulu, one shall be a resident of the county of Hawaii, one shall be a resident of the county of Maui, and one shall be a resident of the county of Kauai and two members shall be public members.

Appointments shall be made for a term of four years, commencing from the date of expiration of the last preceding term and shall be made to expire on June 30. Appointments shall be made so that at least one appointment shall be required each year.

Any vacancy shall be filled by appointment for the unexpired term."

SECTION 17. Section 471-3, Hawaii Revised Statutes, is amended to read as follows:

"§471-3 Board of examiners; appointment and removal; qualifications. A board of veterinary examiners, consisting of seven members, four of whom shall be residents of the city and county of Honolulu and three of whom shall be residents of counties other than the city and county of Honolulu, shall be appointed, and may be removed, by the governor.

Five of the members of the board shall be veterinarians who have been licensed to practice [in the State] for at least five years and shall be actively engaged in the practice of veterinary medicine or, if not active at the time of appointment, shall have been previously so engaged for ten years and two shall be public members."

SECTION 18. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 19. This Act shall take effect on July 1, 1993; provided that the amendments to section 26-9(o) shall take effect on July 1, 1994.

(Approved June 22, 1993.)

Notes

1. Should be underscored.
2. Section not amended.

ACT 323

H.B. NO. 1955

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 general rules of the department of land and natural resources relating to permitted uses of significant cultural, historic, and pre-contact sites and monuments, such as Iolani Palace and Mauna Ala, are neither specific nor appropriate to the actual uses of these sites and monuments. These rules fail to consider the cultural significance of these sites and monuments, which should be treated with the respect and dignity befitting their importance. The general rules of the state park system relating to beaches, cabins, and outdoor showers, not to mention swimming and horseback riding, are inapplicable and inappropriate to such sites as Iolani Palace and Mauna Ala. The purpose of this Act, consequently, is to amend the historic preservation law by expanding the scope of the State's historic preservation program to include, among other things, the development and adoption, in consultation with the Office of Hawaiian Affairs native historic preservation council, of rules governing permits for access by native Hawaiians and Hawaiians to cultural, historic, and pre-contact sites and monuments.

SECTION 2. Section 6E-3, Hawaii Revised Statutes, is amended to read as follows:

"§6E-3 Historic preservation program. 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 on-going 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, bequest, land exchange, or other means; preservation, restoration, administration, or transference of the property; and the charging of reasonable admissions to that property;
- (3) Development of a statewide survey and inventory to identify and document historic properties and burial sites, including all those owned by the State and [its political subdivisions;] the counties;
- (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] counties and public and private agencies involved in historic preservation activities;
- (8) Coordination of activities of the [political subdivisions of the State] counties 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

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- properties listed on or eligible for the Hawaii register of historic places;
- (10) Coordination of the evaluation and management of burial sites as provided in section 6E-43;
- (11) Acquisition of burial sites in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means, to be held in trust;
- (12) Submittal of an annual report to the governor and [the] legislature detailing the accomplishments of the year and recommendations for changes in the state plan or future programs relating to historic preservation;
- (13) Regulation of archaeological activities throughout the State;
- (14) Employment of sufficient professional and technical staff for the purposes of this chapter without regard to chapters 76 and 77; [and]
- (15) Adoption of rules in accordance with chapter 91, necessary to carry out the purposes of this chapter[.]; and
- (16) Development and adoption, in consultation with the Office of Hawaiian Affairs native historic preservation council, of rules governing permits for access by native Hawaiians and Hawaiians to cultural, historic, and pre-contact sites and monuments."

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 22, 1993.)

ACT 324

S.B. NO. 728

A Bill for an Act Relating to Oil Spills.

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

SECTION 1. Section 128D-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Federal on-scene coordinator" means the federal official predesignated by the United States Environmental Protection Agency or the United States Coast Guard to coordinate and direct federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal under subpart E, of the National Contingency Plan.

"State on-scene coordinator" means the state official designated by the department of health to coordinate and direct responses under this chapter."

SECTION 2. Section 128D-6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) No person shall be liable under this chapter or otherwise under the laws of the State or any of the counties, including the common law, to any government or private parties for costs, damages, or penalties as a result of actions taken or omitted in the course of rendering care, assistance, or advice in [accordance] compliance with this chapter, the National Contingency Plan, or at the

direction of [an] a federal or state on-scene coordinator, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or pollutant or contaminant or the threat thereof. This subsection shall not preclude liability for costs, damages, or penalties as the result of gross negligence or intentional misconduct on the part of such person.”

SECTION 3. Section 128D-23, Hawaii Revised Statutes, is amended to read as follows:

“[§128D-23[]] Exemption from state and county permits. No state or county permit shall be required for the portion of any removal or remedial action conducted entirely on site where such response action is carried out in compliance with this chapter[.], or where such removal or remedial action is in response to a release of a hazardous substance or pollutant or contaminant that occurred in or on the coastal waters of the State and such removal or remedial action is carried out in compliance with this chapter, the National Contingency Plan, or at the direction of a federal or state on-scene coordinator.”

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 22, 1993.)

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S.B. NO. 1770

A Bill for an Act Relating to Housing.

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

SECTION 1. Section 201E-10, Hawaii Revised Statutes, is amended to read as follows:

“[§201E-10[]] Housing advocacy and information system. (a) The corporation, with the assistance of other agencies of the State and counties with related responsibilities, shall develop and maintain a housing advocacy and information system[.]. The system shall make available current information as to housing conditions, needs, supply, characteristics, developments, trends, federal housing programs, and housing laws, ordinances, rules, and regulations.] to aid the corporation in meeting the needs and demands of housing consumers.

(b) In establishing and maintaining the housing advocacy and information system, the corporation shall [assemble necessary and appropriate information, including but not limited to] conduct market studies, engage in community outreach, and solicit recommendations from and statistics and research developed by agencies of the United States, the State, the counties, private research organizations, nonprofit community groups, trade associations, including those of the construction and real estate industries, departments, [and] individuals at the University of Hawaii[.], and housing consumers.

(c) The corporation shall analyze the information received and make recommendations to appropriate agencies and developers.

(d) The corporation, through the housing advocacy and information system, shall act as a clearinghouse for information as to housing conditions, needs, supply,

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demand, characteristics, developments, trends, federal housing programs, and housing laws, ordinances, rules, and regulations.

[c)] (e) The housing advocacy and information system may be used by housing researchers, planners, administrators, and developers, and shall be coordinated with other housing research efforts. The corporation shall maintain a current supply of information, including means to gather new information through surveys, contracted research, and investigations."

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 22, 1993.)

ACT 326

H.B. NO. 1624

A Bill for an Act Relating to Residential Leaseholds.

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

SECTION 1. Chapter 514C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§514C- Sales to individual lessees. Notwithstanding any other provisions in this chapter, a lessor may sell the leased fee interest in any land under a condominium project or cooperative project or any part thereof to individual condominium unit lessees or cooperative unit lessees, provided that the following requirements have been complied with:

- (1) No individual lessee shall be obligated to enter into a contract to purchase without having been afforded a period of at least ninety days within which to consider the offer made by the lessor, provided that the individual lessee may enter into a contract to purchase before the ninety days expires if the individual lessee so desires. The lessee shall further have the right to terminate such contract to purchase without penalty for a period of ninety days from the date the contract was first entered into;
- (2) At the time any offer to sell the leased fee interest is communicated to the lessee by the lessor, the association of owners or cooperative housing corporation shall be provided with written notice delivered or mailed by registered or certified mail, return receipt requested, postage prepaid, to any two of the president, vice-president, or managing agent (if any), of the lessor's intent to sell the interest, together with a complete and correct copy of the offer, which offer shall contain the full and complete terms thereof. Except as provided in paragraph (3), where the board of directors of the association of apartment owners or cooperative housing corporation has written authorization to represent its members, then the association or corporation shall have a right of first refusal to purchase that leased fee interest for the same price as is contained in the written purchase offer, provided that the offer shall be deemed to be rejected if not accepted in writing by the board of directors of the condominium project or the cooperative housing cor-

- poration within one hundred twenty days of its receipt of written notice from the seller, as evidenced by the return receipts;
- (3) Any board of directors of the association of apartment owners or cooperative housing corporation may fully or partially waive its right of first refusal at any time with written notice to the lessor, provided, however, that it shall waive its right of first refusal with respect to the leased fee interest appurtenant to a lessee's apartment at the written request of the lessee. The legislature hereby gives the board of directors of the association of apartment owners or cooperative housing corporation the authority to exercise the foregoing waiver without having to amend any bylaws, charter, or other governing documents;
 - (4) Notwithstanding any provision contained in any bylaws, or any amendment thereto or written authorization, authorizing the board of directors of the association of apartment owners or cooperative housing corporation to represent the individual lessees in the lease-to-fee conversion, each individual shall have the right to represent himself or herself in such lease-to-fee conversion by giving written notice of such desire to the lessor and the board of directors; and
 - (5) After the lessor (or its agent or representative) has been able to hold one meeting with the lessees and has been able to provide a written summary of the meeting to the lessees, then for a period of ninety days thereafter, the lessor, its agents, employees, and representatives, shall not initiate communication with the lessees regarding the offer, although such parties may respond to inquiries made by lessees."

SECTION 2. Section 514C-5, Hawaii Revised Statutes, is amended to read as follows:

"[§]514C-5[] Offer to other prospective purchasers; time limit. No lessor shall [offer to] sell the leased fee interest in any land under a condominium project or cooperative project containing one or more residential units or any part thereof to any party other than the association of apartment owners or cooperative housing corporation for that project until a right of first refusal for the purchase of that interest has been offered as required by this chapter and has been rejected in writing by the board of directors[,], except in the case of sales to individual condominium unit lessees or cooperative unit lessees, which shall be subject to the requirements of section 514C-_____, provided that an offer made pursuant to sections 514C-2, [and] 514C-3, and 514C-_____, shall be deemed to be rejected if not accepted in writing by the board of directors of the condominium project or the cooperative housing corporation within one hundred twenty days of its receipt of the written notice from the seller, as evidenced by the return receipts, or if the sale, through no fault of the seller, has not closed upon the purchase of one hundred per cent of the interest being sold within one hundred eighty days of receipt by the board of directors of such written notice, as evidenced by the return receipts. In the event that closing is delayed due to any fault of the seller, the deadline for closing shall be extended for a period of time equal to the delay caused by seller."

SECTION 3. Section 516-33, Hawaii Revised Statutes, is amended to read as follows:

"§516-33 Qualification for purchase. (a) Except as otherwise provided under section 516-28, no application to purchase shall be accepted nor shall any sale of any residential houselot within a development tract [shall] be made to any person unless the person meets the following requirements:

- (1) Is at least eighteen years of age;
 - (2) Is a bona fide resident of the State [or has a bona fide intent to reside in the development tract if successful in purchasing the lot] and [does reside] resides on the lot [within five years of purchase of the lot], except in hardship circumstances as determined by the corporation[;]
on a case by case basis where such inability to reside on the lot arises out of a temporary job or military transfer, a temporary educational sabbatical or the serious illness of the person; provided further that if either the person or the lessor disagree with the corporation's determination, they shall be entitled to a contested case proceeding under chapter 91 in which both the person and lessor shall be parties;
 - (3) Has legal title to, or pursuant to an agreement of sale an equitable interest in, a residential structure situated on the leased lot applied for; provided that for the purposes of this section, the vendor under such agreement of sale shall not be eligible to purchase the lot. An agreement of sale means an executory contract for the sale and purchase of real property which binds one party to sell and the other party to buy property which is the subject matter of the transaction;
 - (4) Has a letter of credit, certificate of deposit, proof of funds, or approved application from any lending institution demonstrating that the person will be able to promptly pay the corporation for the leased fee interest in the lot;
 - (5) Submits an application in good faith in such form as is acceptable to the corporation;
 - (6) Executes a contract for purchase of the fee interest in such form as is acceptable to the corporation; and
 - (7) Does not own in fee simple lands suitable for residential purposes for such person within the county and in or reasonably near the place of business of such person or has or have pending before the housing finance and development corporation an unrefused application to lease or purchase a lot in a development tract. A person is deemed to own lands herein if the person, the person's spouse, or both the person and the person's spouse (unless separated and living apart under a decree of a court of competent jurisdiction) own lands.
- (b) The amount set by the corporation for the leased fee interest in the lot for which the lessee must obtain a letter of credit, certificate of deposit, proof of funds, or approved application for loan pursuant to section 516-33(4) shall not be admissible for any reason in any action, suit, or proceeding brought under this chapter. Any financial information the corporation may request and obtain from the lessees shall not be discoverable or admissible in any action, suit, or proceeding brought under this chapter.
- (c) In the event of a wilful breach of contract of a lessee to purchase the leased fee interest, the corporation may sell or assign its interest without respect to the requirements of this section.
- (d) The corporation may require additional testimony or evidence under oath in connection with any application. The determination by the corporation of any applicant's eligibility under this part shall be conclusive as to all persons thereafter dealing with the property; provided that the making of any false statement knowingly by applicants or other person in connection with any application shall constitute perjury and shall be punishable as such. The corporation shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 5. This Act shall not affect any offer to sell or sale of a leased fee interest to an apartment owner, association of apartment owners, or cooperative housing corporation, which is pending on the effective date of this Act.

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

(Approved June 23, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 327

H.B. NO. 1739

A Bill for an Act Relating to Libraries.

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

SECTION 1. Chapter 312, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . FEE FOR ENHANCED SERVICES PROGRAM

§312- Fee for enhanced services program; established. (a) The board of education, through the state librarian, shall:

- (1) Provide for the establishment and ongoing operation of a fee for enhanced service program, which includes but is not limited to the planning, programming, and budgeting of operating, research and development, and capital investment programs; and
- (2) Administer a special fund to be known as the "library fee for enhanced services special fund".

(b) Notwithstanding sections 312-3.6 and 312-4, all moneys collected through the fee for enhanced services program shall be deposited into the library fee for enhanced services special fund established under section 312-

(c) The state librarian, with the approval of the board of education, shall determine the types and kinds of enhanced services to be included under the fee for enhanced services program; provided that a schedule of fees for these enhanced services shall be adopted in accordance with chapter 91. Libraries shall not be obligated to offer all of the services specified in the fee for enhanced services program, and each public library shall determine which services it will provide.

§312- Library fee for enhanced services special fund. (a) There is established in the state treasury the library fee for enhanced services special fund into which shall be deposited all moneys collected pursuant to section 312- and any fee schedules adopted pursuant thereto.

(b) The special fund shall be administered by the state librarian who, after consultation with the library advisory committee, shall determine the annual amount that each public library shall receive. Allocations shall be based on the balance in the special fund on the first day of each fiscal year and made in quarterly installments not more than thirty days after the close of each fiscal quarter.

(c) Moneys allocated from the special fund shall be used by each public library to operate its fee for enhanced services program. Each library shall post in a conspicuous place a list of expenditures made by the library from the special fund during the preceding fiscal quarter.

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(d) The state librarian shall submit an annual report on the status of the special fund. The report shall include information about deposits made into the fund and the source of these deposits, and allocations to each public library, descriptions and amounts of the expenditures made from the fund, and the balance remaining in the fund on June 30 of each year. The report shall be submitted to the legislature and the governor not later than twenty days prior to the convening of each regular session. Any balance remaining in the fund on July 1, 1996, shall be deposited into the general fund."

SECTION 2. Sections 312-1 to 312-7, Hawaii Revised Statutes, are hereby designated as "Part I. General Provisions".

SECTION 3. This Act shall take effect upon approval and shall be repealed on July 1, 1996.

(Approved June 23, 1993.)

ACT 328

H.B. NO. 2042

A Bill for an Act Relating to a Hawaii State Library Foundation Trust Fund.

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- Hawaii state library foundation trust fund. (a) There is established as a separate fund of the Hawaii state library foundation, a Hawaii nonprofit corporation, the Hawaii state library foundation trust fund. All funds contributed to the trust fund, including income and capital gains earned therefrom, shall be used exclusively for state library programs as defined in the articles, bylaws, resolutions, and other instruments executed on behalf of the Hawaii state library foundation or by the state librarian. The trust fund may receive any and all types of private contributions, and the income and capital gains earned by the fund; provided that funds or properties donated for library use and patrons' deposits shall be deposited and accounted for in accordance with rules adopted by the comptroller. The trust fund shall be subject to the following restrictions:

- (1) All funds, and the income and capital gains earned by investment of those funds, shall be expended only for the support of state library programs; and
 - (2) Other restrictions imposed by the legislature with respect to the transfer or appropriation of funds.
- (b) Any funds deposited in the trust fund, and any income and capital gains earned therefrom, not used for state library programs, shall be invested in accordance with the provisions of the articles, bylaws, resolutions, or other instruments executed on behalf of the Hawaii state library foundation, and in a manner intended to maximize the rate of return on investment of the fund.

(c) If the trust fund is terminated or the Hawaii state library foundation is dissolved, all funds, including the income and capital gains earned by the investment of funds, shall be distributed in accordance with the articles and bylaws of the Hawaii state library foundation.

(d) The Hawaii state library foundation shall require an annual audit of the trust fund, the results of which shall be submitted to the department of education

not more than thirty days after receipt by the foundation. The foundation shall retain for a period of three years, any documents, papers, books, records, and other evidence that is pertinent to the trust fund, and permit inspection or access thereto by the department of education, the state librarian, the department of accounting and general services, state legislators, and the state auditor, or their duly authorized representatives.

(e) The purpose of this section is to create by statute a private charitable trust fund to financially support state library programs. The trust fund shall be subject to the terms and conditions provided in this section. The trust fund shall not be placed in the state treasury and the State shall not administer the fund nor be liable for its operation or solvency. The fund shall be a private charitable trust fund administered by a private trust company as trustee.

(f) Subsections (a) to (e) shall take effect upon the creation of a Hawaii state library foundation, a tax-exempt, nonprofit foundation that is subject to the terms and conditions provided in this section; provided that this section shall be repealed on June 30, 1995, if the Hawaii state library foundation is not established by this date."

SECTION 2. Section 102-14, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) This section shall not apply to the University of Hawaii system, public library system, department of education facilities, department of transportation airport and harbor restaurant and lounge facilities and operations, public parks, and state and county facilities designed and intended for use as facilities for entertainment and other public events."

SECTION 3. Section 312-4, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved June 23, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 329

S.B. NO. 124

A Bill for an Act Relating to Motor Fuel.

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

SECTION 1. Chapter 486H, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

"§486H- Prohibition of manufacturer or jobber from operating a service station. (a) From July 31, 1993 to August 1, 1995, no manufacturer or jobber shall operate a major brand, secondary brand, or unbranded retail service station in Hawaii to sell its petroleum products.

(b) For the purposes of this section, the term "to operate" means to engage in the business of selling motor vehicle fuel at a retail service station through any

employee, commissioned agent, subsidiary company, or person managing a retail service station under a contract and on a fee arrangement with the manufacturer or jobber.

(c) This section shall not apply to any individual locations operated by any manufacturer or jobber on the effective date of this Act.

§486H- Enforcement of prohibition. (a) The attorney general shall commence a civil action to enforce section 486H-, by seeking injunctive or any other appropriate relief. The civil action shall be brought in the circuit court of the circuit where the alleged violation occurred, or where the defendant resides or is doing business.

(b) Any person who is injured in another person's business or property by the violation of section 486H-, may bring a civil action for damages or injunctive relief, or both, against the person violating section 486H-. If the plaintiff prevails, the plaintiff shall be awarded reasonable attorneys and expert witness fees; provided that if a court awards only nominal damages to the plaintiff, those fees, in the court's discretion, need not be awarded to the plaintiff. Any action brought under this subsection shall be brought in the circuit court of the circuit where the alleged violation occurred, or where the defendant resides or is doing business.

§486H- Preemption by federal law. This chapter shall not be applied in a manner that would render its application preempted by the "Petroleum Marketing Practices Act", 15 U.S.C. Sec. 2801, et. seq., or other applicable federal law."

SECTION 2. Section 486H-1, Hawaii Revised Statutes, is amended to read as follows:

"§486H-1 Definitions. As used in this chapter:

[(1)] "Franchise" means:

[(A)] (1) Any agreement or related agreements between a petroleum distributor and a gasoline dealer under which the gasoline dealer is granted the right to use a trademark, trade name, service mark, or other identifying symbol or name owned by the distributor in connection with the retail sale of petroleum products supplied by the petroleum distributor; or

[(B)] (2) Any agreement or related agreements described in [subparagraph (A)] paragraph (1) and any agreement between a petroleum distributor and a gasoline dealer under which the gasoline dealer is granted the right to occupy the premises owned, leased, or controlled by the distributor, for the purpose of engaging in the retail sale of petroleum products supplied by the distributor.

"Gasoline" includes gasoline, benzol, benzine, naphtha, and any other liquid prepared, advertised, offered for sale, sold for use as, or used for, the generation of power for the propulsion of motor vehicles, including any product obtained by blending together any one or more petroleum products with or without other products, if the resultant product is capable of the same use.

[(2)] "Gasoline dealer" means any person engaged in the retail sale of petroleum products in the United States under a franchise agreement entered into with a petroleum distributor.

[(3)] "Good faith" means the duty of a gasoline dealer and a petroleum distributor to act in a fair and equitable manner in the performance and in the demanding of performance of the terms and provisions of the franchise. The petroleum distributor shall not impose on a gasoline

dealer by contract, rule,² or regulation, whether written or oral, any standard of conduct [which] that is not reasonable and of material significance to the franchise relationship.

- [(4)] "Inventory" means any product sold to a gasoline dealer for resale purposes by a petroleum distributor.

"Jobber" means every wholesaler of petroleum products.

"Major brand" means the primary trade name or trademark most commonly associated and identified with a manufacturer's retail service station.

"Manufacturer" means every producer or refiner of petroleum products on January 1, 1992, or any subsidiary of that producer or refiner.

"Motor vehicle fuel" means gasoline, diesel fuel, alcohol, and any mixture of those fuels suitable for use in vehicles registered under chapter 286.

- [(5)] "Petroleum distributor" means any person engaged in the sale, consignment, or distribution of petroleum products to retail outlets [which] that it owns, leases,¹ or otherwise controls.

"Petroleum products" includes motor vehicle fuel, residual oils number 4, 5, and 6, and all grades of jet (turbo) fuel.

"Purchase" means any acquisition of ownership.

- [(6)] "Retail" means the sale of a product for purposes other than resale.

"Retail service station" means a place of business where motor vehicle fuel is sold and delivered into the tanks of motor vehicles.

"Sale" means any exchange, gift, or other disposition.

"Secondary brand" means a trade name or trademark, other than a major brand, used to identify a manufacturer's retail service station.

"Unbranded" means an independent retail service station dealer, jobber, heating oil distributor, motor fuel wholesaler, or peddler marketing gasoline or special fuels under its own brand, trade name, or trademark, other than those of a manufacturer, or any subsidiary thereof."

SECTION 3. If a dealer vacates a location, before a replacement dealer can be found, the facility may be company operated for up to one hundred twenty days. If a dealer cancels a lease prior to the expiration of the lease, or chooses not to accept a franchise renewal offer, and there is less than three years remaining for that lease, the facility may be company operated until the termination of that lease.

SECTION 4. 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 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved June 23, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 330

S.B. NO. 301

A Bill for an Act Relating to Waiahole Valley.

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

SECTION 1. The housing finance and development corporation (HFDC) is developing an agricultural park and low-density residential development on approximately six hundred acres of land in Waiahole Valley on the island of Oahu. HFDC holds title to this land. The purpose of this park and development is to provide long-term affordable rental housing for tenants in Waiahole and Waikane valleys who were threatened with eviction during the 1970s, to promote diversified agriculture, and to preserve the rural lifestyle of the valleys.

There are ten parcels abutting the HFDC property under control of the department of land and natural resources (DLNR). These lands are farmed by the tenants, who are a part of the wider Waiahole-Waikane community. Combining these lots with the HFDC property would promote the master planning of diversified agriculture in Waiahole, make government functions more efficient by having one state agency overseeing the area, and help bring the community together.

The purpose of this Act is to transfer title to these ten parcels of land to HFDC so that they may be consolidated in the Waiahole agricultural park.

SECTION 2. The following parcels of land are hereby transferred from DLNR to HFDC:

Tax map key number	Lot size
4-8-01:19	3.0 acres
4-8-07:07	2.0 acres
4-8-07:06	2.0 acres
4-8-01:20	3.5 acres
4-8-07:03	17.0 acres
4-8-07:09	4.0 acres
4-8-07:08	2.0 acres
4-8-07:10	5.0 acres
4-8-07:11	62.5 acres
4-8-07:12	5.0 acres

The transfer shall be effective immediately and DLNR shall be responsible for properly documenting the change in title.

SECTION 3. Upon taking title to the above-listed parcels HFDC shall immediately offer leases to those persons who hold revocable permits to the parcels from DLNR as of the effective date of this Act. The leases shall be negotiated and shall be on the same terms as leases offered to all other persons leasing parcels from HFDC within the Waiahole agricultural park.

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

(Approved June 23, 1993.)

ACT 331

H.B. NO. 1971

A Bill for an Act Relating to Time Share Practices.

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

SECTION 1. Section 514E-11, Hawaii Revised Statutes, is amended to read:

"§514E-11 Prohibited practices. It is a violation of this chapter for any sales agent or acquisition agent of time share units or plans to:

- (1) Fail to comply with the disclosure requirements set forth in section 514E-9 or any rule adopted pursuant thereto;
- (2) Use any promotional device, including but not limited to entertainment, prizes, gifts, food and drinks, games, transportation, luaus, ocean recreational activities, land recreational activities, aerial recreational activities, or tours, or other inducements, or make any offer thereof, without fully disclosing orally and as provided in paragraph (3) that the device is being used or offered for the purpose of soliciting sales of time share units or interests;
- (3) Offer a prospective purchaser a prize or gift[, in writing,] as part of any time share advertising or sales promotion plan, if in order to claim the prize, the prospective purchaser must attend and complete a sales presentation,¹ unless written disclosure is furnished to the prospective purchaser at the time the prospective purchaser is notified of the prize or gift; provided that the written disclosure is written or printed in a size equal to at least ten-point bold type and contains all of the following:
 - (A) A full description of the exact prize or gift won by the prospective purchaser including its cash value;
 - (B) All terms and conditions attached to the prize or gift;
 - (C) A statement that the consumer must attend and complete a sales presentation; and
 - (D) An identification of the time share project to be offered for sale including type of ownership, exchange privileges, limitations, and price ranges of the time share interests in that project;
- (4) Misrepresent or deceptively represent any material fact concerning the time share plan or time share unit;
- (5) Make any representation that a time share interest is an investment, including but not limited to the value of the interest at resale;
- [55] (6) Fail to honor and comply with all provisions of a contract or reservation agreement with the purchaser;
- [66] (7) Include, in any contract or reservation agreement, provisions purporting to waive any right or benefit provided for purchasers pursuant to this chapter;
- [77] (8) Receive from any prospective purchaser any money, property (including but not limited to a credit card), or other valuable consideration prior to signing a contract or reservation agreement for the purchase of a time share plan or unit; [or]
- [88] (9) Make [a sales presentation to a prospective purchaser] any agreement or contract with a purchaser before delivering, furnishing, or tendering to that prospective purchaser any promised promotional device or other instrument[.];

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- (10) Distribute any promotional or disclosure material separately if the material was filed in a consolidated form;
- (11) Use any unregistered time share booth or fail to have at least one conspicuous sign posted on or in a time share booth in a location reasonably calculated to bring the sign to the attention of customers outside of such time share booth that states, at minimum, "TIME SHARE", and in a manner consistent with department, city and county ordinances;
- (12) Misrepresent the amount of fees to be charged, including management fees, or the structure for future fee increase; or
- (13) Sell, offer for sale, or advertise for sale, by any person, partnership, firm, corporation, joint stock company, or other association engaged in marketing time share plans within the State, any tourist activity, including, but not limited to land, aerial, or water recreational activities, at less than the cost thereof to such vendor or give, offer to give, or advertise with the intent to give away any such tourist activity with the purpose or effect of inducing the vendee to purchase a time share plan or to attend a time share marketing event.

Any violation of this section shall also constitute an unlawful or deceptive practice within the meaning of section 480-2.

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

SECTION 3. This Act shall take effect upon approval. Paragraph (13) of section 514E-11 shall be automatically repealed five years from the effective date of this Act.

(Approved June 23, 1993.)

Note

1. Comma should be underscored.

ACT 332

H.B. NO. 173

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 air transportation is uniquely important to the people of the State of Hawaii. The construction of surface transportation systems linking the various islands of Hawaii on the comprehensive basis that prevails elsewhere in the United States is impractical. Accordingly, the people of the State of Hawaii must rely extensively on air travel for their basic daily personal transportation needs and for the shipment of goods which are important to their daily lives. Similarly, visitors to the State must often rely on local air travel services provided by Hawaii air carriers for transportation among the various islands. This makes reliable air transportation among the islands of the State vital to the growth of the statewide tourism industry.

The recent downturn in tourism throughout the State, especially on the neighbor islands, has resulted in a dramatic and severe loss of passenger traffic by interisland airlines. The legislature further finds that failure to provide relief to these critical transportation providers is likely to exacerbate the visitor decline on the neighbor islands and have a severe negative impact on businesses statewide.

The loss of air transportation among our islands would result in further reduction in employment and the quality of life for the citizens of Hawaii.

The legislature finds that these concerns can best be addressed by the regulation of air services between points in the State of Hawaii at the state level. The legislature finds that the current policies that are adopted on the national level may be inappropriate to the unique environment of Hawaii interisland and local service, and that policies adopted by the State of Hawaii in the regulation of this service will not impair implementation of national regulatory goals particularly including safety regulation which shall remain exclusively with the Federal Aviation Administration.

The legislature further finds that financial assistance for those hardest hit by this loss of revenues is not available through a loan from a federal or state agency. Such financial assistance can best be provided through a loan guarantee by the State to assist Hawaii interisland air carriers when other government resources are not available and a loan from a private lending institution can only be secured through the use of a guarantee from the State.

The legislature finds and declares that the issuance of loan guarantees under this Act is in the public interest and for the public health, safety, and general welfare of the State. The purpose of this Act is to:

- (1) Establish a statutory scheme for the regulation of interisland air carriers, to the extent permissible under the Constitution and laws of the United States, and
- (2) Assist Hawaii interisland air carriers whose operations and revenues have been adversely affected by the reduced number of visitors now using their transportation services by authorizing the department of business, economic development, and tourism, through its director, to guarantee loans from private lending institutions.

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

“CHAPTER HAWAII AIR CARRIERS

§ -1 Application of chapter; interstate or foreign commerce. This chapter shall not apply to commerce with foreign nations, with territories of the United States, or to interstate commerce, except insofar as the application is permitted under the Constitution and laws of the United States.

§ -2 Definitions. As used in this chapter:

“Air transportation” means the holding out to the general public of or the undertaking to provide the carriage of persons or property, except for United States mail, by air, for compensation or hire between any pair of points both of which are within the State of Hawaii, unless the carriage is part of the continuous carriage of the persons or property to or from a point outside the State of Hawaii. For the purposes of this chapter the term “continuous carriage” means transportation by air which does not include a stopover of more than twenty-four hours.

“Aircraft” means any craft or other artificial contrivance of whatever description which is used or capable of being used, or intended to be used, as a means of transportation by air.

“Certificate” means a certificate of public convenience and necessity issued under this chapter to a Hawaii air carrier.

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"Citizen of the United States" shall have the same meaning as defined in section 101(16) of the Federal Aviation Act of 1958 (49 U.S.C. §1301 et seq.), as amended.

"Commission" means the air carrier commission established pursuant to section -4.

"Control", in reference to a relationship between any person or persons and another person or persons, includes actual as well as legal control, indirect as well as direct control, and the power to exercise substantial influence whether or not exercised.

"Hawaii air carrier" or "carrier" means any person who has received a certificate issued by the commission and who undertakes or holds itself out to the general public as engaging directly or indirectly in the transportation by air of passengers or property, or both, for compensation or hire within the State or between points within the State.

"Rates" includes rates, fares, and charges of whatever kind and nature unless the context indicates otherwise.

"Related company" means a company or persons that directly, or indirectly through one or more subsidiaries, affiliates, or a holding company, controls or is controlled by, or is under common control with, a Hawaii air carrier.

"Transportation of persons" includes every service in connection with or incidental to the comfort or convenience of persons transported, and the receipt, carriage, and delivery of these persons and their baggage.

"Transportation of property" includes every service in connection with or incidental to the transportation of property, including in particular its receipt, carriage, preservation, and delivery, and all incidental services affecting these activities.

§ -3 Exemptions, generally. Notwithstanding any other provisions of this chapter, this chapter shall not apply to:

- (1) Persons transporting their own property where the transportation is in furtherance of a primary business purpose or enterprise of that person, except where the transportation is undertaken by a Hawaii air carrier to evade the regulatory purposes of this chapter; or
- (2) Persons engaged in the business of transporting persons solely for sightseeing and other recreational activities not involving point-to-point travel.

§ -4 Air carrier commission, establishment. (a) There is established an air carrier commission to assist in the regulation of interisland air carriers pursuant to the purposes of this chapter. The commission shall be placed with the department of transportation for administrative purposes.

(b) The commission shall consist of five members. The commission shall be appointed in the manner prescribed in section 26-34, Hawaii Revised Statutes, except as otherwise provided in this section. The members shall be appointed for terms of six years each, subject to the advice and consent of the senate. The terms of the members first appointed shall be for two, three, four, five, and six years, respectively, as designated by the governor at the time of appointment. The governor shall designate a member of the commission to be chairperson of the commission. Each member shall hold office until the member's successor is appointed and qualified.

(c) In appointing members, the governor shall consider persons who have had experience in transportation, accounting, engineering, government, finance, law, or other similar fields. No person owning any stock or bonds of any Hawaii air carrier or of any common carrier by air, or having any interest in, or deriving any

remuneration from, any Hawaii air carrier or any common carrier by air, shall be appointed as a commissioner; provided that any person who has retired from the service of and no longer holds any position with any common carrier or Hawaii air carrier may be eligible for appointment.

(d) The members of the commission shall receive no compensation for their services on the commission, but shall be reimbursed for actual expenses incurred in the performance of their duties.

§ -5 Staff. The air carrier commission may appoint and employ, on a contractual or noncontractual basis not subject to chapters 76 and 77, persons the commission finds necessary for the performance of the commission's functions. The commission shall set forth the powers, duties, and compensation of the staff.

§ -6 General powers and duties. The air carrier commission shall have general supervision over all Hawaii air carriers providing air transportation and, to the extent determined by the commission to be necessary to effectuate the purposes of this chapter, over any related company, and shall perform the duties and exercise the powers imposed or conferred upon it by this chapter. The general powers of the commission shall include, but not be limited to:

- (1) Regulating Hawaii air carriers by utilizing, in addition to its other powers, the investigative powers set forth in section -7;
- (2) Establishing reasonable classifications of Hawaii air carriers based upon the nature of the services provided by the carriers, and adopting rules pursuant to chapter 91 to regulate those classes of Hawaii air carriers; and
- (3) Exempting from this chapter, in whole or in part, when determined to be in the public interest, any Hawaii air carrier engaging in air transportation solely with aircraft with a maximum seating capacity of not more than seventeen passengers or maximum cargo capacity of not more than three thousand pounds.

§ -7 Investigative powers. (a) The air carrier commission shall have the power to examine the condition of each Hawaii air carrier and, to the extent determined by the commission to be necessary to effectuate the purposes of this chapter, any related companies, including but not limited to:

- (1) The manner in which carriers are operated with reference to the accommodation of the public;
- (2) The fares and rates charged by carriers;
- (3) The value of the physical property of carriers;
- (4) The issuance of stocks and bonds, and the disposition of the proceeds thereof, by carriers;
- (5) The amount and disposition of the income, and all financial transactions, of carriers;
- (6) The business relations of carriers with other persons, companies, or corporations;
- (7) The compliance of carriers with all applicable state and federal laws and with the provisions of their franchise, charter, and articles of association, if any;
- (8) The classifications, rules, regulations, practices, and service of carriers; and
- (9) All matters of every nature affecting the relations and transactions between carriers and the public, persons, or corporations.

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(b) Any investigation may be made by the commission on its own motion, or a sworn written complaint that the commission determines sets forth any *prima facie* cause of complaint.

(c) A related company shall be deemed to have consented to examination and investigation pursuant to this section by entering into or maintaining a control relationship with a Hawaii air carrier.

§ -8 Certificates of public convenience and necessity. (a) Except as otherwise provided in this chapter, no person shall engage in air transportation unless the person holds a certificate issued by the air carrier commission authorizing its operation.

(b) Applications for certificates shall be made in writing to the commission. Applications shall be in the proper form and contain the required information, with the proof of service upon the interested parties, as the commission shall require by rule.

(c) A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application if it is found that the applicant is a citizen of the United States and fit, willing, and able to properly perform the service proposed and to conform to this chapter and the requirements and rules of the commission, and that the proposed service, to the extent to be authorized by the certificate, is required by the public convenience and necessity; otherwise the application shall be denied. The applicant shall have the burden of proof to establish that any proposed service is required by the public convenience and necessity. The commission shall institute an oral evidentiary hearing to consider any application for a certificate that would authorize the holder to use aircraft capable of carrying more than seventeen persons.

(d) Any applicant receiving a certificate under this chapter shall pay upon receipt of the certificate a registration fee and subsequent annual fee that shall be determined by the commission and deposited into the state general fund.

(e) Any Hawaii air carrier engaging in air transportation under a certificate issued by the commission may occasionally deviate from the route over which it is authorized to operate under the certificate under rules adopted by the commission.

§ -9 Temporary authority. To enable the provision of service for which there is an immediate and urgent need to a point or points having no Hawaii air carrier service capable of and willing to meet the need, the air carrier commission, in its discretion and without hearings or other proceedings, may grant temporary authority for the service by a Hawaii air carrier. The temporary authority, unless suspended or revoked for good cause, shall be valid for the time the commission shall specify, but for not more than a period of one hundred twenty days for any one immediate and urgent need.

§ -10 Transfer of certificates of public convenience and necessity, carrier property, and control of carriers. (a) No Hawaii air carrier shall sell, lease, assign, mortgage, or otherwise dispose of, or encumber any certificate, in whole or in part, or any of its property necessary or useful in the performance of transportation services for the public; nor shall any Hawaii air carrier, by any means, directly or indirectly, merge or consolidate its property, certificates, or any part thereof, with any other carrier, without in each case first having secured from the air carrier commission an order authorizing it to do so, and every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with an order of the commission authorizing the same, is void and of no effect.

(b) No Hawaii air carrier shall purchase or acquire, take, or hold, any part of the capital stock of any other common carrier without having been first authorized to do so by the commission. Every assignment or transfer of any stock by or through any person to any person, or otherwise, in violation of this section is void and of no effect, and no such transfer shall be made on the books of any air carrier. Nothing herein shall prevent the holding of stock lawfully acquired prior to the effective date of this chapter.

(c) No person shall acquire control of any Hawaii air carrier without first receiving the approval of the commission.

(d) Whenever a transaction is proposed under subsection (a), (b), or (c), the Hawaii air carrier or carriers, or person or persons, seeking approval thereof shall present an application to the commission in the form that the commission shall require. The commission may act upon the application with or without first holding a public hearing; provided that, if requested, the commission shall afford reasonable opportunity for interested parties to be heard. If the commission finds that, subject to the terms and conditions that it shall find to be just and reasonable, the proposed transaction will be consistent with the public interest, the commission shall enter an order approving and authorizing the transaction, upon the terms and conditions, and with the modifications found to be just and reasonable. The proponent of the transaction within the scope of subsection (a), (b), or (c) shall have the burden of proof to establish that the transaction is consistent with the public interest.

(e) Pending the determination of an application filed with the commission for approval of a consolidation or merger of the properties of two or more Hawaii air carriers, or of a purchase, lease, charter, or contract to operate the properties of one or more Hawaii air carriers, or of an acquisition of control of a Hawaii air carrier, the commission, in its discretion and without hearings or other proceedings, may grant temporary approval, for a period not exceeding one hundred twenty days or for an additional period as the determination of an application may require, of the operation of the Hawaii air carrier properties sought to be acquired by the persons proposing in the pending application to acquire the properties, if it shall appear that failure to grant this temporary approval may result in destruction of or injury to the Hawaii air carrier properties sought to be acquired, or substantial interference with their future usefulness in the performance of adequate and continuous service to the public.

(f) This section shall apply to any transaction entered into or proposed to be entered into by a related company which is determined by the commission to have potential impact upon the related Hawaii air carrier or its operations. A related company shall notify the commission of any such transaction at least sixty days prior to its consummation.

§ -11 Suspension, change, and revocation of certificates. (a) Certificates shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as provided in this section.

(b) Any certificate, upon application of the holder thereof, in the discretion of the air carrier commission, may be amended or revoked, in whole or in part. Upon complaint, or on the commission's own initiative, a certificate may be suspended, changed, or revoked, in whole or in part, for wilful failure by the holder or any related company to comply with this chapter, or with any lawful order or rule of the commission, or with any term, condition, or limitation of the certificate. No certificate shall be revoked, except upon application of the holder, unless the holder thereof or any related company wilfully fails to comply, within a reasonable time that shall not be fewer than thirty days and that shall be fixed by the commission,

with a lawful order of the commission, rule of the commission, or to a term, condition, or limitation of the certificate or permit.

(c) The right to engage in transportation by virtue of any certificate issued pursuant to section -8 or by virtue of temporary authority granted under section -9 or -10, may be suspended by the commission upon reasonable notice of not fewer than fifteen days to the carrier, but without hearing or other proceedings, for failure to comply by the carrier or any related company, with the terms of the certificate or temporary authority or with any lawful order or rule of the commission regarding the certificate or temporary authority.

§ -12 Rates, fares, and charges of air carriers. (a) In the transportation of persons every Hawaii air carrier shall:

- (1) Provide safe and adequate service, equipment, and facilities for the transportation of the passengers; and
- (2) Establish, observe, and enforce just and reasonable:
 - (A) Rates, fares, and charges;
 - (B) Regulations and practices relating to rates, fares, and charges; and
 - (C) Regulations and practices relating to the issuance, form, and substance of tickets; the carrying of personal, sample, and excess baggage; the facilities for transportation; and all other matters relating to or connected with the transportation of passengers as determined by the commission.

(b) In the transportation of property every Hawaii air carrier shall:

- (1) Provide safe and adequate service, equipment, and facilities for the transportation of the property; and
- (2) Establish, observe, and enforce just and reasonable:
 - (A) Rates, charges, and classifications;
 - (B) Regulations and practices relating to rates, charges, and classifications; and
 - (C) Regulations and practices relating to the manner and method of presenting, marking, packing, and delivering property for transportation; the facilities for transportation; and all other matters relating to or connected with the transportation of property as determined by the commission.

(c) All charges made for any service rendered by any Hawaii air carrier in the transportation of persons or property or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for the service or any part thereof, is prohibited and declared to be unlawful.

(d) Any person or body politic may make a complaint in writing to the commission that any rate, fare, charge, rule, or practice, in effect or proposed to be put into effect, is or will be in violation of this section. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the commission shall be of the opinion that any individual rate, fare, or charge, demanded, charged, or collected by any Hawaii air carrier, or any rule or practice whatsoever of the Hawaii air carrier affecting the rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum rate, fare, or charge thereafter to be observed, or the lawful rule or practice thereafter to be made effective.

(e) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of persons or property by Hawaii air carriers, and to prescribe classifications, rules, and practices relating thereto, the commission shall give consideration, among other factors, to the following:

- (1) The effect of the rates upon the movement of traffic by the Hawaii air carrier or carriers for which the rates are prescribed;
- (2) The need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with the furnishing of the service; and
- (3) The need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, including the operation of service at reasonable load factors, to provide the service.

(f) The commission shall establish and thereafter periodically adjust the recognized level of the fare, rate, or charge. The commission may adjust the recognized level by increasing or decreasing it, as appropriate, by the percentage change in the aggregate cost per available seat mile of similarly situated carriers for fares and per available ton mile for general commodity rates.

(g) The commission shall have no authority to find that any fare, rate, or other charge for service established by any Hawaii air carrier is unjust, unreasonable, or unjustified or to suspend the fare, rate, or other charge on the basis that the fare, rate or charge is too low or too high if the fare, rate, or charge is not more than five per cent higher or ten per cent lower than the recognized level of the fare, rate, or charge. Separate recognized levels shall be established and thereafter periodically adjusted on a peak and off-peak basis for first class fares, normal economy fares, tour basing fares, group fares, kamaaina fares, and for general commodity rates. The commission shall have no authority to find that a contract freight rate is unjust or unreasonable.

§ -13 Tariffs. (a) Every Hawaii air carrier shall file with the air carrier commission, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of persons or property. The rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in the form and manner, and shall contain the information that the commission shall prescribe by rule. The commission may reject any tariff filed with it which is not consistent with this section. Any tariff rejected by the commission shall be void and its use shall be unlawful.

(b) No change shall be made in any rate, fare, charge, or classification, or any rule, or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a Hawaii air carrier, except after thirty days notice of the proposed change filed and posted in accordance with subsection (a). The commission, in its discretion and for good cause shown, may allow the change upon notice less than that specified, or modify the requirements of this section with respect to posting and filing of tariffs, either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(c) No Hawaii air carrier shall engage in the transportation of persons or property unless the rates, fares, and charges upon which the same are transported by the carrier have been filed and published in accordance with this chapter.

(d) Whenever any schedule is filed with the commission stating a new rate, fare, or charge, for the transportation of persons or property by a Hawaii air carrier or any rule or practice affecting the rate, fare, or charge, or the value of the service thereunder, the carrier may on its own initiative, or shall by order of the commission served prior to the effective date of the schedule, concurrently file an economic justification which shall be prepared under the same form and in the same manner as prescribed by the commission unless the changed fare or rate is within the zone of fare or rate flexibility established pursuant to section -12(g).

Except as provided in section -12(g), the commission may upon complaint of any interested person or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, enter upon a hearing concerning the lawfulness of the rate, fare, or charge, or the rule or practice, and pending the hearing and decision the commission may suspend the operation of the schedule and defer the use of the rate, fare, or charge, or the rule or practice, by delivering to the affected carrier or carriers, not later than five days prior to the effective date of the schedule, a statement in writing of its reasons for the suspension. The commission shall have up to six months from the date of ordering a hearing to investigate the lawfulness of the rate, fare, or charge, to complete its investigation. If the commission fails to issue a final order within the six-month period then the changes proposed by the carrier shall go into effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, or practice, is just and reasonable. In exercising its authority under this subsection and subsection (e), the commission shall consider the factors regarding reasonableness set forth in section -12(e).

(e) When a fare or rate increase application is filed, the commission, in its discretion, may authorize temporary increases in rates, fares, and charges, upon a prima facie showing by a Hawaii air carrier that such fares, rates, or charges are just and reasonable; provided that the commission by order shall require the carrier to keep an accurate account of all amounts received from the increase. The commission, after hearing and decision, shall require a carrier to refund the portion of the increased rates or charges found to be not justified to persons in whose behalf the amounts were paid.

§ -14 Investigation of unfair or deceptive practices. The commission, upon its own initiative or upon complaint, if it considers the action to be in the public interest, may investigate and determine whether any Hawaii air carrier has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the commission finds, after notice and hearing, that a carrier is engaged in unfair or deceptive practices or unfair methods of competition, it shall order the carrier to cease and desist from the practices or methods of competition. Notwithstanding section 480-2(d), such complaint may be made by any person, a government agency, or competing carrier and may relate to practices involving advertising and marketing, service and ancillary services, pricing or any other aspect of the operations of a Hawaii air carrier.

§ -15 Issuance of securities; execution of leases. A Hawaii air carrier, with the approval of the air carrier commission, may issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness, payable at periods of more than twelve months after the date thereof, and enter into long-term leases of more than five years and leverage leases, for the following purposes:

- (1) For the acquisition or use of property;
- (2) For the construction, completion, extension, or improvement of or addition to its facilities or service;
- (3) For the discharge or lawful refunding of its obligations; and
- (4) For the reimbursement of moneys actually expended from income or from any other moneys in its treasury not secured by or obtained from the issue of its stocks or stock certificates, or bonds, notes, or other evidences of indebtedness, except maintenance of service, replacements, and substitutions not constituting capital expenditure in cases where the air carrier has kept its accounts for the expenditure in a

manner as to enable the commission to ascertain the amount of monies expended and the purposes for which the expenditures were made, and the sources of the funds in its treasury applied to the expenditures.

A Hawaii air carrier may not issue securities, nor enter into long-term leases of more than three years and leverage leases, to acquire or use property or to construct, complete, extend, improve, or add to its facilities or service, if the commission determines that the proposed transaction will have a material adverse effect on the carrier's operations. No carrier shall repurchase or reissue its own common stock without the approval of the commission.

This section shall apply to a transaction involving a related company to the extent that the commission determines that the transaction may have a potential impact upon the relevant Hawaii air carrier or its operations. A related company shall notify the commission of any transaction at least sixty days prior to its consummation.

§ -16 Accounts, records, and reports. The air carrier commission may require annual, periodic, or special reports from all Hawaii air carriers and related companies. The commission shall prescribe the manner and form in which the reports shall be made.

§ -17 Unlawful actions; penalties. (a) Any person knowingly and wilfully violating any provision of this chapter, or violating any certificate for which a penalty is not otherwise herein provided, shall be fined not less than \$500 nor more than \$2,000 for the first offense, and not less than \$1,000 nor more than \$10,000 for any subsequent offense. Each day of the violation shall constitute a separate offense.

(b) Any person, whether carrier, shipper, or consignee, or any officer, employee, agent, or representative thereof, who knowingly offers, grants, or gives, or solicits, accepts, or receives any rebate, concession, or discrimination in violation of any provision of this chapter, or who by means of any false statement or representation or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, knowingly and wilfully assists, suffers, or permits any person or persons, natural or artificial, to obtain transportation of persons or property subject to this chapter for less than the applicable rate, fare, or charge, or who knowingly and wilfully by any such means or otherwise fraudulently seeks to evade or defeat regulations in this chapter provided for Hawaii air carriers, shall be fined not less than \$100 nor more than \$5,000 for each offense.

(c) Any person who knowingly and wilfully divulges any fact or information which may come to the person's knowledge during the course of any examination or inspection made under authority of this chapter, except as the person may be directed by the commission or by a court or judge of competent jurisdiction, shall be guilty of a misdemeanor, and shall be subject to a fine of not more than \$1,000 or imprisonment for not¹ exceeding one year, or both.

(d) Any Hawaii air carrier or related company, or any officer, agent, employee, or representative thereof, who shall knowingly and wilfully fail or refuse to comply with any provision of this chapter, or any rule, regulation, filed tariff, or requirement or order thereunder, shall pay a civil penalty to the State in the sum of not less than \$100, nor more than \$5,000 for each offense, and, in the case of continuing violation, a penalty not to exceed \$1,000 for each additional day during which the failure or refusal continues. A penalty shall become due and payable when the person incurring it receives a notice in writing from the air carrier commission, reasonably describing the violation and advising that the penalty is

due. Penalties assessed against a related company may at the discretion of the air carrier commission be collected from the related Hawaii air carrier.

(e) The commission may compromise any fine or civil penalty taking into consideration, among other factors, the impact on consumers and remedial measures to be taken.

§ -18 Hearings. (a) Unless otherwise provided in this chapter, all hearings, investigations, and proceedings shall be governed by chapter 91 and by rules adopted by the air carrier commission, and in the conduct thereof, the rules of evidence need not be applied; provided that in all evidentiary hearings conducted pursuant to chapter 91 in which a person has the burden of:

- (1) Justifying the reasonableness of its rates, fares, charges, or classifications;
- (2) Establishing the need for service in the public convenience and necessity or of demonstrating that a proposed transaction is consistent with the public interest; or
- (3) Proving the reasonableness of expenditures, contracts, leases, or other transactions between the carrier and corporate affiliates of the carrier, the burden shall be satisfied only if the reliable, probative, and substantial evidence is clear and convincing. No informality in any hearing, investigation, or proceeding, or in the manner of taking testimony shall invalidate any order, decision, or rule made, approved, or confirmed by the commission.

(b) Complaints may be made, in writing, by the commission on its own motion or by any person or body politic setting forth any act or thing done, or omitted to be done by any person subject to the commission's jurisdiction, including any rule, rate, or charge, heretofore established or fixed by or for any Hawaii air carrier, in violation or claimed to be in violation, of any law or any order or rule of the commission.

§ -19 Review and appeals. (a) Within ten days after the issuance of any final decision or order of the commission under this chapter, any party aggrieved by the action of the commission may submit a petition to the director of transportation requesting the director to review the decision or order. The filing of any petition shall stay the effectiveness of the decision or order until the director has issued a final decision on review. The director may affirm in whole or in part the order or decision of the commission or remand it to the commission for further consideration, in which case the order or decision shall remain stayed until it is again submitted to and approved by the director.

(b) An appeal from an order of the air carrier commission under this chapter, whether or not reviewed by the director, shall be made to the supreme court in the manner and within the time provided by chapter 602 and the rules of court; provided that the order is final. If the order is preliminary, an appeal may be made pursuant to section 91-14(a). 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 proper as to giving a bond and keeping the necessary accounts or otherwise securing restitution of the excess charges, if any, made during the pendency of the appeal in case the order appealed from should be sustained, revised, or modified, in whole or in part.

(c) Any party injured by a violation of this chapter may file an action to enjoin such violation before any court of general jurisdiction of the State of Hawaii.

§ -20 Existing service. (a) As of the effective date of enactment of all required federal legislation, any person providing air transportation with turnaround

service between two points, both of which are within the State of Hawaii pursuant to authority granted by the United States Department of Transportation, shall be deemed qualified and shall be issued a certificate pursuant to this chapter.

(b) For the purposes of this section, "turnaround service" means the operation of an aircraft that only serves points within the State of Hawaii."

SECTION 3. The legislative reference bureau shall conduct a study to assess the need for a consumer advocate to represent, protect, and advance the interests of all consumers before the air carrier commission. The study shall include, but not be limited to, the following:

- (1) Recommendations on the general powers and duties of the consumer advocate;
- (2) An assessment of staffing and funding requirements;
- (3) An assessment of whether this responsibility may be incorporated under the purview of the present consumer advocate or if a separate consumer advocate is recommended, where this position may be placed for administrative purposes; and
- (4) Proposed legislation necessary to implement the recommendations.

The legislative reference bureau shall report its findings and recommendations to the legislature no later than thirty days before the convening of the regular session of 1994.

SECTION 4. Loans guaranteed by the department. (a) The department of business, economic development, and tourism, through its director, may guarantee up to ninety per cent of the principal balance of a loan made by a private lending institution to a Hawaii air carrier providing the carriage of persons or property by air for compensation or hire between any two points, both of which are within the State of Hawaii; provided that at no time shall the aggregate amount of the State's liability, contingent or otherwise, on loans guaranteed by this Act exceed \$12,600,000.

(b) The loan guarantee shall be for a term of not more than seven years.

(c) All loans guaranteed under this Act shall be collateralized on a basis at least equal to the outstanding balance of the loan guaranteed; provided that as part of the collateral, the Hawaii air carrier shall deposit, in cash, an amount equal to twenty per cent of the principal balance of the loan into the Hawaii interisland airline loan guarantee trust fund to be held by the State in an interest bearing account. The balance of the collateral shall be in the form of real property interests or such other marketable assets as may be approved by the director. The collateral shall not be subordinated. All parts and equipment pledged as collateral shall be subject to a buyback or re-stock agreement such that the value of the collateral or method of securing payment from the collateral shall be guaranteed.

(d) A loan guarantee shall be considered only when there is evidence that the loan is not available from other sources. The loan shall be deemed to be available unless the Hawaii air carrier provides proof satisfactorily to the director of refusal of all or a part of the required loan from at least three financial institutions, one of which has a current business relationship with the carrier. Proof of refusal shall contain the date of application, amount, purpose, and the financial institutions' reasons for not granting the desired loan. The financial institutions' refusal to advance credit shall not be considered the full test of the unavailability of credit. Where the director has reason to believe that credit is otherwise available from sources other than such financial institutions, the loan applied for shall not be granted notwithstanding the receipt of a written refusal from such financial institutions.

(e) The department shall conduct a due diligence examination of the Hawaii air carrier applying for a loan guarantee under this Act. The department shall not approve a loan guarantee unless the applicant provides reasonable assurance that the loan can and will be repaid pursuant to its terms. Reasonable assurance of repayment shall be based upon consideration of the applicant's record of past earnings or projections of future earnings.

(f) The loan guarantee may not be granted unless the Hawaii air carrier secures agreements from its principal creditors that the principal creditors shall withhold any collection actions which may result in the Hawaii air carrier ceasing operations for a minimum of two years from the effective date of the guarantee.

(g) Funds provided by the guaranteed loan may be used for working capital except that loan guarantees shall not be granted if the direct or indirect purpose or result of granting the loan would be to:

- (1) Satisfy debts arising prior to the effective date of the guarantee;
- (2) Provide funds, directly or indirectly, for payment, distribution, or as a loan to owners, partners, or shareholders of the borrower;
- (3) Provide funds for wage or salary increases; or
- (4) Replenish funds heretofore used for any of the above purposes in anticipation of applying for a loan guarantee under this Act.

(h) The department may set additional terms and conditions on the granting of the loan guarantee. When the application for a guaranteed loan has been approved by the department, the department shall issue to the lender a guarantee for the percentage of the loan guaranteed. The lender shall collect all payments from the borrower and otherwise service the loan.

(i) Loan guarantees shall not be granted unless the carrier raises new equity equal to the amount of the guarantee in a form acceptable to the department.

(j) In return for the department's guarantee, the lender shall remit, out of interest collected, a guarantee fee on the unpaid principal balance of the guaranteed portion of the loan to the State, provided that this fee shall not be added to any amount which the borrower is obligated to pay. The department shall determine the amount of the guarantee fee.

(k) The applicant shall:

- (1) Expend the loan in accordance with the provisions of this Act;
- (2) Keep the department informed of any and all changes in the security and other major changes in the carrier's operation; and
- (3) Promptly provide information and documents to the department upon request.

(l) Upon retirement of the loan or under other conditions satisfactory to the director of business, economic development, and tourism, the deposit made into the Hawaii interisland airline loan guarantee trust fund by the Hawaii air carrier shall be returned to the Hawaii air carrier in accordance with the terms of the agreement with the carrier.

In the event of a default by the Hawaii air carrier, the lender shall notify the department of the default, and shall be entitled to receive all moneys deposited into the Hawaii interisland airline loan guarantee trust fund by the Hawaii air carrier. The lender shall commence all actions necessary to protect or enforce its rights to the properties used as collateral to secure the loan guarantee and shall prosecute such actions to the fullest extent available under law.

(m) During the life of a loan guarantee, the carrier shall submit to the department audited annual financial statements consisting of a balance sheet, income statement, and a statement of cash flows. These reports shall be submitted no later than four months after the close of the carrier's fiscal year. The department may require the carrier to file interim financial statements and reports as deemed necessary by the director.

SECTION 5. Pursuant to Article VII, section 13, clause 8, of the State Constitution that states: "Bonds constituting instruments of indebtedness under which the State or any political subdivision incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under this section; provided that the State or political subdivision shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State or political subdivision as provided by law," the legislature finds and declares that the moneys deposited into the Hawaii interisland airline loan guarantee trust fund pursuant to section 4(c) of this Act, satisfies the reasonable reserve requirement of the State Constitution.

SECTION 6. There is created a trust fund in the state treasury to be known as the Hawaii interisland airline loan guarantee trust fund which shall serve as the reserve for all loans guaranteed under this Act.

SECTION 7. The Hawaii air carrier shall deposit, in cash, an amount equal to twenty per cent of the principal balance of the loan guaranteed under this Act into the Hawaii Interisland Airline Loan Guarantee trust fund. This sum shall, when and if necessary, be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 8. 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 1993-94, to conduct due diligence examinations of any Hawaii air carrier applying for a loan guarantee from the State of Hawaii, and monitoring and auditing, and the administration of the Hawaii interisland airline loan guarantee trust fund.

SECTION 9. The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 10. The provisions of this Act shall be performed to the extent permissible under the United States Constitution and federal law without causing a violation of the United States Constitution, federal grant agreements, federal law, or federal regulations.

SECTION 11. This Act shall take effect upon its approval; provided that section 2 shall take effect upon the enactment of federal legislation permitting implementation of that section; provided further that section 8 shall take effect on July 1, 1993; provided further that the collateral required by section 4(c) of this Act is deposited into the Hawaii interisland loan guarantee trust fund on such terms and conditions acceptable to the director of the department of business, economic development, and tourism, by June 30, 1993; and provided further that this Act shall be repealed on June 30, 2002.

(Approved June 28, 1993.)

Note

1. So in original.

ACT 333

H.B. NO. 1034

A Bill for an Act Relating to Disaster Relief and Rehabilitation.

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

SECTION 1. Section 209-1, Hawaii Revised Statutes, is amended to read as follows:

“§209-1 Definitions. As used in this chapter:

“Board” means the board of land and natural resources[;].

“Commodity” means any good or service necessary for the health, safety, and welfare of the people of Hawaii; provided that this term shall include, but not be limited to:

- (1) Materials;
- (2) Merchandise;
- (3) Supplies;
- (4) Equipment;
- (5) Resources; and

(6) Other articles of commerce that shall include, without limitation, the following:
(A) Food;
(B) Water;
(C) Ice;
(D) Chemicals;
(E) Petroleum products;
(F) Construction materials; or
(G) Residential dwellings.

“Coordinator” means the rehabilitation coordinator provided for in section 209-4[;].

“Director” means the director of business, economic development, and tourism[;].

“Rehabilitation area” means any area of the State struck by a state disaster and declared to be in need of rehabilitation by the governor pursuant to section 209-2[;].

“Residential dwelling unit” means any single or multifamily residence where the occupants pay rent to an owner or landlord, for the right to occupy and live on the property.

“Severe weather warning” means the issuance by the National Weather Service of a public notification that a dangerous weather condition exists that could impact the State, or any portion of it, within a specified period of time. This term includes but is not limited to, warnings of coastal inundation (high surf), flash flooding, tsunami, or hurricane.

“Small Business Administration” means the Small Business Administration of the United States[; and].

“State disaster” means any unfortunate, sudden, and extraordinary occurrence declared by the governor pursuant to section 209-2 to have caused losses and suffering of such character and magnitude as to require and justify rehabilitative assistance from the State.”

SECTION 2. Section 209-5, Hawaii Revised Statutes, is amended to read as follows:

“§209-5 Duties of coordinator. The rehabilitation coordinator shall:

- (1) Provide for the official contact between the State and persons affected by the state disaster;
- (2) Make available to [these] persons affected by the state disaster information on all state rehabilitation programs;
- (3) Aid all persons affected by the state disaster in securing assistance available under this chapter;
- (4) Inform [these] persons affected by the state disaster of assistance available from sources other than the State, and assist the victims in obtaining any assistance;
- (5) Keep [a list] lists of [these] persons affected by the state disaster, [posting thereon] all assistance received by the victims from the State and, to the extent that the information is available, assistance from other sources;
- (6) Advise the governor as to the administration and effectiveness of the various programs;
- (7) Establish a temporary office on the island affected by the state disaster if necessary, and where more than one island is affected, establish such offices as the governor may direct; and
- (8) File an annual report with the governor and the legislature describing the organization, activities, expenditures, and assistance granted pursuant to this chapter and making recommendations to increase the effectiveness of this chapter at least twenty days before the convening of the regular session of the legislature."

SECTION 3. Section 209-9, Hawaii Revised Statutes, is amended to read as follows:

"[§209-9] Mark-up freeze; authorized by governor.] Rental or sale of essential commodities during a state disaster; prohibition against price increases. (a) Whenever the governor declares a state disaster for the entire State or any portion thereof, [the governor, pursuant to a proclamation issued under section 209-2, may prohibit any increase on the mark-up on the sale of any commodity deemed to be necessary for the health, safety, and welfare of the people in the community. Any commodity may be specified in the proclamation, and may include, but is not limited to, food products, fuel products, clothing, and housewares.] or when the State, or any portion thereof, is the subject of a severe weather warning:

- (1) There shall be prohibited any increase in the selling price of any commodity, whether at the retail or wholesale level, in the area that is the subject of the disaster declaration or the severe weather warning; and
- (2) No landlord shall terminate any tenancy for a residential dwelling unit in the area that is the subject of a disaster declaration or a severe weather warning, except for a breach of a material term of a rental agreement or lease, or if the unit is deemed to be structurally unsafe.

(b) [The mark-up for commodities for which increases are prohibited shall be not more than the normal mark-up at that outlet seventy-two hours before the disaster was proclaimed.

(c) "Mark-up" means the percentage by which the retail selling price of a commodity exceeds its cost to the seller.] Notwithstanding this section, any additional operating expenses incurred by the seller or landlord because of the state disaster, and which can be documented, may be passed on to the consumer. In the case of a residential dwelling unit, if rent increases are contained in a written instrument which was signed by the tenant prior to the disaster declaration or

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severe weather warning, the increases may take place pursuant to the written instrument.

(c) The prohibitions under subsection (a) shall remain in effect until twenty four hours after the severe weather warning is canceled by the National Weather Service; or in the event of a disaster declaration, until the declaration is altered, amended, revised, or revoked by the governor.

(d) In any action against a merchant, landlord, or other business for violation of the price limitations in this section, the defendant shall be deemed not to have violated this section if the defendant proves all of the following:

- (1) The violation of the price limitation was unintentional;
- (2) The defendant voluntarily rolled back prices to the appropriate level upon discovering that this section was or may have been violated; and
- (3) The defendant has instituted a restitution program for all consumers who may have paid excessive prices.

[(d)] (e) Any [person, firm, company, association, or corporation violating this provision shall be fined a sum of not less than \$50 nor more than \$1,000 for each violation, which sum shall be collected in a civil action brought by the director of the office of consumer protection on behalf of the State.] violation of this section shall constitute unfair methods of competition and unfair and deceptive acts or practices in the conduct of any trade of commerce under section 480-2 and shall be subject to a civil penalty as provided in section 480-3.1. Each item sold at a price [which] that is prohibited by this section shall constitute a separate violation.”

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 30, 1993.)

ACT 334

H.B. NO. 1123

A Bill for an Act Relating to an Increase in the Loan Amounts Under the State Disaster Loan Program.

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

SECTION 1. Section 209-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No loan shall include any portion or item of loss covered by a contract of insurance or for which the applicant receives assistance from any other federal, state, or [local] county program of disaster relief, and the amount of loans to any one applicant shall in no case exceed [\$50,000] \$75,000 for a commercial loan and [\$25,000] \$35,000 for a personal loan.”

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

SECTION 3. This Act, upon its approval, shall take effect retroactive to September 10, 1992.

(Approved June 30, 1993.)

ACT 335

H.B. NO. 1124

A Bill for an Act Making an Appropriation for Recovery Costs Associated with Hurricane Iniki.

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 \$3,500,000, or so much thereof as may be necessary for fiscal year 1993-1994, and the sum of \$5,000,000, or so much thereof as may be necessary for fiscal year 1994-1995, to reimburse the county of Kauai for real property taxes remitted, refunded, or forgiven under chapter 234, Hawaii Revised Statutes.

The sums appropriated shall be expended by the department of budget and finance for the purposes of this Act.

SECTION 2. 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 1993-1994, and the sum of \$1,000,000, or so much thereof as may be necessary for fiscal year 1994-1995, for a grant-in-aid to the county of Kauai for tourism promotion.

The sums appropriated shall be expended by the county of Kauai for the purposes of 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 1993-1994, for a grant-in-aid to the county of Kauai to assist Kauai in recovering from the devastation and loss caused by Hurricane Iniki; provided that the sum appropriated shall be used for public works projects, housing assistance, and economic revitalization.

The sum appropriated shall be expended by the county of Kauai for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1993.

(Approved June 30, 1993.)

ACT 336

H.B. NO. 1453

A Bill for an Act Relating to Hawaii Children's Trust Fund.

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

SECTION 1. The purpose of this Act is to establish the Hawaii children's trust fund to serve as a medium for a public-private partnership for family strengthening to prevent child abuse and neglect. Research performed nationally and locally indicates that child abuse and neglect are preventable through programs and activities which strengthen the family through education and support. The fund will make grants to private nonprofit organizations, public agencies, or qualified persons in order to provide community-based services and education designed to strengthen families and prevent child abuse and neglect. The fund shall serve as a mechanism to maximize financial resources for this endeavor by serving as a repository for federal and state funds, as well as private contributions from corporations and other businesses, foundations, individuals, and other interested parties.

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

**“CHAPTER
HAWAII CHILDREN’S TRUST FUND**

§ -1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

“Advisory committee” means the component of the Hawaii children’s trust fund coalition that serves in an advisory capacity to the trust fund and the department of health.

“Board” means the Hawaii children’s trust fund advisory board.

“Child abuse and neglect” has the same meaning as “child abuse or neglect” as defined in section 350-1.

“Coalition” means the Hawaii children’s trust fund coalition.

“Primary prevention” means efforts targeting the general population designed to promote the general welfare of children and families prior to any occurrence of abuse or neglect.

“Secondary prevention” means efforts targeting children and families that are considered, because of their life situations, to be at risk of abuse or neglect.

“Trust fund” or “fund” means the Hawaii children’s trust fund.

§ -2 Creation of the Hawaii children’s trust fund. (a) There is established the Hawaii children’s trust fund as a separate fund of the Hawaii Community Foundation, a Hawaii nonprofit corporation. Moneys received from the state, county, or federal government, and private contributions of cash and other property, and the income and capital gains earned by the fund shall constitute the trust fund assets.

(b) The Hawaii Community Foundation shall have the responsibility for the expenditure of moneys from the trust fund for the purposes of this chapter.

(c) The purpose of the trust fund is to strengthen families primarily by the award of grants for primary and secondary prevention activities to prevent child abuse and neglect.

(d) The fund may receive contributions, grants, or gifts in cash or otherwise from all sources. The legislature intends that the public and private sectors work together as partners in securing contributions for the fund. The State may donate moneys to the trust fund by legislative appropriation; provided that any appropriations made by the State are not intended to supplant the funding of existing prevention programs.

(e) There shall be an endowment component of the Hawaii children’s trust fund.

(f) The aggregate principal sum deposited in the Hawaii children’s trust fund, and any income and capital gains earned by the trust fund but not expended for grantmaking or administration, shall be invested in accordance with the provisions of the Hawaii Community Foundation in a manner intended to maximize the rate of return on investment of the trust fund consistent with the objective of preserving the trust fund’s principal.

(g) The department of health shall serve as the lead agency for the public sector and, in conjunction with the Hawaii Community Foundation, may provide staffing for the board, the coalition, and advisory committee.

(h) Results of the annual audit of the Hawaii Community Foundation shall be submitted to the department of health not later than thirty days from the date the Hawaii Community Foundation receives the audit results. The Hawaii Community Foundation shall retain for three years all documents, papers, books, records, and

other material pertinent to the fund and audit. The Hawaii Community Foundation shall permit the department of health, the department of accounting and general services, the legislature, and the auditor, or their authorized representatives, to inspect and have access to any of these materials.

(i) In the event of the termination of the trust fund or the dissolution of the Hawaii Community Foundation, the unspent appropriations made by the State, if any, shall revert back to the State. Any other amounts remaining in the Hawaii children's trust fund shall be distributed at the recommendation of the board.

§ -3 Receipt of funds. The fund may accept contributions, grants, or gifts from corporations or other businesses, foundations, government, individuals, and other interested parties.

§ -4 Hawaii children's trust fund advisory board. (a) There shall be a Hawaii children's trust fund advisory board, which shall make the final recommendations to the Hawaii Community Foundation for the expenditure of funds for the following activities:

- (1) Grantmaking with private nonprofit organizations, public agencies, or qualified individuals to provide community-based services and education designed to strengthen families to prevent child abuse and neglect;
 - (2) Grantmaking to raise community awareness of the trust fund; and
 - (3) Administration of the trust fund.
- (b) The board shall consist of seven members to be appointed as follows:
- (1) One member shall be selected by the Hawaii Community Foundation to serve for a term of three years. This member may not serve more than two consecutive terms.
 - (2) Three members shall be appointed by the governor from a list of names of seven persons submitted by the Hawaii Community Foundation. Each of these three members shall serve for a term of three years, except that the terms of the initial board members shall be staggered as follows: one member shall be appointed to a one-year term, one member shall be appointed to a two-year term, and one member shall be appointed to a three-year term. None of these three members shall serve for more than two consecutive terms.
 - (3) One member shall be appointed from among the members of the senate by the president of the senate, to serve until the expiration of the member's term in the senate during which the member is appointed.
 - (4) One member shall be appointed from among the members of the house of representatives by the speaker of the house to serve until the expiration of the member's term in the house of representatives during which the member is appointed.
 - (5) One member shall be the director of health or the director's designee.

§ -5 Hawaii children's trust fund coalition. There shall be a Hawaii children's trust fund coalition which, through its advisory committee, shall develop policy, planning, strategy, and publicize the fund, as well as solicit public and private moneys for the fund. The coalition shall serve as a forum for addressing the issue of family strengthening, and for promoting strategies and statewide planning for the prevention of child abuse and neglect. Membership in the coalition shall be open to any representative of any agency and any individual committed to strengthening families to prevent child abuse and neglect.

§ -6 Hawaii children's trust fund advisory committee. (a) There shall be an advisory committee of the Hawaii children's trust fund coalition. The advisory committee shall provide leadership for the coalition. Members of the advisory committee shall be initially selected prior to December 1, 1993.

(b) The advisory committee shall perform the following functions:

- (1) Promote statewide planning and strategies for strengthening families with the intent of preventing child abuse and neglect;
- (2) Establish criteria and guidelines for grantmaking for the board;
- (3) Publicize the fund and solicit moneys from public and private sources, in collaboration with the board;
- (4) Advise the department of health on matters involving the prevention of child abuse and neglect; and
- (5) Facilitate the exchange of information between groups concerned with families and children.

(c) The advisory committee shall include private and public members. Public sector representation shall include the department of health, department of human services, department of education, office of children and youth, office of youth services, and the judiciary. The coalition shall elect the private sector representatives, whose membership shall equal one more than the number of public sector representatives.

(d) Each member of the advisory committee shall have one vote, except that the representative of the department of health shall not vote on matters relating to advising the department of health. The advisory committee shall elect its officers.

§ -7 Grants. Grants provided for the strengthening of families, with the intent of preventing child abuse and neglect, may include, but are not limited to, the following:

- (1) Programs for families to increase the family unit's capability to create a healthy environment in which each member may develop to the member's fullest potential;
- (2) Programs for parents to increase their ability to provide a safe and nurturing environment for their children;
- (3) Programs for children to increase their ability to form healthy relationships, and to avoid and cope with dangerous situations;
- (4) Training and education for professionals, including making information about the problems of child abuse and neglect available to agencies dealing with these problems;
- (5) General community education to increase the community's awareness of the needs of families and children, and of the issues of child abuse and neglect and its prevention; and
- (6) Research, evaluation, and advocacy activities related to the prevention of child abuse and neglect."

SECTION 3. Section 321-38, Hawaii Revised Statutes, is amended to read as follows:

"[[§321-38]] [Child abuse and neglect secondary prevention advisory committee.] (a) There is established within the department for administrative purposes the child abuse and neglect secondary prevention advisory committee. The committee shall consist of seven members appointed by the governor as provided in section 26-34; except that members shall be appointed for three-year terms. The members shall be officers or employees of public and private agencies which provide multidisciplinary intervention services for the secondary prevention of child abuse and neglect.

(b) The advisory committee shall advise the department on implementation of this part.

(c) The advisory committee shall elect its officers.

(d) 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.] **Hawaii children's trust fund advisory committee.** There is established the Hawaii children's trust fund advisory committee as provided in section -6. The advisory committee shall have the functions as provided in section -6(b)."

SECTION 4. The director of health shall publicly announce the time and place of the initial meeting of the coalition, to be convened before December 1, 1993.

SECTION 5. There shall be appropriated out of the general revenues of the State of Hawaii the sum of \$1, or so much thereof as may be necessary for fiscal year 1993-1994, to the Hawaii children's trust fund for the purposes of this Act.

The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 6. If any provision of this Act, or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which may be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

SECTION 8. This Act shall take effect upon approval; provided that section 5 shall take effect on July 1, 1993.

(Approved June 30, 1993.)

ACT 337

H.B. NO. 1473

A Bill for an Act Relating to Statewide Electric and Telephone Rate Increases to Assist Kauai's Electric and Telephone Ratepayers.

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

SECTION 1. The legislature finds that damages sustained during state-declared emergency situations such as natural disasters may affect different regions of the State more harshly than others. Such is the case with Hurricane Iniki, which devastated Kauai but left the rest of the Hawaiian islands relatively unharmed. To more equitably share the costs of reparations in direct response to Iniki, and in consideration of the potential for future disasters to destroy any one of the communities within the State at any time, the legislature declares that there is a compelling need for all of Hawaii's people to assist Kauai's electric and telephone utility ratepayers. Specifically, due to costs incurred by the utilities in repairing damages to their networks as a result of Hurricane Iniki, Kauai's ratepayers may be subject to significant increases in electric and telephone rates. Ratepayers pay for utility costs, and may be required to pay utility restoration costs, as part of the rates set by the public utilities commission.

Kauai Electric, the utility providing electricity to Kauai, estimates that if repair and restoration costs are collected from its ratepayers, it must assess a rate increase of approximately twenty per cent on its customers to recover projected electric utility restoration costs of approximately \$40,000,000 caused by Iniki. This twenty per cent rate increase is in addition to a fourteen per cent general rate increase granted by the public utilities commission after Iniki based on a rate case which was pending when Iniki struck Kauai.

GTE Hawaiian Tel ("Hawaiian Tel"), the utility providing telephone service to Kauai, also sustained widespread damage to its network from Iniki. The hurricane caused severe damage to Hawaiian Tel's interisland microwave antennas, severing the trunking between its central offices in many areas and destroying approximately 1,700 of its utility poles. A significant portion of the distribution network between Hawaiian Tel's central offices and its customers' premises was either destroyed or damaged.

Hawaiian Tel estimates that restoration of the intrastate portion of its services and service to its customers on Kauai will cost approximately \$50,000,000. In the absence of other relief, Hawaiian Tel would need to request increase rates applicable to Kauai ratepayers by more than two hundred per cent to recover the costs of repairing damage resulting from Iniki.

To date, most of the funds used for electrical and telephone network restoration efforts on Kauai have been provided by Kauai Electric and Hawaiian Tel. A way to mitigate the possible impact on the affected utility ratepayers is needed. A portion of the capital expenses incurred as a result of Hurricane Iniki may be reimbursable or offset by insurance payments or other sources of recovery. However, the total amount that will be expended as a result of Iniki and the net amount not recovered from outside sources will not be finally determined until early 1994, when the majority of the restoration effort is expected to be completed.

The legislature further finds that ratepayers, residents, and businesses on Kauai are suffering from extreme hardship due to personal and financial losses caused by Iniki's devastation of the island's physical environment and economy. Therefore, the ability of ratepayers on Kauai to pay for all of the costs of restoring electrical and telephone services damaged by Iniki has been severely reduced.

The purpose of this Act is to more equitably distribute utility restoration and repair costs incurred as a result of a state-declared emergency among utility service ratepayers on a statewide basis.

SECTION 2. Chapter 239, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§239- Surcharge amounts exempt. Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269- shall not be gross income for the acting utility for purposes of this chapter. Any amounts retained by the acting utility for collection or other costs shall not be included in this exemption."

SECTION 3. Chapter 240, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§240- Surcharge amounts exempt. Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269- shall not be gross receipts for the acting utility for purposes of this chapter. Any amounts retained by the acting utility for collection or other costs shall not be included in this exemption."

SECTION 4. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§269. Statewide rate increase surcharge assessment on ratepayers in emergency situations. (a) Any utility that sustains damage to its facilities as a result of a state-declared emergency (including but not limited to disaster relief and civil defense emergencies as defined in chapters 127 and 128) and incurs costs related to the restoration and repair of its facilities which, if assessed only on the utility ratepayers of the affected utility service territory, may result in a rate increase of more than fifteen per cent for the average ratepayer in that utility service territory, may apply to the public utilities commission in accordance with this section to recover the costs provided herein through a monthly surcharge which shall be assessed on a statewide basis and shall be based on the utility's net restoration and repair costs; provided that the surcharge shall not result in an assessment of more than fifteen per cent for the average ratepayer in each of the other utility service territories and provided further that the public utilities commission shall exclude ratepayers in utility service territories with rates that may be substantially higher than other utility service territories in the State.

The public utilities commission shall have the authority to initially set, or subsequently revise, the surcharge to reflect the actual net restoration and repair costs incurred after deduction of amounts received from outside sources of recovery. Such outside sources of recovery shall include, but not be limited to, insurance proceeds, government grants, and shareholder contributions.

(b) Any utility meeting the criteria set forth in subsection (a) may file an application with the public utilities commission setting forth its estimated restoration and repair costs as well as the estimated amount or amounts that may be received from outside sources of recovery.

(c) Within ninety days after filing of the utility's application, the public utilities commission, upon notice, hearing, and a determination that the application is just, reasonable, and in the public interest, shall:

- (1) Decide the extent to which it is just, reasonable, and in the public interest for the damaged utility's ratepayers or shareholders, or both, to bear part or all of the repair and restoration costs;
- (2) Determine whether the estimated amount of any net restoration and repair costs to be borne by the ratepayers of the damaged utility would result in a rate increase of more than fifteen per cent for the average residential ratepayer in that utility's service territory;
- (3) Issue an order allowing the affected utility or another utility acting on behalf of the affected utility to implement a monthly surcharge on all ratepayers statewide for the type of service rendered by the affected utility if the public utilities commission determines pursuant to paragraph (2) that a rate increase of more than fifteen per cent would otherwise be assessed;
- (4) Exclude from any such order ratepayers in utility service territories with rates that are substantially higher than other utility service territories in the State; and
- (5) Periodically review the order to ensure that the amounts collected by, or on behalf of, the utility shall not exceed the amount determined by the public utilities commission to be the net restoration and repair costs actually incurred.

The surcharge shall be assessed over a period to be determined by the public utilities commission; provided, however, that the period shall not exceed ten years.

(d) Any outside sources of recovery, including but not limited to grants from federal or state sources, shall be used to offset any repair and restoration costs except where the use of such funds is otherwise limited by the grantor thereof.

(e) For the purposes of this section, the term "restoration and repair costs" means those costs necessary to restore facilities damaged by a state-declared emergency to a functional level substantially the same as that existing immediately before the emergency and does not include the costs of upgrades or enhancements.

(f) Any utility authorized by the public utilities commission to assess a surcharge pursuant to this section shall state separately the amount of the assessment on each affected ratepayer's monthly bill."

SECTION 5. Section 235-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There shall be excluded from gross income, adjusted gross income, and taxable income:

- (1) Income not subject to taxation by the State under the Constitution and laws of the United States;
- (2) Rights, benefits, and other income exempted from taxation by section 88-91, having to do with the state retirement system, and the rights, benefits, and other income, comparable to the rights, benefits, and other income exempted by section 88-91, under any other public retirement system;
- (3) Any compensation received in the form of a pension for past services;
- (4) Compensation paid to a patient affected with Hansen's disease employed by the State or the United States in any hospital, settlement, or place for the treatment of Hansen's disease;
- (5) Except as otherwise expressly provided, payments made by the United States or this State, under an act of Congress or a law of this State, which by express provision or administrative regulation or interpretation are exempt from both the normal and surtaxes of the United States, even though not so exempted by the Internal Revenue Code itself;
- (6) Any income expressly exempted or excluded from the measure of the tax imposed by this chapter by any other law of the State, it being the intent of this chapter not to repeal or supersede any such express exemption or exclusion;
- (7) The first \$1,750 received by each member of the reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States of America, and the Hawaii national guard as compensation for performance of duty;
- (8) Income derived from the operation of ships or aircraft if the income is exempt under the Internal Revenue Code pursuant to the provisions of an income tax treaty or agreement entered into by and between the United States and a foreign country, provided that the tax laws of the local governments of that country reciprocally exempt from the application of all of their net income taxes, the income derived from the operation of ships or aircraft which are documented or registered under the laws of the United States;
- (9) The value of legal services provided by a prepaid legal service plan to a taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
- (10) Amounts paid, directly or indirectly, by a prepaid legal service plan to a taxpayer as payment or reimbursement for the provision of legal

- services to the taxpayer, the taxpayer's spouse, and the taxpayer's dependents; [and]
- (11) Contributions by an employer to a prepaid legal service plan for compensation (through insurance or otherwise) to the employer's employees for the costs of legal services incurred by the employer's employees, their spouses, and their dependents[.]; and
- (12) Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269- shall not be gross income, adjusted gross income, or taxable income for the acting utility under this chapter. Any amounts retained by the acting utility for collection or other costs shall not be included in this exemption."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on July 1, 1993, and shall apply to any qualifying restoration and repair cost incurred on or after September 11, 1992, as a result of damage inflicted by Hurricane Iniki.

(Approved June 30, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 338

H.B. NO. 1773

A Bill for an Act Relating to a Program of Regimental Discipline for Corrections.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds and declares that it is in the interest of the State to:

- (1) Reduce prison overcrowding and cost by placing selected first-time offenders in a fast-track intermediate sanction program;
- (2) Increase deterrence and reduce recidivism by giving the offender a clear and unpleasant view of prison life through realities of confinement, rigorous physical training, and continuous reinforcement and monitoring of desirable, law-abiding behavior within and without the institution;
- (3) Achieve punishment through the use of short-term shock incarceration;
- (4) Ensure public safety by keeping offenders confined under rigorous control; and
- (5) Promote rehabilitation of offenders through discipline training as well as meeting their needs for education, drug and alcohol treatment, and job skills development.

The legislature determines and declares that the program of regimental discipline is not to be used as an alternative to probation, but as an alternative to incarceration.

The purpose of this Act is to authorize the department of public safety to implement a rigorous offender program based on regimental discipline.

SECTION 2. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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"§706- Program of regimental discipline. (1) The department of public safety is authorized to implement a rigorous offender program based on regimental discipline. Participants shall undergo a regimen of hard work, physical training, intensive counseling, and educational and treatment programs within a highly structured and motivational environment. The program shall be available to defendants and committed persons who:

- (a) Have not been convicted of a class A felony;
- (b) Are not considered violent;
- (c) Are chosen by the director of public safety;
- (d) Are in good physical condition;
- (e) Have not been previously sentenced to an indeterminate term of imprisonment; and
- (f) Are willing to participate in the program.

(2) The court, with the approval of the director of public safety, may order a defendant to satisfactorily complete a program of regimental discipline of not less than ninety days before the court sentences a defendant or as a condition of probation or a deferred acceptance of guilty plea.

(3) If a defendant is ordered to complete a program, the director of public safety shall certify to the court whether the defendant completed the program satisfactorily. If the defendant fails to complete the program satisfactorily as a condition of a deferred acceptance of guilty plea, such a failure shall be considered in accordance with section 853-3. If a defendant fails to complete the program satisfactorily as a condition of probation, such a failure shall be considered in accordance with section 706-625."

SECTION 3. New statutory material is underscored.¹

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

(Approved June 30, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 339

H.B. NO. 1890

A Bill for an Act Relating to Laws Affecting Insurance.

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

SECTION 1. The legislature finds that new, creative, and flexible mechanisms are necessary to insure against hurricane losses in Hawaii in the aftermath of the devastation caused by Hurricane Iniki and the worldwide insurance crisis. The economic welfare of this State is dependent on the availability of property insurance including coverage for catastrophic losses in the event of another hurricane.

The legislature finds that without property insurance the orderly growth and development of the State would be severely impeded; that adequate insurance upon property is necessary to enable homeowners and commercial owners to obtain financing for the purchase and improvement of their property; and that while the need for such insurance is increasing, the market for such insurance is not adequate and is likely to become less adequate in the future.

The purpose of this Act is to create the Hawaii hurricane relief fund. The Hawaii hurricane relief fund will assess the availability of insurance from all

sources and be empowered to take steps to provide coverage should the private market prove unreliable.

The establishment of the Hawaii hurricane relief fund serves a public purpose and is an essential government function.

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

**"CHAPTER
HAWAII HURRICANE RELIEF FUND**

PART I. GENERAL PROVISIONS

§ -1 Definitions. As used in this chapter, unless the context otherwise requires:

“Board” means the board of directors of the Hawaii hurricane relief fund.

“Commissioner” means the insurance commissioner as defined in section 431:2-102.

“Covered event” means each hurricane that directly causes windstorm damage in the State.

“Deductible” or “mandatory deductible” means the amount of loss assumed by the policyholder that is not included in the coverages provided by the fund.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of finance.

“Eligible property” means:

(1) Real property of one to four units used for residential purposes and which is in insurable condition, and tangible personal property located therein or thereon as provided in the plan of operation or any manual of rules and rates adopted under the plan of operation; and

(2) Real property used for business, commercial, or industrial purposes which is in insurable condition located therein or thereon as provided in the plan of operation or any manual of rules and rates adopted under the plan of operation.

“Fund” means the Hawaii hurricane relief fund established by this chapter.

“Hurricane” means a storm that has been declared and defined by the Central Pacific Hurricane Center of the National Weather Service to be a hurricane.

“Plan of operation” means the plan for providing hurricane property insurance as adopted by the board of directors of the Hawaii hurricane relief fund, and any amendments thereto, under section -7.

“Policy of hurricane property insurance” means a policy or endorsement of insurance issued by the fund insuring only against damage or loss to eligible property caused by a covered event in excess of the deductible and up to \$750,000 per risk on real property of one to four units used for residential purposes and up to \$500,000 per risk on real property used for business, commercial or industrial purposes, subject to the limits defined by the plan of operation; provided that this policy shall not include coverage for business interruption.

“Policy of property insurance” means a policy providing “property insurance” as defined in section 431:1-206. For purposes of this chapter, it includes “basic property insurance” as provided under article 21 of chapter 431.

“Property insurance” means policies, riders, or endorsements of insurance that provide indemnity, in whole or in part, for the loss, destruction, or damage of eligible property.

“Servicing facility” means any insurer engaged in writing direct property insurance in this State and licensed in this State, and any other party authorized to act in like capacity on behalf of the fund.

§ -2 Establishment of Hawaii hurricane relief fund. There shall be a Hawaii hurricane relief fund to be placed within the department of commerce and consumer affairs for administrative purposes. The fund shall be a public body and a body corporate and politic.

§ -3 Board of directors. (a) The board of directors of the fund shall consist of the insurance commissioner as an ex officio voting member and six members appointed by the governor in accordance with section 26-34. The board shall be the policy making body of the fund. As such, the board shall be responsible for establishing policies for the administration and operation of the fund and the performance of other duties and functions assigned to the fund.

(b) Two members shall, by and with the advice and consent of the senate, be appointed by the governor for a term of four years; provided that of the initial appointees, one shall be appointed for a two-year term. A vacancy on the authority of a seat subject to this subsection shall be filled in accordance with Article V, section 6, of the Constitution of the State of Hawaii.

(c) Two members shall, by and with the advice and consent of the senate, be appointed by the governor from a list of nominations submitted by the president of the senate. The members appointed from a list of nominations of the president of the senate shall serve for a term of four years; provided that of the initial appointees, one shall be appointed for a two-year term.

(d) Two members shall, by and with the advice and consent of the senate, be appointed by the governor from a list of nominations submitted by the speaker of the house of representatives. The members appointed from a list of nominations of the speaker of the house of representatives shall serve for a term of four years; provided that of the initial appointees, one shall be appointed for a two-year term.

(e) The governor shall select a chairperson and vice-chairperson from among the members.

(f) The board shall meet as often as necessary to formulate and implement strategies and plans of operations in furtherance of this chapter. Upon its appointment, the board shall adopt an interim plan of operation within ninety days.

(g) The appointed directors shall receive no compensation for services, but shall be entitled to reimbursement of necessary expenses, including travel expenses, incurred in the performance of their duties.

(h) The board may appoint, not subject to chapters 76 and 77, an executive director of the fund whose salary shall be set by the board. The board may employ, not subject to chapters 76 and 77, technical experts and officers, agents and employees, permanent or temporary, as required. The board may also contract with persons, not subject to chapters 76, 77, and 78 when in the determination of the board, the services to be performed are unique and essential to the execution of the functions of the fund; provided that no individual contract shall be for a period longer than two years per term.

§ -4 Planning and assessment functions of the fund; discretion to provide insurance. (a) The fund shall be responsible for monitoring the availability of property insurance, including insurance for covered events, in this State. If at any time the board determines, in its sole discretion, that the private insurance market is not making such insurance reasonably available to consumers in this State, the fund may offer policies of hurricane property insurance for sale in accordance with this chapter.

(b) Nothing in subsection (a) shall prohibit the board from exercising its powers to develop plans and procedures for the operation and management of the fund without regard to the determination of the board as to the availability of insurance in the private market.

§ -5 Powers, duties, and functions. (a) The Hawaii hurricane relief fund shall have the following general powers:

- (1) To sue and be sued;
- (2) To make and alter policies for its organization and internal administration;
- (3) To adopt rules in accordance with chapter 91 to effectuate the purposes of this chapter;
- (4) To borrow moneys, including but not limited to moneys from state or federal sources and to issue notes or other obligations of the fund for the purposes of providing funds for any of its purposes as authorized by the legislature from time to time;
- (5) To pledge or assign all or any part of the moneys, rents, charges, or other revenue and any proceeds derived by the fund; and
- (6) Enter into contracts as necessary to effectuate the purposes of this chapter.

(b) In addition to the general powers under subsection (a), the fund shall have the specific power to:

- (1) Adopt and administer a plan of operation in accordance with section -7, and a manual of rules and rates to provide persons having an insurable interest in eligible property with insurance coverage provided by the fund;
- (2) Authorize the provision of hurricane coverage by the fund for tangible personal property located in or on real property used for business, commercial, or industrial purposes and establish limits of liability for specific coverages within the range of authorized coverage;
- (3) Adopt actuarially sound rates based on reasonable assumptions relative to expectations of hurricane frequency and severity for all coverage provided under policies or endorsements issued by the fund. Rates adopted shall be subject to approval by the commissioner pursuant to article 14 of chapter 431. Rates adopted shall provide for classification of risks and shall include past and prospective losses and expense experience in this State;
- (4) Adopt procedures, guidelines, and surcharges applicable to hurricane policies issued in connection with an underlying property policy issued by an unauthorized insurer;
- (5) Adopt any form of insurance policy necessary for providing hurricane property insurance by the fund, with the approval of the commissioner;
- (6) Issue insurance policies and pay claims for coverage over the mandatory deductible;
- (7) Require every licensed insurer transacting direct property insurance business in this State to act as a servicing facility, and by contract with such insurer authorize such insurer to inspect eligible properties, service policies and policyholders of hurricane property insurance, provide claim services, and perform any other duties as authorized by the fund for applicants to the fund and those insured by it;
- (8) (A) Assess annually all licensed property or casualty insurers the amounts which, together with the other assets of the fund, are sufficient to meet all necessary obligations of the fund. The

assessment shall be made on the insurer's gross direct written premiums for property and casualty insurance in Hawaii for the preceding calendar year. The rate of assessment in a year in which a covered event has not occurred shall be 3.75 per cent and shall not include the insurer's gross direct written premiums for motor vehicle insurance in Hawaii; provided that the rate of assessment may be increased to an amount not to exceed five per cent and may include the insurer's gross direct written premiums for motor vehicle insurance in Hawaii following a covered event. An insurer authorized to provide comparable coverage under section -10(b) shall be assessed an amount that excludes gross direct written premiums for property insurance in Hawaii.

- (B) In the event of a loss from a covered event the fund, in addition to the annual assessment in paragraph (A), shall assess those insurers which wrote property insurance coverage during the year immediately preceding the year of the covered event in proportion to each insurer's share of the total property premium during that year. However, in no event shall the total assessment exceed \$500,000,000 in the aggregate; provided that a separate assessment shall be made for each covered event. An insurer authorized to provide comparable coverage under section -10(b) shall be exempted from this subparagraph.
- (C) Each insurer shall be notified of any assessment not later than thirty days before it is due. The fund may exempt or differ, in whole or in part, the assessment of any insurer if the assessment would cause the insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by this jurisdiction;
- (9) Develop a program of incentives to encourage insurers to provide policies of hurricane property insurance in the event the commissioner authorizes the provision of comparable insurance pursuant to section -10(b); which may include, but are not limited to, exemption of the insurer's gross direct written premium for property insurance from the annual assessment pursuant to section -5(b)(8)(A);
- (10) Develop a credit against the annual assessment based on the difference between premiums written in 1993 and the premiums written in 1992 by each property insurer;
- (11) Develop procedures regarding policies written by unauthorized insurers comparable to the assessments, and other contributions made by insurers authorized to do business in this State;
- (12) Accumulate reserves or funds, including the investment income thereon, to be used for paying expenses, making loans, and paying valid claims for covered events insured by the fund; and
- (13) Collect and maintain statistical and other data as may be required by the commissioner.

§ -6 Advisory committee. To assist it in implementing this chapter the fund may appoint an advisory committee consisting of:

- (1) Not less than one individual who is employed or trained as a meteorologist and possesses knowledge of the history, trends, and nature of windstorms in the Pacific Ocean;
- (2) Not less than one individual who is a member of the American academy of actuaries; and

- (3) Not less than one individual who is a structural engineer licensed to practice in the State and is knowledgeable about local community building codes.

The fund may establish additional advisory committees as it may deem necessary in furtherance of this chapter.

§ -7 Plan of operation. (a) The fund shall adopt a plan of operation, and a manual of rules and rates necessary or suitable to ensure both the solvency and the reasonable and equitable administration of the fund.

(b) If the fund fails to adopt a plan of operation, or the fund fails to adopt amendments to the plan of operation, the commissioner shall adopt a plan of operation or make amendments necessary to carry out the purposes of this chapter. Any plan of operation, or amendment, adopted by rule of the commissioner, shall continue in full force and effect until the rule is superseded by a plan of operation, or amendment, adopted by a majority vote of all members of the fund's board, and approved by the commissioner.

- (c) The plan of operation shall:

- (1) Establish procedures for performance of all powers and duties of the fund;
- (2) Establish procedures for providing notice to all persons with interests insurable by the fund in the State of the type of insurance available from the fund in the event the fund offers insurance;
- (3) Provide for and adopt all necessary forms, including insurance policies to be used by and on behalf of the fund, for use by the fund and servicing facilities;
- (4) Adopt actuarially sound rates, based on reasonable assumptions relative to expectations of hurricane frequency and severity, to be charged for insurance provided by the fund, in accordance with article 14 of chapter 431;
- (5) Publish manuals of rules, rates, and rating and classification plans, which shall address mandatory deductibles, limits of coverage, and the classification of risks and rate modifications based on the exposure of insureds;
- (6) Establish procedures for receiving and servicing applications to the fund;
- (7) Establish procedures for processing and maintaining records of the fund relating to its financial transactions, its agents, its employees, its operations, and all transactions with any servicing facility;
- (8) Establish procedures for the collection and remittance of the premiums and return of unearned premiums where applicable;
- (9) Establish procedures for the payment of valid claims;
- (10) Establish procedures for prorating available funds pursuant to section -15;
- (11) Establish procedures for obtaining reinsurance;
- (12) Establish procedures to borrow funds; and
- (13) Develop a plan for the investment of moneys held by the fund subject to the limitations in article 6 of chapter 431.

§ -8 Annual statements. (a) The fund shall submit to the commissioner each year, not later than one hundred twenty days after the end of the fund's fiscal year, a financial report in a form approved by the commissioner.

(b) The commissioner may require other reports concerning risks insured by the fund as the commissioner deems appropriate.

§ -9 Powers of the commissioner. (a) For the purpose of ascertaining the fund's condition or compliance with this chapter, the commissioner shall examine the accounts, records, documents, and transactions of the fund at least once every three years commencing at the time the fund starts issuing policies of hurricane property insurance or more often if the commissioner deems advisable. The fund shall pay all reasonable and actually incurred expenses of the examination in accordance with section 431:2-306(b).

(b) The commissioner may exercise all of the commissioner's powers provided by law in the supervision and regulation of the fund, any servicing facility, and any other person or entity subject to the jurisdiction of the commissioner.

§ -10 Coverage available from the fund; deductible. (a) Policies issued by the fund shall provide a maximum aggregate coverage up to of¹ \$750,000 per risk on real property of one to four units used for residential purposes and \$500,000 per risk for real property used for business, commercial, and industrial purposes and shall provide for a mandatory deductible. The deductible amount for residential personal property policies shall be the greater of \$1,000 or one per cent of the insured value or the greater of \$2,000 or two per cent of the insured value; provided that the board may establish higher deductible limits. The deductible amount for commercial property policies shall be the greater of \$5,000 or five per cent of the insured value or an amount equivalent to the all¹ other perils deductible of the underlying policy of property insurance; provided that the board may establish higher deductible limits.

(b) Upon the authorization of the commissioner, insurers may provide standard extended coverage endorsements, including coverage of hurricane risks, subject to the fund's program for incentives and credits; provided that in the absence of such authorization no other policy of property insurance or endorsement to a policy of property insurance on eligible property located in this State shall be issued to provide insurance for damages or losses caused by a covered event if such coverage is offered by the fund.

§ -11 Underlying policy required; hurricane coverage shall be provided. (a) Any eligible property for which coverage is sought from the fund shall already be insured by an underlying policy of property insurance as defined in section 431:1-206 or article 21 of chapter 431 but excluding the covered event. Every underlying policy of property insurance provided by an unauthorized insurer shall be subject to the procedures, guidelines and surcharges as provided in the plan of operation.

(b) The fund shall not deny any application for hurricane property insurance on any property eligible under subsection (a).

(c) The fund shall renew any policy provided payment of the applicable renewal premium is received by the fund on or before the expiration date stated in the policy. The fund may nonrenew a policy on the grounds the property is no longer covered by an underlying policy of property insurance. The policy issued by the fund shall not provide coverage in the event that there is no underlying policy of property insurance at the time of loss. In such case, any unearned premiums shall be returned to the policyholder on a pro rata basis.

§ -12 Mitigation. The fund shall develop a comprehensive loss reduction plan for the hurricane peril. The plan shall include standards for new residential and commercial structures and separate standards for existing residential and commercial structures. The plan shall provide a timetable for implementation of mandatory loss mitigation measures for both new and existing structures.

§ -13 Appeals. (a) Any applicant or policyholder adversely affected by a decision of the fund shall have the right to appeal to the fund's board within thirty days after the decision. The application for an appeal shall specify how the person making the appeal was aggrieved and the grounds upon which relief is demanded. The decision of the board shall be deemed final.

(b) Any final action, decision, or order of the board under this chapter shall be subject to judicial review by the circuit court.

§ -14 Immunity and limitation on liability. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any servicing facility; the fund or its agents, employees, or its board; the State; the commissioner; or the commissioner's representatives for any action taken by them in the performance of their powers and duties under this chapter; provided that this section shall not be construed to prohibit any exercise of the commissioner's power pursuant to this chapter or any other law or rule adopted pursuant to law, chapters 661 and 662, and any other law to the contrary notwithstanding. Nothing in this chapter shall create an obligation, debt, claim, cause of action, claim for relief, charge, or any other liability of any kind whatsoever in favor of any person or entity without regard to whether that person or entity received any benefits under this chapter, against the State, or its officers and employees. The State and its officers and employees shall not be liable for the results of any application, denial of application, claim, loss, or other benefits provided by the fund pursuant to this chapter. Nothing in this chapter shall be construed as authorizing any claim against the State whatsoever, nor shall this chapter be construed as authorizing any claim against the fund in excess of any note, loan, liability, or other obligation incurred by the fund.

§ -15 Exemption from property and liability insurance guaranty association; insolvency of fund. Notwithstanding any other provision of law to the contrary, neither the fund nor its policyholders shall be subject to the provisions of, or be eligible for, the benefits provided in sections 431:16-101 to 117 inclusive. If the total amount available at any time to the fund is insufficient to make all necessary payments, the moneys available shall be prorated and the unpaid portion shall be paid as soon thereafter as moneys become available.

§ -16 Establishment of hurricane reserve trust fund. (a) There is created in the treasury of the State the hurricane reserve trust fund to be administered by the Hawaii hurricane relief fund, into which shall be deposited the special mortgage recording fee established by this chapter. The special mortgage recording fee shall be imposed on each mortgage and each amendment to a mortgage which increases the principal amount of the secured debt which is recorded in the bureau of conveyances of the State under chapter 502 or filed with the assistant registrar of the land court of the State under chapter 501.

The special fee shall be in an amount equal to one-tenth of one per cent of the stated principal amount of the debt secured by the mortgage or, in the case of an amendment of a mortgage, an amount equal to one-tenth of one per cent of the amount of the increase of the stated principal debt.

The special fee shall be in addition to any applicable fees under chapter 501 or 502. The special fees shall be collected by escrow depositories licensed under chapter 449, or financial institutions authorized to engage in the escrow business, or persons and companies permitted to engage in limited escrow transactions under section 449-3. The special mortgage recording fees shall be collected prior to recordation of the mortgage with the bureau of conveyances or the assistant registrar of the land court of the State and shall be deposited into the hurricane reserve trust fund. The bureau of conveyances and the assistant registrar of the land court

may also collect and transmit any special fees for deposit into the hurricane reserve trust fund.

(b) The fund shall implement the annual assessment of all licensed property and casualty insurers as authorized by section -5 (b)(8)(A) and the proceeds from the assessments shall be deposited into the hurricane reserve trust fund.

(c) If the fund offers to issue policies of hurricane property insurance, the premiums for such policies shall be deposited into the hurricane reserve trust fund.

(d) Should the moneys in the hurricane reserve trust fund be insufficient to pay claims arising out of a covered event, the fund is authorized to levy a surcharge not to exceed seven and one-half per cent a year on premiums charged for policies issued by all licensed property and casualty insurers. These moneys may be used for purposes as directed by the board, including but not limited to the payment of debt service and principal on a contract of financial reinsurance. The formula to calculate the amount and period of the surcharge and the procedures and methodology for payment of claims during periods of insufficiency of moneys for such purpose shall be provided in the plan of operation.

(e) Any proceeds from loans or other moneys from the federal government, any proceeds from bonds issued pursuant to this Act loaned by the director of finance to the Hawaii hurricane relief fund, and such other moneys as the State may make available from time to time shall be deposited into the hurricane reserve trust fund.

(f) Moneys in the hurricane reserve trust fund shall be expended by the fund and used solely for the purposes of this chapter.

(g) Upon dissolution of the fund, the net moneys of the hurricane reserve trust fund shall revert to the state general fund.

§ -17 Additional notice requirement. Thirteen months prior to discontinuation of writing property insurance coverage, an insurer shall file an affidavit with the commissioner stating the reasons for the discontinuation.

§ -18 Exemption for Hawaiian home lands. Nothing in this chapter shall prohibit or limit any person from obtaining insurance for property subject to the Hawaiian Homes Commission Act of 1920, as amended, from any insurer other than the fund if such insurance is deemed sufficient by the commissioner."

SECTION 3. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§46- Homeowners insurance. (a) Notwithstanding any law to the contrary, a county, either alone or together with any other county or counties, may:

- (1) Form an insurance company, association (nonprofit or otherwise), fund, or trust;
- (2) Acquire an existing insurance company;
- (3) Enter into arrangements with one or more insurance companies; or
- (4) Any combination of the foregoing; upon such terms and conditions and for such periods, as the council of the county shall approve by ordinance or resolution, or both, to provide homeowner insurance, including hurricane coverage, for residents of the county or counties participating in such undertaking. Such undertaking shall be subject to the provision of chapter , including, but not limited to, section -10(b), and chapter 431.

(b) Any county participating in an undertaking as authorized under subsection (a) may:

- (1) Issue general obligation bonds under chapter 47 to establish necessary reserves to provide for the payment of claims in excess of reserves and for other related purposes;
 - (2) Invest funds held in reserve, which are not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control or as the council of the county may authorize pursuant to ordinance or resolution; and
 - (3) Issue general obligation bonds under chapter 47 to pay any liability incurred that is self-insured or uninsured by that county, including without limitations, liabilities for damage to property, comprehensive liability, environmental, or other losses.
- (c) If no homeowner insurance is provided pursuant to this section within two years of the effective date of this section, this section shall cease to be in effect; provided that any county participating in any undertaking to provide homeowner insurance under this section within that two year period may continue to do so thereafter."

SECTION 4. Chapter 431, Hawaii Revised Statutes, is amended by adding to article 19 a new section to be appropriately designated and to read as follows:

"§431:19- Personal lines insurance. (a) Notwithstanding the provisions of section 431:19-102(a), a captive insurance company may be licensed to provide personal lines coverage for unrelated risks if the commissioner deems that extraordinary circumstances exist which make the provision of this coverage by a captive insurance company appropriate and in the best interest of the public. In determining whether such extraordinary circumstances exist, the commissioner shall consider the following factors:

- (1) The extent to which the particular coverage is available in the voluntary market;
- (2) The existence of a relationship between the parent of the captive insurance company and the proposed policyholders other than that of insurer to insured;
- (3) Whether the captive insurance company has sufficient capitalization to insure the proposed risks; and
- (4) Any other factors which the commissioner deems appropriate.

(b) Any captive insurance company formed pursuant to this section shall be subject to articles 5, 10, 10A, 10B, 10C, 10D, 10E, 10F, 10G, 12, 15, and 17 of chapter 431 in addition to all other applicable law."

SECTION 5. Section 39-51, Hawaii Revised Statutes, is amended to read as follows:

1. By adding a new definition to be appropriately inserted and to read as follows:

"“System” means an organized plan or arrangement under which one or more undertakings are operated or implemented as a harmonious whole.”

2. By amending the definition of “undertaking” to read as follows:

"“Undertaking” means any public works and properties, improvement, or system, tangible or intangible, owned or operated by the State or a department thereof, [and from which the State or department may derive revenues, or with respect to which the State or department may derive user taxes.] and any public

activity, policy, or program undertaken by the State or a department thereof, and from which the State or department may derive revenues, or with respect to which the State or department may derive user taxes."

SECTION 6. Section 431:13-104, Hawaii Revised Statutes, is amended to read as follows:

"§431:13-104 Favored agent or insurer; coercion of debtors. (a) No person may require as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance, negotiate any contract of insurance, or renewal thereof, through a particular insurer or group of insurers or agent or broker or group of agents or brokers.

(b) No person who lends money or extends credit may:

- (1) Solicit insurance for the protection of real property, after a person indicates interest in securing a first mortgage credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension;
- (2) Unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of an insurance contract because the contract contains coverage in addition to that required in the credit transaction;
- (3) Require that any borrower, mortgagor, purchaser, insurer, broker or agent pay a separate charge, in connection with the handling of any contract of insurance required as a security for a loan on real estate, or pay a separate charge to substitute the insurance policy of one insurer for that of another. This paragraph does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document;
- (4) Use or disclose, without the prior written consent of the borrower, mortgagor or purchaser taken at a time other than the making of the loan or extension of credit, information relative to a contract of insurance which is required by the credit transaction, for the purpose of replacing the insurance;
- (5) Require any procedures or conditions of duly licensed agents, brokers or insurers not customarily required of those agents, brokers or insurers affiliated or in any way connected with the person who lends money or extends credit.

(c) Every person who lends money or extends credit and who solicits insurance on real and personal property subject to subsection (b) must explain to the borrower in writing that the insurance related to such credit extension may be purchased from an insurer or agent of the borrower's choice, subject only to the lender's right to reject a given insurer or agent as provided in subsection (b)(2). Compliance with disclosures as to insurance required by Truth-In-Lending laws or comparable state laws shall be in compliance with this paragraph.

This requirement for a commitment shall not apply in cases where the premium for the required insurance is to be financed as part of the loan or extension of credit involving personal property transactions.

(d) The commissioner shall have the power to examine and investigate those insurance related activities of any person whom the commissioner believes may be in violation of this section. Any affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.

(e) Nothing in this section shall prevent a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(f) Nothing contained in this section shall apply to credit life or credit disability insurance.

(g) Nothing in this section shall prevent a person who lends money or extends credit from assisting a mortgagor, borrower or purchaser in obtaining homeowners insurance where the borrower requests such assistance in writing. Nothing in this section shall prevent a person who lends money or extends credit from referring a mortgagor, borrower, or purchaser to the Hawaii hurricane relief fund."

SECTION 7. Section 219.1 of the Hawaii Homes Commission Act of 1920, as amended, is amended to read as follows:

"§219.1 General assistance. (a) The department is authorized to carry on any activities it deems necessary to assist the lessees in obtaining maximum utilization of the leased lands, including taking any steps necessary to develop these lands for their highest and best use commensurate with the purposes for which the land is being leased as provided for in section 207, and assisting the lessees in all phases of farming, ranching, and aquaculture operations and the marketing of their agricultural or aquacultural produce and livestock.

(b) Notwithstanding any law to the contrary, the department either alone or together with any other governmental agency, may:

- (1) Form an insurance company, association (nonprofit or otherwise), pool, or trust;
- (2) Acquire an existing insurance company;
- (3) Enter into arrangements with one or more insurance companies; or
- (4) Undertake any combination of the foregoing; upon such terms and conditions and for such periods, as the commission shall approve, to provide homeowner protection, including hurricane coverage, for lessees participating in such undertaking. Such undertaking shall be subject to the provisions of chapter , including but not limited to section -10(b), and chapter 431.

(c) The department, if experiencing any of the power as authorized under subsection (b) may:

- (1) Issue revenue bonds under and pursuant to part III of chapter 39, Hawaii Revised Statutes, to establish necessary reserves to provide for the payment of claims in excess of reserves and for other related purposes; or to pay any liability incurred that is self-insured or uninsured by the commission including without limitations, liabilities for damage to property, comprehensive liability, environmental, or other losses; and
- (2) Invest funds held in reserve, which are not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control or as the commission may authorize by resolution."

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SECTION 8. Article 17 of chapter 431, Hawaii Revised Statutes, is repealed.

SECTION 9. Chapter 479, Hawaii Revised Statutes, is repealed.

SECTION 10. (a) The director may establish a loan program to assist the Hawaii hurricane relief fund in carrying out the plan of operation, and may make loans to the Hawaii hurricane relief fund. There is hereby created in the treasury of the State a separate and special fund to be designated as the hurricane bond loan fund of this Act.

(b) The department of budget and finance, with the approval of the governor, is authorized to issue in the name of the department revenue bonds at such times and in such amount or amounts not to exceed \$200,000,000 in aggregate principal as may be requested and deemed necessary by the commissioner for the purposes of the Hawaii hurricane relief fund. All such bonds shall be issued pursuant to part III of chapter 39, except as provided in this section.

(c) The resolution or certificate providing for the issuance of the bonds may provide that all or part of the proceeds may be held and invested in the hurricane bond loan fund until needed for the purposes of the Hawaii hurricane relief fund. For the purposes of providing a source of revenue or security for these bonds, the director may pledge funds deposited or to be deposited in the hurricane bond loan fund to the payment or security of the bonds, and the pledge shall constitute a lien and security interest on the moneys in the hurricane bond loan fund to the extent and with the priority set forth in the document establishing the pledge, without the necessity for physical delivery, recording, or other further act. No revenue bonds may be issued pursuant to this section unless the director of finance shall first make a determination based on information provided by the commissioner that there are sufficient revenues and other assets to pay debt service on the revenue bonds.

(d) The director of finance is authorized to issue reimbursable general obligation bonds in the principal amount of \$200,000,000, or so much thereof as may be requested and deemed necessary by the commissioner for the purposes of the Hawaii hurricane relief fund, and the same sum is appropriated for fiscal year 1993-1994 for deposit into the hurricane reserve trust fund. The commissioner, upon the commissioner's determination that it is advisable to transfer funds from the hurricane reserve trust fund, shall reimburse the state general fund for payment of debt service on general obligation bonds authorized and issued under this section.

SECTION 11. The state supreme court shall have exclusive and original jurisdiction over any controversy or dispute regarding the financing of the Hawaii hurricane relief fund and the hurricane reserve trust fund through the issuance of revenue bonds or general obligation bonds, and the security provisions thereof and the imposition and collection of any rates and charges to repay or provide security for the bonds; provided that the jurisdiction be limited to the applicability of Article VII of the Constitution of the State of Hawaii to these matters.

SECTION 12. All Acts passed by the legislature during this Regular Session of 1993, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act unless such acts specifically provide that this Act is being amended.

SECTION 13. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provi-

sions 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 14. 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 1993-1994, to carry out the purposes of this Act, including the hiring of necessary staff. The sum appropriated shall be expended by the director of commerce and consumer affairs.

SECTION 15. The provisions of the amendments made by this Act to the Hawaiian Homes Commission Act of 1920, as amended, are declared to be severable and if any section, clause, or phrase, or the application thereof to any person or circumstance 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 the effectiveness of the remainder of these amendments or the application thereof shall not be affected.

SECTION 16. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 17. This Act shall take effect upon its approval; provided that section -16(a) of chapter , Hawaii Revised Statutes, and sections 10 and 14 of this Act shall take effect on July 1, 1993.

(Approved June 30, 1993.)

Notes

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

ACT 340

H.B. NO. 2015

A Bill for an Act Relating to the Island of Kaho'olawe.

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

SECTION 1. The legislature finds that the island of Kaho'olawe is of significant cultural and historic importance to the native people of Hawaii. The island had been used as a military target range since 1941. In 1990, the bombing and shelling of the island was halted by Congress and the President of the United States. A federal commission, known as the Kaho'olawe Island Conveyance Commission, was created by Congress to determine the terms of conveyance of the island to the State of Hawaii.

The legislature further finds, because of extensive erosion and other ecological problems, the presence of unexploded ordnance, archaeological and other cultural and historic sites, and the presence of native and endangered flora and fauna, that federal resources, as well as a new management regime are needed to effectively meet the unique challenges of restoring, preserving, and determining the appropriate use of Kaho'olawe.

The legislature recognizes the continuing stewardship role of the Protect Kaho'olawe Ohana.

The purpose of this Act is to establish the Kaho'olawe island reserve commission which shall have policy and management oversight of the Kaho'olawe

island reserve. The establishment of the commission will provide a system that recognizes the island's unique challenges and preserves in perpetuity the island's cultural and historic resources for the people of Hawaii.

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

**"CHAPTER
KAHO'OLawe ISLAND RESERVE**

§ -1 Administration of chapter. The Kaho'olawe island reserve commission and the department of land and natural resources shall administer this chapter.

§ -2 Definitions. As used in this chapter, unless the context otherwise requires:

“Commission” means the Kaho'olawe island reserve commission.

“Department” means the department of land and natural resources.

“Island reserve” means the area designated as the island of Kaho'olawe and the submerged lands and waters extending seaward two miles from its shoreline.

“Waters” means the area extending seaward two miles from the shoreline.

§ -3 Reservation of uses. (a) The Kaho'olawe island reserve shall be used solely and exclusively for the following purposes:

- (1) Preservation and practice of all rights customarily and traditionally exercised by native Hawaiians for cultural, spiritual, and subsistence purposes;
- (2) Preservation and protection of its archaeological, historical, and environmental resources;
- (3) Rehabilitation, revegetation, habitat restoration, and preservation; and
- (4) Education.

(b) The island shall be reserved in perpetuity for the uses enumerated in subsection (a). Commercial uses shall be strictly prohibited.

§ -4 Powers and duties. The department and other departments and agencies of the State shall be subject to the oversight of the commission with regard to the control and management of the island reserve. Subject to section -6, the department shall:

- (1) Adopt rules pursuant to chapter 91 after the commission has approved the rules;
- (2) Implement controls and permitted uses for the island reserve;
- (3) Enforce this chapter;
- (4) Provide administrative support to the commission; and
- (5) Authorize such of its employees as it deems reasonable and necessary to serve and execute warrants and arrest offenders or issue citations in all matters relating to enforcement of the laws and rules applicable to the island reserve.

§ -5 Commission. (a) There is established the Kaho'olawe island reserve commission to be placed within the department of land and natural resources for administrative purposes as provided in section 26-35. The commission shall consist of seven members to be appointed in the manner and to serve for the terms provided in section 26-34; provided that:

- (1) One member shall be a member of the Protect Kaho'olawe Ohana;
- (2) Two members shall be appointed by the governor from a list provided by the Protect Kaho'olawe Ohana;
- (3) One member shall be a trustee or representative of the office of Hawaiian affairs;
- (4) One member shall be a county official appointed by the governor from a list provided by the mayor of the county of Maui;
- (5) One member shall be the chairperson of the board of land and natural resources; and
- (6) One member shall be appointed by the governor from a list provided by native Hawaiian organizations.

(b) The governor shall appoint the chairperson from among the members of the commission.

(c) The members of the commission shall serve without pay but shall be reimbursed for their actual and necessary expenses, including travel expenses, incurred in carrying out their duties.

(d) Any action taken by the commission shall be approved by a simple majority of its members. Four members shall constitute a quorum to do business.

(e) The commission may hire employees necessary to perform its duties, including administrative personnel, as provided in section 26-35.

(f) The commission shall adopt rules in accordance with chapter 91 to guide its conduct and shall maintain a record of its proceedings and actions.

§ -6 Responsibilities and duties of the commission. The commission shall:

- (1) Establish criteria, policies, and controls for permissible uses within the island reserve;
- (2) Approve all contracts for services and rules pertaining to the island reserve;
- (3) Provide advice to the governor, the department, and other departments and agencies on any matter relating to the island reserve;
- (4) Provide advice to the office of state planning and the department of the attorney general on any matter relating to the federal conveyance of Kaho'olawe;
- (5) Enter into curator or stewardship agreements with appropriate Hawaiian cultural and spiritual community organizations for the perpetuation of native Hawaiian cultural, religious, and subsistence customs, beliefs, and practices for the purposes stated in section -3;
- (6) Carry out those powers and duties otherwise conferred upon the board of land and natural resources and the land use commission with regard to land dispositions and land use approvals pertaining to the island reserve. All powers and duties of the board of land and natural resources and the land use commission concerning land dispositions and land use approvals pertaining to the island reserve are transferred to the commission; and
- (7) Carry out those powers and duties concerning the island reserve otherwise conferred upon the county of Maui by chapter 205A. The powers and duties of the county of Maui and its agencies concerning coastal zone disposition and approvals pertaining to the island reserve are transferred to the commission.

§ -7 Fishing. Section -3 of this chapter notwithstanding, the commission shall adopt rules pursuant to chapter 91 to permit fishing in the waters around

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Kaho'olawe that are consistent with the purpose of this chapter and that take into consideration the health and safety of the general public.

§ -8 Penalty. Any person who violates any of the laws or rules applicable to the island reserve shall be guilty of a misdemeanor and shall be fined not more than \$1,000 or imprisoned not more than one year, or both, for each offense. Each day of each violation shall be deemed a separate offense.

§ -9 Transfer. Upon its return to the State, the resources and waters of Kaho'olawe shall be held in trust as part of the public land trust; provided that the State shall transfer management and control of the island and its waters to the sovereign native Hawaiian entity upon its recognition by the United States and the State of Hawaii.

All terms, conditions, agreements, and laws affecting the island, including any ongoing obligations relating to the clean-up of the island and its waters, shall remain in effect unless expressly terminated.

§ -10 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 that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

SECTION 3. The office of state planning and the department of the attorney general, after consulting with the Kaho'olawe island reserve commission, are authorized to initiate the conveyance of Kaho'olawe to the State; provided that, before the island of Kaho'olawe is conveyed to the State, agreements shall be executed with regard to liability, monetary resources, rehabilitation, and removal of ordnance and other hazardous wastes.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$137,500, or so much thereof as may be necessary for fiscal year 1993-1994, to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of land and natural resources.

SECTION 5. This Act shall take effect upon its approval; except that section 4 shall take effect on July 1, 1993.

(Approved June 30, 1993.)

ACT 341

S.B. NO. 2

A Bill for an Act Relating to Enterprise Zones.

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

SECTION 1. The purpose of this Act is to allow the county of Kauai to make an application for the designation of the areas damaged by Hurricane Iniki as an enterprise zone pursuant to Chapter 209E, Hawaii Revised Statutes.

SECTION 2. Section 209E-4, Hawaii Revised Statutes, is amended to read as follows:

"§209E-4 Enterprise zone designation. (a) The governing body of any county may make written application to the department to have an area declared to be an enterprise zone. The application shall include a description of the location of the area or areas in question, and a general statement identifying proposed local incentives to complement the state and any federal incentives.

(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. Any such area shall 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 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 [shall] have incomes below eighty per cent of the median family income of the county[.]; or
- (2) [An] The unemployment rate is 1.5 times the state average.

(c) Notwithstanding subsection (b), all census tracts within the county of Kauai shall be eligible for designation as an enterprise zone. Such designation, if made, shall remain in effect until January 1, 1996 unless the Governor earlier determines that the designation is no longer necessary."

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 30, 1993.)

ACT 342

S.B. NO. 189

A Bill for an Act Relating to Employment Security.

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

SECTION 1. Section 383-65, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Except as otherwise provided in subsection (b), benefits paid to an individual shall be charged against the accounts of the individual's base period employers and the amount of benefits so chargeable against each base period employer's account shall bear the same ratio to the total benefits paid to the individual as the base period wages paid to the individual by the employer bear to the total amount of base period wages paid to the individual by all of the individual's base period employers. Benefits paid [in benefit years beginning after June 30, 1963,] shall be charged to employers' accounts in the calendar year in which the benefits are paid.

(b) Benefits paid to an individual shall not be charged against the account of any of the individual's base period employers on a contributory plan under section 383-61 when such benefits are:

- (1) Paid to an individual during any benefit year [beginning October 5, 1986, and thereafter,] if the individual:
 - (A) Left work voluntarily without good cause; or

- (B) Was discharged for misconduct connected with the individual's work; or
- (C) Left work voluntarily for good cause not attributable to the employer.

The chargeability of benefits to an employer's account shall be determined in accordance with section 383-94 and other applicable provisions of this chapter, or as may be otherwise specified by the department[.];

- (2) Paid to an individual, who, during the individual's base period, earned wages for part-time employment with an employer, if the employer continues to give the individual employment to the same extent while the individual is receiving benefits as during the base period and the employer establishes such fact to the satisfaction of the director of labor and industrial relations[.];
- (3) Paid to an individual for the period the individual is enrolled in and is in regular attendance at a vocational training or retraining course approved by the director pursuant to section 383-29[.];
- (4) Paid to an individual under the extended benefits program, sections 383-168 to 383-174; except that one-half of the amount of such benefits which are based on services performed for a governmental employer on a contributory plan shall be charged to the account of such employer[.];
- (5) Paid to an individual who qualifies to receive benefits by meeting the minimum earnings and employment requirements only by combining the individual's employment and wages earned in two or more states[.];
- (6) Benefits overpaid to a claimant as a result of ineligibility or disqualification under sections 383-29 and 383-30 unless such overpayment resulted from the employer's failure to furnish information as required by this chapter or the rules of the department[.]; or
- [7) Paid to an individual with respect to wages paid for previously uncovered services as defined in section 383-22(b) or for services for which an exclusion was granted pursuant to section 383-78, but only to the extent that the fund is reimbursed for such benefits by the federal government pursuant to section 121 of Public Law 94-566.]
- (7) Benefits paid to an individual during any benefit year beginning September 13, 1992 and thereafter shall not be charged to the account of any base period employer from whose employment the individual is separated as a direct result of a major disaster and would have been entitled to disaster unemployment assistance under the Stafford Disaster Relief and Emergency Assistance Act (P.L. 100-707) but for the receipt of unemployment insurance benefits paid under this chapter; provided that the employer must petition for relief of any charges to an employer's reserve account as requested by the department and the director approves granting relief of charges."

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 30, 1993.)

ACT 343

S.B. NO. 1752

A Bill for an Act Relating to the Corrections Population Management Commission.

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

SECTION 1. Findings and purpose. The legislature finds that:

- (1) For many years, the State of Hawaii has had difficulty in managing the size of its corrections population. There have been more persons committed or detained in correctional facilities than there is bedspace to accommodate them.
- (2) Overcrowding was a major cause of the 1985 lawsuit which resulted in a consent decree governing conditions at the Oahu community correctional center (OCCC) and the women's community correctional center (WCCC). Continued overcrowding is the primary reason why the State is unable to satisfy the requirements of the consent decree, and is the most significant obstacle to resolution of the litigation.
- (3) A permanent solution to overcrowding must be established to terminate federal court supervision of OCCC and WCCC, to prevent future litigation, and to enable the department of public safety to more effectively operate its facilities.
- (4) Although the department of public safety is responsible for the operation of correctional facilities, it cannot, by itself, resolve the problem of overcrowding. The department has no control over admission of inmates into its facilities and has only limited control over their release.
- (5) A permanent solution to overcrowding requires the participation, cooperation, and commitment of all three branches of government and of all criminal justice agencies in the State.

The purpose of this Act is to establish a corrections population management commission which shall develop mechanisms to prevent inmate populations from exceeding the capacity of the correctional facilities.

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

**"CHAPTER
CORRECTIONS POPULATION MANAGEMENT COMMISSION**

§ -1 Corrections population management commission established. There is established a corrections population management commission, hereinafter referred to as the commission, to be attached administratively to the department of public safety. The objective of the commission shall be to establish maximum inmate population limits for each correctional facility and to formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility.

§ -2 Maximum inmate populations; guidelines. The commission shall establish for each correctional facility, maximum inmate population limits which may be enforced by the director of public safety. Population limits shall be established pursuant to guidelines adopted by the commission, which guidelines may be adopted without regard to the requirements of chapter 91. The guidelines shall ensure the safety of the public.

§ -3 Recommendations. The commission shall recommend to the appropriate authorities, cost-effective mechanisms, legislation, and policies to prevent the inmate population from exceeding the limits established pursuant to section

-2. These recommendations shall include estimates of fiscal impact. In addition, the commission shall consider and make recommendations on the following to the appropriate authorities:

- (1) Strategies for the management of projected growth in the inmate population;
- (2) Bail and other pretrial release programs;
- (3) Legislation relating to sentencing;
- (4) Judicial sentencing policies;
- (5) Intermediate punishments and other alternatives to incarceration;
- (6) Probation programs;
- (7) Inmate classification systems;
- (8) Reintegration and treatment programs for inmates;
- (9) Paroling policies and supervision programs; and
- (10) Future construction of correctional facilities.

§ -4 Composition; expenses. (a) The corrections population management commission shall consist of eight members. The state attorney general, the director of public safety, the prosecuting attorney of the city and county of Honolulu, the state public defender, and the chairperson of the Hawaii paroling authority, or their designated representatives, shall be members of the commission. Additionally, the chief justice of the Hawaii supreme court shall appoint a judge as a member of the commission. Finally, one member each shall be appointed by the president of the senate and the speaker of the house of representatives.

(b) The members of the commission shall serve without compensation but shall be reimbursed for expenses necessary in the performance of their duties.

(c) The governor shall appoint the chairperson of the commission from among its members.

§ -5 Annual report. The commission shall submit to the legislature, not fewer than twenty days prior to the convening of each regular session, an annual report of its activities and of its recommended legislative proposals.

§ -6 Executive secretary; staff. The department of public safety shall appoint an executive secretary and additional staff as necessary to carry out the functions of the commission. All staff shall be appointed without regard to chapters 76 and 77."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$83,882, or so much thereof as may be necessary for fiscal year 1993-1994 and the sum of \$72,782, or so much thereof as may be necessary for fiscal year 1994-1995, to carry out the intent and purpose of this Act.

The sums appropriated shall be expended by the department of public safety.

SECTION 4. This Act shall take effect upon its approval; provided that section 3 shall take effect on July 1, 1993.

(Approved June 30, 1993.)

ACT 344

H.B. NO. 126

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 percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance." Article VII, section 13, also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including "reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year" and "bonds constituting instruments of indebtedness under which the State or any political subdivision incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded under this section."
- (2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 1992-1993 and estimated for each fiscal year from 1993-1994 to 1996-1997, is as follows:

Fiscal Year	Net General Fund Revenues	Debt Limit
1989-90	\$2,418,273,831	
1990-91	2,654,706,036	
1991-92	2,672,238,596	
1992-93	2,773,716,000	\$477,621,805
1993-94	2,779,671,000	499,540,739
1994-95	2,910,923,000	507,246,912
1995-96	3,099,945,000	521,965,783
1996-97	(Not Applicable)	542,083,238

For fiscal years 1992-93, 1993-94, 1994-95, 1995-96, and 1996-97 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 percent. The net general fund revenues for fiscal years 1989-90, 1990-91, and 1991-1992 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, 1992, dated December 1, 1992. The net general fund revenues for fiscal years 1992-93 to 1995-96 are estimates, based on general fund revenue estimates made as of April 15, 1993, 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. (A) According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds, after the exclusions permitted by Article VII, section 13, of the State Constitution, for determining the power of the State to issue general obligation bonds within the debt limit as of March 1, 1993, is as follows for fiscal year 1993-94 to fiscal year 1999-2000:

Fiscal Year	Principal and Interest
1993-94	\$300,563,903
1994-95	305,191,838
1995-96	341,582,157
1996-97	311,408,865
1997-98	301,461,742
1998-99	270,457,448
1999-2000	261,792,602

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit generally continues to decline each year from fiscal year 2000-2001 to fiscal year 2012-13 when the final installment of \$18,275,000 shall be due and payable. (B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$210,000,000 (including \$8,000,000 authorized in House Bill No. 1975, H.D. 2, S.D. 1, C.D. 3, Relating to Governmental Assistance,¹ which was passed by the 1993 session of the legislature), part of which is excludable in determining the power to the State to issue general obligation bonds, pursuant to Article VII, section 13, of the State Constitution.

- (4) Amount of authorized and unissued general obligation bonds and guaranties and proposed bonds and guaranties. (A) As calculated from the state comptroller's bond fund report as of March 31, 1993, adjusted for (1) appropriations to be funded by general obligation bonds as provided in Act 35, Session Laws of Hawaii 1993, in the amount of \$136,500,000; (2) lapses as provided in House Bill No. 1152, H.D. 1, S.D. 1, C.D. 1 (the General Appropriations Act of 1993)² amounting

- to \$6,526,821; and (3) lapses as provided in House Bill No. 203, H.D. 1, S.D. 2, C.D. 1 (the Judiciary Appropriations Act of 1993)³ amounting to \$38,387,000, the total amount of authorized but unissued general obligation bonds is \$477,315,798. The total amount of general obligation bonds authorized by this Act is \$999,646,798 (including the change in means of financing from general fund to general obligation bond fund as provided in House Bill No. 1152, H.D. 1, S.D. 1, C.D. 1, the General Appropriations Act of 1993,² amounting to \$86,562,798). The total amount of general obligation bonds previously authorized and unissued and the general obligation bonds authorized by this Act is \$1,476,962,596. (B) As reported by the department of budget and finance the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$210,000,000, part of which is excludable in determining the power to the State to issue general obligation bonds, pursuant to Article VII, section 13, of the State Constitution. The total amount of guaranty authorized by House Bill No. 173, H.D. 3, S.D. 1, C.D. 1 (Relating to Transportation)⁴ is \$20,000,000, and is herein validated. The total amount of guarantees previously authorized and the guarantees validated by this Act is \$230,000,000.
- (5) Proposed general obligation bond issuance. As reported herein for fiscal years 1992-93, 1993-94, 1994-95, 1995-96, and 1996-97 the State proposes to issue \$135,600,000 during the remainder of fiscal year 1992-93, \$350,000,000 during the first half of fiscal year 1993-94, \$144,000,000 during the second half of fiscal year 1993-94, and \$100,000,000 in each half of fiscal year 1994-95, \$220,000,000 during the first half of fiscal year 1995-96, \$100,000,000 during the second half of fiscal year 1995-96, \$236,000,000 during the first half of fiscal year 1996-97, and \$100,000,000 during the second half of fiscal year 1996-97. 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 bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. From the schedule reported in paragraph (5), the total amount of general obligation bonds which the State proposes to issue during the fiscal years 1992-93 to 1995-96 is \$1,150,500,000. An additional \$336,000,000 is proposed to be issued in fiscal year 1996-97. The total amount of \$1,150,500,000 which is proposed to be issued through fiscal year 1995-96 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 \$1,476,962,596, as reported in paragraph (4), except for \$326,462,596. It is assumed that the appropriations to which an additional \$326,462,596 in bond issuance needs to be applied will have been encumbered as of June 30, 1996. The \$336,000,000 which is proposed to be issued in fiscal year 1996-97 will be sufficient to meet the requirements of the June 30, 1996, encumbrances in the amount of \$326,462,596. The amount of assumed encumbrances as of June 30, 1996, is reasonable and conservative. 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, 1996, and the amount of June 30, 1996 encumbrances versus the amount of bonds which is proposed to be issued in fiscal year 1996-97, 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. (A) General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds which are excludable from the amount of each proposed bond issued because:

- (i) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in this Act will be implemented and will require the application of proceeds from a particular bond issue; and
- (ii) 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 8.4 percent for the ten years from fiscal year 1993-94 to fiscal year 2002-2003. For the purpose of this declaration, the assumption is made that five percent of each bond issue will be excludable from the debt limit, an assumption which the legislature finds to be reasonable and conservative except for the \$136,500,000 proposed issuance during the remainder of fiscal year 1992-93, none of which is excluded. (B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor can be excluded but only to the extent the principal amount of such guarantees does not exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of this paragraph (7) and provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law. According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under Article VII, section 13, of the State Constitution for the fiscal years 1993-94, 1994-95, 1995-96, and 1996-97 are as follows:

Fiscal Year	Total Amount of General Obligation Bonds Not Otherwise Excluded by Article VII, Section 13 of the State Constitution
1993-94	\$2,854,080,933
1994-95	2,865,094,970
1995-96	2,922,183,174
1996-97	2,998,812,186

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guarantees and the guaranties proposed to be incurred, which does not exceed seven percent of the average amount set forth in the last column of the above table and for which reserve funds have been or will have been established as heretofore provided by, can be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to Article VII, section 13, of the State Constitution will become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such assumptions and on the determination in paragraph (8), the aggregate principal amount of the portion of the outstanding guarantees and the guaranties proposed to be incurred, which must be included in determining the power of the State to issue general obligation bonds is \$26,297,003.

- (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 7.0 percent with respect to general obligation bonds issued during the remainder of fiscal year 1992-93 and 7.5 percent on the general obligation bonds issued thereafter, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, general obligation bonds and instruments of indebtedness under which the State incurs a contingent liability as a guarantor authorized in this Act, will not cause the debt limit to be exceeded at the time of such issuance:

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 on Bonds and Guaranties
Remainder	\$477,621,805	\$385,019,160 (FY 1995-96)
FY 1992-93 \$136,500,000		
1st half	499,540,736	409,956,660 (FY 1995-96)
FY 1993-94 \$332,500,000		
2nd half	499,540,736	420,216,660 (FY 1995-96)
FY 1993-94 \$136,800,000		
1st half	507,246,912	427,341,660 (FY 1995-96)
FY 1994-95 \$95,000,000		
2nd half	507,246,912	434,466,660 (FY 1995-96)
FY 1994-95 \$95,000,000		
1st half	521,965,783	444,822,734 (FY 1996-97)
FY 1995-96 \$209,000,000		
2nd half	521,965,783	451,947,734 (FY 1996-97)
FY 1995-96 \$95,000,000		
1st half	542,083,238	466,694,717 (FY 1997-98)
FY 1996-97 \$224,200,000		
2nd half	542,083,238	473,819,717 (FY 1997-98)
FY 1996-97 \$95,000,000		
(9)	Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act and for all bonds authorized and unissued and calculated for all bonds issued and outstanding and guarantees, will not cause the debt limit to be exceeded at the time of issuance.	

SECTION 2. The legislature finds the bases for the declaration of findings set forth in this Act reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds 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. 1152, H.D. 1, S.D. 1, C.D. 1 (the General Appropriations Act of 1993),² House Bill No. 203, H.D. 1, S.D. 2, C.D. 1 (the Judiciary Appropriations Act of 1993),³ House Bill No. 1890, H.D. 1, S.D. 1, C.D. 1 (Relating to Laws Affecting Insurance),⁴ and House Bill No. 1202, H.D. 2, S.D. 2, C.D. 1 (Relating to a Convention Center)⁶ passed by this regular session of 1993, 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 \$999,646,798.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with section 39-16, Hawaii Revised Stat-

utes, in such principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

SECTION 4. The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

SECTION 5. In printing this Act, the revisor of statutes shall substitute in section 1 and section 3 the corresponding act numbers for bills identified therein.

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

(Approved July 1, 1993.)

Notes

1. Act 85.
2. Act 289.
3. Act 277.
4. Act 332.
5. Act 339.
6. Did not pass regular session of 1993. Recommitted to conference committee.

ACT 345

H.B. NO. 525

A Bill for an Act Relating to Water Pollution.

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

SECTION 1. The legislature finds that nonpoint source pollution has been identified as a major source of water pollution in Hawaii. Nonpoint source pollution is pollution from diffuse sources such as sediment, urban runoff, nutrients, and pesticides. The State has identified fourteen water quality-limited segments in which water pollution is attributed to nonpoint source pollution.

The legislature further finds that water quality is important to Hawaiian ecosystems, local living standards, and the State's economy. Residents and visitors alike depend on clean ocean and stream waters for recreational activities.

The 1987 amendments to the federal Clean Water Act included a new section 319: "nonpoint source management programs." This section requires the development of a nonpoint source pollution assessment report and management plan by each state. The department of health has used past federal grants and staff on loan from federal agencies to prepare these documents. In 1989, Hawaii's state assessment report and management plan were approved by the United States Environmental Protection Agency (EPA) and by the governor.

The legislature also finds that funding for the State through the Clean Water Act section 205(j)(5) for the implementation of the State's nonpoint source pollution program has ended. The only remaining federal funds are funds available under section 319(h) of the Clean Water Act, which requires matching funds from the State. State funding is needed to replace the lost section 205(j)(5) funds and to provide state matching funds for section 319(h) grants. In addition, state-funded staff is needed to develop and submit proposals for EPA section 319(h) funding so the State will not lose an opportunity to benefit from EPA grant moneys available for nonpoint source pollution project implementation.

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

**"CHAPTER
NONPOINT SOURCE POLLUTION MANAGEMENT AND CONTROL"**

§ -1 Definitions. As used in this chapter, unless the context clearly requires otherwise:

“Department” means the department of health.

“Director” means the director of health.

“Nonpoint source pollution” means water pollution that does not originate from a point source.

“Person” means any individual, partnership, firm, association, public or private corporation, federal agency, the State or a county, trust, estate, or any other legal entity.

“Point source pollution” means pollution from any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

“Pollution” means water pollution.

“Program” means the nonpoint source pollution management and control program established within the department pursuant to this chapter.

“State waters” means all waters, fresh, brackish, or salt, around and within the State including, but not limited to, coastal waters, wetlands, streams, rivers, drainage ditches, ponds, reservoirs, canals, groundwaters, and lakes; provided that drainage ditches, canals, ponds, wetlands, and reservoirs required as a part of a water pollution control system or an irrigation system are excluded.

§ -2 Nonpoint source pollution management and control program; rules. (a) There is established within the department a nonpoint source pollution management and control program to administer, enforce, and carry out all laws, rules, and programs relating to nonpoint source pollution in the State. The program may request the assistance of the clean water branch staff of the department, whenever necessary, in administering this chapter and, upon request, shall assist in the implementation and enforcement of chapter 342D.

(b) The nonpoint source pollution management and control program shall administer this chapter through the director. The director may delegate to any person the 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 and duties of the director. (a) In addition to any other power or duty prescribed by law, the director shall:

- (1) Reduce, control, and mitigate nonpoint source pollution in the State;
- (2) Adopt rules under chapter 91 necessary for the purposes of this chapter, which may include water quality standards for specific areas, types of nonpoint source pollution discharges, or management measures in the control of water pollution, allowing for varying local conditions;
- (3) Develop plans, recommendations, and policies, and provide other support to further the State’s capacity to carry out the requirements of any federal law, rule, or regulation pertinent to the management or mitigation of nonpoint source pollution;
- (4) Work cooperatively with other state, county, and federal agencies, to facilitate the monitoring of and update the list of waters in the State that cannot reasonably be expected to attain or maintain state water

quality standards and goals established under the federal Water Quality Act of 1987 (P.L. 100-4) without additional action to control nonpoint source pollution;

- (5) Identify those categories of nonpoint sources that add significant pollution to the state waters identified under paragraph (4);
- (6) Facilitate implementation of the best management practices, programs, and measures to control each category of nonpoint source pollution identified under paragraph (5), and encourage nonpoint source pollution mitigation practices including, but not limited to, the use of non-hazardous substances in the household and agroforestry management;
- (7) Identify public and private sources of expertise, technical assistance, financial assistance, educational assistance, training, and technology transfer;
- (8) Convene statewide and regional public forums involving the general public, the regulatory community, and businesses and industries that may contribute to categories of nonpoint source pollution for the purpose of establishing plans, and developing management strategies and other mitigation measures to control and manage nonpoint source pollution;
- (9) Provide funding for projects to demonstrate the best available technology and best management practices for preventing and mitigating nonpoint source pollution;
- (10) Provide funding for public initiative projects to encourage education and prevention measures relating to nonpoint source pollution;
- (11) Propose legislation, alternate funding mechanisms, and new programs to improve the State's capacity to mitigate nonpoint source pollution; and
- (12) Review environmental assessments and environmental impact statements as defined under section 343-2 for the purposes of commenting on the effects that a proposed action would have on the level of nonpoint source pollution generated in an area.

(b) In the course of enforcing any rule adopted pursuant to this chapter, the director may:

- (1) Enter and inspect any area to investigate an actual or suspected source of nonpoint pollution, to ascertain compliance or noncompliance with any rule or standard adopted by the department pursuant to this chapter;
- (2) Inspect any records kept in accordance with the terms and conditions of rules adopted under this chapter; and
- (3) Test any waters and aquatic and other life forms that may have been subjected to any form of nonpoint source pollution and assess the environmental effects of the pollution, including the pollution's effects on the quality of the receiving waters and aquatic and other life forms; provided that if the department determines that the effects of the pollution would make it hazardous to consume the water and aquatic or other life forms, the department shall immediately notify the public of the hazard through the news media and by posting warning signs in those areas where the waters and shoreline contain water and aquatic or other life forms that would be hazardous if consumed.

§ -4 Civil penalties. (a) Any person who violates any rule adopted under this chapter shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken to

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impose or collect the penalty provided for in this section shall be considered a civil action.

(b) Any person who denies, obstructs, or hampers the entrance to and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle shall be fined not more than \$5,000 for each day of such a denial, obstruction, or hampering. Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action.

(c) Any fine or penalty collected shall be placed in the environmental response revolving fund pursuant to Chapter 128D-2."

SECTION 3. 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 1993-1994, to finance the nonpoint source pollution management and control program. The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 4. This Act shall not be construed or interpreted to diminish the scope of chapter 342D, Hawaii Revised Statutes, or the authority of the director of health under chapter 342D.

SECTION 5. This Act shall take effect on July 1, 1993.

(Approved July 1, 1993.)

ACT 346

H.B. NO. 920

A Bill for an Act Relating to Married Persons.

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

SECTION 1. Section 574-1, Hawaii Revised Statutes, is amended to read as follows:

"**§574-1 Married persons.** Upon marriage each of the parties to a marriage shall declare the middle and last names each will use as a married person. The last name or names chosen may be any middle or last name legally used at any time, past or present, by either spouse, or any combination of such names, which may, but need not, be separated by a hyphen. [the person's own, that of the person's spouse alone or that of the person's spouse placed before or after the person's own last name and separated by a hyphen.] The middle name or names chosen may be any middle or last name legally used at any time, past or present, by either spouse, or any combination of such names, which may, but need not, be separated by a hyphen. [the person's last name or the last name of a person's spouse converted to a middle name or the middle name or names given on the person's birth certificate or a combination of a middle name or names on a person's birth certificate and the person's last name converted to a middle name.]"

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 July 1, 1993.)

ACT 347

H.B. NO. 1363

A Bill for an Act Relating to Medicine.

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

SECTION 1. Like the rest of the rural United States, the rural areas and the neighbor islands of our State are having great difficulties meeting the basic medical needs of their residents. The problem is especially critical in east Hawaii on the Big Island, which was judged in a recent study to be short of as many as eighteen primary care physicians.

Unfortunately, the problem is steadily worsening. While the physician population in rural areas is decreasing, the general population in many of these areas is increasing. East Hawaii is a case in point. More people have moved to the area to enjoy the lower cost of living and the higher quality of life. But physicians prefer to live in urban areas, such as Honolulu, where they are closer to the financial and cultural core, and closer, as well, to their academic and professional contacts.

The result, in practical terms, is that health care professionals living in east Hawaii are spread very thin and cannot serve all of those who need care. Patients, as a consequence, are forced to fly to Honolulu or go to the emergency room at Hilo hospital for basic medical care. Both of these alternatives are expensive, and there is understandable concern that the primary care patient load takes valuable emergency staff and resources at Hilo hospital away from true emergencies.

Under the foregoing circumstances, the health and welfare of the residents of east Hawaii clearly require that strategies for the recruitment and retention of primary care professionals for the area be developed and implemented immediately.

The legislature is aware that health care professionals are more likely to remain and practice in the community where they received their professional training. Experience in a rural setting helps to overcome some of the reluctance of physicians to practice in rural communities. Additionally, the presence of professional training opportunities in a rural community also generates an academic atmosphere which benefits community and physicians alike, and improves both the quality and quantity of services delivered.

The purposes of this Act are to establish:

- (1) A family practice residency program in the school of medicine of the University of Hawaii with a curriculum that includes opportunities for participating residents to train in an accredited training site at Hilo hospital;
- (2) A two-year demonstration project to provide training to health care graduates and students, including medical and nursing graduates and students, at the Hilo hospital training site; and
- (3) A family practice ambulatory health center at the "old" Hilo hospital which shall serve as a training site for the foregoing program and demonstration project.

SECTION 2. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§304- Family practice residency program; established. (a) The school of medicine of the University of Hawaii shall develop an accredited family practice residency program with a curriculum that includes opportunities for residents to participate in residency training at designated accredited training sites in

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rural and medically under-served communities in the State. In developing the program, the following shall be considered:

- (1) The use of compensated and volunteer faculty, including physicians residing in the training community, to instruct and supervise participants in the program;
- (2) The provision of faculty development training for community physicians assisting in a voluntary capacity;
- (3) The provision of inpatient, outpatient, and emergency room training;
- (4) The coordination of patient care with ancillary care services such as occupational therapy, physical therapy, respiratory therapy, and social services; and
- (5) The provision of housing accommodations for participants in close proximity to the training site.

(b) The residency program and the training component incorporated therein shall meet the requirements necessary to achieve and maintain accreditation with the accreditation committee for graduate medical education and the residency review committee for family practice. The program curriculum shall be developed to provide participants with the knowledge, training, and skills they require to be eligible to take the board certification examination offered by the American Board of Family Practice."

SECTION 3. There is established a two-year demonstration project to be known as the "rural health care training project." This project shall provide training for health care graduates and students, including medical and nursing graduates and students, at the family practice ambulatory health center developed under this Act. The school of medicine of the University of Hawaii, the school of nursing of the University of Hawaii Manoa, the school of nursing of the University of Hawaii Hilo, Hilo hospital, and the department of health shall work together in developing the rural health care training demonstration project.

SECTION 4. There is established a family practice ambulatory health center to be located at the "old" Hilo hospital site. This center shall:

- (1) Focus on the provision of primary care in a community-based setting;
- (2) Serve as one of the training sites for the family practice residency program of the school of medicine of the University of Hawaii; and
- (3) Serve as the training site for the rural health care training demonstration project.

The University of Hawaii (Manoa and Hilo campuses), Hilo hospital, and the department of health shall work cooperatively with the east Hawaii community in planning, developing, and establishing the family practice ambulatory health center at Hilo hospital.

SECTION 5. New statutory material is underscored.¹

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

(Approved July 1, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 348

H.B. NO. 1370

A Bill for an Act Relating to Historic Preservations.

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

SECTION 1. The legislature finds that the demands of Hawaii's rapidly expanding population have placed increasing pressures on the finite land resources of the State. Some of these lands have significance in terms of their scenic, recreational, historical, cultural, or ecological value. An example of a landmark that requires special protection is Mount Olomana on the island of Oahu. The scenic, cultural, and historical value of this familiar landmark should be protected before it is irreparably damaged. The purpose of this Act, therefore, is to recognize the historical significance of Mount Olomana and authorize the acquisition of lands necessary for its protection.

SECTION 2. Chapter 6E, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

"§6E- Mount Olomana state monument. There is established the Mount Olomana state monument as a historic landmark on Oahu to be administered by the department of land and natural resources and to consist of those lands that the department determines to be essential to the preservation of the visual, cultural, and historical aspects and significance of Mount Olomana. Subject to legislative appropriation, the department shall acquire through purchase, land exchange, or both, those lands identified as significant to the preservation of Mount Olomana as a historic landmark."

SECTION 3. The department of land and natural resources shall acquire all or portions of the approximately 368.78 acres of land identified by tax map key number (I) 4-2-05:01, through purchase pursuant to section 171-30, Hawaii Revised Statutes, entering into a land exchange pursuant to section 171-50, or both, for the preservation of Mount Olomana as a historic landmark.

SECTION 4. New statutory material is underscored.¹

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

(Approved July 1, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 349

H.B. NO. 1459

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 88-24, Hawaii Revised Statutes, is amended to read as follows:

"§88-24 Composition of board. The board of trustees shall consist of [seven] eight members as follows:

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- (1) The director of finance of the State, ex officio;
- (2) [Three] Four members of the system, two of whom shall be general employees [and], one of whom shall be a teacher, and one of whom shall be a retirent to be elected by the members and retirants of the system under [the] rules [and regulations] adopted by the board governing the election to serve for terms of six years each, one of the terms to expire on January 1 of each even-numbered year; provided that, if after the close of filing of petitions for candidacy, a member is unopposed for election to a trustee position, the member shall be deemed and declared to be duly and legally elected to the position of trustee without an election; and
- (3) Three citizens of the State who are not employees, one of whom shall be a responsible officer of a bank authorized to do business within the State, or a person of similar experience, to be appointed by the governor, with the advice and consent of the senate, to serve for a term of six years each, one of the terms to expire January 1 of each odd-numbered year.

Each trustee shall serve until the trustee's successor is elected or appointed, as the case may be, and qualified. For the purpose of this section, the term "general employees" includes police officers and firefighters."

SECTION 2. Section 88-28, Hawaii Revised Statutes, is amended to read as follows:

"§88-28 Voting; rules. Each trustee shall be entitled to one vote on the board of trustees. [Four] Five concurring votes shall be necessary for a decision by the trustees at any meeting of the board.

Subject to the limitations of this part, the board [shall], from time to time, shall establish rules [and regulations] for the administration of the funds of the system and for the transaction of its business."

SECTION 3. To ensure that there is a smooth transition when the composition of the existing board of trustees is altered, as provided by this Act, the employees' retirement system shall review the situation and make findings and recommendations to the legislature at least twenty days before the convening of the regular session of 1994.

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

SECTION 5. This Act, upon its approval, shall take effect on July 1, 1994; provided further that section 3 shall take effect upon approval.

(Approved July 1, 1993.)

ACT 350

H.B. NO. 1628

A Bill for an Act Relating to Laws Affecting Financial Institutions.

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 designated and to read as follows:

"CHAPTER 412"**ARTICLE 1. GENERAL PROVISIONS**

§412:1-100 Short title. This chapter shall be known and may be cited as the Code of Financial Institutions.

§412:1-101 Purpose. This chapter shall be liberally construed and applied to promote its underlying purposes and policies, which are as follows:

- (1) To simplify, clarify, and modernize the laws concerning the regulation, organization, management, and activities of financial institutions in this State; and
- (2) To provide a comprehensive set of laws applicable to financial institutions.

§412:1-102 Scope and application of chapter. (a) This chapter shall be applicable to the following:

- (1) All Hawaii financial institutions;
- (2) Other persons, including foreign financial institutions, who subject themselves to special provisions of this chapter, or who, by violating any of its provisions, become subject to the penalties of this chapter; and
- (3) To the extent permitted by federal law, all federal financial institutions transacting business in this State.

(b) A person shall not be deemed to be doing business in this State simply because it participates in a mortgage loan transaction with a Hawaii financial institution or a federal financial institution whose operations are principally conducted in this State by purchasing, acquiring, transferring, servicing, enforcing, or otherwise dealing with mortgaged property located in this State, or by foreclosing upon, or acquiring title to mortgaged property in case of a default under the mortgage, securing the rents and profits therefrom, or disposing of the same.

(c) Loans made by a financial institution pursuant to an agreement that a federal agency will guaranty the loan, or will purchase the loan, shall be subject to this chapter only to the extent consistent with federal law. No law of the State prescribing the nature, amount, or form of security or requiring security upon which loans may be made, or limiting the aggregate amount which is permitted to be invested in loans by reason of type of investment, or prescribing or limiting interest rates upon loans, or prescribing or limiting the period for which loans may be made shall be deemed to apply to loans made pursuant to an agreement with a federal agency that it will guaranty or purchase the loan.

§412:1-103 Application to existing financial institutions. (a) The provisions of this chapter shall apply to all financial institutions existing on the effective date of this chapter, except as provided in this section.

(b) The existence, charters, licenses, and certificates of authority of Hawaii financial institutions or foreign financial institutions formed or existing on the effective date of this chapter are not affected by the enactment of this chapter nor by any change made thereby in the requirements for the formation of Hawaii financial institutions or chartering, licensing or certification of Hawaii financial institutions or foreign financial institutions, nor by the amendment or repeal thereby of the laws under which they were formed, created, chartered, licensed or certified.

(c) Except to the extent specifically provided in this chapter, the power and authority of financial institutions existing on the effective date of this chapter shall

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not be limited or restricted in any way by the enactment of this chapter nor by the amendment or repeal of the laws under which they were formed or created, or which granted such power and authority. Except to the extent specifically provided otherwise in this chapter, no federal powers granted to Hawaii financial institutions prior to the effective date of this chapter under Act 258, Session Laws of Hawaii 1969, as amended, Act 179, Session Laws of Hawaii 1969, as amended, and Act 125, Session Laws of Hawaii 1977, as amended shall be limited or restricted in any way by the enactment of this chapter.

(d) Except as otherwise provided in this section, any Hawaii financial institution which on the effective date of this chapter is not in compliance with any of the provisions of sections 412:3-104, 412:3-106, 412:3-209, 412:3-500, 412:4-104, or 412:9-101 of this chapter shall within one hundred eighty days after the effective date of this chapter inform the commissioner in writing as to the extent and nature of its noncompliance and shall simultaneously file with the commissioner a plan for achieving full compliance with such provisions. The commissioner shall thereafter review and consider the circumstances of the Hawaii financial institution and shall by order establish a date by which the institution shall fully comply, which shall not in any event be later than the third anniversary of the effective date of this chapter, unless otherwise provided herein or by federal law, or unless extended by the commissioner.

(e) A financial services loan company licensed in this State and actively engaged in business in this State on the effective date of this chapter shall have the minimum capital and surplus required for the institution under existing law of this State immediately prior to the effective date of this chapter, rather than the minimum capital and surplus required under this chapter. Upon a sale or transfer to a third party of a controlling interest in the financial services loan company, other than by devise or descent, the institution shall comply with the minimum capital and surplus requirements of this chapter.

(f) Neither the enactment of this chapter nor the amendment of this chapter nor the amendment or repeal of the laws under which financial institutions existing on the effective date of this chapter were formed or created shall void, render voidable, abrogate, terminate or amend any contract, agreement, lease, loan, commitment, indenture, restrictive covenant, participation agreement, trust, designation, appointment, agency, investment, certificate or other instrument of any description to which an existing financial institution is a party or by which it is bound, or under which it holds any rights or benefits, which were in effect immediately before the effective date of this chapter.

§412:1-104 Names. Unless authorized to engage in business as a financial institution in this State of the type indicated by the name or as otherwise approved by the commissioner, no person may use any of the terms "financial institution," "bank," "savings bank," "savings and loan," "savings association," "financial services loan company," "credit union," "trust company," "intra-Pacific bank," "international banking corporation," words of similar import, or translations of such words, in a manner that might suggest or tend to lead others into believing that the person is a financial institution of the character indicated by the name. No financial institution may use words designating another type of financial institution, or words of similar import, or translations of such words, in a manner that suggests or might tend to lead others into believing that it is that type of financial institution.

§412:1-105 Deposits. Except as expressly authorized by this chapter, section 415-106(c), or by federal law, no person shall solicit, accept or hold deposits in this State.

§412:1-106 Headings; references. The meaning or scope of any provision of this chapter is not affected by any heading. Any references in this chapter to federal laws or regulations shall be deemed to refer to successor laws and regulations unless the reference is clearly inapplicable.

§412:1-107 Particular provisions prevail. Provisions of this chapter relating to a particular class of financial institutions or a particular matter shall prevail over provisions relating to financial institutions in general or to such matter in general.

§412:1-108 Jurisdiction conferred upon circuit court. For all matters requiring or permitting judicial action or remedy in this chapter, jurisdiction is conferred upon the circuit court of the judicial circuit in which the principal office in this State of the affected financial institution is located.

§412:1-109 Definitions. As used in this chapter, except as otherwise specifically provided herein:

“Affiliate,” with respect to an existing or proposed financial institution or a financial institution holding company, means any company that controls the financial institution or the financial institution holding company and any other company that is under common control with the financial institution or the financial institution holding company.

The following shall not be considered to be an affiliate:

- (1) Any company, other than a financial institution, that is a subsidiary of a financial institution;
- (2) Any company engaged solely in holding or leasing the premises of a financial institution;
- (3) Any company engaged solely in conducting a safe deposit business;
- (4) Any company engaged solely in holding obligations of the United States or its agencies or obligations fully guaranteed by the United States or its agencies as to principal and interest; and
- (5) Any company where control results from the exercise of rights arising out of a bona fide debt previously contracted, but only for the period of time specifically authorized under applicable State or federal law or regulation.

“Aggregate net contribution to capital” of a company means the sum of amounts employed to purchase capital stock of a company and to make contributions to the company’s capital and surplus, less amounts received upon the sale or redemption of capital stock of the company or received in distributions with respect to the company’s capital stock other than amounts received in distributions from the accumulated net earnings of the company.

“Aggregate outstanding investment” in a company means the sum of amounts employed to purchase capital stock of a company, to make contributions to the company’s capital and surplus and to invest in obligations of the company, less amounts received upon the sale or redemption of capital stock of the company, amounts received in distributions with respect to the company’s capital stock other than distributions from the accumulated net earnings of the company, and amounts received to retire obligations of the company.

“Appropriate federal regulatory agency” means, with respect to a financial institution or financial institution holding company, any one or more regulatory agencies of the Federal government referred to in the following sentence which either (1) insures the deposits of the financial institution or financial institution holding company, or (2) has the power and duty to conduct periodic general examinations of the affairs of the financial institution or financial institution hold-

ing company by virtue of the legal characterization of the financial institution or financial institution holding company under federal law, and not by virtue of the fact of affiliation of the financial institution or financial institution holding company with any other person or an alleged violation of a specific law. Subject to the preceding sentence, an appropriate federal regulatory agency may be the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Reserve Board, the Office of Thrift Supervision, the National Credit Union Administration or any regulatory agency of the Federal government which shall succeed to the insurance or supervisory duties of one of the foregoing.

“Capital” means: (1) the aggregate par value or other amount received and allocated to the issued and outstanding capital stock of a financial institution; or (2) the total amount of a mutual association or a credit union’s outstanding and unimpaired membership shares or share accounts.

“Capital stock” means the units of interest, whether or not having a par value, common or preferred, legally issued by a financial institution or other corporation, which represents a fractional ownership interest in the institution or corporation. The term does not include shares or membership in a mutual savings and loan association or credit union.

“Circuit court” means the court established in each of the judicial circuits of this State pursuant to chapter 603 and which has jurisdiction under section 412:1-108 over a matter.

“Commissioner” means the commissioner of financial institutions of this State.

“Common stock” means all capital stock of a financial institution or other corporation that is not preferred stock.

“Company” means any corporation, partnership, trust (business or otherwise), association, joint venture, pool syndicate, unincorporated organization, or any form of business entity not specifically listed herein and, unless specifically excluded, a financial institution; provided that “company” does not mean any trust existing on the effective date of this chapter which under its terms must terminate within twenty-five years, or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust.

“Comparable financial institution” means:

- (1) In the case of a bank that is a Hawaii financial institution, a national banking association, and vice-versa;
- (2) In the case of a savings and loan association or savings bank that is a Hawaii financial institution, a federal savings and loan association or federal savings bank, and vice-versa; and
- (3) In the case of a credit union that is a Hawaii financial institution, a federal credit union, and vice-versa.

“Conservator” means a person appointed by the commissioner to take possession and control of a Hawaii financial institution for a temporary period in order to preserve and protect the assets of the institution for the benefit of its depositors, beneficiaries, creditors, and shareholders or members.

“Control” means, unless the context clearly requires otherwise, directly or indirectly, solely or through another person or transaction, or in concert with another:

- (1) Owning or having the power to vote twenty-five per cent or more of any class of voting securities;
- (2) Owning or having the power to exercise twenty-five per cent or more of the votes of a mutual association, credit union, or other entity whose voting rights are not determined by voting securities;
- (3) Owning or having the power to vote ten per cent or more of any class of voting securities if: (A) the issuer of that class of securities has

- issued any class of securities under section 12 of the Securities Exchange Act of 1934, as amended; or (B) immediately after the acquisition, no other person will own a greater percentage of that class of voting securities;
- (4) Having the power to elect by any means a majority of the directors; or
 - (5) Having the power to exercise a dominant influence over management, if so determined by the commissioner after notice and a hearing.

No depository institution or trust company shall be deemed to own or control a company by virtue of its ownership or control of shares in a fiduciary capacity, unless that depository institution or trust company has sole voting power over a sufficient number of voting securities of the company to constitute control hereunder.

“Deposit” or “deposits” means money or its equivalent received or held by a person in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a demand, checking, savings, time, passbook, negotiable order of withdrawal, thrift or share account, or which is evidenced by its passbook, certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument, or a check, draft or share draft drawn against a deposit account and certified by a person, on which the person is primarily liable.

“Depository institution” means a financial institution that is authorized to accept deposits under its chartering or licensing authority and includes a bank, savings bank, savings and loan association, depository financial services loan company, credit union, or intra-Pacific bank.

“Director” means any member of the board of directors of a financial institution, whether or not receiving compensation. An advisory director is not considered a director if the advisory director (1) is not elected by the shareholders of the financial institution, (2) is not authorized to vote on matters before the board of directors, and (3) provides solely general policy advice to the board of directors.

“Division” means the division of financial institutions of the department of commerce and consumer affairs of this State.

“Executive officer” of a financial institution means a person who participates or has authority to participate (other than in the capacity of a director) in major policymaking functions of the financial institution, whether or not: (1) the officer has an official title, (2) the title designates the officer as an assistant, or (3) the officer is serving without salary or other compensation. The chairman of the board, the president, every vice president, the secretary, and the treasurer of a financial institution are considered executive officers, unless (1) the officer is excluded, by resolution of the board of directors or by the bylaws of the financial institution, from participation (other than in the capacity of a director) in major policymaking functions of the financial institution, and (2) the officer does not actually participate in such major policymaking functions. An executive officer of a financial institution includes an executive officer of any subsidiary of the financial institution, unless the executive officer of the subsidiary (1) is excluded (by name or by title) from participation in major policymaking functions of the financial institution by resolutions of the boards of directors of both the subsidiary and the financial institution, and (2) does not actually participate in such major policymaking functions.

“Federal” means belonging to, part of, or related to the government of the United States of America.

“Federal financial institution” means a national banking association, federal savings bank, federal savings and loan association or federal credit union.

“Federal Home Loan Bank” means a federal home loan bank created and organized under the authority of the Federal Home Loan Bank Act.

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“Federal Reserve Bank” means a federal reserve bank created and organized under the authority of the Federal Reserve Act.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System created and described in the Federal Reserve Act.

“Financial institution” means a Hawaii financial institution, and unless the context indicates otherwise, a federal financial institution or foreign financial institution.

“Financial institution holding company” is a holding company which controls a Hawaii financial institution or which controls another financial institution holding company. The following persons shall not be deemed to come within the definition of a financial institution holding company:

- (1) A registered dealer who acts as an underwriter or member of a selling group in a public offering of the voting securities of a financial institution or of a financial institution holding company;
- (2) A person who acts as proxy for the sole purpose of voting at a designated meeting of the security holders of a financial institution or of a financial institution holding company;
- (3) A person who acquires control of a financial institution or of a financial institution holding company by devise or descent; or
- (4) A pledgee of a voting security of a financial institution or of a financial institution holding company who does not have the right, as pledgee, to vote such voting security.

“Financial institution subsidiary” means: (1) a financial institution that is controlled by a financial institution holding company, or (2) a financial institution holding company that is controlled by another holding company.

“Foreign financial institution” means a person, other than a Hawaii financial institution or a federal financial institution whose operations are principally conducted in this State, which is authorized to engage under the laws of its jurisdiction of organization, or does engage, in the business of accepting deposits or making loans or engaging in the trust business.

“Hawaii financial institution” means a corporation or credit union which holds a charter or license under this chapter or under prior Hawaii law, authorizing it to accept deposits, to make loans in excess of the rates permitted in chapter 478, or to engage in the business of a trust company, and includes a corporation, mutual savings and loan association or credit union existing and chartered as a Hawaii financial institution or licensed to transact business in this State on the effective date of this chapter. A Hawaii financial institution may be a bank, savings bank, savings and loan association, depository financial services loan company, nondepository financial services loan company, trust company, credit union, or intra-Pacific bank.

“Holding company” means any company which controls another company.

“Impaired capital and surplus” or similar language relating to impairment of capital or surplus, means that a financial institution has less than the minimum amount of capital and surplus required under this chapter for that type of financial institution.

“In concert with another” means (1) knowing participation in a joint activity or interdependent conscious parallel action towards a common goal whether or not pursuant to an express agreement; or (2) a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or otherwise.

“Insolvency” means, with respect to a financial institution, that the value of its assets is insufficient to pay its depositors and its creditors.

“Institution-affiliated party” means any of the following:

- (1) Any director, officer, employee or controlling shareholder of, or agent for, or other person that controls a financial institution;
- (2) Any person who has filed or is required to file an application to become a financial institution with the commissioner or an application to acquire control of a Hawaii financial institution or financial institution holding company with the commissioner;
- (3) Any shareholder, consultant, joint venture partner, and any other person as determined by the commissioner (by rule or case-by-case) who participates in the conduct of the affairs of a financial institution; or
- (4) Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any of the following which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the financial institution:
 - (A) Any violation of law or rule,
 - (B) Any breach of fiduciary duty, or
 - (C) Any unsafe or unsound practice.

“Loans and extensions of credit” by a financial institution means any direct or indirect advance of funds (including obligations of makers and endorsers arising from the discounting of commercial paper) to or for the benefit of a person made on the basis of any obligation of that person to repay the funds. “Loans and extensions of credit” includes a contractual commitment to advance funds. “Contractual commitment to advance funds” means (1) an obligation to make payments, directly or indirectly, to a third party contingent upon default by the financial institution’s customer in the performance of an obligation under the terms of that customer’s contract with the third party or upon some other stated condition, or (2) an obligation to guarantee or stand as surety for the benefit of a third party. The term includes, but is not limited to, standby letters of credit, guarantees, puts or other similar arrangements; but does not include commercial letters of credit and similar instruments where the issuer expects the beneficiary, to draw upon the issuer, which do not guaranty payment of a money obligation, and which do not provide for payment in the event of default of the account party.

“Obligation” means any bond, debt, debenture, loan, note or similar undertaking.

“Obligor” means a person owing an obligation.

“Open to the public” means accessible or available to the general public during regular business hours without special permission.

“Operations are principally conducted” where total deposits placed with a person together with deposits placed with its subsidiaries are largest.

“Paid-in capital” means the amount of capital actually received by the financial institution for its capital stock, membership shares or share accounts, as the case may be.

“Passbook” means any book, statement of account, or other record used by a financial institution to record deposits, withdrawals, interest, dividends and changes.

“Person” means a natural person, entity or organization, including without limitation an individual, corporation, joint venture, partnership, sole proprietorship, association, cooperative, estate, trust, or governmental unit.

“Preferred stock” means capital stock in a financial institution or other corporation which entitles its holders to some preference or priority over the owners of common stock, usually with respect to dividends or asset distributions in liquidation.

“Principal shareholder” means a person other than a financial institution, that, directly or indirectly, or acting through or in concert with another, owns, controls, or has the power to vote more than ten per cent of any class of voting

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securities of a financial institution. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual. As used in this definition "immediate family" means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

"Receiver" means a person appointed by the commissioner to take possession and control of a Hawaii financial institution for the purpose of liquidating and winding up the affairs of the institution.

"Related interest" means (1) a company that is controlled by a person or (2) a political or campaign committee that is controlled by a person or the funds or services of which will benefit a person.

"Retained earnings" means the net income of a financial institution earned since its inception which has not been distributed to its shareholders or transferred or allocated to capital stock or surplus or, as the case may be, the accumulated deficits of the financial institution. The term "retained earnings" is interchangeable with the term "undivided profits".

"State" or "this State" means the State of Hawaii, its political subdivisions, agencies, and departments.

"Stock financial institution" means a financial institution which issues shares of capital stock as evidence of fractional ownership in the institution. The term does not include mutual savings and loan associations or credit unions.

"Subsidiary" means a corporation, joint venture, partnership, or other company that is controlled by another corporation.

"Surplus" means an amount received by a financial institution for its capital stock, membership shares, or share accounts, as the case may be: (1) in excess of the par value of any shares having par value; or (2) in excess of the amount allocated to shares without par value, membership shares or share accounts. "Surplus" also means an amount transferred or allocated to the financial institution's surplus from retained earnings, and, unless the context otherwise clearly requires, "surplus" includes retained earnings, whether or not transferred or allocated to surplus.

ARTICLE 2. DIVISION OF FINANCIAL INSTITUTIONS

PART I. ADMINISTRATION

§412:2-100 Commissioner of financial institutions; division of financial institutions. (a) The director of commerce and consumer affairs, with the approval of the governor, shall appoint the commissioner of financial institutions. The commissioner shall be in charge of the division of financial institutions within the department of commerce and consumer affairs. The commissioner shall be the primary regulator of Hawaii financial institutions, and shall have the authority expressly conferred by or reasonably implied from the provisions of this chapter. The commissioner may be removed by the director of commerce and consumer affairs with the approval of the governor; provided that while there is any vacancy in the office of the commissioner, the director of commerce and consumer affairs shall serve as ex-officio commissioner. The commissioner shall not be subject to chapters 76 and 77.

(b) The salary of the commissioner shall be set by the director of commerce and consumer affairs but shall not be more than the maximum salary of first deputies to department heads.

(c) It shall be the primary purpose of the division of financial institutions to ensure the safety and soundness of Hawaii financial institutions and to maintain

public confidence in such institutions through the process of chartering and licensing, regulatory approval, examinations and supervision.

§412:2-101 Deputy commissioner, acting commissioner. The deputy commissioner shall have such duties as are assigned by the commissioner from time to time, and shall serve as acting commissioner whenever the commissioner is out of the State or is otherwise incapable of performing the commissioner's duties.

§412:2-102 Examiners and other personnel. The commissioner may hire as many examiners, professional employees and clerical personnel as the business of the division of financial institutions may require. The commissioner may also appoint an examiner knowledgeable in international banking who shall have the same powers and authority as other examiners, but who shall not be subject to chapters 76 and 77.

§412:2-103 Disqualifications. No person shall be an examiner who is a director of or owner of any interest, or shares of stock, in any company that may be examined pursuant to this chapter.

§412:2-104 Confidentiality of information possessed by commissioner.

(a) The commissioner and all employees, contractors, and appointees of the division of financial institutions shall not divulge or furnish any information in their possession or obtained by them in the course of their official duties to persons outside the division of financial institutions, except the director of the department of commerce and consumer affairs, or unless otherwise permitted by this section or any other law regulating financial institutions or financial institution holding companies, in which case such disclosure shall not authorize or permit any further disclosure of such information. The disclosures prohibited by this section shall include without limitation information that is:

- (1) Privileged or exempt from disclosure under any federal or State law;
- (2) Related to an examination performed by or on behalf of the commissioner or contained in any report of examination;
- (3) Contained in any report submitted to or for the use of the commissioner, except for the nonproprietary portions of applications;
- (4) Related to the business, personal, or financial affairs of any person and is furnished to or for the use of the commissioner in confidence;
- (5) Related to trade secrets and commercial or financial information obtained from a person and is privileged or confidential;
- (6) Obtained pursuant to any lawful investigation for the purpose of enforcing the laws regulating financial institutions and financial institution holding companies in an action or proceeding under parts III, IV, V and VI of this article;
- (7) Related solely to the internal personnel rules or other internal practices of the commissioner;
- (8) Contained in personnel, medical, and similar files (including financial files), the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or
- (9) Contained in inter-agency and intra-agency communications, whether or not contained in written memoranda, letters, tapes or records that would not be routinely available by law to a private party, including but not limited to memoranda, reports, and other documents prepared by the staff of the commissioner.

(b) The commissioner shall furnish a copy of each report of examination to the financial institution or financial institution holding company examined. The

report and its contents shall remain the property of the commissioner and shall not be disclosed to any person who is not an officer, director, employee or authorized auditor, attorney or other consultant or advisor of the financial institution or financial institution holding company. Any person which has received the report from the financial institution or financial institution holding company shall be bound by the confidentiality provisions of this part. Subpoenas of or other legal process to obtain reports of examination or information contained therein shall be directed to the commissioner and not to the financial institution or financial institution holding company that is the subject of the examination. Upon receipt of such a subpoena or other legal process requiring disclosure of such information the commissioner may file a statement of objections or a motion with a court of competent jurisdiction for a protective order and, in any event, shall immediately notify the financial institution that is the subject of the report of examination of the subpoena or other legal process and all relevant circumstances pertaining to the same. Upon receipt of such notification, the financial institution may itself file a statement of objections or a motion with a court of competent jurisdiction for a protective order.

(c) The commissioner may furnish reports of examination and other information relating to the examination of a financial institution or financial institution holding company to:

- (1) The governor, attorney general and the heads of other State governmental agencies having regulatory authority over the financial institution or financial institution holding company;
- (2) The appropriate federal regulatory agencies of the financial institution or financial institution holding company;
- (3) The Office of Comptroller of the Currency, the Federal Housing Finance Board or a federal, state, or foreign bank regulatory agency if the requesting agency agrees to use the information only for functions directly related to the exercise of its appropriate supervisory authority; and
- (4) Other agencies of the United States or a state for use where necessary to investigate civil or criminal charges in connection with the affairs of any financial institution or financial institution holding company under the supervision of the commissioner.

(d) Upon the request of the financial institution or financial institution holding company, and pursuant to a proper showing of cause, the commissioner may furnish examination reports, or portions thereof, and other information relating to that financial institution or financial institution holding company (1) in instances other than those set forth in subsection (c), or (2) to persons not enumerated in subsection (c), including to prospective acquirers of the Hawaii financial institution or financial institution holding company. The decision to grant a request under this subsection shall be in the sole discretion of the commissioner.

(e) All reports or other information made available pursuant to this section shall remain the property of the commissioner, and no person, financial institution or financial institution holding company, agency or authority to whom the information is made available, or any officer, director, employee or agent thereof, shall disclose any of that information, except for the publishing of aggregate statistical material that would not disclose the identity of any person, financial institution or financial institution holding company. In exchanging reports or other information permitted in this section, the commissioner shall require the person receiving the report, as a condition of receipt, to comply with the confidentiality provisions of this section.

(f) The commissioner may provide information regarding trends and issues affecting financial institutions and may make available to the public a combined statement of the condition of Hawaii financial institutions in such form as the

commissioner may see fit, using information derived from reports furnished to the commissioner by the Hawaii financial institutions. The commissioner may also disclose statistical data regarding the number of consumer complaints filed against an institution, the general nature of the complaint and the resolution of the complaint.

(g) Any person who violates this section shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640. Such person shall also be subject to an administrative fine pursuant to section 412:2-609. If such person is an employee, contractor or appointee of the State, such person shall be subject to immediate dismissal or termination proceedings without violating such person's contract, if any.

§412:2-105 Fees and assessments. (a) The commissioner may charge an examination fee based upon the cost per hour per examiner for all financial institutions examined by the commissioner or the commissioner's staff. The hourly fee shall be established by the commissioner by rule adopted in accordance with chapter 91.

(b) In addition to the examination fee, the commissioner may charge any financial institution examined or investigated by the commissioner or the commissioner's staff, additional amounts for travel, per diem, mileage and other reasonable expenses incurred in connection with the examination.

(c) The commissioner shall bill the affected financial institution for examination fees and expenses as soon as feasible after the close of such examination or investigation. The affected financial institution shall pay the division of financial institutions within thirty days following the billing. Unless otherwise provided by statute, all such payments shall be deposited to the general fund of the State. All disputes relating to such billings between the affected financial institution and the commissioner shall be resolved in accordance with the procedures for contested cases under chapter 91.

(d) The commissioner may, by rules adopted in accordance with chapter 91, set reasonable fee amounts to be collected by the division in connection with its regulatory functions, including, without limitation, any fees for renewals, applications, licenses and charters. Unless otherwise provided by statute, all such fees shall be deposited into the general fund of the State.

(e) A Hawaii financial institution which fails to make a payment required by this section shall be subject to an administrative fine of not more than \$250 per day for each day it is in violation of this section, which fine, together with the amount due under foregoing provisions of this section, may be recovered pursuant to the provisions of section 412:2-611.

§412:2-106 Public or private hearings. (a) All hearings before the commissioner shall be subject to chapter 91 and the rules adopted pursuant thereto, unless it is expressly provided otherwise in this chapter.

(b) All actions of and proceedings before the commissioner under parts III, IV, V and VI of this article shall be closed to the public. In such proceedings, reports of examination, testimony of examiners and other evidence may be presented to substantiate or refute allegations stated in any notice of charges. Except as otherwise provided by law, no person shall divulge information regarding such actions or proceedings except to governmental authorities, to the person's directors, and to its officers, employees, attorneys, auditors, or other consultants or advisors of the person who have responsibilities related to the action or proceeding. Hearings which result from joint supervisory or enforcement actions with an appropriate federal regulatory agency shall be closed to the public, unless the procedures set forth in this section are preempted by federal law.

(c) Notwithstanding subsection (b) of this section, the commissioner may authorize the disclosure of the existence or outcome of an action or proceeding under parts III, IV, V and VI of this article and may disclose other general information concerning the action or proceeding, if the commissioner shall determine that such disclosure is in the public interest.

§412:2-107 Rules. The commissioner may adopt, amend or repeal rules pursuant to chapter 91 to effectuate the purpose of all laws within the jurisdiction of the division.

§412:2-108 Alternative mortgage loans rules. The commissioner may by rule permit financial institutions to make loans secured by mortgages that do not meet the loan-to-value ratio, payment terms, compounding of interest, or other requirements contained under this chapter, chapter 478 or other law of this State, including but not limited to, alternative mortgage loans, such as "reverse annuity" and "graduated payment" mortgage loans. Such rules may specify the borrowers eligible for such alternative mortgage loans, and the limitations, restrictions, and other requirements the commissioner shall deem appropriate.

PART II. EXAMINATIONS

§412:2-200 Examinations. (a) The commissioner shall examine each Hawaii financial institution at least once every twenty-four months, or more frequently as the commissioner may determine.

(b) The purpose of every examination shall be to ensure that such Hawaii financial institution is not engaging in illegal, unsafe, or unsound practices, that its management, business practices, and policies are prudent and sound, that it is able to meet all its obligations when due, and that it is complying with all applicable laws. With respect to examinations of nondepository financial services loan companies, the commissioner may limit the scope of the examination to compliance with all applicable laws and rules.

(c) The commissioner shall have full access to the vaults, books and papers of each Hawaii financial institution being examined, except for the contents of safe deposit boxes leased to customers, and may make such inquiries as may be necessary to ascertain the condition of such institution. To the best of their knowledge and ability, and subject to the availability of privileges or immunities under state or federal law, all directors, incorporators, officers, employees, and agents of an institution being examined shall cooperate fully with the commissioner and the commissioner's examiners, shall answer all inquiries and shall furnish all information pertaining to such inquiries.

§412:2-201 Use of federal examinations. The commissioner may accept, adopt, or use in lieu of an examination prescribed by section 412:2-200 all or any part of the results of an examination conducted by a federal regulatory agency of a Hawaii financial institution for the same period or subject matter that would be covered by an examination required or permitted under this article.

PART III. ENFORCEMENT ACTIONS

§412:2-300 Enforcement actions. In enforcing the provisions of this chapter to ensure the safety and soundness of Hawaii financial institutions, the commissioner is authorized to use the powers granted to the commissioner in this part without limitation to direct the discontinuance of any violation of law, or any unsafe or unsound practice that is likely to cause insolvency or substantial dissipa-

tion of assets or earnings of the institution. The provisions of this chapter may be enforced by informal or formal actions. Informal actions include board resolutions, letter agreements, records of action, memoranda of understanding or supervisory agreements. Formal actions include cease and desist orders (whether temporary or permanent), removal orders, suspension and revocation orders, divestiture orders and orders enforcing statutory provisions. In enforcing the provisions of this chapter, a Hawaii financial institution or any institution-affiliated party may consent to the entry of any formal order.

§412:2-301 Joint enforcement with federal regulatory agency. The commissioner may enter into any agreement and take any action with the appropriate federal regulatory agency to enforce jointly all federal and state laws applicable to the Hawaii financial institution.

§412:2-302 Cease and desist orders; grounds for issuance. The commissioner may issue a temporary or permanent cease and desist order to any Hawaii financial institution or any institution-affiliated party that the commissioner finds or has reasonable cause to believe:

- (1) Is violating, has violated, or is about to violate this chapter or any rules issued pursuant to this chapter;
- (2) Is violating, has violated, or is about to violate any written condition imposed by the commissioner on such financial institution's authority to engage in business, or any condition of a written agreement between the financial institution and the commissioner;
- (3) Is engaging, has engaged, or is about to engage in an illegal, unauthorized, unsafe or unsound practice; or
- (4) Is failing to maintain books and records that are sufficiently complete and accurate so as to permit the commissioner to determine the financial condition of the institution named in the order.

§412:2-303 Permanent cease and desist orders; procedure; hearing; enforcement. (a) The notice of charges and proposed permanent cease and desist order shall be in writing and shall be served upon the institution-affiliated party or the Hawaii financial institution at its principal office in this State. The notice of charges shall state the alleged violations or wrongful practices and a summary of the facts in support of such allegations. The notice shall be accompanied by a proposed order which states the commissioner's intent to require discontinuance of such violation or practice and the immediate compliance with all requirements of any applicable agreement or law. The proposed order may also direct such affirmative action as may be necessary to prevent insolvency or to correct the alleged violation or wrongful practice. The notice of charges shall set forth a time and place for a hearing to determine whether the proposed order shall be issued.

(b) Within twenty days after service of a notice of charges, unless an earlier date or later date is set by the commissioner upon request of the affected party, the commissioner shall hold a hearing in accordance with chapter 91. If no appearance is made at the scheduled hearing by the party or its duly authorized representative, the party shall be deemed to have consented to the issuance of the cease and desist order and the commissioner may issue a permanent cease and desist order. Any cease and desist order issued after a hearing held in accordance with this subsection shall become effective after service upon the affected party and shall remain effective until modified or terminated by the commissioner. Any appeal of a permanent cease and desist order shall be made to the circuit court in accordance with chapter 91.

(c) On or after the effective date of any permanent cease and desist order, the commissioner may apply for enforcement of the order to the circuit court. Such application may also contain a petition for such other relief or remedies as may be appropriate in the circumstances. The application shall be given precedence over other cases pending in court, and shall in every way be expedited.

§412:2-304 Temporary cease and desist orders; effective date; hearing; enforcement. (a) In order to act with the utmost speed, the commissioner may issue a temporary cease and desist order upon a determination that (1) one or more of the grounds specified in section 412:2-302 are present; and (2) the violation or threatened violation or unsafe or unsound practice is likely to cause insolvency or substantial dissipation of assets or is likely to seriously weaken the condition of the institution or otherwise seriously prejudice the interests of the depositors during the period in which a permanent cease and desist order can be obtained. The order shall be accompanied by a notice of charges which states the alleged violation or wrongful practice and a summary of the facts in support of such allegation and may require discontinuance of a violation or practice, and the immediate compliance with all requirements of any applicable agreement or law. The order may also direct such affirmative action as may be necessary to prevent insolvency or to correct the alleged violation or wrongful practice. The notice of charges shall set forth a time and place for a hearing to determine whether the temporary order shall be made permanent.

(b) The order shall be effective upon service on the Hawaii financial institution or institution-affiliated party. The order shall remain in effect until a permanent cease and desist order is issued after a hearing, a permanent cease and desist order is consented to, or the charges are dismissed upon completion of a hearing. Any affected party contesting the issuance of the temporary cease and desist order may do so by applying to the circuit court for an injunction.

(c) Within ten days after service of a notice of charges, unless an earlier date or later date is set by the commissioner upon request of the affected party, the commissioner shall hold a hearing in accordance with chapter 91. If no appearance is made at the scheduled hearing by the party or its duly authorized representative, the party shall be deemed to have consented to the issuance of the cease and desist order and the commissioner may convert the temporary cease and desist order into a permanent cease and desist order. Any permanent cease and desist order issued after a hearing held in accordance with this subsection shall become effective after service upon the affected party and shall remain effective until modified or terminated by the commissioner. Any appeal of a permanent cease and desist order shall be made to the circuit court in accordance with chapter 91.

(d) Any temporary cease and desist order may be enforced in the circuit court upon application by the commissioner. Any permanent cease and desist order issued in accordance with this section may be enforced as provided in section 412:2-303(c).

§412:2-305 Consent cease and desist orders. Any Hawaii financial institution or institution-affiliated party may waive its rights to a hearing on any notice of charges by stipulating and consenting to the issuance of a permanent cease and desist order or by stipulating and consenting to the conversion of a temporary cease and desist order into a permanent cease and desist order. Any cease and desist order issued by consent shall be effective as of the date specified therein and shall remain effective until modified or terminated by the commissioner.

§412:2-306 Removal or prohibition of institution-affiliated party; grounds. The commissioner may order the removal of any institution-affiliated

party from office or employment with a Hawaii financial institution and the prohibition of such party's affiliation or participation in the affairs of such financial institution if the commissioner determines that all three of the following circumstances exist:

- (1) The institution-affiliated party has violated this chapter or any rules issued pursuant to this chapter, violated a cease and desist order which has become effective, engaged or participated in an unsafe or unsound practice in connection with the financial institution, or breached a fiduciary duty owed to the financial institution;
- (2) By reason of such violation, practice, or breach the financial institution has suffered or will probably suffer financial loss or other damage, the interests of the financial institution's depositors have been or may be prejudiced, or the institution-affiliated party has received financial gain or other benefit as a result of such violation, practice, or breach; and
- (3) The violation, practice, or breach involves the institution-affiliated party's personal dishonesty, or demonstrates such party's wilful or continuing disregard for the safety or soundness of the financial institution.

§412:2-307 Removal or prohibition of institution-affiliated party; procedure; hearing; enforcement. (a) The notice of charges and the proposed order of removal or prohibition shall be in writing and served upon the institution-affiliated party and the affiliated Hawaii financial institution. The notice of charges shall state the alleged violations, wrongful practices, or breaches and a summary of the facts upon which such allegations are based. The notice shall be accompanied by a proposed order stating the commissioner's intention to remove such party from office, or prohibit such party's affiliation with the financial institution, or both. The notice of charges shall set forth a time and place for a hearing to determine whether the removal or prohibition order shall be issued.

(b) Within twenty days after service upon the institution-affiliated party, unless an earlier or later date is set by the commissioner upon request of the affected party, the commissioner shall hold a hearing in accordance with chapter 91. If no appearance is made at the scheduled hearing by the party or its duly authorized representative, the party shall be deemed to have consented to the issuance of the removal or prohibition order and the commissioner may issue a permanent removal or prohibition order. Any permanent removal or prohibition order issued after a hearing held in accordance with this subsection shall become effective after service upon the institution-affiliated party and shall remain effective until modified or terminated by the commissioner. Any permanent order of removal or prohibition issued to an institution-affiliated party shall also be served upon the affiliated Hawaii financial institution. Any appeal of a permanent removal or prohibition order shall be made to the circuit court in accordance with chapter 91.

(c) On or after the effective date of any permanent removal or prohibition order, the commissioner may apply for enforcement of the order to the circuit court.

§412:2-308 Order of immediate suspension; procedure; effective date; hearing; enforcement. (a) In order to act with the utmost speed, the commissioner may issue an order immediately suspending an institution-affiliated party upon a determination that (1) the grounds specified in section 412:2-306 are present; and (2) the protection of depositors or the financial institution warrant the immediate suspension and prohibition of the institution-affiliated party from further participation in the conduct of the affairs of the financial institution. The order shall be accompanied by a notice of charges which states the alleged violation, wrongful

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practice or breach and a summary of the facts in support of such allegation. The notice of charges shall set forth a time and place for a hearing to determine whether the temporary order shall be made permanent. Any order of immediate suspension issued to an institution-affiliated party shall also be served upon the affiliated Hawaii financial institution.

(b) The order shall be effective upon service on the institution-affiliated party. The order shall remain in effect until a permanent removal or prohibition order is issued after a hearing, a permanent removal or prohibition order is consented to, or the charges are dismissed upon completion of a hearing. Any institution-affiliated party contesting the issuance of the suspension order may do so by applying to the circuit court for an injunction.

(c) Within ten days after service of a notice of charges, unless an earlier date or later date is set by the commissioner upon request of the affected party, the commissioner shall hold a hearing in accordance with chapter 91. If no appearance is made at the scheduled hearing by the party or the party's authorized representative, the party shall be deemed to have consented to the issuance of the suspension order and the commissioner may convert the suspension order into a permanent removal or prohibition order. Any permanent removal or prohibition order issued after a hearing held in accordance with this subsection shall become effective after service upon the institution-affiliated party and shall remain effective until modified or terminated by the commissioner. Any appeal of a permanent removal or prohibition order shall be made to the circuit court in accordance with chapter 91.

(d) Any order of immediate suspension may be enforced in the circuit court upon application by the commissioner. Any permanent order of removal or prohibition issued in accordance with this section may be enforced as provided for in section 412:2-307(c).

§412:2-309 Consent order of removal and prohibition. Any institution-affiliated party may waive its rights to a hearing on any notice of charges by stipulating and consenting to the issuance of a permanent removal or prohibition order by stipulating and consenting to the conversion of a temporary suspension order into a permanent removal or prohibition order. Any final removal or prohibition order issued by consent shall be effective as of the date specified therein and shall remain effective until modified or terminated by the commissioner.

§412:2-310 Removal, prohibition, or suspension; effect of order. No institution-affiliated party whose removal, prohibition or suspension has been ordered shall thereafter participate in any manner in the conduct of the affairs of the affiliated Hawaii financial institution as long as such order is in effect. Any violation of such order shall constitute a violation of law, and shall constitute sufficient grounds for the issuance of a cease and desist order to the affiliated financial institution.

§412:2-311 Suspension, revocation or surrender of charter or license. (a) The commissioner may revoke or suspend any charter or license issued hereunder if the commissioner finds that:

- (1) Any information or representations submitted by an applicant in connection with the issuance of the charter or license were materially false when made;
- (2) Grounds exist for the appointment of a conservator or receiver under this article; or

(3) The Hawaii financial institution, for a period of six months or more, has ceased to engage in the business for which its charter or license was granted.

(b) In issuing a suspension or revocation order, whether by consent or as a result of a chapter 91 hearing, the commissioner may impose such terms and conditions as the commissioner deems appropriate to protect the public interest. The order of suspension or revocation may require the Hawaii financial institution to cease engaging in business altogether, to close one or more of its places of business, or to cease engaging in a particular type of business, as the commissioner deems appropriate.

(c) No suspension or revocation of any charter or license shall impair or affect the obligation of any preexisting lawful contract between a Hawaii financial institution and the other party or parties. Neither shall the suspension or revocation of a charter or license affect the institution's administrative, regulatory, civil or criminal liability for any act or condition existing prior to the suspension or revocation.

(d) The commissioner shall have discretion to reinstate any suspended charter or license, or issue a new charter or license to a Hawaii financial institution whose charter or license has been revoked, if the grounds for ordering the suspension or revocation are no longer present.

§412:2-312 Suspension or revocation; procedure; hearing; enforcement.

(a) The notice of charges and the proposed order of suspension or revocation shall be in writing and served upon the Hawaii financial institution at its principal office in this State. The notice of charges shall state the alleged grounds and a summary of the facts upon which such allegations are based. The notice shall be accompanied by a proposed order stating the commissioner's intention to suspend or revoke the institution's charter or license. The notice of charges shall set forth a time and place for a hearing to determine whether the suspension or revocation order shall be issued.

(b) Within twenty days after service, unless an earlier or later date is set by the commissioner upon request of the affected institution, the commissioner shall hold a hearing in accordance with chapter 91. If no appearance is made at the scheduled hearing by the party or the party's authorized representative, the party shall be deemed to have consented to the issuance of the suspension or revocation order and the commissioner may issue an order of suspension or revocation. Any suspension or revocation order issued after a hearing held in accordance with this subsection shall become effective after service upon the affected institution and shall remain effective until modified or terminated by the commissioner. Any appeal of a suspension or revocation order shall be made to the circuit court in accordance with chapter 91.

(c) On or after the effective date of any suspension or revocation order, the commissioner may apply for enforcement of the order to the circuit court.

§412:2-313 Consent suspension and revocation order. Any Hawaii financial institution may waive its right to a hearing on any notice of charges by stipulating and consenting to the issuance of an order suspending or revoking a license or charter. Any final suspension or revocation order issued by consent shall be effective as of the date specified therein and shall remain effective until modified or terminated by the commissioner.

§412:2-314 Action to correct capital and surplus impairment. (a) Whenever it appears to the commissioner that the capital and surplus of a Hawaii financial institution is impaired, the commissioner shall notify the financial institu-

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tion in writing to correct the impairment within a reasonable time specified by the commissioner, which time may be extended by the commissioner.

(b) If the Hawaii financial institution fails to correct the impairment of its capital and surplus as required, the commissioner may immediately appoint a conservator, or may close the financial institution, appoint a receiver to take possession of its assets, and proceed with the liquidation of its assets. A financial institution placed in conservatorship, pursuant to this subsection may, with the consent of the commissioner, later resume business upon such conditions as the commissioner may approve.

§412:2-315 National or state emergencies. (a) The emergency powers granted in this section may be invoked for the purpose of protecting the general public during any national or state emergency by assuring that Hawaii financial institutions subject to regulation by the commissioner can operate in a safe and effective manner.

(b) If the President of the United States declares a national emergency, by proclamation or otherwise, the commissioner may order some or all Hawaii financial institutions in the State to comply with any regulations, limitations or restrictions prescribed by the Secretary of the Treasury, the Comptroller of the Currency, the Federal Reserve Board, or other federal agency that would otherwise be applicable only to a federal financial institution.

(c) If the governor declares a state emergency, by proclamation or otherwise, the commissioner may order some or all Hawaii financial institutions in the State to observe such temporary rules, limitations or restrictions as the commissioner may prescribe in order to cope with such emergency.

(d) The commissioner may assess and collect from all affected Hawaii financial institutions their ratable share of the administrative costs incurred by the division in its administration of any emergency orders issued under this section. The determination of the commissioner of which Hawaii financial institution or institutions are "affected" and the proration method the commissioner chooses to employ in making assessments under this section may be appealed to the circuit court as provided in chapter 91 by any Hawaii financial institution aggrieved thereby.

PART IV. CONSERVATORS AND RECEIVERS

§412:2-400 Grounds for appointment of conservator or receiver. A conservator or receiver may be appointed to take possession and control of a Hawaii financial institution if such financial institution:

- (1) Is insolvent or has failed to correct an impairment of its capital and surplus as provided in section 412:2-314 of this chapter;
- (2) Is not likely to be able to meet the demands of its depositors or pay its debts in the normal course of business;
- (3) Is in an unsafe or unsound condition to transact business;
- (4) Has incurred or is likely to incur losses that will deplete all or substantially all of its capital and surplus, and there is no reasonable prospect for such capital and surplus to be replenished without federal assistance;
- (5) Has violated or is violating laws, rules or regulations, or has committed or is committing an unsafe or unsound practice, and such violation or practice is likely to cause insolvency or substantial dissipation of assets, or is likely to severely weaken the institution's condition or otherwise seriously prejudice the interests of its depositors;

- (6) Without lawful cause has concealed from or has refused to provide to the commissioner the institution's books, papers, records, information, or assets for inspection by the commissioner or by any lawful agent of the commissioner; or
- (7) Has wilfully violated or is wilfully violating a cease and desist order of the commissioner which has become effective.

§412:2-401 Appointment of conservator or receiver; judicial review. (a)

The commissioner may, without notice or prior hearing, appoint a conservator or receiver for a Hawaii financial institution by a written order setting forth the grounds for such appointment and any other conditions of the conservatorship or receivership as the commissioner deems appropriate, including without limitation the temporary or permanent closure of the financial institution. The commissioner may also require the conservator or receiver other than a federal insurer to obtain a security bond, at the expense of the financial institution, in an amount that the commissioner deems appropriate.

(b) Upon being served with any written order pursuant to subsection (a), the persons in charge of the Hawaii financial institution shall forthwith turn over possession and control of the institution to the conservator or receiver, and upon request by the conservator or receiver shall vacate the premises. The conservator or receiver may apply to the circuit court for injunctive or other relief to enforce the conservatorship or receivership.

(c) Not later than twenty days after the initial appointment of the conservator or receiver, the persons who were in charge of the affected Hawaii financial institution immediately prior to the appointment of a conservator or receiver may bring an action in the circuit court for an order requiring the commissioner to terminate the conservatorship or receivership.

(d) All judicial proceedings under this section shall be closed to the public and shall take precedence over all other pending cases before the court and shall in every other way be expedited. The commissioner's decision to appoint a conservator or receiver shall be set aside only if the court finds that such decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

§412:2-402 Additional grounds for appointment. The commissioner may also appoint a conservator or receiver to take over the possession and control of any Hawaii financial institution:

- (1) Which consents to such appointment by an affirmative vote of a majority of its board of directors, or by a majority vote of its shareholders or members; or
- (2) Whose status as an insured institution has been involuntarily terminated by the federal insurer of its deposits or accounts.

An appointment pursuant to this section shall not be subject to judicial review.

§412:2-403 Who may serve as conservator or receiver. The commissioner, deputy commissioner, federal insurer of the Hawaii financial institution's deposits or accounts or other qualified person may serve as a conservator or receiver. Except for the commissioner, deputy commissioner, or federal insurer, every conservator and receiver must consent in writing to serve in such capacity, and before assuming such position shall sign an engagement agreement agreed upon by the person and the commissioner.

§412:2-404 Federal insurer as conservator or receiver; subrogation. (a) A federal insurer of the Hawaii financial institution's deposits or accounts who

serves as a conservator or receiver shall acquire both legal and equitable title to all assets, rights or claims and to all real or personal property of the institution, to the extent necessary to perform such duties or as may be necessary under applicable federal law to effectuate such appointment.

(b) If a federal insurer pays or makes available for payment its insurance proceeds to the depositors of an institution under conservatorship or receivership, the federal insurer shall be subrogated to the rights of such depositors, whether or not the federal insurer has become conservator or receiver thereof, in the same manner and to the same extent as it would be subrogated in the conservatorship or receivership of a federal financial institution insured by such federal insurer.

§412:2-405 Removal or replacement of conservator or receiver. The commissioner may remove or replace a conservator or receiver other than a federal insurer effective upon notice thereof, and with or without cause. Such removal or replacement shall not subject either the commissioner or the court to any liability to the conservator or receiver. Such removal or replacement shall not affect the financial institution's right to obtain judicial review of the commissioner's original decision to appoint a conservator or receiver under section 412:2-401.

§412:2-406 Compensation and expenses of conservator or receiver. All expenses of any conservatorship or receivership shall be paid out of the assets of the Hawaii financial institution and shall be a lien on the assets, which shall be prior to any other lien provided by this chapter or otherwise. Such expenses shall include without limitation, all costs and expenses incurred by the State, conservator, receiver and any other person for rent, utilities, telephones, travel, equipment, supplies, and employee salaries and benefits (including state employees). No compensation shall be paid to the commissioner, the deputy commissioner or federal insurer for serving as conservator or receiver, but other persons serving in such capacity may receive a salary commensurate with the responsibilities of such position.

§412:2-407 Stay of judicial proceedings. All non-criminal judicial proceedings to which the Hawaii financial institution in conservatorship or receivership, is a party at the time of the appointment of a conservator or receiver, including without limitation any action, hearing, judgment, execution, attachment, summons, discovery or deposition, shall be stayed automatically for a period of forty-five days after the appointment of the conservator or ninety days after the appointment of a receiver. The conservator or receiver may apply to the court presiding over the judicial proceedings for an extension of the stay, which shall be granted only upon a showing that the resumption of the proceeding will substantially detract from the purposes of the conservatorship or receivership and will not significantly diminish the potential recovery or remedy of the other party or parties in the judicial proceedings.

§412:2-408 Duties and powers of conservator. (a) A conservator of a Hawaii financial institution shall observe the provisions of this part except to the extent preempted by applicable federal law.

(b) Upon assuming office, the conservator may:

- (1) Immediately take possession of the assets of the Hawaii financial institution and operate the institution with all the rights and powers of the shareholders or members, directors, and officers with the authority to conduct all business of the Hawaii financial institution;
- (2) Collect all obligations and money due the Hawaii financial institution;

- (3) Preserve and conserve the assets and property of the Hawaii financial institution;
- (4) Set aside and make available for withdrawal by depositors and payment to other creditors on a ratable basis such amounts as in the opinion of the commissioner may safely be used for this purpose; and
- (5) Take such action as may be necessary to carry out the purposes of the conservatorship, consistent with the conservator's appointment order, and as may be required by law, the commissioner or any court having jurisdiction over the matter. Provided, however, that the conservator shall at all times be subject to the direction and supervision of the commissioner.

§412:2-409 Conservator's segregation of deposits. (a) In the commissioner's discretion, the commissioner may order or permit a conservator to accept deposits, notwithstanding the insolvency of the Hawaii financial institution; provided, that such deposits so received shall not be subject to any limitation as to payment or withdrawal, shall be segregated and kept apart from prior deposits, and shall not be used to liquidate any indebtedness of the institution existing at inception of the conservatorship or any subsequent debt incurred for the purpose of liquidating such prior indebtedness. Such deposits received by the conservator shall be kept in cash, invested in direct obligations of the United States, or deposited with a federally insured financial institution.

(b) Any order requiring segregation of deposits under this section shall remain effective no longer than thirty days after the conservator has returned possession and control of the affairs of the Hawaii financial institution to its board of directors. At least thirty days prior to the resumption of such possession and control, the conservator shall publish in a newspaper of general circulation in every county where the financial institution has places of business open to the public, a notice stating the date that possession and control will be returned to the board of directors, and that deposits received during the conservatorship will no longer be segregated in accordance with this section more than thirty days after that date. The notice shall be in a form approved by the commissioner and shall also be conspicuously posted at the principal office and each branch and agency office of the financial institution. The notice shall also be mailed to every person who has deposited funds with the institution during the conservatorship at the depositor's last known address as reflected in the records of the institution.

§412:2-410 Supervised reorganization. (a) The commissioner and, with the commissioner's written approval, any conservator appointed pursuant to this part, may reorganize a Hawaii financial institution in conservatorship, provided that:

- (1) The reorganization will be accomplished under a plan which the commissioner finds is fair and equitable to all depositors' beneficiaries, creditors, and shareholders or members, and is in the public interest;
- (2) The commissioner has approved of the plan in writing, subject to such conditions, restrictions, and limitations as the commissioner may deem appropriate;
- (3) Notice of the plan has been given to all depositors (except depositors whose deposits have been paid in full by a federal deposit insurer or assumed by a federally insured financial institution), creditors, and shareholders or members in a form and manner satisfactory to the commissioner; and

- (4) After such notice, the reorganization plan shall have been consented to in writing by:
- (A) Depositors representing at least seventy-five per cent of the amount of the financial institution's total deposits which will not be satisfied in full under the plan of reorganization;
 - (B) Creditors representing at least seventy-five per cent of the total amount of the claims of general creditors of the financial institution which will not be satisfied in full under the plan of reorganization;
 - (C) Subordinated creditors representing at least seventy-five per cent of the total amount of the claims of each class of debt subordinated by law or by contract to the claims of general creditors which will not be satisfied in full under the plan of reorganization; and
 - (D) Shareholders holding at least two-thirds of each class of the capital stock of the financial institution.

(b) If the foregoing requirements have been met, the commissioner shall issue a certificate to the Hawaii financial institution indicating that the reorganization plan, a copy of which shall be attached to the certificate, has been properly approved, and setting forth any conditions that the commissioner deems appropriate, as well as the effective date of the reorganization.

(c) Once any reorganization has become effective as provided herein, it shall be binding upon all depositors, creditors, and shareholders or members of the Hawaii financial institution, whether or not they have consented to the plan of reorganization, and all claims of such persons shall be treated as if they had consented to the plan of reorganization.

(d) When the reorganization becomes effective, all books, records, and assets of the Hawaii financial institution shall be disposed of in accordance with the plan and the affairs of the financial institution shall be conducted by its board of directors in the manner provided by the plan and under any conditions, restrictions, and limitations prescribed by the commissioner.

§412:2-411 Termination of conservatorship. The commissioner may terminate a conservatorship of a Hawaii financial institution whenever in the commissioner's judgment such action would be prudent and in the public interest. A conservatorship may also be terminated by order of the circuit court. Upon such termination, the financial institution shall be returned to the possession and control of its board of directors, or be placed in a receivership, subject to any terms and conditions imposed by the commissioner or the court. If placed in receivership, the affected Hawaii financial institution shall be entitled to judicial review as provided in section 412:2-401.

§412:2-412 Duties and powers of receiver. (a) A receiver of a Hawaii financial institution shall observe the provisions of this part, except to the extent preempted by applicable federal law.

- (b) Upon assuming office, the receiver may:
 - (1) Immediately take possession of the assets of the Hawaii financial institution with all the rights and powers of the shareholders or members, directors and officers with the authority to conduct all business of the Hawaii financial institution;
 - (2) Collect all obligations and money due the Hawaii financial institution; and
 - (3) Take such action as may be necessary to carry out the purposes of the receivership, consistent with the receiver's appointment order, and as

may be required by law, the commissioner or any court having jurisdiction over the matter. The receiver shall at all times be subject to the direction and supervision of the commissioner.

§412:2-413 No interest on deposits of an institution in receivership. Accrual of interest on any interest-bearing deposits in a Hawaii financial institution shall cease on the date of the appointment of a receiver.

§412:2-414 Optional court supervision. Upon petition of the receiver or the commissioner at any time, the circuit court shall supervise the receivership and such proceedings shall have priority over all other matters pending before the court and shall in every other way be expedited. In case of court supervision, all matters requiring approval of the commissioner shall also require the approval of the court, and all reports required to be filed with the commissioner shall also be filed with the court.

§412:2-415 Notice of receivership; filing of claims. (a) Upon commencement of the receivership, the receiver shall promptly give notice of the fact and purpose of the receivership in a form prescribed by the commissioner and directing depositors and creditors to file any claims they might have against the institution within four months after the first publication of such notice. Such notice may be by:

- (1) Publishing the notice in a newspaper of general circulation in every county where the financial institution engages in business once in each of three successive weeks;
- (2) Delivering the notice to all known depositors, creditors and parties holding any assets of the financial institution; provided, however, that notice of the fact and purpose of the receivership need not be given to depositors of the institution all of whose deposits have been paid by a federal deposit insurer or assumed by a federally insured financial institution and who have received appropriate notice of such payment or assumption; and
- (3) Posting the notice in the principal office and each branch and agency office of the institution.

(b) Any claim which is not filed within four months after the first date of publication of the notice required by subsection (a) shall be forever barred; provided, that this subsection shall not apply to any depositor or creditor whose claim appears on the records of the institution, to the extent shown on such records, whether or not the same is disputed.

(c) The receiver may reject a claim in writing within sixty days after receipt thereof, otherwise it shall be deemed accepted. Upon rejection of a claim by the receiver, the claimant may petition the circuit court for a review of the receiver's determination, provided that any petition for review not filed within four months after the receipt by the claimant of the notice of rejection from the receiver will be barred. In lieu of review by the circuit court of the receiver's decision to reject a claim, the parties may mutually agree to have any claim decided by binding arbitration before an arbitrator appointed by the commissioner or the court.

§412:2-416 Liquidation by receiver; priority of claims. (a) The receiver shall collect and sell or otherwise dispose of all assets of the Hawaii financial institution. For such purposes, the receiver's authority includes but is not limited to the right to sue and be sued in the name of the commissioner, the receiver, or the institution, to compromise any claim, to hire attorneys, accountants, appraisers, auctioneers, or other professional persons, to take mortgages, to enter into contracts of sale and agreements of sale, to borrow money on the institution's credit, and to

take such other measures as may be reasonable and prudent under the circumstances; provided, that any lease, mortgage, sale, exchange, or other transfer of real property, any compromise of any claim, and any pledge of the institution's assets to secure any loan shall require the prior approval of the commissioner or the court.

(b) The receiver shall not pay any claims against the Hawaii financial institution except regular costs and expenses incurred in connection with the administration of the receivership and the permitted operations of the financial institution, unless prior approval is obtained from the commissioner or the court. Once all claims against the institution have been determined, the receiver may disburse payments in the following priority:

- (1) Administrative expenses, which shall include without limitation compensation of the receiver and the employees working under the receiver, fees of attorneys, accountants, appraisers, auctioneers, or other professional persons, rent, current taxes, loans for administrative expenses, expert and advisor's fees, costs of the State, and court costs;
- (2) Unsecured claims for wages, salaries, commissions, including vacation, severance or sick leave pay, earned by an individual within ninety days before the receivership, in an amount not exceeding \$2,000 for each individual;
- (3) Claims which are given priority by applicable statutes and, if the assets are insufficient for the payment in full of all such claims, in the order provided by such statutes, or in the absence of contrary provisions, pro rata;
- (4) All other claims pro rata, exclusive of claims set forth in paragraph (5) of this section; and
- (5) Claims for debts that are subordinated to unsecured claims under a written subordination agreement or other instrument.

The commissioner or the court may order the payments to be made partially, as funds become available for such purpose; provided, that claims with a higher priority must be completely satisfied before any payment of claims with a lower priority.

§412:2-417 Final accounting and discharge. When all the assets of the Hawaii financial institution have been collected and all available funds have been paid as provided in this part the receiver shall file with the commissioner or the court a request for the approval of a final accounting, which shall show the disposition of all assets and shall furnish such receipts as may be required by the commissioner or the court.

§412:2-418 Transfer of assets in contemplation of insolvency void. All transfers, assignments, and payments by any Hawaii financial institution made after or in contemplation of the institution's insolvency shall be void if done with the intent to evade this chapter or to accord preference to any depositor or creditor over another.

§412:2-419 Treatment of lessors. (a) For a period of six months after appointment of a receiver, a lessor may not terminate any lease of personal or real property to the Hawaii financial institution as long as lease rent for the period following the receivership is paid on a timely basis, whether or not the lease has suffered a prior default.

(b) Within six months after initial appointment, the receiver may assume or reject any unexpired lease, and if not assumed within such time the lease shall be deemed to have been rejected; provided, however, that in order to assume any lease:

- (1) The unexpired lease term must be at least thirty days at the time of the assumption;
- (2) Any prior default must be cured, or the receiver must provide adequate assurance that such default will be promptly cured;
- (3) The receiver must provide adequate compensation to any party other than the financial institution for any actual pecuniary loss resulting to such party from such default; and
- (4) The receiver must provide adequate assurance to the lessor of future performance under the lease.

(c) The lessor of a lease rejected under this section shall have a claim against the Hawaii financial institution in receivership for damages resulting from the rejection in an amount which may not exceed the unpaid rent owed under the lease, without acceleration, for a six month period.

(d) Rejection of a lease under this section shall not result in the termination of the lease with respect to the interest of any mortgagee or other person having an interest in the lease other than the Hawaii financial institution.

§412:2-420 Claims for wrongful termination of employment. Recovery on a claim against an insolvent Hawaii financial institution in receivership resulting from wrongful termination of an employment contract shall not exceed the unpaid compensation, without acceleration, pursuant to the contract when the employee was directed to terminate or when the employee actually terminated performance under the contract, whichever first occurred, plus compensation as provided under the contract, without acceleration, for ninety days thereafter.

§412:2-421 Bailments and safe deposit boxes in receivership. (a) If a Hawaii financial institution in receivership has any personal property in its possession as bailee for storage or safekeeping, or if it has any vaults, safes, or safe deposit boxes rented by customers, the receiver shall notify the affected customer at the customer's last known address as reflected in the records of the financial institution. Any notice shall be sent by certified mail, return receipt requested, and shall direct the customer to remove the personal property by a date stated in the notice, which date shall not be less than ninety days after mailing of the notice.

(b) If and when the property is claimed by the customer, any unearned fees for rent or bailment shall be refunded to the customer and shall be treated as an administrative expense of the receivership. Any unpaid fees for rent or bailment shall be collected from the customer or shall be carried as a receivable on the books of the institution.

(c) If the property is not claimed by the date set forth in the notice provided for in subsection (a), the receiver shall cause the safe, vault or safe deposit box to be opened before two witnesses who are not employed by the Hawaii financial institution. Such property shall be placed in a suitable container together with a list, signed by the witnesses, containing a description of the property, the name and address of the customer and the names of the witnesses. The receiver shall keep the property in one of the general vaults, safes or boxes of the financial institution, or other depository, until it is claimed by the owner.

(d) If the property is not claimed within two years after the date set forth in the notice provided for in subsection (a), the receiver may sell the property at public auction, subject to the approval of the commissioner or the court. The receiver may deduct from the proceeds of such sale any unpaid fees for rental or bailment, which shall be an asset of the institution, and the balance shall be disposed of in accordance with chapter 523A. Papers and other items of no apparent value may be destroyed.

PART V. SUPERVISED ACQUISITION OF FINANCIAL INSTITUTIONS

§412:2-500 Definitions. As used in this part: "Failing financial institution" means a Hawaii financial institution or a federal financial institution whose operations are principally conducted in this State, and which:

- (1) Is insolvent or has failed to make good an impairment of its capital and surplus as provided in section 412:2-314;
- (2) Has incurred or is likely to incur losses that will deplete all or substantially all of its capital and surplus, and there is no reasonable prospect for such capital and surplus to be replenished without federal assistance; or
- (3) Has violated or is violating laws, rules or regulations, or has committed or is committing an unsafe or unsound practice, and such violation or practice is likely to cause insolvency or a substantial dissipation of assets or is likely to severely weaken the institution's condition or otherwise seriously prejudice the interests of its depositors.

"Qualifying state" means a state, other than Hawaii, in the Twelfth Federal Reserve District as designated in 12 U.S.C. §222.

§412:2-501 Commissioner's determination of failing institution. (a) Upon determining that a Hawaii financial institution is a failing financial institution, the commissioner shall serve written notice of such determination to the institution. The notice shall set forth the basis for the commissioner's determination, and shall indicate that the commissioner intends to implement the provisions of this part.

(b) If the financial institution contests the commissioner's determination, it shall petition the circuit court to enjoin the commissioner's action, not more than five days after receiving notice of the commissioner's determination that it is a failing financial institution. A hearing on the petition shall be held not more than fifteen days after the petition is filed, and in all other respects the matter shall be expedited. The hearing under this subsection shall be closed to the public.

(c) An order by the circuit court made pursuant to this section may be appealed to the supreme court, but no stay of the order shall be granted pending such appeal.

(d) All court records, documents and files of the financial institution, the division of financial institutions, and the court, so far as they pertain to or are part of the record of the proceedings, shall be and remain confidential. The court may, after hearing the arguments from the parties in chambers, order disclosure of documents for good cause. Unless otherwise ordered, all papers filed with the court shall be sealed from the public and held in a confidential file.

(e) Nothing in this section shall preclude any action by the commissioner under any of the other powers granted to the commissioner by this chapter.

§412:2-502 Solicitation of purchasers. If the court sustains the commissioner's determination that the financial institution is a failing financial institution, or if the institution has not contested such determination and the time for petitioning the court has passed, the commissioner may solicit applications to merge with the failing financial institution or with its holding company, or to purchase all or part of the assets or assume all or part of the liabilities of the failing financial institution, or to purchase the capital stock of the failing financial institution or its holding company. Such solicitation may be by private letter, by personal contact, or by publication, as in the commissioner's discretion may be appropriate in order to

obtain as many fair offers as possible with the least danger to the safety of the failing financial institution, its depositors and creditors, and the general public. The commissioner may disclose such information concerning the failing financial institution as shall be necessary for the prospective applicants to formulate a proposal to purchase, provided that the recipients of such information shall be required to be required to¹ keep the same confidential.

§412:2-503 Applications to purchase. (a) If the failing financial institution is a bank, savings bank, or depository financial services loan company that is a Hawaii financial institution, or if the institution to result from the acquisition proposed in the application is to be any of the foregoing, the commissioner may accept an application under this part only from:

- (1) A Hawaii financial institution;
- (2) A federal financial institution whose operations are principally conducted in this State (unless the operations of any holding company of such an applicant are principally conducted in a state other than Hawaii or a qualifying state);
- (3) A financial institution whose operations are principally conducted in a qualifying state (unless the operations of any holding company of such an applicant are principally conducted in a state other than Hawaii or a qualifying state);
- (4) The holding company of any of the foregoing, if any (unless the operations of such holding company or any holding company of such holding company are principally conducted in a state other than Hawaii or a qualifying state); and
- (5) A person that is not a company.

(b) No application shall be accepted which provides for a merger or consolidation of a failing financial institution or a purchase of its assets or assumption of its liabilities, or a purchase of its capital stock if, as a result of such merger, consolidation, purchase or assumption, any person would be eligible to receive deposits in this State other than through a Hawaii financial institution or a federal financial institution whose operations are principally conducted in this State.

(c) An application filed under this part shall contain such information as the commissioner may require, and shall indicate:

- (1) Whether the applicant proposes to merge with the failing financial institution, purchase all or part of its assets and assume all or part of its liabilities or purchase its capital stock;
- (2) The consideration to be paid; and
- (3) How the proposed purchase will promote the safety and soundness of the failing financial institution, protect its depositors and creditors, and otherwise be in the public interest.

(d) The commissioner may establish a reasonable deadline for the receipt of applications.

§412:2-504 Granting of application; criteria for approval. In evaluating the applications filed under this part, the commissioner shall consider the following factors:

- (1) Whether immediate action is necessary;
- (2) The financial and managerial resources of the applicant and its holding company, if any;
- (3) The probable viability of the failing financial institution after the acquisition or merger has been completed;
- (4) Whether any federal agency is prepared to offer financial assistance to facilitate the acquisition or merger, and the amount of such assistance;

- (5) Whether the effect of the proposed acquisition or merger may be substantially to lessen competition, or tend to create a monopoly or restraint of trade in any section of the country that includes the State or a part thereof, and whether these anti-competitive effects would be clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served;
- (6) The convenience and needs of the public;
- (7) The welfare of the depositors and creditors of the failing financial institution;
- (8) The principal place of business of the applicant, the state where its operations and those of its affiliates are principally conducted, and their current business relationships with Hawaii-based businesses; and
- (9) Any other factors which the commissioner may deem relevant.

The commissioner may negotiate with all or any of the applicants to modify any proposal, may accept more than one proposal if one involves only part of the assets or stock of the failing financial institution, and may condition any approval of an application upon the observance of such requirements as the commissioner deems appropriate. Nothing in this section shall require the commissioner to approve any application or accept any proposal made pursuant to this part.

§412-2:505 Granting of applications; priorities. In considering applications under this part, the commissioner shall give priority to the following tiers:

- (1) First, to Hawaii financial institutions and federal financial institutions whose operations are principally conducted in this State (unless the operations of any holding company of any such Hawaii financial institution or federal financial institution are principally conducted in a state other than Hawaii), to holding companies of the foregoing (unless the operations of any such holding company or the operations of any holding company of such holding company are principally conducted in a state other than Hawaii), and to persons that are not companies;
- (2) Second, to financial institutions whose operations are principally conducted in a qualifying state and to holding companies of the foregoing (unless the operations of any such holding company or the operations of any holding company of such holding company are principally conducted in a state other than Hawaii or a qualifying state); and
- (3) Third, to any other person whose application may be approved under this part.

Before a financial institution, holding company, or person described in paragraph (2) or (3) may be considered, all Hawaii institutions and holding companies which the commissioner deems to be qualified to submit any proposal to acquire not less than substantially all of the deposits or federally insured deposits of the failing financial institution must affirmatively decline to submit any proposal to acquire only the deposits of the failing financial institution.

§412:2-506 Charter or license. In any acquisition pursuant to this part, a charter or license shall be required for:

- (1) Any Hawaii financial institution resulting from a consolidation of an acquirer with a failing financial institution; and
- (2) Any new corporation (except a federal financial institution) formed to merge with or acquire the assets of a failing financial institution pursuant to this chapter, whether or not a provisional approval to organize has been issued to such corporation.

§412:2-507 Expedited approvals. If the commissioner finds that immediate action is necessary in order to prevent the probable failure of the Hawaii financial institution, as determined by section 412:2-501, the commissioner shall have the power to issue an expedited approval authorizing the following:

- (1) In the case of a Hawaii financial institution seeking to acquire the failing financial institution, expedited approval for the establishment of a branch;
- (2) In the case of a new corporation, or for a qualified bidder from a qualifying state, a charter for a bank or savings bank or a license to engage in the business of a depository financial services loan company provided that the applicant has secured provisional approval to organize as required in section 412:2-508.

§412:2-508 Provisional approval to organize. (a) The commissioner may issue a provisional approval to organize a new corporation pursuant to this chapter and chapter 415 solely for the purpose of merging with or acquiring the stock or assets and assuming the liabilities of a failing financial institution in a transaction meeting the requirements of this part and other applicable law.

(b) Applications for a provisional approval shall be filed with the commissioner, and shall provide the information required by this chapter for preliminary approval to organize the type of financial institution that will result from the merger or acquisition under this part. The applicant shall also furnish such other information as the commissioner may require, and an application fee as established by the commissioner.

(c) The commissioner may expedite consideration of an application filed under this section, and may grant the application for a provisional approval without any investigation or publication of notice or informational and comment proceeding; provided, that if after granting of approval, the commissioner discovers any reason why approval should not have been granted, the approval may be revoked by giving written notice of revocation to the applicant.

(d) Except as otherwise provided in this section, the provisional approval shall enable the applicant to accomplish only the merger or acquisition, or both, as shall be specified in the approval.

(e) Any provisional approval shall expire one year after it has been granted, or upon issuance of a charter or license as provided in this chapter, whichever first occurs. The commissioner may extend the expiration date of a provisional approval for good cause. If the merger or acquisition is not consummated before the expiration of the provisional approval, or any extended time granted by the commissioner the approval shall be void and of no further effect.

§412:2-509 Effect of merger or acquisition on prior business, title and obligations. Sections 412:3-610 and 412:3-615 shall apply to the businesses previously carried on by any failing financial institution, title to its property, and its liabilities with respect to any merger or acquisition consummated under this part.

§412:2-510 Commissioner's powers. No provision under this part shall be construed to limit, modify, or restrain any other powers otherwise granted to the commissioner or the division. The provisions of this part shall supplement and provide an alternative to the commissioner's other authority and powers under this article.

§412:2-511 Modification of time periods. Any time periods requiring action by the commissioner as set forth in this part, or as established by rules

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implementing this part, may be shortened or extended when in the commissioner's discretion good cause exists.

§412:2-512 Nonseverability. It is the express intent of the legislature to specifically authorize the acquisition of a failing financial institution by an out-of-state institution only as provided in this part, and notwithstanding the restrictions set forth in the Bank Holding Company Act of 1956, as amended (12 U.S.C. §§1841 et seq.), and, accordingly, the provisions of this part are not severable. If any provision of this part is determined to be invalid, then this entire part shall be of no force and effect, except that transactions already conducted under the authority of this part prior to such determination of invalidity shall not be thereby affected.

PART VI. PENALTIES, ADMINISTRATIVE FINES AND PROHIBITED ACTS

§412:2-600 Applicability of part. (a) The provisions of this part shall apply to all Hawaii financial institutions and to such other persons as shall, by violating any of the provisions of this part, be subject to the penalties and administrative fines provided in this part. The provisions of this part shall be in addition to the prohibitions set forth elsewhere in this chapter.

(b) If a contract is made or any other act is done or omitted in good faith reliance on an interpretation of this chapter made by the supreme court of this State or in a rule duly adopted by the commissioner pursuant to chapter 91, no penalty imposed by this chapter shall apply, notwithstanding that after such contract is made, such interpretation or rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

§412:2-601 Violation of chapter. Any institution-affiliated party who wilfully violates any of the provisions of this chapter for which a penalty or administrative fine is not expressly provided herein shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640.

§412:2-602 Copying records of Hawaii financial institutions. Any institution-affiliated party who knowingly copies without authorization any of the books, papers, records or documents belonging to or in the custody of a Hawaii financial institution, either for the party's own use or for the use of any other person other than in the ordinary and regular course of the party's duties, shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640.

§412:2-603 Disclosures of records of Hawaii financial institutions. Any institution-affiliated party who, without authorization, knowingly discloses, except in the regular course of business, any information derived from a Hawaii financial institution's records shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640.

§412:2-604 Concealment. Any institution-affiliated party who knowingly conceals or endeavors to conceal any transaction of the Hawaii financial institution from any director, incorporator, officer, agent or employee of the institution or any official or employee of the division to whom it should be properly disclosed shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640.

§412:2-605 Subpoena power. The commissioner shall have the power and authority to summon persons and subpoena witnesses, compel their attendance, require production of evidence, administer oaths and examine any person under oath in conducting any proceeding under this part. Any summons or subpoena may

be served by certified mail with return receipt requested. Powers granted under this section may be enforced by the circuit court.

§412:2-606 Witness; failure to testify or produce records. Any person who knowingly fails to attend and testify or answer any lawful inquiry or to produce books, papers, accounts, records, contracts, or documents, if in the person's power to do so, in obedience to the lawful subpoena or lawful requirements of the commissioner, or an examiner employed by the commissioner, shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640.

§412:2-607 Deception; false statements. (a) An institution-affiliated party who does any of the following shall be guilty of a class C felony punishable pursuant to sections 706-660 and 706-640:

- (1) With intent to deceive, makes any false or misleading statement or entry or omits any statement or entry required by law or rule to be made in any book, account, report or statement of the institution; or
- (2) Knowingly obstructs or endeavors to obstruct a lawful examination or investigation of the institution or any of its affairs by an official or employee of the division.

(b) Any person who intentionally or knowingly makes, circulates, or transmits to another or others any statement or rumor, written, printed, or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any Hawaii financial institution that is a depository financial institution, or who knowingly counsels, aids, procures, or induces another to start, transmit or circulate such statement or rumor, shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640.

(c) Any person who maliciously or for personal financial gain makes, circulates, or transmits to another or others any statement or rumor, written, printed, or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any Hawaii financial institution that is a depository institution, or who maliciously or for personal financial gain counsels, aids, procures, or induces another to start, transmit or circulate any such statement or rumor, shall be guilty of a class C felony punishable pursuant to sections 706-660 and 706-640.

§412:2-608 Misapplication of funds. Any institution-affiliated party who wilfully abstracts or misapplies any of the money, funds, credits, assets, or property of a Hawaii financial institution, whether owned by the financial institution or held for safekeeping or as agent, or held in trust shall be guilty of a class C felony punishable pursuant to sections 706-660 and 706-640. However, if the amount abstracted or wilfully misapplied does not exceed \$300, the institution-affiliated party shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640.

§412:2-609 Imposition of administrative fines; assessment. (a) Any Hawaii financial institution which, and any institution-affiliated party who:

- (1) Commits a material violation of any law or rule for which a penalty or fine is not expressly provided herein;
- (2) Commits a material violation of any order issued by the commissioner which has become effective;
- (3) Commits a material violation of any condition imposed in writing by the commissioner in connection with the grant of any application or other request by the financial institution; or

- (4) Commits a material violation of any written agreement between the financial institution and the commissioner, may be ordered by the commissioner to forfeit and pay an administrative fine of not more than \$1,000 for each day during which such violation continues.
- (b) Notwithstanding subsection (a), any Hawaii financial institution which, and any institution-affiliated party who:
- (1) Commits any violation described in any clause of subsection (a);
 - (2) Recklessly engages in an unsafe or unsound practice in conducting the affairs of the Hawaii financial institution; or
 - (3) Breaches any fiduciary duty owed to the financial institution; which violation, practice or breach is:
- (1) Part of a pattern of misconduct;
 - (2) Causes or is likely to cause more than a minimal loss to the Hawaii financial institution; or
 - (3) Results in pecuniary gain or other benefit to such party; may be ordered by the commissioner to forfeit and pay an administrative fine of not more than \$5,000 for each day during which the violation, practice, or breach continues.
- (c) Notwithstanding subsections (a) and (b), any Hawaii financial institution which, and any institution-affiliated party who:
- (1) Knowingly commits any violation described in any clause of subsection (a); knowingly engages in any unsafe or unsound practice in conducting the affairs of the Hawaii financial institution; or knowingly breaches any fiduciary duty owed to the financial institution; and
 - (2) Knowingly or recklessly causes a substantial loss to the Hawaii financial institution or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach; may be ordered by the commissioner to forfeit and pay an administrative fine of not more than \$100,000 for each day during which the violation, practice, or breach continues. The maximum administrative fine shall not exceed in the case of any person other than a Hawaii financial institution, the amount of \$500,000 and in the case of any Hawaii financial institution, the lesser of \$1,000,000 or one per cent of the total assets of the Hawaii financial institution.
- (d) Any administrative fine imposed under subsections (a), (b), or (c) may be assessed and collected by the commissioner by service of written notice and order upon the Hawaii financial institution or institution-affiliated party. If, with respect to any such assessment, a hearing is not requested pursuant to section 412:2-610(c) within the period of time allowed under section 412:2-610(c), the assessment shall constitute a final and unappealable order.

§412:2-610 Compromise or modification of administrative fines; determining amount of fine; hearing. (a) The commissioner may compromise, modify or suspend any administrative fine which may be assessed or which has been assessed pursuant to section 412:2-609. The commissioner may also exempt violations of informal enforcement actions from the administrative fines and penalties set forth in section 412:2-609.

(b) In determining the amount of any administrative fine imposed under section 412:2-609, the commissioner shall take into account the appropriateness of the fine with respect to all of the following:

- (1) The size of financial resources and good faith of the financial institution or the person charged;
- (2) The gravity of the violation, practice, or breach;
- (3) The history of previous violations, unsafe or unsound practices, or breaches of fiduciary duty owed to the financial institution;

- (4) The extent to which a federal agency has, by imposing a fine for similar conduct, mitigated the need for imposition of a particular level of administrative fine under section 412:2-609; and

- (5) Such other matters as justice may require.

(c) The Hawaii financial institution or other person against whom any administrative fine is assessed under this section shall be afforded a hearing in accordance with chapter 91 if the financial institution or person submits a written request for a hearing within twenty days after the service of the notice of assessment.

§412:2:611 Action to recover administrative fines; deposit to general fund. (a) If any Hawaii financial institution or institution-affiliated party fails to pay an assessment after any administrative fine assessed under this chapter has become final, the commissioner shall recover the amount assessed by action in circuit court, in which case the commissioner may request the court to award reasonable attorney's fees and costs.

(b) Unless otherwise provided by statute, all administrative fines collected under authority of this chapter shall be deposited in the general fund of the State.

ARTICLE 3. ORGANIZATION AND MANAGEMENT OF FINANCIAL INSTITUTIONS

PART I. GENERAL PROVISIONS

§412:3-100 Applicability of this part. This part shall apply to all Hawaii financial institutions.

§412:3-101 Name of financial institution. The name of every Hawaii financial institution shall be subject to the approval of the commissioner and shall conform with the provisions of section 415-8(2) or any successor thereto, whether or not the Hawaii financial institution is a corporation. If the Hawaii financial institution is incorporated, its name may, but need not, contain the word "corporation", "incorporated", or "limited", or an abbreviation of one of the words.

§412:3-102 Change of name. To change its name, a Hawaii financial institution shall file an application with the commissioner and pay such fees as the commissioner may establish. The application shall be approved if the commissioner is satisfied that the new name complies with this chapter and chapter 415. Any change of name of a stock financial institution or mutual savings and loan association pursuant to this section shall be effected in accordance with chapter 415. Any change of name shall not affect a financial institution's rights, liabilities or obligations existing prior to the effective date thereof, and no documents of transfer shall be necessary to preserve such rights, liabilities or obligations; provided, however, that the commissioner may require notice to be given to the public and other governmental agencies.

§412:3-103 Amendments to articles and bylaws. Upon the adoption of any amendment to the articles of incorporation or association or to the bylaws of a Hawaii financial institution, the secretary or other authorized officer of the financial institution shall file a copy of the amended articles or bylaws with the commissioner, certifying that the copy is true and correct, the date the amendment was adopted and that the amendment was duly adopted in accordance with the applicable provisions of the articles and bylaws. The amended articles and bylaws shall be kept on file by the division.

§412:3-104 Qualifications of directors. Except for nondepository financial services loan companies, the board of directors of every Hawaii financial institution shall at all times consist of at least five directors, of whom at least three shall be residents of this State at the time of their election and while holding office. If any resident director ceases to be a resident of this State or ceases to be a director, and such circumstance causes the number of resident directors on the board to be fewer than three, another resident director shall be immediately elected or appointed in accordance with the institution's bylaws. The board of directors of any financial institution, which is a wholly owned subsidiary of a holding company incorporated in another state shall at all times consist of at least five directors, of whom at least one shall be a resident of this State at the time of election and while on the board.

§412:3-105 Election and appointment of executive officers. The directors of a Hawaii financial institution shall elect or appoint its executive officers. The directors may also appoint and employ all other necessary officers and agents, define their duties, fix their compensation, dismiss them, and require that they be bonded. Except for the election or appointment of executive officers, the board of directors may delegate to such officers the employment, discharge, fixing of compensation, bonding, and supervision of subordinate officers, employees and agents.

§412:3-106 Residency of chief executive officer. The chief executive officer of every Hawaii financial institution, except a nondepository financial services loan company, shall be a resident of this State. If at any time a person holding the office ceases to be a State resident, that person's tenure shall automatically cease, and a successor, alternate, or substitute who is a State resident shall be immediately appointed or elected, as provided in the institution's bylaws.

§412:3-107 Meetings of the board. Except for nondepository financial services loan companies, the board of directors of every Hawaii financial institution shall hold a regular meeting at least once every three months.

§412:3-108 Generally accepted accounting principles. Every Hawaii financial institution shall follow generally accepted accounting principles, except as otherwise prescribed by the appropriate federal regulatory agency.

§412:3-109 Charging down assets. The commissioner may require any asset on the books of a Hawaii financial institution to be charged down to such sum as represents its fair value.

§412:3-110 Holding of assets. Every Hawaii financial institution shall take the action necessary to assure the safekeeping of its assets, and to keep them separate and apart from the assets or property of others. An institution may use the services of a correspondent financial organization as a depository for securities owned or held as collateral, or a computer service organization for accounting, or the practice of nominee registration of title of securities.

§412:3-111 Maintenance of books and records. (a) Every Hawaii financial institution shall keep its books and records in a safe and secure place in this State. The commissioner may authorize such records to be maintained outside of this State.

(b) A computer service bureau or data processing service may be utilized to process data without obtaining the commissioner's authorization, provided that the final books and records are maintained in accordance with subsection (a).

(c) The books and records of the Hawaii financial institution may be maintained as originals or photocopies, on microfilm or microfiche, on computer disks or tapes, or similar forms, provided that they are readily accessible and may be easily examined.

(d) Records, statements or reports required or authorized by this chapter may be in a spoken language other than English provided that English translations are also maintained.

(e) No Hawaii financial institution shall be required to preserve or keep its records or files for a period longer than six years, except as specified in subsection (f).

(f) The following records or files of a Hawaii financial institution shall not be destroyed except in accordance with rules of the commissioner promulgated under chapter 91:

- (1) Minute books of meetings of shareholders, directors, and executive committee;
- (2) Capital stock ledger; and
- (3) General ledgers and trust ledgers.

These records and files may be maintained in original form or in the form of a photographic, photostatic, microfilm, microcard, miniature photographic, or other reproduction by a durable medium for reproducing the original.

(g) No liability shall accrue against any Hawaii financial institution for its destruction of its records or files in accordance with this section or the rules adopted hereunder. A showing by the financial institution that its records or files have been destroyed in accordance with this section or rules adopted hereunder shall be sufficient excuse for the failure to produce them.

§412:3-112 Submissions to commissioner. (a) Every Hawaii financial institution shall at its own expense file the following written reports with the commissioner:

- (1) An independent audit report of its financial statements as of the close of its fiscal year shall be filed by a Hawaii financial institution, other than a nondepository financial services loan company or credit union, within one hundred twenty days of the close of its fiscal year; provided that the commissioner for good cause shown may grant a reasonable extension of not more than forty-five days. For depository institutions, the report shall be conducted in accordance with the requirements of section 36 of the Federal Deposit Insurance Act (12 U.S.C. §1831m). For trust companies, the independent audit report shall contain audited financial statements prepared in accordance with generally accepted accounting principles and shall be based on an audit performed in accordance with generally accepted auditing standards, the independent auditor's report on the fair presentation of the financial statements and any qualification to the report, any management letter, and any other report. Hawaii financial institutions that are subsidiaries of a financial institution holding company may satisfy the requirements of this paragraph by filing an independent audit report of the financial institution holding company;
- (2) Unaudited financial statements as of the following dates shall be filed by a Hawaii financial institution within thirty days of the date of the financial statement:
 - (A) For a nondepository financial services loan company, trust company, or credit union the statements shall be filed as of June 30 and December 31 of each year.

- (B) For a Hawaii financial institution, other than a nondepositary financial services loan company, trust company, or credit union, the statements shall be filed as of March 31, June 30, September 30, and December 31 of each year.

The reports shall be in a form prescribed by the commissioner and prepared in accordance with section 412:3-108. In the alternative, the institution may file the Call Reports, Consolidated Reports of Condition and Reports of Income, or Thrift Financial Reports as of those dates which are submitted to the appropriate federal regulatory agency of the institution;

- (3) A notice of any change in the office of the person who has primary responsibility for the operation and management of the financial institution shall be filed by a Hawaii financial institution within ten days of the change. The notice shall specify the name and address of such person, who shall be designated that institution's "chief executive officer"; and
- (4) Any other reports and other information that the commissioner may require with respect to any financial institution at the times and in the form as the commissioner deems appropriate for the proper supervision and regulation of the institution.

Each report shall be signed by an officer authorized by the institution's board of directors to sign the report, and shall contain a declaration of the officer's authority and a statement that the report is true and correct.

(b) Each wholly-owned subsidiary of a Hawaii financial institution whose assets constitute ten per cent or more of the consolidated assets of the Hawaii financial institution shall also submit separate unaudited financial statements meeting the requirements of subsections (a)(2)(A) or (B) as applicable, whether or not the financial institution prepares a consolidated financial statement.

(c) If the commissioner determines that any report is inadequate, the report shall be returned to the financial institution, with directions to rectify the inadequacies within the time specified by the commissioner, which shall not be longer than thirty days.

(d) The commissioner may impose an administrative fine upon any financial institution failing to furnish any report or information as required under this section. The fine shall not exceed \$1,000 for each day that the report is delinquent and shall be recovered pursuant to the provisions of section 412:2-609.

§412:3-113 Publication of financial statements. Unless extended by the commissioner, within ten days after submission to the commissioner of its June 30 and December 31 financial statements, every Hawaii financial institution, except a nondepositary financial services loan company or credit union, shall publish its statement of assets and liabilities in a newspaper of general circulation in this State. The statement shall be in a form prescribed by the commissioner and shall be prepared in accordance with section 412:3-108.

§412:3-114 Duty to report illegal acts. A Hawaii financial institution shall immediately notify the commissioner in writing of any act of robbery, embezzlement, or fraud committed in connection with its affairs whenever the concerned act involves a sum in excess of \$10,000.

§412:3-115 Access to safety deposit box. Unless otherwise provided for in the lease for a safety deposit box, access to the safety deposit box leased or rented to one or more persons may be permitted by a financial institution to any person leasing or renting the safety deposit box, including any person purporting to be the

personal representative, authorized agent, guardian, trustee or other fiduciary for the lessee or renter of the safety deposit box. The provisions of this section shall be applicable even though the name of the person appearing on the financial institution's records as the lessee or renter is modified by a qualifying or descriptive term such as agent or trustee or other word or phrase indicating that the person may not be the lessee or renter of the safety deposit box in their own right. No financial institution shall be liable for any damages or penalty for allowing or refusing access to or removal of the contents of the safety deposit box under the provisions of this section.

PART II. ORGANIZATION OF BANKS, SAVINGS BANKS, SAVINGS AND LOAN ASSOCIATIONS, TRUST COMPANIES AND DEPOSITORY FINANCIAL SERVICES LOAN COMPANIES

§412:3-200 Applicability of part. The provisions of this part shall govern the organization of Hawaii financial institutions that are banks, savings banks, savings and loan associations, trust companies, and depository financial services loan companies.

§412:3-201 Application for preliminary approval to organize financial institution. (a) Three, or more individuals, of whom at least three are residents of the State, or any company which seeks to become a financial institution holding company may file an application with the commissioner for preliminary approval to organize a Hawaii financial institution under this part. Banks seeking authority to engage in the trust business through a division or department of the bank, or through a subsidiary shall apply for such authority under section 412:5-205.

(b) The application shall contain the following information, unless waived by the commissioner:

- (1) The proposed name of the financial institution, the location of its principal office, and any lease agreements for such principal office;
- (2) Financial statements, employment history, education, management experience, and other biographical information for all applicants, organizers, proposed executive officers, and directors of the financial institution;
- (3) The name and address of each proposed subscriber of capital stock in the financial institution and if capital has not been fully raised, a proposed capital plan including a description of any stock options, debentures, and stock warrants offered or proposed to be offered to any person;
- (4) Proposed financial institution policies concerning loans, asset and liability management, conflicts of interest, investments, operations, and community reinvestment;
- (5) The financial institution's business plan;
- (6) Financial projections regarding the financial institution's profitability;
- (7) A market study or letters of support evidencing the need and advisability of granting authority to organize a financial institution;
- (8) Except for trust companies, evidence that the financial institution has applied for federal deposit insurance from the Federal Deposit Insurance Corporation or other appropriate federal deposit insurer;
- (9) Evidence that the proposed directors and executive officers of the financial institution have the financial ability, responsibility, and experience to engage in the business of a financial institution;
- (10) A description of any existing or proposed service corporation, affiliate, or subsidiary; and

(11) Any other information that the commissioner may require.

(c) The application shall be submitted in a form prescribed by the commissioner. The commissioner may accept application forms which are utilized by any federal regulatory agency in processing similar applications. The application shall be accompanied by an application fee of \$9,000, or such greater amount as the commissioner shall establish by rule pursuant to chapter 91. The application fee shall not be refundable.

(d) The identity of each applicant and organizer, and any information which is not confidential shall be available to the public. The applicant may request in writing that information be kept confidential. The applicant shall designate and separate any matter which the applicant claims is confidential and shall submit a separate statement providing the reasons and authority for the request for confidential treatment. The failure by the applicant to request confidential treatment and designate and separate the confidential matter shall preclude any objection or claim for wrongful disclosure of the same. Information determined by the commissioner to be confidential, pursuant to an applicant's request or otherwise, shall not be available to the public.

§412:3-202 Additional requirements for holding company. (a) An applicant for the organization of a Hawaii financial institution which will be a subsidiary of a holding company shall furnish the commissioner with the following additional information regarding the holding company, unless waived by the commissioner:

- (1) If the holding company is a corporation, a certificate from the incorporating jurisdiction indicating that the corporation was properly organized under applicable corporate law, and that it is otherwise in good standing;
- (2) Its existing and proposed affiliates and subsidiaries, and the extent and nature of its control over the operations of the proposed financial institution;
- (3) Financial statements, employment history, education, management experience, and other biographical information for all of its executive officers and directors;
- (4) The name and address of each shareholder or each proposed subscriber of capital stock, and if capital has not been fully raised, a proposed capital plan including a description of any stock options, debentures, and stock warrants offered or proposed to be offered to any person;
- (5) Evidence that it has or will have the financial ability, responsibility, and experience to engage in the business of a financial institution holding company; and
- (6) Any other information that the commissioner may require.

(b) The commissioner may issue a preliminary decision regarding the qualifications of the holding company.

§412:3-203 Deferral of application requirements. For good cause, the commissioner may defer specific application requirements until the filing of an application for a charter or a license.

§412:3-204 Publication of notice. (a) Once the application to organize a Hawaii financial institution is complete and has been accepted by the commissioner, the applicant shall publish a notice at least once a week for three successive weeks in a newspaper of general circulation in each county in this State where the

proposed financial institution intends to establish a principal office, branch or agency.

(b) The notice shall be in a form prescribed by the commissioner and shall state the fact that an application has been filed, the names of the applicant and organizers, the location of the financial institution's proposed place of business, and the amount of its proposed capital. The notice shall also state that within fifteen days after the last publication of the notice any person may file with the commissioner written comments on the application or a request for an informational and comment proceeding to present information and comments to the commissioner. Any request for an informational and comment proceeding shall be accompanied by a brief statement of the person's interest in the application, the matters to be discussed at the informational and comment proceeding, and the reasons why written comments will not suffice in lieu of an informational and comment proceeding.

§412:3-205 Informational and comment proceeding on application. (a)

An informational and comment proceeding on the application shall not be mandatory and whether an informational and comment proceeding is held shall be within the commissioner's discretion, regardless of whether any person has requested one.

(b) If the commissioner determines that an informational and comment proceeding is warranted, the commissioner shall notify the applicant and every person who has requested an informational and comment proceeding of the time, date, and place of the proceeding at least ten days prior to the proceeding.

§412:3-206 Grant of preliminary approval to organize a financial institution. (a)

Following the expiration of the time for the submission of written comments or the completion of an informational and comment proceeding, the commissioner shall issue a written decision and order on the application for preliminary approval to organize. If the commissioner approves the application, the applicant shall become an "applicant in organization," and may take all steps necessary to complete organization and file an application for a charter or license.

(b) An application for preliminary approval to organize shall be approved only if the commissioner finds that:

- (1) The proposed activities of the financial institution will comply with the requirements of this chapter;
- (2) If the financial institution will be a subsidiary of a holding company, the holding company is or will be properly organized, in good standing, and financially sound, and is not or will not be engaging directly or indirectly through any subsidiary or affiliate in business prohibited by this chapter;
- (3) The qualifications, character, financial responsibility, experience, and general fitness of the proposed directors and executive officers of the financial institution and any holding company are such as will warrant public confidence and a belief that the business of the financial institution will be honestly and efficiently conducted. For purposes of this section, the commissioner may presume that in the absence of credible evidence to the contrary, a director, officer, or controlling person is of good character and sound financial standing. Such presumption may be rebutted by evidence to the contrary, including without limitation a finding that such director, officer, or controlling person has:
 - (A) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;
 - (B) Consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;

- (C) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;
 - (D) Wilfully made or caused to be made in any application or report filed with the commissioner, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has wilfully omitted to state in any application or report any material fact which was required to be stated therein; or
 - (E) Wilfully committed any violation of, or has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this chapter or of any rule or order issued under this chapter; and
- (4) The proposed operations of the financial institution will be conducted in a safe and sound manner.

(c) In granting preliminary approval to organize, the commissioner may impose any conditions and restrictions that are in the public interest, including but not limited to requiring the applicant to fulfill representations contained in its application and agreements made with the commissioner during the application process.

§412:3-207 Denial of preliminary approval to organize. If the commissioner is not satisfied that the applicant meets all the criteria set forth for preliminary approval to organize, the commissioner shall issue a written decision denying the applicant's application. An applicant who is denied approval may request a hearing before the commissioner in accordance with chapter 91. Any final decision of the commissioner denying an applicant preliminary approval to organize may be appealed to the circuit court as provided in chapter 91.

§412:3-208 Approval of articles and bylaws. (a) Within sixty days after receiving preliminary approval to organize, the applicant in organization shall file with the commissioner the proposed articles of incorporation and bylaws of the Hawaii financial institution. Within sixty days thereafter, the commissioner shall deny, approve or issue a statement of no objection to the articles and bylaws.

(b) The articles of incorporation shall comply in all respects with chapter 415.

(c) If there has been no disapproval by the commissioner, the articles of incorporation may be delivered by the applicant in organization to the director of commerce and consumer affairs for filing, and if accepted for filing, the financial institution shall have corporate existence.

(d) Although the proposed financial institution may have corporate existence, it may not transact any financial institution business until it has received a financial institution charter or license under this article; provided that the financial institution may conduct any transaction that is incidental and necessary to prepare to do a financial institution business and obtain a charter or license.

§412:3-209 Paid-in capital and surplus. (a) Every financial institution existing or organized under the laws of this State shall at all times, and every applicant in organization shall before filing the final application for a charter or license under this part and at all times thereafter, have paid-in capital and surplus of not less than the following amounts for each type of institution specified below:

Banks	\$5,000,000
Savings banks	\$3,000,000

Savings and loan associations	\$2,000,000
Trust companies	\$1,500,000
Depository financial services loan companies	\$1,000,000

(b) The initial paid-in capital and surplus of each financial institution shall be in money or in the form of such other property as may be authorized by the board of directors and approved in writing by the commissioner.

§412:3-210 Approval of capital stock solicitation. (a) The applicant in organization and the proposed Hawaii financial institution shall not solicit subscriptions for the capital stock of the Hawaii financial institution without written approval of the commissioner.

(b) An application under this section may be filed before or after the applicant's articles of incorporation and bylaws have been approved by the commissioner; provided that the applicant in organization and the proposed financial institution shall not solicit subscriptions for capital stock until the articles of incorporation and bylaws of the proposed financial institution shall have been approved by the commissioner. An applicant in organization seeking approval of a capital stock solicitation shall pay a fee established by the commissioner pursuant to section 412:2-105, and shall file an application which contains the following:

- (1) Information regarding the solicitation plan by which the applicant in organization and the proposed financial institution proposes to conduct the solicitation of subscribers;
- (2) Information regarding the classes of shares, respective quantities of shares for each class, and the subscription price of each class of stock;
- (3) A specimen subscription contract or purchase agreement, suitability certificates and other related documents to be executed by subscribers;
- (4) Any underwriting agreement or other agreement for the purchase or distribution of the capital stock;
- (5) Any escrow agreements or other agreement for the holding of the purchase proceeds of the capital stock;
- (6) Proposed advertising materials;
- (7) If the offer and sale of the capital stock is subject to the Securities Act of 1933 and regulations thereunder, a copy of the registration statement most recently filed with the federal Securities and Exchange Commission or any other notices or other filings in lieu of registration required or permitted by that Act or regulation and any subsequent amendments thereto;
- (8) If the offer and sale of the capital stock is subject to chapter 485, a copy of the registration or qualification statement most recently filed with the commissioner of securities and any subsequent amendments thereto;
- (9) If the offer and sale of the capital stock is not subject to the Securities Act of 1933 or chapter 485, whether exempted by law or regulation or otherwise, a copy of the most recent version of any prospectus, offering memorandum, offering circular, or other offering document proposed to be delivered to prospective subscribers to the capital stock, and any subsequent amendments thereto; and
- (10) Any other information that the commissioner may require.

(c) Upon being satisfied that the application for approval of the capital stock solicitation is complete and that the solicitation will not affect the safety or soundness of the proposed financial institution or harm the public interest, the commissioner shall approve the application. The approval shall not constitute a determination that the applicant has complied with chapter 485 or any other State or federal law.

§412:3-211 Time limit to complete organization. (a) A proposed Hawaii financial institution shall obtain its required capital and surplus, complete its organization, and obtain a charter or license from the commissioner within one year from the date of incorporation; provided that for good cause shown by the applicant in organization, the commissioner may by written order extend the deadline for a period not to exceed six months.

(b) If the applicant in organization fails to meet the deadline set forth in subsection (a), the commissioner shall order the applicant in organization to dissolve the proposed Hawaii financial institution.

§412:3-212 Final application for charter or license. (a) After completing its organization of the Hawaii financial institution, the applicant in organization may file with the commissioner an application for a charter or license to engage in the business of a Hawaii financial institution. The application shall be in a form prescribed by the commissioner and, unless waived by the commissioner, shall contain the following information:

- (1) A sworn statement by the applicant in organization that it has complied with all requirements of law concerning the organization of the proposed financial institution, including but not limited to the requirement that the full amount of its required capital and surplus has been paid in or deposited in escrow under terms satisfactory to the commissioner;
- (2) The names and addresses of all common and preferred shareholders, and elected or appointed directors and executive officers of the proposed financial institution and any holding company of the financial institution, and the number of shares owned by each;
- (3) A description of any material changes which have occurred in the financial institution's organizers or the applicant in organization, its business plan, and its financial condition since the issuance of the preliminary approval to organize, accompanied by updated financial statements of the financial institution, any holding company of the financial institution, the applicant in organization, and all executive officers and directors of the financial institution and any holding company of the financial institution;
- (4) Evidence that all federal deposit insurance, fidelity bonds and any other insurance required by the order of preliminary approval have been obtained;
- (5) A description of the financial institution's disaster recovery policies and programs, security programs, and all vending contractors for electronic data processing and servicing; and
- (6) Any other information that the commissioner may require.

(b) The commissioner shall review the application, may conduct an examination of the financial institution, and may interview any proposed director or executive officer.

(c) If the commissioner is satisfied that the financial institution and, if applicable, its holding company have fulfilled all the requirements of law, the grounds for preliminary approval, and that the financial institution is qualified to engage in the business of a financial institution, the commissioner shall issue a written decision and order approving the application. The order may restrict the payment of dividends for a period of up to three years, and may contain any other conditions and restrictions on the financial institution that are in the public interest, including but not limited to the divestment of any contractual arrangement with an affiliate or subsidiary involving any type of business not permitted under this chapter. Upon approving the application and upon the payment by a depository

financial services loan company of an initial license fee established by rule pursuant to chapter 91, the commissioner shall issue to the financial institution a charter or license to engage in the business of a financial institution under this chapter.

§412:3-213 Denial of charter or license. If the commissioner is not satisfied that the applicant meets all the criteria set forth for approval of the charter or license, the commissioner shall issue a written decision denying the applicant's application. An applicant who is denied approval may request a hearing before the commissioner in accordance with chapter 91. Any final decision of the commissioner denying an applicant a charter or license may be appealed to the circuit court as provided in chapter 91.

PART III. ORGANIZATION OF NONDEPOSITORY FINANCIAL SERVICES LOAN COMPANIES

§412:3-300 Applicability of part. The provisions of this part shall govern the organization of nondepository financial services loan companies in this State.

§412:3-301 Application for license. (a) Any corporation incorporated in this State or any person intending to form a corporation incorporated in this State may file an application with the commissioner for a license to engage in the business of a nondepository financial services loan company.

(b) The application shall contain the following information, unless waived by the commissioner:

- (1) The proposed name of the nondepository financial services loan company, the location of its principal office, and any lease agreements for such principal office;
- (2) Any intended or existing affiliates, subsidiaries, and holding company of the proposed nondepository financial services loan company and the extent and nature of the holding company's control over the operations of the proposed nondepository financial services loan company;
- (3) A business plan which shall contain the following:
 - (A) A written description of the company's proposed financial products;
 - (B) A written statement which explains how the scope of the proposed business complies with article 9 and why any existing lines of business do not conflict with the provisions of article 9;
 - (C) A written description of the company's proposed plan of marketing its products, whether through affiliates, subsidiaries, service corporations, or holding company;
 - (D) Financial projections regarding the nondepository financial services loan company's profitability; and
 - (E) Any and all contractual arrangements which are intended to be executed between the nondepository financial services loan company and its holding company, affiliates, and subsidiaries;
- (4) Financial statements, employment history, education, management experience, and other biographical information for the proposed executive officers and directors of the nondepository financial services loan company and its holding company, if any;
- (5) Proposed policies regarding loans, investments, operations, accounting, record-keeping and compliance with applicable federal and state consumer laws;

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- (6) The name and address of each proposed subscriber of capital stock in the nondepository financial services loan company or the majority shareholders in any holding company;
 - (7) A copy of the nondepository financial services loan company's articles of incorporation and bylaws; and
 - (8) Any other information that the commissioner may require.
- (c) The application shall be submitted on a form prescribed by the commissioner. The application shall be accompanied by an application fee of \$5,000, or such greater amount as the commissioner shall establish by rule pursuant to chapter 91. The application fee shall not be refundable.
- (d) The identity of each applicant and organizer, and any information which is not confidential shall be available to the public. The applicant may request in writing that information be kept confidential. The applicant shall designate and separate any matter which the applicant claims is confidential and shall submit a separate statement providing the reasons and authority for the request for confidential treatment. The failure by the applicant to request confidential treatment and designate and separate the confidential matter shall preclude any objection or claim for wrongful disclosure of the same. Information determined by the commissioner to be confidential, pursuant to an applicant's request or otherwise, shall not be available to the public.

§412:3-302 Publication of notice. (a) Once the application for a license is complete and has been accepted by the commissioner, the applicant shall publish a notice at least once in a newspaper of general circulation in each county in this State where the nondepository financial services loan company intends to establish a principal office, branch or agency.

(b) The notice shall be in a form prescribed by the commissioner and shall state the fact that an application has been filed, the name of the applicant, the location of the nondepository financial services loan company's proposed place of business, and the amount of its proposed capital. The notice shall also state that within fifteen days after the last publication of the notice any person may file with the commissioner written comments on the application and or a request for an informational and comment proceeding to present information and comments to the commissioner. Any request for an informational and comment proceeding shall be accompanied by a brief statement of the person's interest in the application, the matters to be discussed at the informational and comment proceeding, and the reasons why written comments will not suffice in lieu of an informational and comment proceeding.

§412:3-303 Informational and comment proceeding. (a) An informational and comment proceeding on the application shall not be mandatory and whether an informational and comment proceeding is held shall be within the commissioner's discretion, regardless of whether any person has requested one.

(b) If the commissioner determines that an informational and comment proceeding is warranted, the commissioner shall notify the applicant and every person who has requested an informational and comment proceeding of the time, date, and place of the proceeding at least ten days prior to the proceeding.

§412:3-304 Grant of approval. (a) An application for a license shall be approved only if the commissioner finds that:

- (1) The proposed nondepository financial services loan company and holding company, if any, will comply with the requirements of this chapter; and

- (2) The qualifications, character, financial responsibility, experience, and general fitness of the proposed directors and executive officers of the nondepository financial services loan company are such as will warrant public confidence and a belief that the business of the nondepository financial services loan company will be honestly and efficiently conducted. For purposes of this section, the commissioner may presume that in the absence of credible evidence to the contrary, a director, officer, or controlling person is of good character and sound financial standing. Such presumption may be rebutted by evidence to the contrary, including without limitation a finding that such director, officer, or controlling person has:
- (A) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;
 - (B) Consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;
 - (C) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;
 - (D) Wilfully made or caused to be made in any application or report filed with the commissioner, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has wilfully omitted to state in any application or report any material fact which was required to be stated therein; or
 - (E) Wilfully committed any violation of, or has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this chapter or of any rule or order issued under this chapter.

(b) If the commissioner is satisfied that the applicant has fulfilled all the requirements of law and is qualified to engage in the business of a nondepository financial services loan company, the commissioner shall issue a written decision and order approving the application. Upon approving the application and upon the payment of an initial license fee established by rule pursuant to chapter 91, the commissioner shall issue to the applicant a license to engage in the business of a nondepository financial services loan company under this chapter.

(c) In granting approval, the commissioner may impose any conditions and restrictions that are in the public interest, including but not limited to requiring the applicant to fulfill representations contained in its application and agreements made with the commissioner during the application process.

§412:3-305 Denial of license. If the commissioner is not satisfied that the applicant meets all the criteria set forth for approval, the commissioner shall issue a written decision denying the applicant's application. An applicant who is denied approval may request a hearing before the commissioner in accordance with chapter 91. Any final decision of the commissioner denying an applicant a license may be appealed to the circuit court as provided in chapter 91.

§412:3-306 Paid-in capital and surplus. (a) Every nondepository financial services loan company existing or organized under the laws of this State shall at all times have paid-in capital and surplus of not less than \$500,000.

(b) The initial paid-in capital and surplus of every nondepository financial services loan company shall be in money.

PART IV. MANAGEMENT OF STOCK FINANCIAL INSTITUTIONS

§412:3-400 Applicability of part. This part shall govern the management of all Hawaii financial institutions that are stock financial institutions.

§412:3-401 Applicability of Hawaii Business Corporation Act. (a) Except to the extent that the provisions of this chapter are inconsistent, all provisions of chapter 415 shall apply to a corporation engaging in business as a Hawaii financial institution under this chapter. In case of any inconsistencies, the provisions of this chapter shall control.

(b) A copy of each document delivered to the director of commerce and consumer affairs for filing pursuant to chapter 415 shall be simultaneously delivered to the commissioner.

§412:3-402 Capital stock. The following provisions shall apply to all shares of capital stock of a Hawaii stock financial institution:

- (1) Subject to any restrictions in chapter 415 or the articles of incorporation, the consideration to be paid for the issuance of authorized capital stock of a Hawaii stock financial institution shall be authorized by the board of directors of the financial institution and shall be paid only in money or such other consideration as may be authorized by chapter 415 or this chapter, but not in labor or services actually performed for the financial institution; provided that upon authorization by the board of directors, the financial institution may issue its own authorized shares of capital stock in exchange for or in conversion of its outstanding shares, or distribute its own shares pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate stock dividends or splits, and any such transaction shall not require consideration; provided, further, that no such issuance of shares of any class or series shall be made to the holders of shares of any other class or series unless it is either expressly provided for in the articles of incorporation, or is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class or series in which a distribution is to be made.
- (2) No Hawaii financial institution shall issue any share of its capital stock unless and until the full amount of any consideration therefor as authorized by the board of directors shall have been paid into or received by the financial institution.
- (3) No Hawaii stock financial institution other than a nondepository financial services loan company shall issue preferred stock without first obtaining the written approval of the commissioner as to the amount and terms thereof. While any preferred stock of a financial institution is held as owner or pledgee by any federal agency or entity established by law for the purpose of providing financial assistance to financial institutions, such preferred stock and any dividends paid thereon shall be exempt from taxation by this State.
- (4) No Hawaii stock financial institution other than a nondepository financial services loan company shall decrease its authorized capital stock or the par value of capital stock having par value, or decrease its outstanding capital stock by the acquisition of its own shares, without first receiving the written approval of the commissioner.

§412:3-403 Dividends and other capital distributions. (a) No Hawaii stock financial institution shall declare or pay any dividends or make any other

capital distribution to its shareholders except pursuant to its articles of incorporation, this section, and section 415-45; provided that if section 415-45 is inconsistent with this section, the provisions of this section shall control.

(b) In this section, "capital distribution" means:

- (1) A distribution of cash or other property by any Hawaii stock financial institution to its owners made on account of that ownership, but excluding any dividends consisting only of shares of the capital stock of the financial institution or rights to purchase such shares;
- (2) A payment by any stock financial institution to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interest, including any extensions of credit to finance an affiliated company's acquisition of those shares or interests; or
- (3) A transaction that the commissioner determines, by order or rule, to be in substance a distribution of capital to the owners of the financial institution.

(c) A Hawaii stock financial institution shall not make any capital distribution in an amount greater than its retained earnings then on hand or if after such capital distribution the financial institution shall not have the minimum paid-in capital and surplus required by this chapter. For purposes of this section the amount of retained earnings on hand, capital and surplus shall be determined in accordance with generally accepted accounting principles, except that:

- (1) All loans and extensions of credit on which interest has been delinquent for one year or more, or upon which a final judgment has been unsatisfied for more than one year and interest has been delinquent for one year or more, unless and to the extent the same are well secured or in the process of collection shall have been charged down;
- (2) All assets which the commissioner may have required to be charged down pursuant to section 412:3-109, shall have been charged down; and
- (3) Any loss sustained or charge made by a Hawaii financial institution as provided in this subsection shall be netted first against any reserve established therefor, then charged to retained earnings, then to surplus, and then to capital.

(d) Before making any capital distribution, each Hawaii stock financial institution, except for a nondepositary financial services loan company, shall, until its capital and surplus equal at least one hundred thirty-three per cent of its initial minimum capital and surplus required under section 412:3-209, transfer to surplus from its retained earnings at least twenty-five per cent of its net profits from the preceding fiscal year.

PART V. PLACES OF BUSINESS

§412:3-500 Prohibition of business at unauthorized locations. Except as expressly authorized by this chapter or by federal law, no financial institution shall conduct any business in this State except at places of business or in the manner authorized in this part and except to the extent so authorized.

§412:3-501 Authorized places of business. (a) A Hawaii financial institution may conduct business at one or more of the following places of business, to the extent authorized:

- (1) The principal office of a Hawaii financial institution is the place of business that it designates as its executive headquarters in this State. A financial institution may, but need not, conduct other businesses permitted under its charter or license at its principal office. The terms

"principal office," "home office," and "main office" are interchangeable.

- (2) A branch is a place of business open to the public where a financial institution shall be authorized to conduct all businesses permitted under its charter or license, except for the maintenance of its executive headquarters.
- (3) An agency is a place of business open to the public where a financial institution may conduct only specific businesses approved by the commissioner in writing.
- (4) An automatic teller machine or ATM is a place of business, either at a fixed location or mobile, consisting of an on-line or off-line, manned or unmanned, electronic processing device, including associated equipment and structures, that is situated at a premises separate from a financial institution's principle office, branch, agency, or support facility, at which deposits of cash or instruments, or cash disbursement transactions between a person and one or more financial institutions are accomplished, whether instantaneous or otherwise, through or by means of electronic or automated signals or impulses including the human voice; provided that it shall not mean a telephone or an electronic processing device situated at or within the premises of a bank customer that is used only for transactions between that customer and the financial institution. The term does not include merchant operated terminals and point of sale terminals.
- (5) A support facility is a place of business that is not generally open to the public, where a financial institution conducts limited types of significant business operations of the financial institution, including but not limited to data processing, clerical activities and storage.
 - (b) In addition to conducting business at a place of business described in subsection (a), a Hawaii financial institution may conduct business in any other manner or place necessary or convenient; provided that deposits of cash or instruments shall not be received, checks, negotiable orders of withdrawal or share drafts shall not be paid, and cash shall not be disbursed, except at an authorized principal office, branch or ATM or at any agency or support facility which has been authorized by the commissioner to accept deposits or disburse cash.

§412:3-502 Foreign financial institution. No foreign financial institution shall receive deposits, lend money, or pay checks, negotiable orders of withdrawal or share drafts from any principal office, branch, agency, ATM, or other location in this State, unless expressly authorized by this chapter, other laws of this State, or federal law; provided, that nothing in this section shall prohibit any foreign financial institution from participating in the disbursement of cash through an ATM network or from operating from any location in this State as a mortgage broker licensed under chapter 454, or as a real estate collection servicing agent registered under chapter 454D.

§412:3-503 Opening or relocating principal office, branch, or agency. (a) No Hawaii financial institution may relocate its principal office to another location in this State, or open or relocate any branch or agency within or outside of this State without the commissioner's prior written approval; provided, that approval shall not be required if the relocation will be less than one mile from the institution's present place of business, the institution gives the commissioner written notice at least twenty days prior to the move, the type of business carried on at the new place of business will be the same as at the present place of business, and there

will be no financial involvement in the relocation by a director, executive officer, or principal shareholder, or a related interest of any of these persons.

(b) The institution shall file an application with the commissioner. The application shall be in a form prescribed by the commissioner and shall be accompanied by a fee the amount of which shall be established by rule. The application shall contain the following information:

- (1) The name of the financial institution;
- (2) The specific location of the proposed site of the principal office, branch or agency;
- (3) The anticipated opening date and, if open for a specified period, the end of such period;
- (4) The nature of the business or transactions intended to be carried on at the location;
- (5) Facts showing the necessity or justification for the proposed site and that there is a reasonable assurance of sufficient volume of business so that opening and maintaining the proposed business location will not jeopardize the solvency of the financial institution; and
- (6) Any other information that the commissioner may require.

(c) If after appropriate examination and investigation, the commissioner is satisfied that the proposed opening or relocation is justified and proper, the commissioner shall approve the application in writing, with any conditions as the commissioner deems appropriate. Upon payment by a financial services loan company of the initial license fee for the new branch or agency, or the reissuance of license fee for the relocated office as established by rule pursuant to chapter 91, the commissioner shall issue a license for the new or relocated office.

§412:3-504 Notice and deadline for opening or relocating principal office, branch, or agency. Every financial institution permitted under this part to open or relocate a principal office, branch, or agency shall notify the commissioner in writing that the opening or relocation has been completed, no later than five days after the opening or relocation. If the opening or relocation will not be completed within nine months after the opening date stated in the application, the financial institution may obtain from the commissioner an extension of the time to open or relocate, which shall be reasonably granted for good cause. If an extension of time to open or relocate is not obtained in writing, the commissioner may revoke the permission to open or relocate.

§412:3-505 Opening or relocating out-of-state branch or agency. With the commissioner's prior written approval, a Hawaii financial institution may open or relocate a branch or agency that is outside of this State, including but not limited to any state, possession, or territory of the United States or any foreign country. An application to open or relocate an out-of-state branch or agency shall be filed in accordance with section 412:3-503, and the commissioner may assess the financial institution any additional expenses as may be reasonably necessary to consider the application.

§412:3-506 Opening or relocating automatic teller machine or support facility. A Hawaii financial institution which opens or relocates an ATM or support facility shall within thirty days thereafter submit a letter to the commissioner containing the following information:

- (1) The location of the ATM or support facility;
- (2) A description of the type of functions which the ATM or support facility will perform; and
- (3) The date or anticipated date of opening or relocation.

§412:3-507 Closing branch or agency. A Hawaii financial institution shall give the commissioner prior notice of its intent to close any branch or agency at least thirty days prior to the closing. The notice shall specify the intended date of closing, the reasons for the closing, and a certification by the secretary or other authorized officer of the institution that the decision to close was duly approved by its board of directors. This notice may be satisfied by delivery to the commissioner of a copy of any notice pertaining to the closure given to the financial institution's appropriate federal regulatory agency.

§412:3-508 Closing automatic teller machine or support facility. A Hawaii financial institution shall provide notice to the commissioner of its closure of an ATM or support facility within thirty days of the closing. The notice shall contain the location of the ATM or support facility closed and the date of closing.

§412:3-509 Out-of-state branch or agency. A Hawaii financial institution maintaining a branch or agency outside of this State shall be subject to the following requirements:

- (1) The accounts of each out-of-state branch or agency of the financial institution shall be maintained independently of the accounts of all its other out-of-state branches or agencies, and independently of its offices, branches, and agencies in this State. At the end of every quarter of its fiscal year the financial institution shall transfer to its general ledger at its principal office the profit and loss from each out-of-state branch or agency as separate items;
- (2) The commissioner may at any time conduct examinations of any out-of-state branch or agency and may at any time order its discontinuance for the same reasons as a branch or agency within the State may be ordered to be discontinued. The financial institution maintaining the out-of-state branch or agency shall pay for the cost of all examinations, as provided in section 412:2-105; and
- (3) A financial institution may act as the fiscal agent of the United States through any of its out-of-state branches or agencies.

PART VI. CONVERSIONS, MERGERS, CONSOLIDATIONS, ACQUISITIONS, ASSUMPTIONS, AND VOLUNTARY DISSOLUTIONS

§412:3-600 Applicability of this part. This part applies to:

- (1) The conversion, merger, consolidation, acquisition of the assets or assumption of the liabilities, acquisition of control, or voluntary cessation of business and dissolution of a Hawaii financial institution;
- (2) The merger, consolidation or acquisition of control of a financial institution holding company which controls:
 - (A) A Hawaii financial institution; and
 - (B) To the extent permitted by federal law, a federal financial institution whose operations are principally conducted in this State; and
- (3) All persons who seek to merge or consolidate with, acquire the assets or assume the liabilities of, or acquire control of:
 - (A) A Hawaii financial institution;
 - (B) A financial institution holding company which controls a Hawaii financial institution; and
 - (C) To the extent permitted by federal law, a financial institution holding company which controls a federal financial institution whose operations are principally conducted in this State.

§412:3-601 No conversions, mergers, consolidations, acquisitions, assumptions or voluntary dissolutions except pursuant to this part. Except as modified by the commissioner's powers under parts III, IV and V of article 2, no Hawaii financial institution or financial institution holding company may undergo a conversion, merger or consolidation, sell all or substantially all of its assets, be subject to any assumption of any of its liabilities or to an acquisition of control, or cease business and dissolve except in accordance with this part.

§412:3-602 Definitions. As used in this part:

"Participating institution" means one or all of the financial institutions (or, where applicable, financial institution holding companies) participating in a merger or consolidation pursuant to this part.

"Resulting institution" means the financial institution resulting from a merger, consolidation or conversion pursuant to this part.

§412:3-603 Procedure for applications pursuant to this part. Whenever the written approval of the commissioner is required with respect to any transaction covered by this part, the following procedures shall apply:

- (1) An application for approval by the commissioner pursuant to this part shall be on a form prescribed by the commissioner and shall contain any information, data and records as the commissioner may require. As far as possible consistent with the effective discharge of the commissioner's responsibilities, the commissioner shall prescribe the use of forms currently prescribed by the appropriate federal regulatory agency of financial institutions and financial institution holding companies for identical or similar types of transactions. The application shall be accompanied by an application fee established by the commissioner pursuant to section 412:2-105. The application fee shall not be refundable;
- (2) If any material change occurs in the facts set forth in an application, or if for any other reason the applicant desires to amend the application, an amendment setting forth any change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner. Within twenty days after receiving an application or any amendment thereto, the commissioner may request any additional information necessary in deciding whether to approve a proposed transaction pursuant to this part. The applicant shall submit the additional information in a reasonable time thereafter, as may be specified by the commissioner;
- (3) If the commissioner would approve a plan of conversion, merger or consolidation, an acquisition of assets or assumption of liabilities, an acquisition of control, or a voluntary cessation of business and dissolution, but on terms different than contained in the application, the commissioner may give notice to the applicant of the nature of the changes which would be approved, and the applicant may submit an amended application;
- (4) If the commissioner intends to disapprove an application, the commissioner shall deliver to the applicant a written notice of the intent to disapprove. Within ten days after receipt of the commissioner's notice of intent to disapprove an application, the applicant may request an administrative hearing, to be held in accordance with chapter 91. If no request for a hearing is made, the commissioner's disapproval shall become final. If after the hearing the commissioner finally disapproves

- the application, the applicant may, within thirty days of the date of the final decision, appeal to the circuit court as provided in chapter 91;
- (5) Notwithstanding any other provision of this part, any complete application which is not approved or denied by the commissioner within a period of sixty days after the application is filed with the commissioner or, if the applicant consents to an extension of the period within which the commissioner may act, within the extended period, shall be deemed to be approved by the commissioner as of the first day after the period of sixty days or the extended period. If the commissioner gives notice of an informational and comment proceeding on the application, the sixty day period shall be extended to a date as may be fixed by order of the commissioner. For purposes of this section, an application is deemed to be filed with the commissioner at the time when the complete application, including any amendments or supplements, containing all of the information in the form required by the commissioner, is received and accepted by the commissioner;
- (6) Any applicant submitting information to the commissioner pursuant to this part may request that the information, or any part thereof, be kept confidential. The request shall be made in writing and shall set forth the specific items sought to be kept confidential and the reasons and authority for the confidential treatment. The commissioner may, pursuant to a request or otherwise, determine that good cause exists to keep some or all of the information confidential, and shall keep the information confidential and not subject to public disclosure. In connection with an application for the acquisition of control pursuant to section 412:3-612, the commissioner may release information to the affected financial institution or financial institution holding company with a directive that some or all of the information be kept confidential.

§412:3-604 Shareholder or member vote. (a) For any transaction covered by this part which requires approval of the shareholders or members of the financial institution, the voting requirements shall be:

- (1) If a Hawaii financial institution is a stock institution, the holders of two-thirds of each class of the issued and outstanding capital stock of the financial institution entitled to vote or such greater majority as may be provided by the articles of incorporation of the Hawaii financial institution shall be required to approve any action under this part;
- (2) If a Hawaii financial institution is a mutual savings and loan association, a majority of members present in person or by proxy at any meeting shall be required to approve any action under this part;
- (3) If a Hawaii financial institution is a credit union, a majority of members present in person at any meeting shall be required to approve any action under this part.
- (b) This section shall control over the required percentages for any shareholder vote contained in section 415-73 on approval by shareholders of a merger or consolidation, section 415-79 on approval by shareholders on the sale of assets not in the usual and regular course of business, and section 415-84 on approval by shareholders on the voluntary dissolution of a corporation.

§412:3-605 Notice to mutual savings and loan or credit union member; no right of dissent. (a) Wherever the approval of a transaction is required by this part by the members of a mutual savings and loan association or a credit union, notice of a fleeting of its members, which may be an annual or a special fleeting,

shall be given to each member entitled to vote. The notice shall be provided not less than twenty days before the date of the meeting. The notice shall state that the purpose of the meeting is to vote upon a transaction covered by this part and shall be accompanied by a detailed description of the proposed transaction or a summary of the transaction and a copy of the plan of conversion, merger, consolidation, sale of assets or assumption of liabilities, or voluntary cessation of business and dissolution approved by the board of directors.

(b) A member of a mutual savings and loan association or credit union shall have no right of dissent under chapter 415 for any of the transactions governed by this part.

§412:3-606 Conversion from State to comparable federal financial institution. (a) A Hawaii financial institution may convert to a comparable federal financial institution if the conversion is approved at a meeting of its shareholders or members duly called and noticed and upon a vote which satisfies the requirements of section 412:3-604.

(b) Within ten days after the meeting of its shareholders or members approving the conversion, the financial institution shall file with the commissioner:

- (1) A notice of intention to convert; and
- (2) A certificate signed by two executive officers of the financial institution verifying the validity of the meeting, that the required vote was obtained, and that the attached copy of the resolution to convert adopted at the meeting is true and correct.

(c) Within a reasonably prompt time and without any unnecessary delay after the meeting approving the conversion, the financial institution shall take the action necessary to complete the conversion and to obtain a federal license, charter, certificate, or other approval to become a federal financial institution.

(d) The date of issuance of the federal license, charter, certificate, or other approval, or the effective date of conversion stated in the license, charter, certificate or other approval, shall be the effective date of the conversion.

(e) Upon the effective date of the conversion as determined under federal law, the institution's State charter or license shall terminate without further notice, and the institution shall cease to be regulated by the commissioner. Within ten days after receipt of the federal charter, license, certificate, or other approval, the resulting financial institution shall deliver a copy thereof to the commissioner.

§412:3-607 Conversion from federal to comparable Hawaii financial institution. (a) A federal financial institution whose operations are principally conducted in this State may convert to a comparable Hawaii financial institution if the institution, and its holding company or holding companies, if any, shall have complied with all requirements, conditions, and limitations imposed by federal law with respect to the conversion, subject to any rights of dissenting shareholders or members and to obtaining a charter under this chapter.

(b) The federal financial institution shall file an application with the commissioner pursuant to section 412:3-603 for a charter to engage in business as a comparable Hawaii financial institution pursuant to this chapter. The application shall be accompanied by:

- (1) A certificate signed by two executive officers of the financial institution, verifying that it has complied with all federal laws and regulations relating to the conversion;
- (2) The information required from applicants for approval to organize a Hawaii financial institution of the same type; and
- (3) Any other information that the commissioner may require.

(c) The commissioner may require notice to be given to the public as may seem appropriate. The commissioner may conduct an examination of the institution as provided under article 2, part II, of this chapter. The cost of any examination shall be assessed against and paid by the institution pursuant to sections 412:2-105.

(d) The charter shall be granted only if the commissioner is satisfied that the granting of the charter will not impair the safety or soundness of the financial institution or any other financial institution, and that the applicant meets all the requirements set forth in this chapter for the type of financial institution for which the application has been filed. The requirements shall include, but not be limited to, the appropriate location of offices, capital structure, business experience, and the character of its executive officers and directors. The commissioner may impose any restrictions and conditions on the operation of the resulting financial institution as the commissioner deems appropriate and consistent with federal law.

(e) The conversion shall be effective upon the effective date of the new charter granted by the commissioner after all provisions of this section and applicable federal law have been complied with in full.

§412:3-608 Conversion to another type of financial institution. (a) A financial institution of any type, whether federal or State, may convert to a Hawaii financial institution of any other type if the institution and its holding company or holding companies, if any, shall have complied with all requirements, conditions, and limitations imposed by this part and by federal law, if applicable.

(b) If the converting institution is a Hawaii financial institution, its shareholders or members shall approve a conversion to another type of financial institution at a meeting duly called and noticed and upon a vote which satisfies the requirements of section 412:3-604.

(c) The financial institution shall file an application with the commissioner pursuant to section 412:3-603 for a charter or license to engage in the business of the type of financial institution to which it will convert. The application shall be accompanied by:

- (1) A certificate signed by two executive officers of the financial institution, verifying the validity of the meeting of the shareholder or members, that the requisite vote has been obtained, and that the attached copy of the resolution to convert adopted at the meeting is true and correct, or that the applicant has complied with all federal laws and regulations regarding the conversion, as the case may be;
- (2) The information required from applicants for approval to organize a Hawaii financial institution of the type into which it will convert; and
- (3) Any other information that the commissioner may require.

(d) The commissioner may require notice to be given to the public as may seem appropriate. The commissioner may conduct an examination of the institution as provided under article 2, part II, of this chapter. The cost of any examination shall be assessed against and paid by the institution pursuant to section 412:2-105.

(e) The charter or license shall be granted only if the commissioner is satisfied that the granting of the charter or license will not impair the safety or soundness of the financial institution or any other financial institution, and that the applicant meets all the requirements set forth in this chapter for the type of financial institution for which the application has been filed. The requirements shall include, but not be limited to, the appropriate location of offices, capital structure, business experience, and the character of its executive officers and directors. The commissioner may impose any restrictions and conditions on the operation of the resulting financial institution as the commissioner deems appropriate and consistent with federal law.

(f) The conversion shall be effective upon the effective date of the new charter or license granted by the commissioner after all provisions of this section and of federal law shall have been complied with in full.

(g) Nothing in this section shall be construed as permitting the conversion of any financial institution to a state-chartered mutual savings and loan association.

§412:3-609 Merger or consolidation of Hawaii financial institutions. (a)

Any one or more financial institutions may merge into another financial institution and any two or more financial institutions other than credit unions may consolidate into a new financial institution if the institutions shall have complied with all requirements, conditions, and limitations imposed by this chapter and by federal law, if applicable. A merger or consolidation in which one or more of the participating financial institutions is a financial institution chartered or licensed under the laws of or whose operations are conducted principally in any state other than Hawaii, in any possession or territory of the United States or in any foreign country shall be authorized only in accordance with subsection (d), or in accordance with part IV of article 5 of this chapter.

(b) Any merger or consolidation of Hawaii stock financial institutions shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger or consolidation of two or more corporations pursuant to chapter 415; except that the vote by the shareholders of each of the participating institutions to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604 and that the director of commerce and consumer affairs shall not file the articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner.

(c) One or more federal financial institutions whose operations are conducted principally in this State and one or more Hawaii financial institutions may be merged or consolidated, with the federal financial institution, the Hawaii financial institution or a new consolidated financial institution being the resulting institution, if the merger or consolidation is permitted by federal law. The federal financial institution shall comply with all requirements, conditions and limitations imposed by federal law or regulation with respect to the merger or consolidation. The Hawaii financial institution shall comply with all of the provisions of this chapter and chapter 415, except that the vote by shareholders or members of the Hawaii financial institution to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604, and that if the resulting institution is a Hawaii financial institution, the director of commerce and consumer affairs shall not file articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner.

(d) One or more financial institutions chartered or licensed under the laws of or whose operations are conducted principally in any state other than Hawaii, in any possession or territory of the United States or in any foreign country and one or more Hawaii financial institutions may be merged or consolidated, but only where the financial institution resulting from any merger or consolidation pursuant to this subsection is chartered or licensed under the laws of and conducts its operations principally in this State or is a federal financial institution which conducts its operations principally in this State. The financial institution chartered or licensed under the laws of any state other than Hawaii, any possession or territory of the United States or any foreign country shall comply with all requirements, conditions and limitations imposed by the law of the jurisdiction under which the financial institution is chartered with respect to the merger or consolidation. The Hawaii financial institution shall comply with all of the provisions of this chapter and chapter 415, except that the vote by shareholders or members of the Hawaii financial institution to approve the plan of merger or consolidation shall satisfy the

requirements of section 412:3-604, and that the director of commerce and consumer affairs shall not file articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner.

(e) A Hawaii mutual savings and loan association may merge into a Hawaii stock financial institution or a federal financial institution whose operations are principally conducted in this State, or may consolidate with a Hawaii stock financial institution or a federal financial institution whose operations are conducted principally in this State into a new resulting institution; provided that the resulting institution shall be a Hawaii stock financial institution or a federal financial institution, and shall not be a Hawaii mutual savings and loan association. The merger or consolidation shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger or consolidation of two or more stock financial institutions pursuant to this section and to chapter 415, as though the Hawaii mutual savings and loan association was a stock financial institution; except that the members of the participating Hawaii mutual savings and loan association shall approve the plan of merger or consolidation at a meeting duly called and noticed and upon a vote which satisfies the requirements of sections 412:3-604 and 412:3-605.

(f) A Hawaii credit union may merge with a Hawaii credit union or federal credit union. The merger shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger of two or more stock financial institutions pursuant to this section and to chapter 415, as though the credit unions were stock financial institutions; except that the plan of merger shall be approved by a majority of the members of the board of directors of each participating credit union and by the members of the participating credit unions at a meeting duly called and noticed and upon a vote which satisfies the requirements of sections 412:3-604 and 412:3-605.

(g) Prior to or after the vote of the shareholders or members upon the plan of merger or consolidation, but prior to delivery of articles of merger or consolidation and plan of merger or consolidation to the director of commerce and consumer affairs, the participating financial institutions shall file an application with the commissioner pursuant to section 412:3-603 for approval of the proposed merger or consolidation. The application shall be accompanied by:

- (1) The plan of merger or consolidation;
- (2) A certificate signed by two executive officers of each of the participating institutions, verifying that the plan of merger or consolidation has been approved by the board of directors of the participating financial institution and that the attached copy of the resolution approving the proposed merger or consolidation is true and correct;
- (3) If any participating financial institution is a federal financial institution or a financial institution chartered under the laws of any state other than Hawaii, any possession or territory of the United States, or any foreign country, a certificate signed by two executive officers verifying that the financial institution has complied, or will comply with all federal laws and regulations or all laws and regulations of the jurisdiction under which it is chartered relating to the merger or consolidation;
- (4) If the resulting financial institution is to be a Hawaii financial institution, the information required from applicants for approval to organize a Hawaii financial institution of the same type as the proposed resulting Hawaii financial institution;
- (5) If a Hawaii financial institution is seeking to merge or consolidate with a financial institution of another type, the information required

from applicants for approval to convert to another type of financial institution; and

- (6) Any other information that the commissioner may require.

(h) The commissioner may require notice to be given to the public as may seem appropriate. The commissioner may conduct an examination of the institution as provided under article 2, part II, of this chapter. The cost of any examination shall be assessed against and paid by the institution pursuant to section 412:2-105.

(i) The commissioner shall approve the plan of merger or consolidation if it appears that:

- (1) Any resulting Hawaii financial institution would meet all the requirements under this chapter for a charter or license to the same extent that it would if it were applying for a new charter or license;
- (2) Any resulting financial institution would be adequately capitalized;
- (3) The plan of merger or consolidation is fair to creditors and the shareholders or members of all participating institutions;
- (4) The participating institutions have complied, or will comply, with all requirements, conditions, and limitations imposed by federal law or regulation or by the law or regulation of the jurisdiction under which an institution is chartered with respect to the merger or consolidation;
- (5) The overall experience, moral character or integrity of the proposed directors and executive officers of the resulting institution is consistent with the interest of the depositors, beneficiaries, creditors, shareholders or members of the financial institution, or in the public interest;
- (6) The merger or consolidation will not jeopardize the safety or soundness of any participating institutions or the resulting institution, and is not otherwise contrary to the public interest;
- (7) The merger or consolidation will not substantially lessen competition or tend to create a monopoly or restraint of trade in any section of the country that includes this State or a part thereof, or that any anti-competitive effects are clearly outweighed in the public interest by the probable effect of the merger or consolidation in meeting the convenience and needs of the community to be served;
- (8) The merger or consolidation will promote the convenience, needs and advantage of the general public particularly in the communities in which the participating and resulting financial institutions conduct or will conduct its business;
- (9) The grounds for approval of a conversion to another type of financial institution pursuant to section 412:3-608 have been met in the case of a participating Hawaii financial institution seeking to merge or consolidate with a financial institution of a different type; and
- (10) The plan meets any other criteria as the commissioner may deem appropriate.

(j) In the case of a merger, the charter or license of the participating institution which is the resulting institution shall continue as the charter or license of the resulting institution upon the effective date of the merger. In the case of a consolidation, when the commissioner is satisfied that the participating institutions have complied with all State and federal law with regard to the consolidation, the commissioner shall issue a charter or license to the consolidated resulting Hawaii financial institution.

§412:3-610 Effect of conversion, merger, or consolidation. (a) A Hawaii financial institution or federal financial institution resulting from a conversion, merger, or consolidation pursuant to this part continues the corporate entities of

each converting or participating institution and shall be deemed to be continuing the same business of each converting or participating institution carried on prior to the conversion, merger, or consolidation with all of the property, rights, powers, and duties of each converting or participating institution, except as affected by the law of this State in the case of a resulting Hawaii financial institution or by federal law in the case of a resulting federal financial institution, and by the articles of incorporation, charter, and bylaws of the resulting institution. No assignment, deed, conveyance, or other instrument of transfer need be executed in order for the resulting institution to maintain the title, rights, and powers held by the converting or participating institutions. The rights of any creditor or obligee of a converting or participating institution prior to any conversion, merger, or consolidation shall not be affected by such conversion, merger, or consolidation.

(b) A resulting institution shall have the right to the use the names of the converting or participating institutions for all legal purposes, including the recordation and filing of documents pursuant to chapters 501 and 502, whenever it can do any act under that name more conveniently. Any reference to a converting or participating institution in any writing, whether executed or taking effect before or after the conversion, merger, or consolidation, shall be deemed a reference to the resulting institution if not inconsistent with the other provisions of the writing. Provided, however, that the resulting institution shall not use a name in its signage, advertising, or other promotional materials in a manner that suggests or might tend to lead others into believing that it is a different type of financial institution.

(c) Except to the extent inconsistent with this part or in contravention of federal law, section 415-76 shall be applicable to any merger or consolidation under this part.

(d) If a converting or participating institution is a trust company or a bank which is authorized to do a trust business, the resulting institution, by operation of law and without further court order, transfer, substitution, act, or deed shall succeed to the rights, properties, assets, investments, deposits, demands, agreements, and trusts of the converting or participating institutions under all trusts, personal representations, executorships, administrations, guardianships, agencies, and all other fiduciary or representative capacities as though the resulting institution had originally assumed the same and shall succeed to and be entitled to take and execute the appointment to all trusteeships, personal representations, executorships, guardianships, and other fiduciary and representative capacities to which the converting or participating institution may be named or is thereafter named in wills, whether probated before or after the conversion, merger or consolidation, or to which it is or may be named or appointed by any other instrument.

§412:3-611 Merger or consolidation of financial institution holding companies. (a) Unless the commissioner shall have given prior approval or shall have waived the requirement for approval pursuant to subsection (c), no financial institution holding company shall merge or consolidate with any other corporation if the effect of the merger or consolidation shall be to change the direct or indirect control of any Hawaii financial institution.

(b) The merger or consolidation shall be effected pursuant to the procedures, conditions and requirements for, and with the effect of, the merger or consolidation of corporations under the applicable laws of the state or states involved.

(c) Unless the requirement for an application is waived by the commissioner, the participating institutions shall file an application with the commissioner pursuant to section 412:3-603 for approval of the proposed merger or consolidation. The application shall be accompanied by:

- (1) A certificate signed by two executive officers of each of the participating institutions, verifying that the participating institution has complied, or will comply with all state laws and rules relating to the merger or consolidation;
- (2) Information of the type required to be provided pursuant to section 412:3-612, with respect to both of the participating institutions and their respective subsidiary financial institutions; and
- (3) Any other information that the commissioner may require.
- (d) The commissioner shall approve the merger or consolidation if it appears that:
 - (1) The resulting financial institution holding company would be adequately capitalized;
 - (2) The participating institutions have complied, or will comply with all requirements, conditions, and limitations imposed by federal law or regulation with respect to the merger or consolidation;
 - (3) The overall experience, moral character or integrity of the proposed directors and executive officers of the resulting financial institution holding company is consistent with the interest of the depositors, beneficiaries, creditors, or shareholders of the financial institution holding company and its subsidiaries, or in the public interest;
 - (4) The merger or consolidation will not jeopardize the safety or soundness of the subsidiary financial institutions of the participating institutions, and is not otherwise contrary to the public interest;
 - (5) The merger or consolidation will not substantially lessen competition or tend to create a monopoly or restraint of trade in any section of the country that includes this State or a part thereof, or that any anti-competitive effects are clearly outweighed in the public interest by the probable effect of the merger or consolidation in meeting the convenience and needs of the community to be served;
 - (6) The merger or consolidation will promote the convenience, needs and advantage of the general public particularly in the community in which the affected institution conducts its business; and
 - (7) The merger or consolidation meets any other criteria as the commissioner may deem appropriate.
- (e) The commissioner may waive the requirement for approval of a merger or consolidation of a financial institution holding company which indirectly controls a nondepositary financial services loan company, provided that publication in a form approved by the commissioner is made. The publication shall state the fact that a merger or consolidation will take place and shall describe the effect, if any, on the operations and employees of the nondepositary financial services loan company. Publication shall be made once in a newspaper of general circulation.

§412:3-612 Acquisition of control of financial institution or financial institution holding company. (a) Unless the commissioner shall have given prior approval or shall have waived the requirement for approval pursuant to subsection (g):

- (1) A person who is not already in control of a Hawaii financial institution or financial institution holding company shall not acquire control of that financial institution or that financial institution holding company, directly or indirectly, individually or in concert with another; and
- (2) A person who is not already in control of a Hawaii financial institution or financial institution holding company shall not, directly or indirectly, make a tender offer for, request or invite a tender offer for, or offer to exchange securities for, any voting security or any security

convertible into a voting security of that financial institution or that financial institution holding company if the transaction would result in the person acquiring control of that Hawaii financial institution or that financial institution holding company; provided that nothing in this section shall prohibit a person from negotiating or entering into agreements subject to the condition that the acquisition of control will not be effective until approval is obtained.

(b) Notwithstanding subsection (a), this section shall not apply to any acquisition of control of a Hawaii financial institution or financial institution holding company:

- (1) That has been placed into receivership or conservatorship, or whose acquisition has been wholly or partially initiated or approved for purposes of supervisory assistance from the commissioner or any other State or federal agency;
- (2) By a donee or distributee of a gift or devise, if the gift or devise is not intended to avoid this section and provided that the donee or distributee within thirty days after the acquisition gives the commissioner written notice of the gift or devise and any other information that the commissioner may require;
- (3) If the acquisition of control is the subject of an application for approval by the commissioner pursuant to section 412:3-609, 412:3-611, or 412:3-613;
- (4) The acquisition of additional shares by a person who either on the effective date of this chapter or the date of compliance with the procedures of this section, and continuously after that date held, directly or indirectly, solely or through another person or transaction, or in concert with another, power to vote twenty-five per cent or more of the voting shares of the Hawaii financial institution or financial institution holding company; or
- (5) The acquisition of additional shares by a person who on the effective date of this chapter and continuously thereafter held, directly or indirectly, solely or through another person or transaction, or in concert with another, power to vote ten per cent or more of the voting shares of the Hawaii financial institution or financial institution holding company, if the transaction will not result in the person's direct or indirect ownership or power to vote twenty-five per cent or more of any class of voting securities of the Hawaii financial institution or financial institution holding company or if the commissioner determines that such person has controlled the Hawaii financial institution or financial institution holding company since the effective date of this chapter.

(c) Unless the requirement for an application is waived by the commissioner, the proposed acquirer shall file an application with the commissioner pursuant to section 412:3-603 for approval to acquire control of the Hawaii financial institution or financial institution holding company. The application shall contain:

- (1) Information regarding the proposed acquirer;
- (2) Details concerning the acquisition; and
- (3) Any other information that the commissioner may require.

(d) After receiving the proposed acquirer's application for approval and any amendments or supplements thereto, the commissioner shall promptly forward a copy of the same to the affected financial institution. The affected institution shall have ten days after receipt of the application and any amendments or supplements thereto within which to submit any relevant information to the commissioner.

regarding the proposed acquisition, and shall be entitled to appear and be heard at any informational and comment proceeding on the application.

(e) The commissioner may disapprove the proposed acquisition of control if it appears that:

- (1) The overall experience, moral character or integrity of any person who would acquire control of a Hawaii financial institution or financial institution holding company or become a financial institution holding company indicates that it would not be in the interest of the depositors, beneficiaries, creditors, or shareholders of the Hawaii financial institution or the financial institution holding company, or in the public interest, to permit the person to control the Hawaii financial institution or the financial institution holding company or to become a financial institution holding company;
- (2) The acquisition will not promote the convenience, needs, and advantage of the general public, particularly in the community in which the affected institution conducts its business;
- (3) The effect of the proposed acquisition may be substantially to lessen competition or tend to create a monopoly or restraint of trade in any section of the country that includes this State or a part thereof, and that these anti-competitive effects are not clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served;
- (4) The financial condition of any person who would acquire control of a Hawaii financial institution or a financial institution holding company or become a financial institution holding company may jeopardize the safety and soundness of the Hawaii financial institution or the financial institution holding company or prejudice the interests of the depositors, beneficiaries, creditors, or shareholders of the Hawaii financial institution or the financial institution holding company;
- (5) Any plan or proposal to liquidate, merge or consolidate, or make any other major change in the business, corporate structure, or management of the Hawaii financial institution or the financial institution holding company or any of its significant subsidiaries is not fair and reasonable to the depositors, beneficiaries, creditors, or shareholders of the Hawaii financial institution or the financial institution holding company or any of its significant subsidiaries; or
- (6) The acquiring person has failed or refused to furnish information requested by the commissioner.

(f) As a condition for approving the proposed acquisition of control, the commissioner shall impose a reasonable time period, not to exceed one year, within which the acquisition of control must occur.

(g) The commissioner may waive the requirement for approval of an acquisition of control of a financial institution holding company which indirectly controls a nondepository financial services loan company, provided that publication in a form approved by the commissioner is made. The publication shall state the fact that a change of control will take place and shall describe the effect, if any, on the operations and employees of the nondepository financial services loan company. Publication shall be made once in a newspaper of general circulation.

§412:3-613 Acquisition of assets and assumption of liabilities. (a) No Hawaii financial institution may sell, exchange or otherwise dispose of all or substantially all of the financial institution's assets or business, or all or substantially all of the business of any of its branches, or, if not in the usual and regular course of business, all or substantially all of the assets or business of any of its

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departments, or may cause or permit the assumption of all or substantially all its liabilities, or any of its deposits, unless the commissioner shall have given prior written approval to the acquisition or assumption, and only if the acquisition or assumption complies with this part.

(b) Each acquisition or assumption subject to this section shall be effected pursuant to the procedures, conditions and requirements of chapter 415 applicable to, the sale of assets other than in the regular course of business; provided that the acquisition or assumption shall be approved by the shareholders or members of the transferring financial institution at a meeting duly called and noticed and upon a vote which satisfies the requirements of section 412:3-604. Notwithstanding the foregoing, the approval of the shareholders or members of the transferring institution shall not be required if the acquisition of all or substantially all of the assets or business, or the assumption of liabilities or deposits, of any of the transferring financial institution's departments or branches does not constitute an acquisition of all or substantially all of the assets or business, or assumption of all or substantially all of the liabilities or deposits, of the transferring financial institution.

(c) The participants in the transaction shall jointly file an application with the commissioner pursuant to section 412:3-603 for approval of the plan of acquisition or assumption. The application shall contain:

- (1) The plan of acquisition or assumption which shall include, but not be limited to, the names and types of participants involved, the material terms of the transaction, and the provisions as to the manner in which the participants in the transaction will comply with all applicable federal and State law;
- (2) A certificate signed by two executive officers of each of the participants in the transaction verifying that the attached copy of the resolution approving the plan of acquisition or assumption adopted by the board of directors of each of the participants in the transaction is true and correct; and
- (3) Any other information that the commissioner may require.
- (d) The commissioner may require notice to be given to the public as may seem appropriate.
- (e) The commissioner shall approve the acquisition or assumption if it appears that:
 - (1) The depositors, beneficiaries, creditors, shareholders, or members, and other persons having any interest in the transferring financial institution will be adequately protected under the plan of acquisition or assumption;
 - (2) The amount paid for the acquisition or assumption was determined at arm's length, and does not appear to be fraudulent;
 - (3) The plan of acquisition or assumption does not adversely affect the stability of the acquiring or assuming participant if the participant is a Hawaii financial institution, and if the sale is part of the liquidation of the transferring financial institution, provides for the orderly dissolution of the transferring institution in a manner consistent with law;
 - (4) If one or more of the participants in the transaction is subject to federal regulation, the participants will comply with all applicable federal laws;
 - (5) The overall experience, moral character or integrity of the directors and executive officers of the acquiring or assuming participant is consistent with the interest of the depositors, beneficiaries, creditors, or shareholders of the acquiring or assuming participant, or in the public interest;

- (6) The acquisition or assumption will not jeopardize the safety or soundness of any Hawaii financial institution which is a participant in the transaction, and is not otherwise contrary to the public interest;
- (7) The proposed acquisition or assumption will not substantially lessen competition or tend to create a monopoly or restraint of trade in any section of the country that includes this State or a part thereof, or that any of these anti-competitive effects are clearly outweighed in the public interest by the probable effect of the acquisition or assumption in meeting the convenience and needs of the community to be served; and
- (8) The plan of acquisition or assumption meets such other criteria as the commissioner may deem appropriate.

(f) Upon any required approval by the shareholders or members of the transferring financial institution, two executive officers of the institution shall deliver to the commissioner a certificate that the sale or assumption was duly approved by the shareholders or members of the transferring institution. If the commissioner is satisfied that the participants in the transaction have complied with all applicable State and federal law with regard to the adoption of the plan of acquisition or assumption, the commissioner shall give written approval to the participants in the transaction to proceed with the plan to acquire or sell assets or to assume liabilities.

§412:3-614 Sale or transfer of charter or license prohibited. No Hawaii financial institution may sell, transfer, or otherwise dispose of any charter, license, approval, or any other right or privilege granted under this chapter, unless the sale, transfer, or disposition is part of a conversion, merger, consolidation, sale, assumption or acquisition of control permitted under this part. Any attempted sale, transfer, or disposition in violation of this section shall be null, void, and unenforceable.

§412:3-615 Nonconforming assets or business. If a Hawaii financial institution resulting from a conversion, merger, consolidation, acquisition, or assumption by law may no longer own certain types of assets once it undergoes the conversion, merger, consolidation, acquisition, or assumption, or if it may no longer engage in certain types of business activities, the commissioner shall, as part of the order approving the transaction, allow a reasonable time within which the institution may divest itself of the nonconforming assets or business activities in order to conform with law.

§412:3-616 Authority for expedited conversion, merger, consolidation, acquisition, or assumption. Upon application of all participating financial institutions in a conversion, merger, consolidation, acquisition or assumption, the commissioner may expedite any application for conversion, merger, consolidation, acquisition, or assumption pursuant to this part and order the transaction to take effect immediately; provided that the financial institutions shall have complied with any applicable federal law and provided that the commissioner finds that such expedited action is necessary to protect the financial institutions' depositors, beneficiaries, creditors, or shareholders, or the public. The commissioner's findings shall be expressed in writing as part of the decision and order approving the conversion, merger, consolidation, acquisition, or assumption.

§412:3-617 Voluntary cessation of business and dissolution. (a) Except for a credit union, a solvent Hawaii financial institution whose capital is not impaired and which has not received a notice of charges and proposed suspension or revocation order pursuant to section 412:2-312 may cease its business and

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dissolve if the institution shall have complied with applicable federal law and the following requirements and conditions:

- (1) The board of directors shall adopt a resolution adopting a plan of liquidation and dissolution and recommending that the financial institution be dissolved, and directing that the question of the dissolution be submitted to the commissioner for approval, and, if approved, to a vote of the shareholders or members, which vote may be at either an annual or special meeting. The plan of liquidation and dissolution shall include, but not be limited to, provisions for the orderly payment or assumption of the institution's deposits and other liabilities and for transfer or assumption of all trust, agency and other fiduciary relationships and accounts;
- (2) Within five business days after the meeting of the board of directors described in paragraph (1) of this subsection, the financial institution shall file an application with the commissioner pursuant to section 412:3-603 for approval to cease business and dissolve. The application shall be accompanied by a copy of the plan of liquidation and dissolution certified by two executive officers of the financial institution to have been duly adopted by the board and any other information that the commissioner may require. A copy of the notice shall be delivered contemporaneously to the financial institution's federal insurer;
- (3) The commissioner shall approve the application to cease business and dissolve if the commissioner is satisfied that the depositors, beneficiaries and creditors will be adequately protected under the plan, the institution is not insolvent or in danger of becoming insolvent, that its capital is not impaired and is not in danger of becoming impaired, and that no other reason exists to deny the application. The commissioner may impose any restrictions and conditions as the commissioner deems appropriate;
- (4) Upon receipt of the commissioner's approval to cease business and dissolve, the financial institution shall proceed with the dissolution in accordance with the procedures, conditions and requirements for, and with the effect of, a voluntary dissolution by act of corporation pursuant to chapter 415, except that the vote by shareholders or members to approve the dissolution shall satisfy the requirements of section 412:3-604;
- (5) Any financial institution whose capital is impaired or in danger of becoming impaired, and any institution which is insolvent or in danger of becoming insolvent, may not undergo a voluntary dissolution.
 - (b) Subject to the approval of the commissioner, a credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section.
 - (1) The board of directors shall adopt a resolution recommending the voluntary dissolution of the credit union and requesting that the liquidation question be submitted to the members;
 - (2) Not later than ten days after the board of directors decides to submit the liquidation question to the members, the chairman shall notify the commissioner and any government agency or other organization insuring member accounts thereof, in writing, setting forth the reasons for the proposed liquidation. Not later than ten days after the members act on the liquidation question, the chairman of the board of directors shall notify the commissioner and any government agency or other organization insuring member accounts, in writing, of the action of the members on the liquidation question;

- (3) As soon as the board of directors decides to submit the liquidation question to the members, all business affairs of the credit union, including, but not limited to, payments on and withdrawal of shares, share certificates, share drafts, deposits, and deposit certificate, the transfer of shares to loans and interest, making investments of any kind, and issuing loans, shall be suspended until the members act on the liquidation question. Upon approval by the members, all business transactions of the credit union shall be permanently discontinued. Necessary expense of operation, however, shall continue to be paid upon authorization by the board of directors or the liquidating agent during liquidation;
 - (4) An affirmative majority vote by the members by ballot, in person, by letter, or other written communication, is necessary for a credit union to enter into voluntary liquidation. Whenever authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first-class mail, at least ten days prior to such meeting;
 - (5) A liquidating credit union shall remain in existence for the purpose of discharging its debts, collecting its loans, distributing its assets, and any other necessary functions in order to conclude its business. A liquidating credit union may sue or be sued for the purpose of enforcing its debts and obligations until its affairs are complete;
 - (6) The board of directors or the liquidating agent who may be the insurer shall use the assets of the credit union to pay:
 - (A) First, the expenses incidental to liquidation including any surety bonds required during liquidation;
 - (B) Second, any liability due to nonmembers;
 - (C) Third, the deposits and deposit certificates of the members of the credit union;
 - (D) Fourth, the remaining assets shall be distributed to the members in proportion to the number of shares held by each member on the date dissolution was approved by the members;
 - (7) When the board of directors or the liquidating agent determines that all assets of the credit union having a reasonable expectancy of realization have been liquidated and distributed as provided in this section, the board or the liquidating agent, whichever is applicable, shall complete a certificate of dissolution on a form prescribed by the commissioner. Upon the completion of such certificate, the board or the liquidating agent, whichever is applicable, shall file such certificate with the commissioner for the complete dissolution and liquidation of the credit union.
- (c) Nothing in this section shall preclude the commissioner at any time from appointing a receiver or conservator for the financial institution pursuant to this chapter, or from seeking any relief or sanction from the circuit court that may otherwise be permitted by law.

§412:3-618 Injunctions. If it appears to the commissioner that any person has committed or is about to commit a violation of any provision of this part or any rule or order of the commissioner under this part, the commissioner may apply to the circuit court for an order enjoining the person from violating or continuing to violate this part or any rule or order and for injunctive relief as the nature of the case or the interests of the financial institution or the financial institution holding company or its depositors, beneficiaries, creditors or shareholders may require.

ARTICLE 4. DEPOSITS IN FINANCIAL INSTITUTIONS GENERALLY

§412:4-100 Law applicable. (a) Sections 412:4-101, 412:4-102 and 412:4-104 shall apply to all Hawaii financial institutions which are authorized by this chapter to solicit, accept and hold deposits. The remaining sections of this article shall apply to all Hawaii financial institutions and, to the extent permitted by federal law, to federal financial institutions which are authorized to solicit, accept and hold deposits in this State.

(b) Other provisions of the laws of this State, including, but not limited to, chapter 490, the uniform commercial code, chapter 551D, the uniform durable power of attorney act, chapter 553A, uniform transfers to minors act, chapter 556, the uniform fiduciaries act, chapter 560, the uniform probate code, and any successor or similar acts shall also be applicable to deposits in this State. The rights, protections, releases and discharges of financial institutions with respect to its depositors or third parties contained in this article and other applicable laws shall be cumulative.

§412:4-101 Forms of deposit. (a) Except as specifically prohibited by federal law or any provision of this chapter, and subject to section 412:8-205 with respect to trust companies, section 412:9-400 with respect to depository financial services loan companies, and section 412:9-500 with respect to nondepository financial services loan companies, Hawaii financial institutions may open accounts and accept deposits therein of any type generally accepted by financial institutions in the United States.

(b) Hawaii financial institutions may open accounts and accept deposits therein in the name of one or more persons, in the person's own right or in a fiduciary or other representative capacity, in any form of ownership not inconsistent with the laws of this State.

§412:4-102 Deposit account statements. A Hawaii financial institution shall provide at least one of the holders of each deposit account with a statement in writing or by electronic means at least quarterly showing deposits, withdrawals, interest earned and the opening and closing balances of the account for the period of the statement; provided that quarterly statements need not be provided to any holders of passbooks or certificates of deposit or time deposit accounts, whether or not matured.

§412:4-103 Statements presumed correct after one year; statute of limitations. (a) Any statement of account rendered by a financial institution to the account holder, and in the case of a multi-party account to any one holder, shall be conclusively presumed to be correct after one year from the date of its first rendition, and unless the holder has objected to such statement within such period, the account shall be deemed finally adjusted and settled.

(b) Any legal action to correct the account not brought within one year shall be barred; provided, however, that the period for commencement of any legal action shall be extended for any length of time that the financial institution has been given notice by the account holder of any alleged error within said one-year period and the financial institution has not denied the account holder's objection to the correctness of the statement.

(c) A statement of account shall be deemed to have been rendered when the financial institution has made a notation in the account holder's passbook, or has provided either a deposit account statement showing the balance of the account and the transactions since the last statement, or a written notice reasonably calculated to apprise the holder of such transactions and balance.

(d) The account holder of an account has a duty to exercise reasonable care and diligence in examining any statement rendered by the financial institution, if any, and nothing in this section relieves the holder of such duty or from the consequences of neglecting such duty.

§412:4-104 Federal deposit insurance required. No bank, savings bank, savings and loan association and depository financial services loan company which is a Hawaii financial institution shall accept deposits unless such deposits are insured to the extent allowed by the Federal Deposit Insurance Corporation or a successor agency. No credit union which is a Hawaii financial institution shall accept deposits or issue shares unless such deposits or shares are insured to the extent allowed by the National Credit Union Administration or a successor agency.

§412:4-105 Accounts held in more than one name. Any deposit account held in the names of two or more persons may be paid, on request and according to its terms, to any one or more of the persons. A financial institution shall not be required to inquire as to the source of funds received for deposit to an account in the name of more than one person, or to inquire as to the proposed application of any sum paid from the account. Unless the terms of the deposit account clearly require the signature of more than one person for payment, transfer or withdrawal:

- (1) Payment, transfer or withdrawal of funds therefrom by or on the order of any of the persons shall release and discharge the financial institution from any liability for the paid, transferred or withdrawn funds with respect to all of the persons, and no action at law or equity may be maintained against the financial institution for payment, transfer or withdrawal made in accordance with this section; and
- (2) If the account is pledged, but not all the owners of the account sign the pledge, the pledge shall nevertheless be valid as to all funds in the account, and the pledge shall not operate to sever or terminate the form of multiple ownership of the account.

§412:4-106 Fiduciary accounts. A financial institution may open accounts and accept deposits therein in the name of a person as a trustee, personal representative, guardian, conservator, agent, custodian or other fiduciary for one or more other persons. Such accounts shall be subject to the following treatment:

- (1) If a financial institution has not received written notice and is not on actual notice that a fiduciary named on a deposit account has been removed, resigned, died or adjudicated an incapacitated person by a court of competent jurisdiction under applicable law, it may make payments or allow transfers or withdrawals from the account to or on the order of the fiduciary in accordance with the provisions of its contract with the account holder;
- (2) Any fiduciary who withdraws funds from a fiduciary account and whose name appears as a fiduciary on such account shall be presumed by the financial institution to be acting within the scope of any authority granted or belonging to the fiduciary. A payment, transfer or withdrawal from the account made by or on the order of the fiduciary payable to or for the benefit or account of the fiduciary or credited to the personal account of the fiduciary shall not be sufficient in the absence of actual knowledge on the part of the financial institution to charge it with a duty of inquiry or notice of any infirmity or defect in the right or title of the fiduciary to the funds paid, transferred or withdrawn;

- (3) If a financial institution pays funds or allows the transfer or withdrawal of funds from a fiduciary account according to the provisions of this section or other applicable law of this State, such payment, withdrawal or transfer shall operate to release and discharge the financial institution of any further liability to any person with respect to the funds so paid, transferred or withdrawn, and no action at law or equity may be maintained against the financial institution for payment, transfer or withdrawal made in accordance with this section;
- (4) A financial institution which pays or allows any transfer or withdrawal from a fiduciary account pursuant to this section shall not be liable for any estate taxes that may be due with respect to said account;
- (5) Notwithstanding the foregoing, trust accounts established by the financial institution meeting the definition of "trust account" in section 560:6-101 shall be subject to the treatment provided in article VI of chapter 560.

§412:4-107 Accounts of minors. A financial institution may open an account and accept deposits therein in the name of a minor in the same manner as for an adult and the deposit shall be held for the exclusive right and benefit of the minor, free from the control of any other person. All relations between the financial institution and the minor shall be on the same basis as though the minor were an adult, and any payment, transfer or withdrawal made to or on the order of the minor shall operate to release and discharge the financial institution for the paid, transferred or withdrawn funds with respect to all persons, and any pledge of the account by the minor shall be valid. Provided, however, that in case any guardian, conservator or trustee is appointed for the minor by a court having jurisdiction, the financial institution may pay over or credit to the guardian, conservator or trustee the deposit and interest or dividends pertaining thereto, and such payment or credit shall operate to release and discharge the financial institution from further liability to the guardian, conservator or trustee and to the minor with respect to the funds so paid or credited. No action at law or equity may be maintained against the financial institution for payment, transfer, withdrawal or pledge made in accordance with this section.

§412:4-108 No notice of incapacity. If a financial institution has not received written notice and is not on actual notice that a deposit account holder has been adjudicated an incapacitated person by a court of competent jurisdiction under applicable law, it may make payments or allow transfers or withdrawals from the account to or on the order of the account holder in accordance with the provisions of its contract with the holder, and such payment, transfer or withdrawal shall operate to release and discharge the financial institution from further liability to the account holder and the holder's successors in interest with respect to the funds so paid, transferred or withdrawn, and no action at law or equity may be maintained against the financial institution for payment, transfer or withdrawal in accordance with this section.

§412:4-109 Checks drawn or transfers or withdrawals made by authorized persons. Whenever a deposit account holder has authorized another person, whether as an agent, attorney-in-fact, officer, or in any other capacity, to draw checks on or make or order transfers or withdrawals from the account, the financial institution, in the absence of proper written notice to the contrary, shall be justified in presuming that any check drawn on the account or transfer or withdrawal made by or on the order of the authorized person in the form or manner authorized by the account contract, including payments, transfers or withdrawals

made to or for the account and benefit of the authorized person, was paid or made for a purpose authorized by the account holder and within the scope of the authority conferred upon the authorized person. The death, disability or incapacity of the account holder does not revoke or terminate the authority granted by the holder as to the financial institution if, without actual knowledge of the death, disability or incapacity of the holder, the financial institution acts in good faith in accordance with the authorization. Any payment, transfer or withdrawal paid or allowed by the financial institution pursuant to this section shall release and discharge the financial institution from any liability to any person for the funds paid, transferred or withdrawn, and no action at law or equity may be maintained against the financial institution for payment, transfer or withdrawal in accordance with this section.

§412:4-110 Checks drawn or transfers or withdrawals made by intoxicated persons. It shall be lawful for any financial institution to refuse to pay any check, draft, order of transfer or withdrawal, or order drawn upon it when the officers or employees of the financial institution in good faith have reason to believe that the person signing or indorsing the instrument is or was so under the influence of alcohol, drugs or other intoxicating substances as to make it doubtful whether the person is or was at the time of signing or indorsing the instrument capable of intelligently transacting business; and no action at law or equity may be maintained against the financial institution or its officers or employees on account of any refusal pursuant to this section.

§412:4-111 Accounts of deceased nonresidents. A deposit held in a financial institution in the name of a person who dies while domiciled in another state, the District of Columbia and any territory or possession of the United States, leaving an estate in this State which exceeds \$5,000 in net value, may be paid to the executor, administrator or other personal representative of the decedent appointed by a court of competent jurisdiction therein. Upon presentation of letters of administration or other documentation purporting to establish the appointment under the law of the decedent's domicile, the financial institution may make the payment without requiring the filing of ancillary proceedings in this State. Upon such payment, the financial institution shall be released and discharged of any further liability to any person with respect to the funds so paid, and no action at law or equity may be maintained against the financial institution for payment made in accordance with this section.

§412:4-112 Pledging of assets. (a) No financial institution shall give a preference to any depositor by pledging the assets of the financial institution, except as otherwise authorized by this chapter; provided that any financial institution may for any purpose borrow money and pledge or hypothecate its assets as collateral security therefor.

(b) A financial institution may pledge its assets to secure deposits or borrowing of public funds. For purposes of this section, "public funds" means funds belonging:

- (1) To the State, if credited to the State or to the official credit of the director of finance;
- (2) To any county within the State, if credited to such county or to the official credit of the treasurer or similar fiscal officer of the county;
- (3) To the government of any state or foreign country, or any territory or possession thereof, or any of its political subdivisions, instrumentalities or municipalities, in which the pledging financial institution has a branch office, if credited to such government or to the official credit of the treasurer or similar fiscal officer thereof;

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- (4) To the United States, if credited in such manner and under such rules and regulations as may be prescribed by the United States government.

Once the financial institution has complied with all conditions necessary for the return of any assets it has pledged to secure the deposit or borrowing of the public funds, the government official in possession of such assets shall promptly return the same to the financial institution. If such assets are not so returned, the financial institution shall have its appropriate remedies at law and in equity, including, in the case of the State or any county of the State, the remedies under chapter 38; provided, that nothing in this subsection shall permit the avoidance of any requirements or liabilities imposed on the State or any county under chapter 38.

ARTICLE 5. BANKS

PART I. GENERAL PROVISIONS

§412:5-100 Definition. In this article the term "bank" means a corporation which has authority to operate as a bank under this chapter.

§412:5-101 Necessity for bank charter. Except as expressly permitted by federal law or this chapter or section 415-106(c), no person shall engage in any activity for which a charter to operate as a bank is required by this chapter, including without limitation the solicitation, acceptance and holding of deposits in the State, the use of the term "bank", or the exercise of such other powers or privileges restricted to banks under applicable law unless it is a corporation incorporated in this State and has such a charter.

PART II. POWERS OF BANKS

§412:5-200 General powers. (a) Except as expressly prohibited or limited by this chapter, a bank shall have the power to solicit, accept and hold deposits, engage in other activities which are usual or incidental to the business of banking, and shall have all rights, powers and privileges of a corporation organized under the laws of this State including but not limited to the power to:

- (1) Make loans and extensions of credit of any kind, whether unsecured or secured by real or personal property of any kind or description;
 - (2) Borrow money from any source within or without the State;
 - (3) Issue, confirm and advise letters of credit, or otherwise enter into letter of credit transactions;
 - (4) Enter into repurchase agreements;
 - (5) Accept drafts or bills of exchange and buy and sell bullion and foreign currency; and
 - (6) Make investments as permitted under this article.
- (b) Except as otherwise expressly authorized by this chapter or by the commissioner under section 412:5-201, a bank shall not:
- (1) Employ its funds, directly or indirectly, in trade or commerce, by buying or selling ordinary goods, chattels, wares, and merchandise, or by owning or operating industrial or manufacturing plants of any kind;
 - (2) Own or control the capital stock of any other corporation;
 - (3) Make loans and extensions of credit secured by its own capital stock, except in cases where the taking of the security is necessary to prevent loss upon an indebtedness previously contracted in good faith;
 - (4) Make loans and extensions of credit secured by the capital stock of another bank, if by making the loan the total capital stock of the other

- bank held by the lending bank as collateral would exceed in the aggregate fifty per cent of the capital stock of the other bank; or
- (5) Engage in any business for which a real estate broker's license is required, in any business for which an insurance agent or agency license is required, or in any business of a securities broker or dealer. This prohibition shall not apply to the sale of credit life and other forms of credit related insurance products and shall not affect previous licenses or approvals granted to sell securities or non-credit related forms of insurance.

§412:5-201 Powers granted under federal law. (a) In this section "federal power" means any activity, right, privilege, or immunity granted to a national banking association under any federal statute, rule, regulation, interpretation or court decision.

(b) Any bank desiring to acquire any federal power, shall file an application with the commissioner. The application shall indicate the applicable federal statute, rule, regulation, interpretation or court decision, the extent of the federal power desired, the reasons for the application, and any other information requested by the commissioner. The commissioner may by rule prescribe the form of application and application filing fees.

(c) If the commissioner is satisfied that the power should be granted, the commissioner shall issue a written approval of the application, subject to such terms and conditions as the commissioner deems appropriate. Other banks may file an application if they desire the same federal power, but approval of any application need not be granted. Any federal power granted pursuant to this section is in addition to, and not in limitation of, any other provision of this chapter, and the federal power may be exercised notwithstanding any other provision in this chapter.

(d) If any federal power is terminated or modified, the commissioner may terminate or make a similar modification to any corresponding power granted under this section.

(e) The commissioner may suspend or revoke any federal power granted under this section or under previous law if the commissioner finds:

- (1) That the bank has violated any conditions imposed in connection with the grant of power; or
- (2) The bank has not begun to exercise such power within one year of the date it was granted.

(f) The commissioner shall retain jurisdiction over the enforcement of any power granted under this section or under previous law. Any action under subsections (d) or (e) of this section shall be taken only after the commissioner has given the bank notice of the proposed action and an opportunity to be heard.

§412:5-202 Membership in federal banks. Any bank may become a member of a federal reserve bank organized under authority of the Federal Reserve Act or of a federal home loan bank organized under the Federal Home Loan Bank Act, or any successor or similar system of federal banks established by Congress, and may purchase and hold the shares of such federal bank. The bank may have and exercise all powers not in conflict with the laws of this State incident to such membership; provided, however that notwithstanding such membership the bank and its directors, officers, and shareholders shall continue to be subject to all liabilities and duties imposed upon them by any law of this State.

§412:5-203 Operating subsidiaries. (a) "Operating subsidiary" means a corporation other than a corporation referred to in section 412:5-305(g)(2) to (8) of which more than eighty per cent of the voting securities is held by a bank.

(b) An operating subsidiary may engage in activities which are authorized for a bank or which are usual or incidental to the business of a bank.

(c) No bank may acquire, establish or hold the voting securities of an operating subsidiary without the commissioner's prior written approval; provided, that such approval shall not be required so long as the bank's aggregate net contributions to the capital of the operating subsidiary remain less than ten per cent of the bank's capital and surplus; provided further, that the bank shall comply with the notification requirements of subsection (f). Unless otherwise provided by law or rule, all provisions of this chapter applicable to the operations of the parent bank shall be applicable to the operations of its operating subsidiary. Unless otherwise provided by law or rule, pertinent accounts of the parent bank and its operating subsidiaries shall be consolidated for the purpose of applying applicable statutory limitations such as contained in section 412:5-302.

(d) The bank shall file an application with the commissioner in a form approved by the commissioner. The application shall be accompanied by a fee the amount of which shall be prescribed by rule. The application shall contain the following information concerning the proposed operating subsidiary:

- (1) The name and date for commencement of operations;
- (2) The specific location;
- (3) The activities and nature of business;
- (4) The ownership, amount and nature of the investment; and
- (5) Any other information that the commissioner may require.

(e) If after appropriate examination and investigation, the commissioner is satisfied that the acquisition, establishment or holding the voting securities of the operating subsidiary will comply with this section, the commissioner shall approve such application in writing, with such conditions as the commissioner may deem appropriate.

(f) The bank shall notify the commissioner in writing within five days of acquiring or establishing an operating subsidiary or performing new activities in the operating subsidiary. The notification shall provide the information specified in subsection (d).

(g) The accounts of each operating subsidiary of a bank shall be maintained independently of the accounts of all of the bank's other operating subsidiaries, and independently of the accounts of the bank itself. At least at the end of every quarter of its fiscal year the bank shall consolidate or recognize its proportionate share of the profit and loss from each operating subsidiary.

§412:5-204 Acceptances of drafts and bills of exchange. (a) A bank may accept drafts or bills of exchange drawn upon it without limitation in the character of acceptances it may make in financing credit transactions; provided that a bank's own eligible acceptances described in subsection (b) of this section are subject to the limitations contained in this section in lieu of the separate and distinct limitations contained in section 412:5-302.

(b) A bank may accept the following as eligible acceptances:

- (1) Drafts or bills of exchange drawn upon it having not more than six months sight to run, exclusive of days of grace, and which arise out of transactions involving the import or export of goods, transactions involving the domestic shipment of goods or transactions which are secured at the time of acceptance by a warehouse receipt or other document conveying or securing title covering readily marketable staples;

- (2) Drafts or bills of exchange drawn upon it having not more than three months sight to run, exclusive of days of grace, drawn by banks in foreign countries for the purpose of furnishing dollar exchange, as required by the usage of trade in the respective countries. Provided that the drafts or bills of exchange shall be drawn under regulations prescribed by the Federal Reserve Board; and
- (3) Drafts and bills of exchange in addition to those described in this section, which are of the kind described by section 13 of the Federal Reserve Act, and which may be eligible for discount under regulations prescribed from time to time by the Federal Reserve Board.
- (c) No bank shall accept eligible drafts or bills of exchange, whether in a foreign or domestic transaction, for any one person, in an amount at any one time exceeding in the aggregate twenty per cent of its capital and surplus.
- (d) No bank shall accept drafts or bills of exchange in an amount exceeding at any time in the aggregate one hundred and fifty per cent of its capital and surplus; provided that the commissioner may authorize a bank to accept drafts or bills of exchange in an amount not exceeding at any time in the aggregate two hundred per cent of its capital and surplus.
- (e) With respect to a bank which issues an eligible acceptance, the limitations contained in this section shall not apply to that portion of the eligible acceptance sold under a participation agreement to another financial institution or to a discounted eligible acceptance that is no longer held by the bank.
- (f) None of the limitations or restrictions in this section shall apply to drafts or bills of exchange secured by bonds or other securities issued by the United States government, by the State or by a municipality thereof, if the market value of the bonds or other securities exceeds at the time of acceptance by five per cent the amount of the drafts or bills of exchange.
- (g) The purchase or discount of banker's acceptances issued by other banks which are of the kind described in section 13 of the Federal Reserve Act, or which are eligible for discount under regulations prescribed from time to time by the Federal Reserve Board, shall not be subject to any limitation based on capital and surplus.

§412:5-205 Authority to engage in trust business. (a) A bank may not engage in any activity requiring a charter as a trust company under article 8 of this chapter, including without limitation serving as trustee, personal representative, registrar or transfer agent for stocks and bonds, guardian, agent, assignee, or receiver, or in any other fiduciary capacity, unless it has received the approval of the commissioner under this section. If approved, the trust business may be conducted through a subsidiary, division or department of the bank.

(b) The bank shall file an application for such approval with the commissioner on a form prescribed by the commissioner, together with an application fee of \$5,000, or such greater amount as the commissioner shall establish, no part of which shall be refundable. The application shall contain the following information:

- (1) Appropriate board resolutions authorizing the establishment of a trust company, division or department;
- (2) Employment history, education, management experience, and other biographical information for all executive officers, trust officers, and managers of the trust company, division or department;
- (3) Proposed policies concerning common trust funds, overdrafts, disaster recovery plans, dividends, management of assets and liabilities, conflicts of interest, investments, and fee schedules. The commissioner may consider any existing bank policies that will be adapted and utilized for its trust business;

- (4) A business plan and financial projections regarding profitability of the proposed trust business;
 - (5) Evidence that the bank has or will have the financial ability, responsibility, and experience to engage in the trust business; and
 - (6) Any other information which the commissioner may require.
- (c) If the proposed trust business will be conducted in a subsidiary of a bank, the application shall contain the following additional information:
- (1) The name of the subsidiary, the location of its principal office, and any lease agreements for such principal office;
 - (2) Employment history, education, management experience, and other biographical information for all directors of the subsidiary; and
 - (3) A proposed capital plan.
- (d) A bank engaging in the trust business shall establish and maintain the same amount of capital and surplus required of a trust company under article 3 of this chapter, in addition to any capital and surplus required to engage in the business of a bank under this article. A bank engaging in the trust business shall also maintain the reserves required of a trust company under section 412:8-202.
- (e) The commissioner's decision shall be in the form of a written order, and if approved, may contain such conditions and restrictions as may be in the public interest. The application shall be approved only if the commissioner is satisfied that the proposed trust business will not jeopardize the safety and soundness of the bank; that the applicant has sufficient capital, surplus, and cash reserves; that the proposed management of the trust business is financially responsible, honest, and qualified; and that the trust business will be carried on in a safe and sound manner. If the commissioner grants approval to a bank to carry on its trust business through a subsidiary, the commissioner shall issue a trust charter to such subsidiary.
- (f) Any bank which is authorized to engage in the trust business through a division or department of the bank shall maintain books, records, and accounts for its trust business that are separate from its banking business.
- (g) A bank which is authorized to engage in the trust business through a subsidiary shall not be considered a trust holding company under this chapter.
- (h) Any bank authorized to engage in the trust business under this section with respect to such trust business shall also be subject to all the provisions applicable to trust companies under article 8 of this chapter; provided that if there is any conflict between the provisions of article 8 and this article with respect to the operation of a trust business, the provisions of article 8 shall control with respect to such trust business.

§412:5-206 International banking facilities. A bank may without prior approval of the commissioner establish an international banking facility anywhere in this State. An international banking facility is a set of international banking accounts under Regulation D of the Federal Reserve Board (12 C.F.R. Part 204). At least fourteen days prior to the establishment of an international banking facility any bank intending to do so shall furnish the commissioner with a copy of the statement of intention required under Regulation D. Every bank maintaining an international banking facility shall furnish the commissioner with a copy of each quarterly report required under Regulation D.

PART III. LOANS AND INVESTMENTS

§412:5-300 Applicability of part. This part sets forth the requirements and restrictions for lending and investments by all banks. A bank may make loans and extensions of credit and may invest its assets as may be permitted by this part and as may be provided elsewhere in this article.

§412:5-301 General requirements for loans. A bank shall make loans and extensions of credit that are consistent with prudent banking practices and in compliance with all applicable federal and State law.

§412:5-302 Limitations on loans and extensions of credit to one borrower. (a) No bank shall permit a person to become indebted or liable to it, either directly or indirectly on loans and extensions of credit, in a total amount outstanding at any one time in excess of twenty per cent of the capital and surplus of the bank.

(b) This section applies to all loans and extensions of credit made by a bank and its subsidiaries. It does not apply to loans and extensions of credit made by a bank or its subsidiaries to its affiliates or subsidiaries.

(c) The limitations set forth in this section shall not apply to:

- (1) A bank's eligible acceptances as described in section 412:5-204(b);
- (2) A bank's purchase or discount of another bank's acceptances of the kinds described in section 13 of the Federal Reserve Act;
- (3) A bank's deposits with a Federal Reserve Bank, Federal Home Loan Bank or another depository institution made in compliance with this chapter;
- (4) A bank's sale of federal funds to another depository institution with a maturity of one business day or under a continuing contract;
- (5) Loans and extensions of credit secured by the interest-bearing obligations of the United States or those for which the faith and credit of the United States are distinctly pledged to provide for the payment of the principal and interest thereof or of the State or any county or municipal or political subdivision of this State, issued in compliance with the laws of this State, where the market value of the security shall be at any time not less than one hundred five per cent of the face amount of the loans and extensions of credit;
- (6) Loans and extensions of credit to the extent secured by a pledge or security interest in a deposit account in the lending bank; and
- (7) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable credit sales contracts which carry a partial recourse endorsement or limited guarantee by the person transferring the credit sales contracts, if the bank's respective file or the knowledge of its officers of the financial condition of each maker of such credit sales contract is reasonably adequate, and an officer of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such credit sales contract and not upon any partial recourse endorsement or limited guarantee by the transferor. Under these circumstances, such credit sales contract will be considered a loan and extension of credit to the maker of the credit sales contract rather than the seller of the credit sales contract.

(d) In computing the total loans and extensions of credit made by a bank to any person, all loans and extensions of credit by the bank to the person and to any partnership, joint venture or unincorporated association of which the person is a partner or a member shall be included unless the person is a limited partner, but not a general partner, in a limited partnership, or unless the person is a partner in a limited or general partnership, or a member of a joint venture or unincorporated association, if such partner or member, by law, by the terms of the partnership, joint venture or membership agreement, or by the terms of an agreement with the bank, is not to be held liable to the bank for the debts of the partnership, joint venture or association. In computing the total loans and extensions of credit made by a bank to any firm, partnership, joint venture or unincorporated association, all

loans and extensions of credit to its individual partners or members shall be included unless such individual partner is a limited partner, but not a general partner, in a limited partnership, or unless such individual partner or member, by law, by the terms of the partnership, joint venture, or membership agreement, or by the terms of an agreement with the bank, is not to be held liable to the bank for the debts of the partnership, joint venture or association.

(e) Alternatively, a bank may, with the prior approval of the commissioner, comply with the lending limits applicable to national banking associations, as and to the same extent it would, at the time, be so required by federal law or regulation if it were a national banking association. In monitoring a bank's compliance with the national banking association lending limits, the commissioner shall give substantial weight to the Office of the Comptroller of the Currency's regulations and opinions interpreting the national banking association lending limits and will regard them as strong evidence of safe and sound banking practices.

§412:5-303 Loans to executive officers, directors, principal shareholders and affiliates. No bank shall make any loan or extension of credit in violation of section 18(j) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(j) or, if the bank is a member of the Federal Reserve System, in violation of sections 22(g), 22(h), 23A or 23B of the Federal Reserve Act, 12 U.S.C. §§375a, 375b, 371c and 371c-1.

§412:5-304 General requirement for investments. A bank shall make investments that are consistent with prudent banking practices and in compliance with all applicable federal and State law.

§412:5-305 Permitted investments. (a) To the extent specified herein, a bank may invest its own assets in securities and obligations of:

- (1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;
- (2) United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Financing Corporation, Resolution Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, and the United States Postal Service; and
- (3) Quasi-United States governmental institutions including without limitation the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States Government is a

shareholder or contributing member, provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the bank's capital and surplus.

(b) To the extent specified herein, a bank may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.

(c) To the extent specified herein, a bank may invest its own assets in bonds or similar obligations issued by any state of the United States other than this State, the District of Columbia, or any territory or possession of the United States, by municipal governments of such states, territories or possessions or by any foreign country or political subdivision of such country; provided, that:

- (1) The bond, note, or warrant has been issued in compliance with the constitution and laws of any such government;
- (2) There has been no default in payment of either principal or interest on any of the general obligations of such government for a period of five years immediately preceding the date of the investment; and
- (3) The total amount invested in such obligations of any one issuer by a bank shall not exceed twenty per cent of the bank's capital and surplus.

(d) To the extent specified herein, a bank may invest its own assets in notes, bonds, and other obligations of any corporation which at the time of the investment is incorporated under the laws of the United States or any state or territory thereof or the District of Columbia; provided, that the aggregate amount invested by a bank under this subsection and subsection (e) in any one corporation shall not exceed twenty per cent of the bank's capital and surplus.

(e) To the extent specified herein, a bank may invest its own assets in securities of an investment grade. The term "investment grade" means notes, bonds, certificates of interest or participation, beneficial interests, mortgage or receivable-related securities, and other obligations that are commonly understood to be of investment grade quality, including without limitation those securities that are rated within the four highest grades by any nationally-recognized rating service or unrated securities of similar quality as reasonably determined by the bank in its prudent banking judgment (which may be based in part upon estimates which it believes to be reliable). Investment grade does not include investments which are predominantly speculative in nature. The aggregate amount invested by a bank under this subsection and subsection (d) in any one company or other issuer shall not exceed twenty per cent of the bank's capital and surplus.

(f) To the extent specified herein, a bank may purchase, hold, convey, sell or lease real or personal property as follows:

- (1) The real property in or on which the business of the bank is carried on, including its banking offices, other space in the same property to rent as a source of income; permanent or vacation residences or recreational facilities for its officers and employees; other real property necessary to the accommodation of the bank's business, including but not limited to parking facilities, data processing centers, and real property held for future banking use where the bank in good faith expects to utilize the property as bank premises; provided, if the bank ceases to use any real property and improvements thereon for one of the foregoing purposes, it shall, within five years thereafter, sell the real property or cease to carry it or them as an asset; provided further, such property shall not without the approval of the commissioner exceed seventy-five per cent of the bank's capital and surplus;
- (2) Personal property used in or necessary to the accommodation of the bank's business, including but not limited to furniture, fixtures, equip-

ment, vaults and safety deposit boxes. The bank's investment in furniture and fixtures shall not without the approval of the commissioner exceed twenty-five per cent of the bank's capital and surplus;

- (3) Personal property and fixtures which the bank acquires for purposes of leasing to third parties and such real property interests as shall be incidental thereto;
- (4) Such real property or tangible personal property as may come into its possession as security for loans or in the collection of debts; or as may be purchased by or conveyed to the bank in satisfaction of or on account of debts previously contracted in the course of its business, when such property was held as security by the bank; and
- (5) The seller's interest under an agreement of sale, as that term is defined in sections 501-101.5 and 502-85, including without limitation the reversionary interest in the real estate and the right to income under the agreement of sale, with or without recourse to the seller.

Except as otherwise authorized in this section any tangible personal property acquired by a bank pursuant to subsection (f)(4) shall be disposed of as soon as practicable and shall not without the written consent of the commissioner be considered a part of the assets of the bank after the expiration of two years from the date of acquisition.

Except as otherwise authorized in this section any real property acquired by a bank pursuant to subsection (f)(4) shall be sold or exchanged for other real property by the bank within five years after title thereto has vested in it by purchase or otherwise, or within such further time as may be granted by the commissioner.

Any bank acquiring any real property in any manner other than provided by this section shall immediately, upon receiving notice from the commissioner, charge the same to profit and loss, or otherwise remove the same from assets, and when any loss impairs the capital and surplus of the bank the impairment shall be made good in the manner provided in this chapter.

- (g) A bank may own or control the capital stock:
 - (1) Of operating subsidiaries as set forth in this article;
 - (2) Of a corporation organized and existing for the ownership of real or personal property used or which the bank in good faith expects to be used in the bank's business;
 - (3) Of the Federal National Mortgage Association, the Student Loan Marketing Association, Federal Home Loan Mortgage Corporation or of any other corporation organized for substantially the same purposes; provided that this subsection shall be deemed to authorize subscription for as well as purchase of the stock;
 - (4) Of small business investment companies operating under the Federal Small Business Investment Act of 1958;
 - (5) Of bank service corporations, subject to the provisions of the Bank Service Corporation Act, 12 U.S.C. §§1861-1862;
 - (6) Of a corporation whose stock is acquired or purchased to save a loss on a preexisting debt secured by such stock; provided, that the stock shall be sold within twelve months of the date acquired or purchased, or within such further time as may be granted by the commissioner;
 - (7) Of an international banking corporation established pursuant to article 5A of this chapter or an Edge corporation or an Agreement corporation established or authorized pursuant to section 25a of the Federal Reserve Act, 12 U.S.C. §631; and
 - (8) Of a captive insurance company incorporated under the laws of the United States, or any state or territory thereof, or the District of Columbia.

§412:5-306 Deposits made by banks. A bank may deposit any of its funds with (1) a federal reserve bank or a federal home loan bank in any amount, or (2) another depository institution, provided that the net deposits in any one depository institution does not exceed twenty-five per cent of the bank's capital and surplus, unless otherwise permitted by federal law. In this section, "net deposits in any one depository institution" means the sum of (1) balances, other than demand balances, due from the institution and (2) demand balances due from the institution, less any demand balances due to that institution if that office of the institution in which the deposit is made is located in the United States.

PART IV. INTRA-PACIFIC BANKS

§412:5-400 Definitions. In this chapter:

"Intra-Pacific bank" is a depository institution or a banking company (1) engaged in the type of business permitted to banks chartered by this State, (2) whose home office is located in a reciprocal region, (3) a majority of whose deposits together with the deposits of its subsidiaries and affiliates are held in a reciprocal region, and (4) which is not directly or indirectly owned or controlled by any holding company other than an intra-Pacific bank holding company.

"Intra-Pacific bank holding company" is a holding company whose subsidiary banking companies hold a majority of the aggregate deposits in a reciprocal region.

"Reciprocal region" means any one of the territories or countries of Guam, American Samoa, the Federated States of Micronesia, the Republic of Palau, the Commonwealth of the Northern Marianas, or the Republic of the Marshall Islands, only so long as:

- (1) Its economy is based on the United States dollar; and
- (2) Its laws allow a bank that is a Hawaii financial institution or its holding company to establish and operate a branch or acquire the assets or control of or merge with a bank or bank holding company in that territory or country, under terms and conditions which are substantially comparable to or less restrictive than the laws of this State concerning the commencement of operations, acquisitions, change of control and mergers of banks and bank holding companies.

§412:5-401 Required approval. No intra-Pacific bank or intra-Pacific bank holding company may engage in business in this State, except in one of the following three forms:

- (1) Branch. An intra-Pacific bank may establish or acquire one or more branches in this State if it obtains the prior approval of the commissioner under this chapter to operate such branch or branches;
- (2) Subsidiary of an intra-Pacific bank. An intra-Pacific bank may establish or acquire, directly or indirectly, the assets of or control over or merge with a bank that is a Hawaii financial institution or its holding company if the intra-Pacific bank obtains the prior approval of the commissioner and:
 - (A) Complies with the requirements of this chapter as to mergers and acquisitions; and
 - (B) Obtains a charter under this chapter to engage in business as a bank;
- (3) Subsidiary of an intra-Pacific bank holding company. An intra-Pacific bank holding company may establish or acquire, directly or indirectly, the assets of or control over or merge with a bank that is a Hawaiian financial institution or acquire control over or merge with, its holding

company if the intra-Pacific bank holding company obtains the prior approval of the commissioner and:

- (A) Complies with the requirements of this chapter as to mergers and acquisitions; and
- (B) Obtains a charter under this chapter to engage in business as a bank.

§412:5-402 Procedure to obtain approval. (a) In order to obtain prior approval of the commissioner, the applicant shall file the application required by and comply with the provisions of article 3. In addition to any information required under article 3, the application shall contain the following information:

- (1) The applicant's articles of incorporation and bylaws, or other basic governing documents; and
 - (2) A certificate from the appropriate regulatory body where its home office is located, indicating that the applicant is in good standing in that jurisdiction.
- (b) In approving any transaction under this part, the commissioner shall consider in addition to the grounds for approval contained in article 3, the following:
- (1) The laws of the reciprocal region allow a bank that is a Hawaii financial institution or its holding company to establish and operate a branch or acquire the assets or control of or merge with a bank or bank holding company in that territory or country, under terms and conditions which are substantially comparable to or less restrictive than the laws of this State concerning the commencement of operations, acquisitions, change of control and mergers of banks and bank holding companies; and
 - (2) The applicant's controlling persons are of good moral character and sound financial standing, its management is competent and sufficiently experienced, it is likely to comply with all applicable laws, and its establishment will serve the public convenience and advantage.
- (c) Where an intra-Pacific bank branch is being established, the minimum number and qualifications of persons serving on the board of directors of an intra-Pacific bank shall be established by the applicable law of its home office.

§412:5-403 Examination and regulation. Every intra-Pacific bank shall be subject to examination and regulation by the commissioner, and shall pay fees and costs to the same extent as any bank chartered under the laws of this State.

§412:5-404 Termination of authority of intra-Pacific bank. The authority of any intra-Pacific bank to engage in the business of a bank in this State pursuant to this part shall automatically terminate at such time as it no longer meets the definition of an intra-Pacific bank under section 412:5-400. In such case it shall:

- (1) Immediately notify the commissioner of that circumstance;
- (2) Cease accepting deposits in this State, and cease making loans and investments in this State;
- (3) Within thirty days, adopt a plan for the orderly liquidation of its assets, or its orderly divestiture pursuant to this chapter, and submit such plan to the commissioner; and
- (4) Take such other measures and actions as shall be directed by the commissioner.

§412:5-405 Termination of authority of intra-Pacific bank holding company. (a) A financial institution holding company ceases to be an intra-Pacific bank

holding company at such time as it no longer meets the definition of an intra-Pacific bank holding company under section 412:5-400.

(b) A financial institution holding company which loses its status as an intra-Pacific bank holding company shall immediately divest itself of its direct or indirect control of any financial institution subsidiary chartered or approved by this State. Failure to accomplish such divestiture within thirty days after termination of its intra-Pacific bank holding company status shall be grounds for the suspension or revocation of the financial institution subsidiary's charter or approval.

§412:5-406 Paid-in capital and surplus. Every intra-Pacific bank engaged in banking in this State shall at all times have paid-in capital and surplus of not less than the minimum amount provided by this chapter for banks which are Hawaii financial institutions.

§412:5-407 Same powers and duties as banks. An intra-Pacific bank engaged in banking in this State shall have all powers and duties allowed by and imposed on all banks chartered by this State, including without limitation the authority to accept deposits, make loans, borrow money and make investments, and the duty to file reports with the commissioner and insure its deposits in this State with a federal agency. An intra-Pacific bank shall also be subject to and liable for all fines and penalties provided by this chapter.

ARTICLE 5A. INTERNATIONAL AND FOREIGN BANKING

PART I. GENERAL PROVISION

§412:5A-100 Applicability of other provisions of this chapter. Unless otherwise expressly provided in this article, the entities covered by this article shall have none of the powers generally given to Hawaii financial institutions under this chapter. Neither shall such entities be required to file any reports or give any notices except as may be expressly provided in this article.

PART II. INTERNATIONAL BANKING CORPORATIONS

§412:5A-200 Scope and definitions. (a) As used in this chapter an "international banking corporation" means a corporation which has authority to operate as an international banking corporation under this part and has been required to use the term "international banking corporation," or such other term approved by the commissioner and containing the word "international," "foreign," "overseas," or some similar word as part of its name. The term "international banking corporation" also includes a person that was organized and operating under chapter 405 prior to the enactment of this chapter.

(b) The existence, charters, licenses, and certificates of authority of international banking corporations formed or existing on the effective date of this chapter are not affected by the enactment of this chapter nor by any change made thereby in the requirements for the formation of international banking corporations, nor by the amendment or repeal thereby of the laws under which they were formed, created, chartered, licensed or certified.

(c) Except to the extent specifically provided in this chapter, the power and authority of international banking corporations existing on the effective date of this chapter shall not be limited or restricted in any way by the enactment of this chapter nor by the amendment or repeal of the laws under which they were formed or created, or which granted such power and authority.

§412:5A-201 Application; fee; approval. (a) No bank may establish a corporation to engage in foreign or international banking and other foreign or international financial activities unless it has filed an application with the commissioner and received approval and authority to establish an international banking corporation and to exercise the powers set forth in this part.

(b) The application shall be on a form prescribed by the commissioner and shall contain any information that the commissioner may require. The application shall be accompanied by an application fee established by the commissioner pursuant to chapter 91.

(c) In granting authority to a bank to establish an international banking corporation, the commissioner may impose such conditions that are in the public interest, including but not limited to the filing of periodic reports or notices.

§412:5A-202 Majority ownership by bank. A majority of the shares of the capital stock of every international banking corporation shall be owned by a bank that is a Hawaii financial institution, a national bank whose operations are principally conducted in this State, or a wholly-owned subsidiary of either of the foregoing.

§412:5A-203 Paid-in capital and surplus. Every international banking corporation shall at all times have paid-in capital and surplus in such amounts as shall be established for all international banking corporations by rule by the commissioner; provided, that:

- (1) Paid-in capital shall at no time be less than \$750,000, except that upon receiving its approval the international banking corporation need have only twenty-five per cent of the required capital paid-in, and the remainder may be paid up in installments of at least ten per cent of total required capital every two months thereafter; and
- (2) The minimum required surplus shall be twenty per cent of capital and need not be paid in or accumulated unless and until the international banking corporation has declared a dividend, whereupon at least ten per cent of its net profits shall be paid to surplus until the required minimum surplus has been fully paid up.

§412:5A-204 Prohibition of business in United States. No international banking corporation shall carry on any part of its business in the United States except as shall, in the judgment of the commissioner, be incidental to its international or foreign business.

§412:5A-205 Powers and duties. Every international banking corporation shall be authorized:

- (1) To engage in banking or financial operations in any foreign country, or in a dependency, territory or possession of the United States, either directly or indirectly through the agency, ownership or control of a foreign institution;
- (2) When required by the Secretary of the Treasury of the United States, to act as a fiscal agent of the United States in any foreign country, or in a dependency, territory or possession of the United States;
- (3) To purchase, sell, discount, and negotiate, with or without its endorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to purchase and sell, with or without its endorsement or guaranty, securities, including the obligations of the United States or of any state thereof, but not including shares of stock

in any corporation except as herein provided; to accept bills or drafts drawn upon it subject to the limitations and restrictions which the commissioner may impose; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to lease personal property and engage in activities incidental thereto; to issue debentures, bonds, and promissory notes under such general conditions as to security and such limitations as the commissioner may prescribe, but in no event having liabilities outstanding thereon at any one time exceeding ten times its capital and surplus; to receive deposits outside of the United States and to receive only such deposits in this State or in any other state of the United States as may be incidental to or for the purpose of carrying out transactions in foreign countries or dependencies, territories or possessions of the United States;

- (4) Generally, to exercise such powers as are incidental to the powers conferred by this part or as may be usual, in the determination of the commissioner, in connection with the transaction of the business of banking or other financial operations in the countries, dependencies, territories or possessions in which it shall transact business and not inconsistent with the power specifically granted herein;
- (5) To establish and maintain for the transaction of its business branches or agencies in foreign countries, and in any state of the United States, and in the dependencies, territories or possessions of the United States, at such place as may be approved by the commissioner and under such rules as the commissioner may prescribe; and
- (6) To purchase and hold stock or other certificates of ownership in any other corporation organized under this article, or under the laws of the United States, or under the laws of any foreign country, or under the laws of any state, dependency, territory or possession of the United States; provided that the other corporation shall not engage in the general business of buying or selling goods, wares, merchandise, or commodities in the United States, and shall not transact any business in the United States except such as in the judgment of the commissioner may be incidental to its international or foreign business. Any acquisition of such stock or certificates of ownership by an international banking corporation shall be subject to the prior approval of the commissioner, who shall render a decision within sixty days following submission of an application; provided, however, that the commissioner may extend such deadline for an additional sixty days for good cause.

§412:5A-206 Acceptance of deposits and reserves. An international banking corporation may only accept deposits subject to the provisions of this article. Whenever an international banking corporation receives deposits in the United States, as may be authorized by this section, it shall carry reserves in such amounts as the commissioner may prescribe, but in no event less than ten per cent of its total deposits in the United States.

§412:5A-207 Deposit of corporate funds. No international banking corporation shall deposit its funds with another financial institution except in a federal reserve bank, unless the other financial institution has been designated a depository by the board of directors of the international banking corporation.

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§412:5A-208 Limitation on investments. An international banking corporation may not invest its funds in the United States, except to the extent permitted by this part.

§412:5A-209 Acquisition of stock in competing corporation. No international banking corporation shall purchase, own, or hold stock or certificates of ownership in any other international banking corporation or any Edge corporation or similar corporation organized under the laws of the United States or any state if the effect within the United States of such purchase, ownership, or holding may be substantially to lessen competition or tend to create a monopoly or restraint of trade.

§412:5A-210 Acquisition of stock to save a loss. Nothing in this part shall prevent an international banking corporation from acquiring and holding stock in any corporation if the acquisition is necessary to prevent a loss upon a debt previously contracted in good faith; provided, that stock so acquired shall within twelve months from the acquisition be sold or disposed of at public or private sale, or within such further time as may be granted by the commissioner.

§412:5A-211 Prohibited corporate activities. No international banking corporation shall directly or indirectly:

- (1) Engage in commerce or trade in commodities, except as specifically provided in this part, or control or fix, or attempt to control or fix, the price of any commodities; or
- (2) Make any discount to any person for the purpose of enabling the person to pay for or hold shares of its stock either subscribed for or purchased by the person.

Any violation of this section shall subject the international banking corporation to the revocation of its approval, and to such penalties and administrative fines prescribed under article 2.

§412:5A-212 Improper discounting of loans. No officer, director, agent or employee of an international banking corporation shall directly or indirectly, as an individual, purchase any loan or other obligation at a discount, or make any loan using a receivable as collateral, when such person knows that the loan or other obligation has been offered to the corporation and has been refused. Any violation of this section shall subject the violator to a civil penalty equal to twice the amount of the consideration given for the loan.

§412:5A-213 Improper fixing of commodity prices. Any director, officer, agent, or employee of any international banking corporation who knowingly uses or conspires to use the credit, funds, or power of the international banking corporation to fix or control the price of any commodities shall be guilty of a misdemeanor punishable pursuant to sections 706-663 and 706-640.

§412:5A-214 Misrepresentation of State liability for bonds. Any person connected in any capacity with an international banking corporation who represents in any way that the State is liable for the payment of any bond or other obligation, or the interest thereon, issued or incurred by any international banking corporation, or that the State is liable for any act or omission of the international banking corporation shall be guilty of a class C felony punishable pursuant to sections 706-660 and 706-640.

PART III. FOREIGN BANK OFFICES AND AGENCIES

§412:5A-300 Applicability of part. This part shall apply to all foreign banks desiring to engage in business in this State, or which are engaging in business in this State.

§412:5A-301 Applicable laws. In addition to this article, foreign banks granted a license under this part shall be subject to articles 1 through 3 and 5 of this chapter; provided, that: (1) if there is any inconsistency between any provision of this article and those prior articles, the provisions of this article shall control; (2) those prior articles shall not apply where it appears from context or otherwise that they are clearly applicable only to banks organized under the laws of this State; and (3) foreign banks shall have no greater powers than are allowed banks chartered under this chapter.

§412:5A-302 Definitions. In this chapter:

“Foreign bank” means a banking company whose home or principal office is located in a foreign nation and whose activities are those usually carried on by banks in such foreign nation, and includes without limitation commercial banks and merchant banks.

“Foreign nation” means any nation other than the United States. The term also includes Puerto Rico, Guam, American Samoa, the Virgin Islands, and any territory, trust territory, dependency, or insular possession of the United States and any political subdivision, territory, trust territory, dependency, or possession of a foreign nation.

“Office” means a representative office, nondepository agency, or depository agency of a foreign bank, as described in section 412:5A-303.

§412:5A-303 Authorized activities. (a) No foreign bank may conduct any activities in this State for which a charter or license as a financial institution is required except to the extent permitted under this part. Subject to this part foreign banks may open and maintain the following types of offices in this State:

- (1) Representative office: at which the foreign bank may conduct only representational functions, but may not solicit or accept deposits, may not make business decisions on behalf of the bank, and may not otherwise transact business. The term “representational functions” means activities solely involving public relations, promotion and goodwill, including without limitation the offering of free informational services, contact with representatives of the bank, and the use of its office facilities. For purposes of this article, if a person establishes or maintains an office in this State as a “representative” of a foreign bank with the authority or acquiescence of the bank, the foreign bank shall be deemed to have established or to be maintaining a representative office;
- (2) Nondepository agency: at which the foreign bank may engage in the types of activities that are permitted by both this State and the government where its home office is located, except as prohibited by this article and except that no deposits of any kind may be accepted; or
- (3) Depository agency: at which the foreign bank may engage in the same activities permitted at nondepository agencies, but shall also be permitted to accept only the following types of deposits:
 - (A) Deposits of a foreign nation, its political subdivisions, agencies, or instrumentalities; and

(B) Deposits of persons who reside, are domiciled and maintain their principal place of business in a foreign nation, and are not citizens of the United States.

(b) A foreign bank may not maintain both a federal and a State agency in this State at the same time. However, a foreign bank may maintain an agency and one or more representative offices in this State at the same time.

(c) A foreign bank may not be licensed under this chapter to maintain both a nondepository and a depository agency at the same time in this State.

(d) A foreign bank licensed to maintain an office in this State shall not transact any trust business, establish branches, or accept deposits except such deposits as are expressly authorized in this part.

§412:5A-304 License to establish office. (a) In order to obtain a license under this part, a foreign bank shall file an application with the commissioner in which the applicant shall furnish the following information, unless waived by the commissioner:

- (1) The name of the foreign bank;
- (2) The specific location of the proposed site of the office;
- (3) The anticipated opening date and, if open for a specified period, the end of such period;
- (4) The nature of the business or transactions intended to be carried on at the location;
- (5) The foreign bank's articles of incorporation and bylaws, or other basic governing documents;
- (6) A certificate from the appropriate regulatory body where its home office is located, indicating that the foreign bank is in good standing in that jurisdiction;
- (7) Evidence that the assets of the corporation located anywhere throughout the world have an aggregate value in United States currency of \$10,000,000,000 and that the corporation has been engaged in the banking business for at least ten years prior to filing an application pursuant to this section;
- (8) Names, residence addresses, and biographical information for the foreign bank's controlling persons, directors, executive officers, and proposed management of the office, sufficient to determine their character, financial standing, education and experience;
- (9) History and financial standing of the foreign bank including but not limited to its current financial statements;
- (10) A statement under oath appointing an agent in this State for receipt of service of process if the license is granted; and
- (11) Any other information that the commissioner may require.

The application shall be accompanied by a filing fee the amount of which shall be established by rule pursuant to chapter 91.

(b) The commissioner shall conduct such review, investigation, and informational and comment proceedings as the commissioner deems necessary. The commissioner shall issue the license if the commissioner determines that the foreign bank's controlling persons, directors, executive officers and proposed management of the office are of good moral character and sound financial standing, its management is competent and sufficiently experienced, the financial history and condition of the bank are satisfactory and it is likely to comply with all applicable laws and rules. The license may contain such restrictions and conditions as the commissioner deems appropriate.

(c) For purposes of this section, the commissioner may presume that in the absence of credible evidence to the contrary, a director, officer, or controlling

person is of good character and sound financial standing. Such presumption may be rebutted by evidence to the contrary, including but not limited to a finding that such director, officer, or controlling person has:

- (1) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;
- (2) Consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;
- (3) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;
- (4) Wilfully made or caused to be made in any application or report filed with the commissioner, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has wilfully omitted to state in any application or report any material fact which was required to be stated therein; or
- (5) Wilfully committed any violation of, or has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this chapter or of any rule or order issued under this chapter.

§412:5A-305 Denial of license. If the commissioner is not satisfied that the applicant meets all the criteria set forth for approval, the commissioner shall issue a written decision denying the applicant's application. An applicant who is denied approval may request a hearing before the commissioner in accordance with the provisions of chapter 91. Any final decision of the commissioner denying an applicant a license may be appealed to the circuit court as provided in chapter 91.

§412:5A-306 Non-assignability of license. No license granted under this part shall be transferable or assignable.

§412:5A-307 Name used by foreign bank. The name used by every foreign bank office licensed in this State shall contain the term "representative office," or "agency," as the case may be.

§412:5A-308 Service of process. Service may be made on a foreign bank by leaving a copy of the process at the office of the appointed agent in this State.

§412:5A-309 Places of business. (a) All business conducted in this State by a foreign bank licensed pursuant to this part shall be conducted only in the office designated in the license. Any such office shall be located in a single building or in adjoining buildings, unless the commissioner in writing authorizes the use of another building in the vicinity of the office.

(b) If the foreign bank is licensed to maintain two or more offices, the bank shall designate one of the offices as its principal place of business in this State.

§412:5A-310 Relocating offices. (a) No foreign bank may relocate its office to another location in this State without the commissioner's prior written approval; provided, that such approval shall not be required if the relocation will be less than one mile from the foreign bank's present place of business, the foreign bank gives the commissioner written notice at least twenty days prior to the move, the type of business carried on at the new place of business will be the same as at the present place of business and there will be no financial involvement in the

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relocation by a director, executive officer, or principal shareholder, or a related interest of any of these persons.

(b) The foreign bank shall file an application with the commissioner in a form approved by the commissioner. The application shall be accompanied by a fee the amount of which shall be established by the commissioner by rule pursuant to chapter 91. The application shall state:

- (1) The name of the foreign bank;
- (2) The specific location of the proposed site of the office;
- (3) The anticipated opening date and, if open for a specified period, the end of such period; and
- (4) Any other information that the commissioner may require.

(c) If the commissioner is satisfied that the proposed relocation is justified and proper, the commissioner shall approve such application in writing, with such conditions as the commissioner may deem appropriate.

§412:5A-311 Notice and deadline for opening or relocating office. Every foreign bank permitted under this part to open or relocate an office shall notify the commissioner in writing that such opening or relocation has been completed, no later than five days after the opening or relocation. If the opening or relocation will not be completed within nine months after the opening date stated in the application, the foreign bank may obtain from the commissioner an extension of the time to open or relocate, which shall be reasonably granted for good cause. If such extension is not obtained in writing, the commissioner may revoke the permission to open or relocate.

§412:5A-312 Segregation of assets. A foreign bank licensed to transact business in this State shall keep the assets of such business separate and apart from the assets of its business outside the State. In case of any default, insolvency, or liquidation by a foreign bank, its creditors with respect to business conducted in this State shall have priority over all other creditors as to the assets of the bank in this State.

§412:5A-313 Calculation of assets and liabilities. When any provision of this chapter applicable to a foreign bank licensed under this part requires the computation of the bank's assets and liabilities to determine restrictions or limits on investments, loans, and the like, only the assets and liabilities of the bank's agencies or representative offices in this State shall be included, and all other assets and liabilities shall be excluded.

§412:5A-314 Deposit for security. (a) No foreign bank shall be licensed to establish an agency in this State unless it first deposits and maintains \$500,000 or such greater amount as determined by the commissioner to be sufficient to protect the interests of the creditors of the bank's business in this State and to protect the public interest, while allowing the bank to remain in sound financial condition.

(b) "Creditors of the bank's business in this State" are, for purposes of this part, creditors of a foreign bank who are domiciled in this State and whose business with the bank was actually transacted in this State.

(c) The deposit under this section shall be made and kept only in a bank that is a Hawaii financial institution or in a national bank whose operations are principally conducted in this State which has been selected by the foreign bank and approved in writing by the commissioner; provided, that the depository bank must have filed with the commissioner an agreement to comply with this section and any rule or order of the commissioner pursuant to this section.

(d) The only assets which may be deposited in order to comply with this section are as follows:

- (1) Cash;
- (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;
- (3) Any commercial paper which is payable in the United States and which is not rated lower than P-1 or its equivalent by any nationally recognized rating service;
- (4) Any banker's acceptance which is payable in the United States and which is eligible for discount with a Federal Reserve Bank;
- (5) Any other asset which the commissioner determines is eligible.

An asset will not satisfy the requirements of this section if it is an instrument that is issued by the foreign bank itself, or by a person who controls, is controlled by or is in common control with the foreign bank, or by an issuer domiciled in or controlled by the foreign nation in which the foreign bank's home office is located, or is issued by a person controlled by another person domiciled in that foreign nation.

(e) The value of any asset deposited pursuant to this section shall be the lower of fair market value or par value.

(f) A deposit made pursuant to this section shall be deemed to be pledged to the commissioner for the benefit of creditors of the bank's business in this State. Notwithstanding anything to the contrary in the Uniform Commercial Code, chapter 490, the commissioner shall have a security interest in the deposit, for the benefit of the creditors. The deposit shall be free from any lien, charge, right of set off, credit, claim, or preference of the approved depository against the foreign bank making the deposit.

(g) If the foreign bank ceases to be licensed under this part, it shall nevertheless maintain the deposit required by this section for a period of time determined by the commissioner to be necessary for the protection of the creditors of the bank's business in this State, and to protect the public interest.

(h) In case the commissioner takes possession of the foreign bank's assets and business for any reason allowed under this chapter, the approved depository shall, upon the commissioner's written order, release to the commissioner any deposit made pursuant to this section.

(i) If a foreign bank fails to pay any judgment creditor of the bank's business in this State, the commissioner may order an approved depository to release all or portions of the deposit made pursuant to this section for such payment. The commissioner shall not issue such an order except upon a showing that the judgment:

- (1) Arose out of the bank's business in this State;
- (2) Has been entered by a court of this State or of the United States;
- (3) Has become final, in that all possibility of direct attack on the judgment by way of appeal, motion for new trial, motion to vacate, or petition for extraordinary writ has been exhausted; and
- (4) Has remained unpaid for a period of not less than sixty days after becoming final.

(j) An approved depository shall not disburse or allow any withdrawal from a deposit established pursuant to this section, without the prior written approval of the commissioner; provided, that any interest or other earnings thereon shall be disbursed to the foreign bank unless and until the commissioner suspends or revokes the bank's license, or takes possession of its property and business in this

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State. All deposits, earnings thereon, and disbursements from the deposit shall be reported to the commissioner within ten days after each such occurrence.

§412:5A-315 Surrender of license. No foreign bank may surrender its license without the commissioner's prior written approval. To obtain such approval, the bank must submit an application to the commissioner stating the reasons for the surrender, together with a report indicating:

- (1) The current financial condition of the bank in a form prescribed by the commissioner;
- (2) The current business being conducted in the State, and an indication of the assets and liabilities attributable to business conducted in this State;
- (3) A list of all creditors of the bank's business in this State, and their outstanding balances; and
- (4) Any other information as the commissioner may require.

The commissioner shall grant the application if the commissioner is satisfied that the termination of the license will not jeopardize the public interest. Any termination under this section shall be effective thirty days after approval, unless otherwise provided by the commissioner, and shall be upon such terms and conditions as shall be specified in the order granting the application.

§412:5A-316 Commissioner's regulatory powers. Every foreign bank licensed under this part shall be subject to all the provisions of article 2 of this chapter to the same extent as Hawaii financial institutions, except that:

- (1) The commissioner may limit the scope of any examination or may require an examination of the bank's records at its home office;
- (2) The commissioner's jurisdiction over the bank's assets shall be limited to the assets located in this State or which were improperly removed from this State; and
- (3) The commissioner's power to reorganize or effectuate an acquisition or merger shall be limited to the bank's assets located in this State.

ARTICLE 6. SAVINGS BANKS

PART I. GENERAL PROVISIONS

§412:6-100 Definition. In this article, "savings bank" means a corporation which has the authority to operate as a savings bank under this chapter.

§412:6-101 Necessity for savings bank charter. Except as expressly permitted by federal law or this chapter or section 415-106(c), no person shall engage in any activity for which a charter to operate as a savings bank is required by this chapter, including without limitation the solicitation, acceptance and holding of deposits in this State, the use of the term "savings bank," or the exercise of such other powers or privileges restricted to savings banks under applicable law, unless it is a corporation incorporated in this State and has such a savings bank charter.

PART II. POWERS OF SAVINGS BANKS

§412:6-200 General powers. (a) Except as expressly prohibited or limited by this chapter, a savings bank shall have the power to solicit, accept and hold deposits, engage in other activities which are usual or incidental to the business of a savings bank, and shall have all rights, powers and privileges of a corporation organized under the laws of this State including but not limited to the power to:

- (1) Make loans and extensions of credit of any kind, whether unsecured or secured by real or personal property of any kind or description;
 - (2) Borrow money from any source, within or without the State;
 - (3) Enter into repurchase agreements;
 - (4) Buy and sell foreign currency; and
 - (5) Make investments as permitted under this article.
- (b) Except as otherwise expressly authorized by this chapter or by the commissioner under section 412:6-201, a savings bank shall not:
- (1) Employ its funds, directly or indirectly, in trade or commerce, by buying or selling ordinary goods, chattels, wares and merchandise, except as an incidental operation or when related to another permitted activity, or by owning or operating industrial or manufacturing plants of any kind;
 - (2) Own or control the capital stock of any other corporation after July 1, 1994;
 - (3) Deal in gold bullion, except a savings bank may buy and sell gold coins minted by the United States Treasury; or
 - (4) Engage in any business for which a real estate broker's license is required, in any business for which an insurance agent or agency license is required, or in any business of a securities broker or dealer. This prohibition shall not apply to the sale of credit life and other forms of credit related insurance products and shall not affect previous licenses or approvals granted to sell securities or non-credit related forms of insurance.

§412:6-201 Powers granted under federal law. (a) In this section "federal power" means any activity, right, privilege, or immunity granted to a federal savings bank under any federal statute, rule, regulation, interpretation or court decision.

(b) Any savings bank desiring to acquire any federal power shall file an application with the commissioner. The application shall indicate the applicable federal statute, rule, regulation, interpretation or court decision, the extent of the federal power desired, the reasons for the application, and any other information requested by the commissioner. The commissioner may by rule prescribe the form of application and application filing fees.

(c) If the commissioner is satisfied that the power should be granted, the commissioner shall issue a written approval of the application, subject to such terms and conditions as the commissioner deems appropriate. Other savings banks may file an application if they desire the same federal power, but approval of any application need not be granted. Any federal power granted pursuant to this section is in addition to, and not in limitation of, any other provision of this chapter, and the federal power may be exercised notwithstanding any other provision in this chapter.

(d) If any federal power is terminated or modified, the commissioner may terminate or make a similar modification to any corresponding power granted under this section.

(e) The commissioner may suspend or revoke any federal power granted under this section or under previous law if the commissioner finds:

- (1) That the savings bank has violated any conditions imposed in connection with the grant of power; or
- (2) The savings bank has not begun to exercise such power within one year of the date it was granted.

(f) The commissioner shall retain jurisdiction over the enforcement of any power granted under this section or under previous law. Any action under subsec-

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tions (d) or (e) of this section shall be taken only after the commissioner has given the savings bank notice of the proposed action and an opportunity to be heard.

§412:6-202 Membership in federal home loan bank. Any savings bank may become a member of a federal home loan bank organized under authority of the Federal Home Loan Bank Act, or any successor or similar system of federal home loan banks established by Congress, and may purchase and hold the shares of such federal home loan bank. The savings bank may have and exercise all powers not in conflict with the laws of this State incident to such membership; provided, however that notwithstanding such membership the savings bank and its directors, officers, and shareholders shall continue to be subject to all liabilities and duties imposed upon them by any law of this State.

§412:6-203 Service corporations. (a) "Service corporation" means a corporation whose stock is owned entirely by one or more state or federally chartered savings banks or savings and loan associations.

(b) Subject to the approval of the commissioner, a savings bank may form and own a service corporation only if the institution or institutions participating in the formation of the corporation are in a safe and sound condition, and the amount of stock to be owned by each will not adversely affect their capital or solvency.

(c) A savings bank may not own or invest in any capital stock, securities or other interest of a service corporation if, together with its investment in the capital stock, securities or other interest of any other service corporations, its aggregate outstanding investment in all service corporations will exceed six per cent of the savings bank's assets.

(d) No service corporation may be formed except upon written approval by the commissioner of an application submitted in a form satisfactory to the commissioner. The approval shall be subject to the written acknowledgement by the applicant that the service corporation shall be subject to: (1) the supervision of the commissioner; (2) examination pursuant to this section; and (3) such other terms and conditions as the commissioner deems appropriate.

(e) Every service corporation shall permit the commissioner to examine its books, records, and activities from time to time, to the extent and whenever the commissioner deems necessary to determine the propriety of any investment by a savings bank in such corporation and whether the activities of the corporation pose a significant risk of loss to the parent savings bank. The corporation shall pay the entire cost of such examination. In addition, a service corporation, at its sole expense, shall cause an independent audit to be made of its books, records, and activities if and when deemed necessary by the commissioner.

(f) A service corporation may engage in activities permitted for a service corporation of a federally chartered savings bank or savings and loan association and such other activities as the commissioner may approve.

(g) A service corporation may engage in permitted activities directly or through one or more subsidiaries or joint ventures.

(h) Whenever a service corporation engages in an activity which is not permitted under this section, and because of such activity a savings bank's investment in the service corporation would be improper, within ninety days following written notice from the commissioner to the savings bank: (1) the improper activity shall be discontinued; or (2) the savings bank shall divest itself of its ownership or investment in the service corporation. The service corporation or the savings bank may appeal the commissioner's decision and request a hearing in accordance with chapter 91.

§412:6-204 Operating subsidiaries. (a) "Operating subsidiary" means a corporation other than a corporation referred to in section 412:6-306(g)(2) to (7) of which more than fifty per cent of the voting securities is held by a savings bank.

(b) An operating subsidiary may engage in activities which are authorized for a savings bank or which are usual or incidental to the business of a savings bank.

(c) No savings bank may acquire, establish or hold the voting securities of an operating subsidiary without the commissioner's prior written approval; provided, that such approval shall not be required so long as the savings bank's aggregate net contributions to the capital of the operating subsidiary remain less than ten per cent of the savings bank's capital and surplus; provided further, that the savings bank shall comply with the notification requirements of subsection (f). Unless otherwise provided by law or rule, all provisions of this chapter applicable to the operations of the parent savings bank shall be applicable to the operations of its operating subsidiary. Unless otherwise provided by law or rule, pertinent accounts of the parent savings bank and its operating subsidiaries shall be consolidated for the purpose of applying applicable statutory limitations such as contained in section 412:6-303.

(d) The savings bank shall file an application with the commissioner in a form approved by the commissioner. The application shall be accompanied by a fee, the amount of which shall be prescribed by rule. The application shall contain the following information concerning the proposed operating subsidiary:

- (1) The name and date for commencement of operations;
- (2) The specific location;
- (3) The activities and nature of business;
- (4) The ownership, amount and nature of the investment; and
- (5) Any other information that the commissioner may require.

(e) If after appropriate examination and investigation, the commissioner is satisfied that the acquisition, establishment or holding the voting securities of the operating subsidiary will comply with this section, the commissioner shall approve such application in writing, with such conditions as the commissioner may deem appropriate.

(f) The savings bank shall notify the commissioner in writing within five days of acquiring or establishing any operating subsidiary or performing new activities in the operating subsidiary. The notification shall provide the information specified in subsection (d).

(g) The accounts of each operating subsidiary of a savings bank shall be maintained independently of the accounts of all of the savings bank's other operating subsidiaries and independently of the accounts of the savings bank itself. At least at the end of every quarter of its fiscal year the savings bank shall consolidate or recognize its proportionate share of the profit and loss from each operating subsidiary.

PART III. LOANS AND INVESTMENTS

§412:6-300 Applicability of part. This part sets forth the requirements and restrictions for lending and investments by all savings banks. A savings bank may make loans and extensions of credit and may invest its assets as may be permitted by this part and as may be provided elsewhere in this article.

§412:6-301 General requirements for loans. A savings bank shall make loans and extensions of credit that are consistent with prudent lending practices and in compliance with all applicable federal and State law.

§412:6-302 Requirements and limits for certain loans. (a) Not less than fifty per cent of the amount of loans and extensions of credit made by a savings bank shall be in loans and extensions of credit secured by real estate.

(b) The aggregate amount loaned by any savings bank for the following types of loans, whether secured or unsecured, shall not exceed the following limits:

(1) Commercial loans: fifteen per cent of the savings bank's total assets.

For purposes of this section "commercial loan" means any loan primarily for business, corporate, commercial, or agricultural purposes where the savings bank substantially relies on the borrower's general credit standing for repayment of the loan and, if the loan is secured by real property, does not primarily rely on the value of or income or projected income from the security for repayment of the loan; and

(2) Education loans: ten per cent of the savings bank's total assets. For purposes of this section, "education loan" means any loan the proceeds of which are used to pay for tuition, fees, books, and other expenses related to primary, secondary, vocational and undergraduate and postgraduate college or university education.

(c) A savings bank may reclassify or apportion a loan from one category to another in this section.

§412:6-303 Limitations on loans and extensions of credit to one borrower. (a) No savings bank shall permit a person to become indebted or liable to it, either directly or indirectly, on loans and extensions of credit, in a total amount outstanding at any one time in excess of twenty per cent of the capital and surplus of the savings bank.

(b) This section applies to all loans and extensions of credit made by a savings bank and its subsidiaries. It does not apply to loans and extensions of credit made by a savings bank or its subsidiaries to its affiliates or subsidiaries.

(c) The limitations set forth in this section shall not apply to:

(3) Loans and extensions of credit secured by the interest-bearing obligations of the United States or those for which the faith and credit of the United States are distinctly pledged to provide for the payment of the principal and interest thereof or of the State or any county or municipal or political subdivision of this State, issued in compliance with the laws of this State, where the market value of the security shall be at any time not less than one hundred five per cent of the face amount of the loans and extensions of credit;

(4) Loans and extensions of credit to the extent secured by a pledge or security interest in a deposit account in the savings bank serving as the lender; and

(5) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable credit sales contracts which carry a partial recourse endorsement or limited guarantee by the person transferring the credit sales contract, if the savings bank's respective file or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the savings bank certifies in writing that the savings bank is relying primarily upon the responsibility of each maker for payment of such credit sales contract and not upon any partial recourse endorsement or limited guarantee by the transferor. Under these circumstances, such credit sales contract will be considered a loan and extension of credit to the maker of the credit sales contract rather than the seller of the credit sales contract.

(d) In computing the total loans and extensions of credit made by a savings bank to any person, all loans and extensions of credit by the savings bank to the

person and to any partnership, joint venture or unincorporated association of which the person is a partner or a member shall be included unless the person is a limited partner, but not a general partner, in a limited partnership, or unless the person is a partner in a limited or general partnership, or a member of a joint venture or unincorporated association, if such partner or member, by law, by the terms of the partnership, joint venture or membership agreement, or by the terms of an agreement with the savings bank, is not to be held liable to the savings bank for the debts of the partnership, joint venture or association. In computing the total loans and extensions or credit made by a savings bank to any firm, partnership, joint venture or unincorporated association, all loans and extensions of credit to its individual partners or members shall be included unless such individual partner is a limited partner, but not a general partner, in a limited partnership, or unless such individual partner or member, by law, by the terms of the partnership, joint venture, or membership agreement, or by the terms of an agreement with the bank, is not to be held liable to the savings bank for the debts of the partnership, joint venture or association.

(e) Alternatively, a savings bank may, with the prior approval of the commissioner, comply with the lending limits applicable to national banking association, as and to the same extent it would, at the time, be so required by federal law or regulation if it were a national banking association. In monitoring a savings bank's compliance with the national banking association lending limits, the commissioner shall give substantial weight to the Office of the Comptroller of the Currency's regulations and opinions interpreting the national banking association lending limits and will regard them as strong evidence of safe and sound banking practices.

§412:6-304 Loans and extensions of credit to executive officers, directors, principal shareholders and affiliates. No savings bank shall make any loan or extension of credit in violation of section 18(j) of the Federal Deposit Insurance Act, 12 U.S.C. §1828(j).

§412:6-305 General requirement for investments. A savings bank shall make investments that are consistent with prudent banking practices and in compliance with all applicable federal and State law.

§412:6-306 Permitted investments. (a) To the extent specified herein, a savings bank may invest its own assets in securities and obligations of:

- (1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;
- (2) United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation, Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Financing Corporation, Resolution

Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, and the United States Postal Service; and

- (3) Quasi-United States governmental institutions including without limitation, the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member, provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the savings bank's capital and surplus.

(b) To the extent specified herein, a savings bank may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.

(c) To the extent specified herein, a savings bank may invest its own assets in bonds or similar obligations issued by any state of the United States other than this State, the District of Columbia, or any territory or possession of the United States, by municipal governments of such states, territories or possessions or by any foreign country or political subdivision of such country; provided, that:

- (1) The bond, note, or warrant has been issued in compliance with the constitution and laws of any such government;
- (2) There has been no default in payment of either principal or interest on any of the general obligations of such government for a period of five years immediately preceding the date of the investment; and
- (3) The total amount invested in such obligations of any one issuer by a savings bank shall not exceed twenty per cent of the savings bank's capital and surplus.

(d) To the extent specified herein, a savings bank may invest its own assets in notes, bonds, and other obligations of any corporation which at the time of the investment is incorporated under the laws of the United States or any state or territory thereof or the District of Columbia; provided, that the aggregate amount invested by a savings bank under this subsection and subsection (e) in any one corporation shall not exceed twenty per cent of the savings bank's capital and surplus.

(e) To the extent specified herein, a savings bank may invest its own assets in securities of an investment grade. The term "investment grade" means notes, bonds, certificates of interest or participation, beneficial interest, mortgage or receivable-related securities, and other obligations that are commonly understood to be of investment grade quality, including without limitation those securities that are rated within the four highest grades by any nationally-recognized rating service or unrated securities of similar quality as reasonably determined by the savings bank in its prudent judgment, which may be based in part upon estimates which it believes to be reliable. Investment grade does not include investments which are predominantly speculative in nature. The aggregate amount invested by a savings bank under this subsection and subsection (d) in any one company or other issuer shall not exceed twenty per cent of the savings bank's capital and surplus.

(f) To the extent specified herein, a savings bank may purchase, hold, convey, sell or lease real or personal property as follows:

- (1) The real property in or on which the business of the savings bank is carried on, including its offices, other space in the same property to rent as a source of income; permanent or vacation residences or recreational facilities for its officers and employees; other real property necessary to the accommodation of the savings bank's business, including but not limited to parking facilities, data processing centers,

and real property held for future use where the savings bank in good faith expects to utilize the property as its premises; provided, if the savings bank ceases to use any real property and improvements thereon for one of the foregoing purposes, it shall, within five years thereafter, sell the real property or cease to carry it or them as an asset; provided further, such property shall not, without the approval of the commissioner, exceed seventy-five per cent of the savings bank's capital and surplus;

- (2) Personal property used in or necessary to the accommodation of the savings bank's business, including but not limited to furniture, fixtures, equipment, vaults and safety deposit boxes. The savings bank's investment in furniture and fixtures shall not, without the approval of the commissioner, exceed twenty-five per cent of the savings bank's capital and surplus;
- (3) Personal and real property which the savings bank acquires for the purpose of leasing to its subsidiaries and affiliates;
- (4) Such real property or tangible personal property as may come into its possession as security for loans or in the collection of debts, or as may be purchased by or conveyed to the savings bank in satisfaction of or on account of debts previously contracted in the course of its business when such property was held as security by the savings bank; and
- (5) The seller's interest under an agreement of sale, as that term is defined in sections 501-101.5 and 502-85, including without limitation the reversionary interest in the real estate and the right to income under the agreement of sale, with or without recourse to the seller.

Except as otherwise authorized in this section any tangible personal property acquired by a savings bank pursuant to subsection (f)(4) shall be disposed of as soon as practicable and shall not without the written consent of the commissioner, be considered a part of the assets of the savings bank after the expiration of two years from the date of acquisition.

Except as otherwise authorized in this section any real property acquired by a savings bank pursuant to subsection (f)(4) shall be sold or exchanged for other real property by the savings bank within five years after title thereto has vested in it by purchase or otherwise, or within such further time as may be granted by the commissioner.

Any savings bank acquiring any real property in any manner other than provided by this section shall immediately, upon receiving notice from the commissioner, charge the same to profit and loss, or otherwise remove the same from the assets, and when any loss impairs the capital and surplus of the savings bank the impairment shall be made good in the manner provided in this chapter.

- (g) A savings bank may own or control the capital stock:
- (1) Of operating subsidiaries as set forth in this article;
- (2) Of a corporation organized and existing for the ownership of real or personal property used or which the savings bank in good faith expects to be used in the savings bank's business;
- (3) Of the Federal National Mortgage Association, the Student Loan Marketing Association, Federal Home Loan Mortgage Corporation or of any other corporation organized for substantially the same purposes; provided that this subsection shall be deemed to authorize subscription for as well as purchase of the stock;
- (4) Of small business investment companies operating under the Federal Small Business Investment Act of 1958;
- (5) Of service corporations as set forth in this article;

- (6) Of a corporation whose stock is acquired or purchased to save a loss on a preexisting debt secured by such stock; provided, that the stock shall be sold within twelve months of the date acquired or purchased, or within such further time as may be granted by the commissioner; and
- (7) Of a captive insurance or association captive insurance company incorporated under the laws of the United States, or any state or territory thereof or the District of Columbia.

§412:6-307 Deposits made by savings banks. A savings bank may deposit any of its funds with (1) a federal reserve bank or a federal home loan bank in any amount, or (2) another depository institution, provided that the net deposits in any one depository institution does not exceed twenty-five per cent of the savings bank's capital and surplus, unless otherwise permitted by federal law. In this section "net deposits in any one depository institution" means the sum of (1) balances, other than demand balances, due from the institution and (2) demand balances due from the institution, less any demand balances due to that institution if that office of the institution in which the deposit is made is located in the United States.

ARTICLE 7. SAVINGS AND LOAN ASSOCIATIONS

PART I. GENERAL PROVISIONS

§412:7-100 Definition. In this article, "savings and loan association" means a corporation or mutual association which has the authority to operate as a savings and loan association under this chapter.

§412:7-101 Necessity for savings and loan association charter. Except as expressly permitted by federal law or this chapter or section 415-106(c), no person shall engage in any activity for which a charter to operate as a savings and loan association is required by this chapter, including without limitation the solicitation, acceptance, and holding of deposits in this State, the use of the term "savings and loan association," or the exercise of such other powers or privileges restricted to savings and loan associations under applicable law, unless it is a corporation incorporated in this State and has such a charter.

PART II. POWERS OF SAVINGS AND LOAN ASSOCIATIONS

§412:7-200 General powers. (a) Except as expressly prohibited or limited by this chapter, a savings and loan association shall have the power to solicit, accept and hold deposits, engage in other activities which are usual or incidental to the business of a savings and loan association, and shall have all rights, powers and privileges of a corporation organized¹ the laws of this State including but not limited to the power to:

- (1) Make loans and extensions of credit of any kind, whether unsecured or secured by real or personal property of any kind or description;
 - (2) Borrow money from any source within or without the State;
 - (3) Enter into repurchase agreements;
 - (4) Buy and sell foreign currency; and
 - (5) Make investments as permitted under this article.
- (b) Except as otherwise expressly authorized by this chapter or by the commissioner under section 412:7-201, a savings and loan association shall not:

- (1) Employ its funds, directly or indirectly, in trade or commerce, by buying or selling ordinary goods, chattels, wares and merchandise, except as an incidental operation or when related to another permitted activity, or by owning or operating industrial or manufacturing plants of any kind;
- (2) Own or control the capital stock of any other corporation after July 1, 1994;
- (3) Deal in gold bullion, except a savings and loan association may buy and sell gold coins minted by the United States Treasury; or
- (4) Engage in any business for which a real estate broker's license is required, in any business for which an insurance agent or agency license is required, or in any business of a securities broker or dealer. This prohibition shall not apply to the sale of credit life and other forms of credit related insurance products and shall not affect previous licenses or approvals granted to sell securities or non-credit related forms of insurance.

§412:7-201 Powers granted under federal law. (a) In this section "federal power" means any activity, right, privilege, or immunity granted to a federal savings and loan association under any federal statute, rule, regulation, interpretation or court decision.

(b) Any savings and loan association desiring to acquire any federal power shall file an application with the commissioner. The application shall indicate the applicable federal statute, rule, regulation, interpretation or court decision, the extent of the federal power desired, the reasons for the application, and any other information requested by the commissioner. The commissioner may by rule prescribe the form of application and application filing fees.

(c) If the commissioner is satisfied that the power should be granted, the commissioner shall issue a written approval of the application, subject to such terms and conditions as the commissioner deems appropriate. Other savings and loan associations may file an application if they desire the same federal power, but approval of any application need not be granted. Any federal power granted pursuant to this section is in addition to, and not in limitation of, any other provision of this chapter, and the federal power may be exercised notwithstanding any other provision in this chapter.

(d) If any federal power is terminated or modified, the commissioner may terminate or make a similar modification to any corresponding power granted under this section.

(e) The commissioner may suspend or revoke any federal power granted under this section or under previous law if the commissioner finds:

- (1) That the savings and loan association has violated any conditions imposed in connection with the grant of power; or
- (2) The savings and loan association has not begun to exercise such power within one year of the date it was granted.

(f) The commissioner shall retain jurisdiction over the enforcement of any power granted under this section or under previous law. Any action under subsections (d) or (e) of this section shall be taken only after the commissioner has given the savings and loan association notice of the proposed action and an opportunity to be heard.

§412:7-202 Membership in federal home loan bank. Any savings and loan association may become a member of a federal home loan bank organized under authority of the Federal Home Loan Bank Act, or any successor or similar system of federal home loan banks established by Congress, and may purchase and

hold the shares of such federal home loan bank. The savings and loan association may have and exercise all powers not in conflict with the laws of this State incident to such membership; provided, however that notwithstanding such membership the savings and loan association and its directors, officers, and shareholders shall continue to be subject to all liabilities and duties imposed upon them by any law of this State.

§412:7-203 Service corporations. (a) "Service corporation" means a corporation whose stock is owned entirely by one or more state or federally chartered savings and loan associations or savings banks.

(b) Subject to the approval of the commissioner, a savings and loan association may form and own a service corporation only if the institution or institutions participating in the formation of the corporation are in a safe and sound condition, and the amount of stock to be owned by each will not adversely affect their capital or solvency.

(c) A savings and loan association may not own or invest in any capital stock, securities or other interest of a service corporation if, together with its investment in the capital stock, securities or other interest of any other service corporations, its aggregate outstanding investment in all service corporations will exceed six per cent of the savings and loan association's assets.

(d) No service corporation may be formed except upon written approval by the commissioner of an application submitted in a form satisfactory to the commissioner. The approval shall be subject to the written acknowledgement by the applicant that the service corporation shall be subject to: (1) the supervision of the commissioner; (2) examination pursuant to this section; and (3) such other terms and conditions as the commissioner deems appropriate.

(e) Every service corporation shall permit the commissioner to examine its books, records, and activities from time to time, to the extent and whenever the commissioner deems necessary to determine the propriety of any investment by a savings and loan association in such corporation and whether the activities of the corporation pose a significant risk of loss to the parent savings and loan association. The corporation shall pay the entire cost of such examination. In addition, a service corporation, at its sole expense, shall cause an independent audit to be made of its books, records, and activities if and when deemed necessary by the commissioner.

(f) A service corporation may engage in activities permitted for a service corporation of a federally chartered savings and loan association and such other activities as the commissioner may approve.

(g) A service corporation may engage in permitted activities directly or through one or more subsidiaries or joint ventures.

(h) Whenever a service corporation engages in an activity which is not permitted under this section, and because of such activity a savings and loan association's investment in the service corporation would be improper, within ninety days following written notice from the commissioner to the savings and loan association: (1) the improper activity shall be discontinued; or (2) the savings and loan association shall divest itself of its ownership or investment in the service corporation. The service corporation or the savings and loan association may appeal the commissioner's decision and request a hearing in accordance with chapter 91.

§412:7-204 Operating subsidiaries. (a) "Operating subsidiary" means a corporation other than a corporation referred to in section 412:7-306(g)(2) to (7) of which more than fifty per cent of the voting securities is held by a savings and loan association.

(b) An operating subsidiary may engage in activities which are authorized for a savings and loan association or which are usual or incidental to the business of a savings and loan association.

(c) No savings and loan association may acquire, establish or hold the voting securities of an operating subsidiary without the commissioner's prior written approval; provided, that such approval shall not be required so long as the savings and loan association's aggregate net contributions to the capital of the operating subsidiary remain less than ten per cent of the saving and loan association's capital and surplus; provided further, that the savings and loan association shall comply with the notification requirements of subsection (f). Unless otherwise provided by law or rule, all provisions of this chapter applicable to the operations of the parent savings and loan association shall be applicable to the operations of its operating subsidiary. Unless otherwise provided by law or rule, pertinent accounts of the parent savings and loan association and its operating subsidiaries shall be consolidated for the purpose of applying applicable statutory limitations such as contained in section 412:7-303.

(d) The savings and loan association shall file an application with the commissioner in a form approved by the commissioner. The application shall be accompanied by a fee the amount of which shall be prescribed by rule. The application shall contain the following information concerning the proposed operating subsidiary:

- (1) The name and date for commencement of operations;
- (2) The specific location;
- (3) The activities and nature of business;
- (4) The ownership, amount and nature of the investment; and
- (5) Any other information that the commissioner may require.

(e) If after appropriate examination and investigation, the commissioner is satisfied that the acquisition, establishment or holding the voting securities of the operating subsidiary will comply with this section, the commissioner shall approve such application in writing, with such conditions as the commissioner may deem appropriate.

(f) The savings and loan association shall notify the commissioner in writing within five days of acquiring or establishing any operating subsidiary or performing new activities in the operating subsidiary. The notification shall provide the information specified in subsection (d).

(g) The accounts of each operating subsidiary of a savings and loan association shall be maintained independently of the accounts of all of the savings and loan association's other operating subsidiaries and independently of the accounts of the savings and loan association itself. At least at the end of every quarter of its fiscal year the savings and loan association shall consolidate or recognize its proportionate share of the profit and loss from each operating subsidiary.

PART III. LOANS AND INVESTMENTS

§412:7-300 Applicability of part. This part sets forth the requirements and restrictions for lending and investments by all savings and loan associations. A savings and loan association may make loans and extensions of credit and may invest its assets as may be permitted by this part and as may be provided elsewhere in this article.

§412:7-301 General requirements for loans. A savings and loan association shall make loans and extensions of credit that are consistent with prudent lending practices and in compliance with all applicable federal and State law.

§412:7-302 Requirements and limits for certain loans. (a) Not less than sixty per cent of the amount of loans and extensions of credit made by a savings and loan association shall be in loans and extensions of credit secured by real estate.

(b) The aggregate amount loaned by any savings and loan association for the following types of loans; whether secured or unsecured, shall not exceed the following limits:

- (1) Commercial loans: twelve and one-half per cent of the savings and loan association's total assets. For purposes of this section "commercial loan" means any loan primarily for business, corporate, commercial, or agricultural purposes where the savings and loan association substantially relies on the borrower's general credit standing for repayment of the loan and, if the loan is secured by real property, does not primarily rely on the value of or income or projected income from the security for repayment of the loan;
 - (2) Education loans: five per cent of the savings and loan association's total assets. For purposes of this section, "education loan" means any loan the proceeds of which are used to pay for tuition, fees, books, and other expenses related to primary, secondary, vocational and undergraduate and postgraduate college or university education;
 - (3) Unsecured construction loans: five per cent of the savings and loan association's total assets. For purposes of this section, "unsecured construction loan" means any loan to provide financing for what is expected to be residential real estate and where the savings and loan association relies primarily on the borrower's general credit and projected future income, if any, from such completed construction.
- (c) A savings and loan association may reclassify or apportion a loan from one category to another in this section.

§412:7-303 Limitations on loans and extensions of credit to one borrower. A savings and loan association shall comply with the lending limitations with respect to one borrower contained in section 5u of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C., §1464u.

§412:7-304 Loans and extensions of credit to executive officers, directors, principal shareholders and affiliates. No savings and loan association shall make any loan or extension of credit in violation of section 11 of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C., §1468.

§412:7-305 General requirement for investments. A savings and loan association shall make investments that are consistent with prudent banking practices and in compliance with all applicable federal and State law.

§412:7-306 Permitted investments. (a) To the extent specified herein, a savings and loan association may invest its own assets in securities and obligations of:

- (1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas

Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;

- (2) United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation, Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Financing Corporation, Resolution Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, and the United States Postal Service; and
- (3) Quasi-United States governmental institutions including without limitation, the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member, provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the savings and loan association's capital and surplus.

(b) To the extent specified herein, a savings and loan association may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.

(c) To the extent specified herein, a savings and loan association may invest its own assets in bonds or similar obligations issued by any state of the United States other than this State, the District of Columbia, or any territory or possession of the United States, by municipal governments of such states, territories or possessions or by any foreign country or political subdivision of such country; provided, that:

- (1) The bond, note, or warrant has been issued in compliance with the constitution and laws of any such government;
- (2) There has been no default in payment of either principal or interest on any of the general obligations of such government for a period of five years immediately preceding the date of the investment; and
- (3) The total amount invested in such obligations of any one issuer by a savings and loan association shall not exceed twenty per cent of the savings and loan association's capital and surplus.

(d) To the extent specified herein, a savings and loan association may invest its own assets in notes, bonds, and other obligations of any corporation which at the time of the investment is incorporated under the laws of the United States or any state or territory thereof or the District of Columbia; provided, that the aggregate amount invested by a savings and loan association under this subsection and subsection (e) in any one corporation shall not exceed twenty per cent of the savings and loan association's capital and surplus.

(e) To the extent specified herein, a savings and loan association may invest its own assets in securities of an investment grade. The term "investment grade" means notes, bonds, certificates of interest or participation, beneficial interests, mortgage or receivable-related securities, and other obligations that are commonly understood to be of investment grade quality, including without limitation those securities that are rated within the four highest grades by any nationally-recognized rating service or unrated securities of similar quality as reasonably determined by the savings and loan association in its prudent judgment, which may be based in

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part upon estimates which it believes to be reliable. Investment grade does not include investments which are predominantly speculative in nature. The aggregate amount invested by a savings and loan association under this subsection and subsection (d) in any one company or other issuer shall not exceed twenty per cent of the savings and loan association's capital and surplus.

(f) To the extent specified herein, a savings and loan association may purchase, hold, convey, sell or lease real or personal property as follows:

- (1) The real property in or on which the business of the savings and loan association is carried on, including its offices, other space in the same property to rent as a source of income; permanent or vacation residences or recreational facilities for its officers and employees; other real property necessary to the accommodation of the savings and loan association's business, including but not limited to parking facilities, data processing centers, and real property held for future use where the savings and loan association in good faith expects to utilize the property as its premises; provided, if the savings and loan association ceases to use any real property and improvements thereon for one of the foregoing purposes, it shall, within five years thereafter, sell the real property or cease to carry it or them as an asset; provided further, such property shall not, without the approval of the commissioner, exceed seventy-five per cent of the savings and loan association's capital and surplus;
- (2) Personal property used in or necessary to the accommodation of the savings and loan association's business, including but not limited to furniture, fixtures, equipment, vaults and safety deposit boxes. The savings and loan association's investment in furniture and fixtures shall not, without the approval of the commissioner, exceed twenty-five per cent of the savings and loan association's capital and surplus;
- (3) Personal and real property which the savings and loan association acquires for the purpose of leasing to its subsidiaries and affiliates;
- (4) Such real property or tangible personal property as may come into its possession as security for loans or in the collection of debts, or as may be purchased by or conveyed to the savings and loan association in satisfaction of or on account of debts previously contracted in the course of its business when such property was held as security by the savings and loan association; and
- (5) The seller's interest under an agreement of sale, as that term is defined in sections 501-101.5 and 502-85, including without limitation the reversionary interest in the real estate and the right to income under the agreement of sale, with or without recourse to the seller.

Except as otherwise authorized in this section any tangible personal property acquired by a savings and loan association pursuant to subsection (f)(4) shall be disposed of as soon as practicable and shall not, without the written consent of the commissioner, be considered a part of the assets of the savings and loan association after the expiration of two years from the date of acquisition.

Except as otherwise authorized in this section any real property acquired by a savings and loan association pursuant to subsection (f)(4) shall be sold or exchanged for other real property by the savings and loan association within five years after title thereto has vested in it by purchase or otherwise, or within such further time as may be granted by the commissioner.

Any savings and loan association acquiring any real property in any manner other than provided by this section shall immediately, upon receiving notice from the commissioner, charge the same to profit and loss, or otherwise remove the same from assets, and when any loss impairs the capital and surplus of the savings and

loan association the impairment shall be made good in the manner provided in this chapter.

- (g) A savings and loan association may own or control the capital stock:
 - (1) Of operating subsidiaries as set forth in this article;
 - (2) Of a corporation organized and existing for the ownership of real or personal property used or which the savings and loan association in good faith expects to be used in the savings and loan association's business;
 - (3) Of the Federal National Mortgage Association, the Student Loan Marketing Association, Federal Home Loan Mortgage Corporation or of any other corporation organized for substantially the same purposes; provided that this subsection shall be deemed to authorize subscription for as well as purchase of the stock;
 - (4) Of small business investment companies operating under the Federal Small Business Investment Act of 1958;
 - (5) Of service corporations as set forth in this article;
 - (6) Of a corporation whose stock is acquired or purchased to save a loss on a preexisting debt secured by such stock; provided, that the stock shall be sold within twelve months of the date acquired or purchased, or within such further time as may be granted by the commissioner; and
 - (7) Of a captive insurance or association captive insurance company incorporated under the laws of the United States, or any state or territory thereof or District of Columbia.

§412:7-307 Deposits made by savings and loan associations. A savings and loan association may deposit any of its funds with (1) a federal reserve bank or a federal home loan bank in any amount, or (2) another depository institution, provided that the net deposits in any one depository institution does not exceed twenty-five per cent of the savings and loan association's capital and surplus, unless otherwise permitted by federal law. In this section "net deposits in any one depository institution" means the sum of (1) balances, other than demand balances, due from the institution and (2) demand balances due from the institution, less any demand balances due to that institution if that office of the institution in which the deposit is made is located in the United States.

PART IV. MANAGEMENT OF MUTUAL SAVINGS AND LOAN ASSOCIATIONS

§412:7-400 Applicability of part. This part shall govern the management of all existing mutual savings and loan associations.

§412:7-401 "Mutual savings and loan association" defined. A "mutual savings and loan association" means a savings and loan association in which the earnings and net worth of the institution inure to the ultimate benefit of the depositors or members. A mutual savings and loan association cannot issue capital stock.

§412:7-402 No further mutual savings and loan associations; applicability of chapter. From and after the effective date of this chapter, new mutual savings and loan associations may no longer be established, and once an existing mutual savings and loan association ceases to operate as such, it may not thereafter operate as a mutual savings and loan association. The exceptions to this prohibition are:

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- (1) A mutual savings and loan association created by the commissioner as part of a supervisory transaction; or
- (2) A mutual savings and loan association which was prior to its formation a mutual holding company owning not less than fifty per cent of a Hawaii stock savings and loan association or savings bank.

§412:7-403 General applicability of laws. The requirements imposed on and the power and authority given to savings and loan associations that are Hawaii financial institutions and to their directors, officers, employees and agents concerning the management and operation thereof shall apply equally to mutual savings and loan associations, except as otherwise provided in this part.

§412:7-404 Articles of association; bylaws. A mutual savings and loan association shall be governed by its articles of association and bylaws, true copies of which shall be filed with the commissioner.

§412:7-405 Membership. (a) All holders of a mutual savings and loan association's deposit accounts and borrowers, whether secured or unsecured, shall be members of the mutual savings and loan association.

(b) An account or loan in the name of two or more persons shall not confer greater voting or other membership rights than if such account or loan were in the name of one person.

§412:7-406 Meetings. A mutual savings and loan association shall hold meetings of its members when and as required by its bylaws, or by any law applicable to financial institutions. A quorum for the conduct of business at any regular or special meeting of its members shall be the presence of at least two members, and when not inconsistent with law, a majority of all votes cast at any duly constituted meeting shall determine any question.

§412:7-407 Voting. (a) The bylaws of the association shall fix the eligibility of members who shall be entitled to vote in person or by proxy at any regular or special meeting.

(b) Each member, other than a borrower, shall be entitled to one vote for every \$100 or fraction thereof of the withdrawal value of such member's account, regardless of the number of deposit accounts such member has at the association. Each borrower shall have one vote in addition to any votes such member may have otherwise. Notwithstanding the foregoing, no member shall be entitled to more than one thousand votes.

(c) Account holders and borrowers who are members shall not be considered separate classes of stock for purposes of any law requiring the vote of each class of stock in corporations with more than one class of stock.

(d) Voting may be by proxy, provided that all proxies must be in writing and shall be signed by the member or the member's attorney-in-fact, and shall continue in force from year to year unless revoked in a writing sent to the secretary of the association. Nothing in this section shall prevent a member from voting in person at any meeting.

§412:7-408 Conversion to stock form. (a) With the approval of the commissioner, a mutual savings and loan association may convert to a stock form, provided the conversion procedure is substantially similar to the procedure authorized for conversion of a federal mutual savings association into a federal stock savings association. The commissioner may waive or depart from any of the

foregoing procedures or requirements when deemed expedient or prudent by the commissioner.

(b) A mutual savings and loan association may also, when converting to a stock form, convert directly from a mutual savings and loan association to any other form of financial institution by complying with all applicable provisions of article 3, part VI of this chapter for conversion to any other form of financial institution or with federal law.

(c) The association's board of directors shall adopt, by a two-third vote of all members of the board, a conversion plan, the provisions of which shall comply with the requirements of State and federal laws, rules and regulations applicable to such mutual to stock conversions.

(d) Following approval by the board of directors, the conversion plan, together with a certified copy of the authorizing resolution adopted by the board of directors, shall be forwarded to the commissioner for approval or disapproval. If the commissioner disapproves the plan, the reasons for such disapproval shall be stated in writing and furnished to the association. The procedures found in article 3, part VI of this chapter shall be followed by the commissioner when approving or disapproving a conversion plan.

(e) The conversion plan shall be presented to the members who are eligible to vote for its approval at an annual or special meeting of the members called for that purpose. A majority of the votes of the members of the association present in person or by proxy shall be required to approve such conversion plan. A member's right to oppose or dissent from a conversion from mutual form to stock form shall be limited to the votes such member may cast in opposition to such conversion. This section shall not in any way diminish a member's right to purchase stock of the converting association or the member's rights as a depositor or as a borrower or as a beneficiary of a liquidation account and not as a member.

(f) Upon approval by the members of the association, two executive officers shall submit the approved conversion plan to the commissioner, together with all necessary amendments to the association's articles of incorporation and bylaws, each certified by such officers, and a certification by such officers satisfactory to the commissioner that all applicable requirements of federal law, if any, have been complied with by the converting association. Unless a later date is specified in the conversion plan, the conversion shall become effective upon the issuance of a stock charter to the converting savings and loan association and the former mutual charter of the converting mutual savings and loan association shall terminate automatically.

(g) A Hawaii financial institution or federal financial institution resulting from a stock conversion pursuant to this part shall be deemed to be continuing the same business of the converting institution carried on prior to the conversion with all of the property, rights, powers and duties of the converting institution. No assignment, deed, conveyance or other instrument of transfer need be executed in order for the converting institution to maintain the title, rights and powers held by the converting institution. The rights of any creditor or obligee of a converting institution prior to the conversion shall not be affected by such stock conversion. Without limitation of the foregoing, section 412:3-610 shall apply upon conversion.

ARTICLE 8. TRUST COMPANIES

PART I. GENERAL PROVISIONS

§412:8-100 Applicability of article. This article shall apply to all financial institutions chartered under this article as trust companies or otherwise authorized to engage in the trust business under this chapter, whether the business of such

institution is carried on in this State or elsewhere. The powers and duties of trustees imposed by case law shall not be affected by this chapter unless a provision hereof conflicts with such case law, in which event this chapter shall control.

§412:8-101 Definitions. In this article:

“Client” means a customer of a trust company, including without limitation a settlor or beneficiary with a vested interest, the grantor of a power, or the principal in an agency relationship. When context permits, both the settlor and the beneficiary may be clients at the same time.

“Trust company” means a Hawaii financial institution which has been permitted to use the term “trust company” as part of its name, or a subsidiary, trust division or department of a bank that is a Hawaii financial institution, which engages primarily in the business of acting as a trustee, personal representative, guardian, agent, and other fiduciary, either by court appointment or by agreement.

“Trust holding company” means a financial institution holding company, other than a bank or a bank holding company which controls a trust company or another trust holding company. A bank which is authorized to engage in the business of a trust company through a subsidiary, division or department of the bank is not a trust holding company if its trust business is solely through such subsidiary, division or department.

§412:8-102 Necessity for trust company charter. No person shall engage in the business of a trust company in this State or control any other person engaging in the business of a trust company in this State, except through a trust company incorporated in this State and chartered under this part or through a trust division, department, or subsidiary of a bank, pursuant to article 5 of this chapter.

§412:8-103 Authority to serve as trustee. Unless chartered as a trust company under this chapter or otherwise specifically authorized by the laws of this State, no person, except an individual acting as a co-trustee, shall hold itself out to the general public as being available to serve as a trustee or trust company, whether or not for compensation. No person shall use the terms “trust company” as part of its name unless chartered as a trust company pursuant to this chapter.

PART II. POWERS OF TRUST COMPANIES

§412:8-200 General powers. (a) Except as expressly prohibited or limited by this chapter, a trust company shall have the fiduciary powers specified in section 412:8-201, such powers as are granted to trustees generally by law, such other powers usual and incidental to the business of a trust company, and all rights, powers and privileges of a corporation organized under the laws of this State including but not limited to the power to:

- (1) Borrow money from any source within or without the State; provided that a trust company shall not pledge or encumber any client assets for the purpose of borrowing money for its own account or benefit;
- (2) Enter into repurchase agreements; and
- (3) Make investments as permitted under this article.
- (b) Except as otherwise expressly authorized by this chapter, a trust company shall not:
 - (1) Issue drafts, bills of exchange, or letters of credit;
 - (2) Discount commercial paper;
 - (3) Solicit, accept or hold deposits;
 - (4) Engage in a general banking, savings bank or savings and loan association business;

- (5) Engage in any business for which a real estate broker's license is required, in any business for which an insurance agent or agency license is required, or in any business of a securities broker or dealer; and
- (6) Make any loans or extensions of credit to any person; except, a trust company may:
 - (A) Make loans to its affiliates not exceeding in the aggregate amount twenty per cent of the trust company's capital and surplus;
 - (B) Make loans to its clients for the sole purpose of preventing overdrafts in the client's account or accounts or securing repayment of overdrafts in the client's account or accounts. A trust company may charge interest on such advances, subject to chapter 478. A trust company shall have a lien on the assets in the client's account(s) for the amount of the advance or credit and interest; and
 - (C) Pay or advance premiums due and owing by any person to an insurance company, before the payment by the person; provided that the total amount of the payments and advances at any one time for the benefit of any one person shall not exceed two per cent of the capital and surplus of the trust company, and for the benefit of all such persons shall not exceed fifteen per cent of the capital and surplus of the trust company.

§412:8-201 Fiduciary powers. Every trust company shall have the power and authority to serve as a trustee, personal representative, guardian of the property, assignee for the benefit of others, or receiver, subject to the duties imposed by the instrument or by law. As used herein, the term "instrument" means any trust agreement, declaration, or other agreement, any valid will, or any court order or decree in any probate, guardianship, or receivership. Pursuant thereto, a trust company is authorized and empowered to exercise powers as provided by law, including, but not limited to:

- (1) Perform such acts as may be prudent, consistent with, and reasonably necessary to carry out the legitimate purposes of such instrument;
- (2) Administer, fulfill, and discharge all lawful duties imposed by instrument or by law, for such remuneration as may be agreed upon or provided by law;
- (3) Acquire principal and income on behalf of the estate administered by the trust company, including without limitation real property, insurance proceeds, rents, interest, dividends, mortgages, bonds, bills, notes, and securities;
- (4) Buy, sell, issue, negotiate, register, transfer, or countersign certificates of stock, bonds, or other obligations of any corporation, association, or municipality;
- (5) Lease, purchase, hold, and convey real and personal property to the extent authorized by the instrument or by law, or consistent with the purposes thereof; and
- (6) Execute and issue on behalf of the estate any documents necessary to the prudent administration thereof, including without limitation any receipts, certificates, papers, and contracts which shall be signed by an appropriate trust officer designated by the trust company.

§412:8-202 Acting as agent. (a) A trust company may act as an agent in behalf of a principal in the transaction of any business or in the management of any

property, real, personal or mixed, with such powers as the trust company may exercise under sections 412:8-200 and 412:8-201; provided, that its duties as such agent and the terms and conditions of the agency or power are set forth either specifically or generally in a written memorandum signed by the principal.

(b) Every trust company undertaking or continuing to act as agent for any principal pursuant to this section shall mail or deliver to the principal or any authorized representative of the principal at stated intervals, not less frequently than once a year, and at the termination of the agency, a written statement of account setting forth:

- (1) All receipts and disbursements since the inception of the agency or the last previous account rendered under this paragraph, as the case may be, in such detail as will identify all properties purchased or sold during the period;
- (2) The credit or debit balance, as the case may be, as of the final date of the accounting period; and
- (3) A complete inventory of all properties, whether real, personal, or mixed, title to or custody or safekeeping of which is then held by the trust company for the account of the principal. The account shall contain such segregation of principal and income as the principal in writing specifically requires.

(c) Unless previously barred by adjudication, consent or limitation, any claim against an agent for breach of fiduciary duty in connection with the agency relationship is barred as to any principal to whom the agent has mailed or delivered an annual or final accounting fully disclosing the matter in question unless a proceeding to assert the claim is commenced within two years after the annual or final accounting has been mailed or delivered to the principal. In any event and notwithstanding lack of full disclosure, an agent who has mailed or delivered an annual or final accounting to the principal and has informed the principal of the location and availability of records for the principal's examination is protected after three years from the date such accounting was mailed or delivered.

(d) Every trust company shall have on hand at all times in actual money of the United States an amount equal to at least twelve per cent of all agency credit balances payable on demand and of accounts payable, plus at least five per cent of all agency credit balances payable on time; provided that such reserve may be deposited payable on demand in banks and other trust companies approved by the commissioner or may be cash in the vaults of the trust company.

(e) The requirements of this section shall not apply to occasional or isolated acts performed under special instructions or at the special request of a principal who is not a general or regular client of the trust company.

§412:8-203 Use of nominees. A trust company acting in a fiduciary or agency capacity, and any fiduciary acting as a co-fiduciary with a trust company, may cause any stock, bond, or other security held in such capacity to be registered or held in the name of a nominee or nominees of the trust company or in the name of the trust company, without disclosing such fiduciary or agency capacity unless expressly otherwise provided by the instrument creating the fiduciary or agency relationship; provided, that the trust company:

- (1) Shall permit the nominee to have possession of or access to the stock, bond, or other security;
- (2) Shall clearly show on its records the name of the nominee and that the security is held by such person; and
- (3) Shall be responsible for any loss resulting from the act of the nominee. No liability for any loss occasioned by the acts of the trust company or its nominee or nominees, with respect to any stock, bond, or other

security so registered or held, shall be imposed upon any corporation the stock, bond, or other security of which is registered in the name of the trust company or the nominee or nominees, or upon the transfer agent or registrar of the corporation.

§412:8-204 Agreement between trust companies and banks. A trust company granted full trust powers may contract by written agreement with any bank or national banking association to carry on trust services in the bank's or national banking association's name and for its account at one or more of the banking offices of a bank or national banking association. A bank may permit by written agreement any trust company having its principal office in this State and exercising full trust powers to carry on trust services at one or more of its banking offices but in the name and for the account of the trust company. Any agreement provided for in this section, including any lease, or modification or extension thereof, shall not be effective as to any trust company until and unless it is approved in writing by the commissioner. The commissioner may approve or disapprove the agreement upon consideration of the sufficiency of the capital and surplus of the trust company and the bank, the need for trust services and other facts or circumstances which the commissioner may deem appropriate.

PART III. INVESTMENT OF TRUST COMPANY ASSETS

§412:8-300 Applicability of part. This part sets forth the requirements and restrictions for investments made by all trust companies. No trust company shall invest its assets except as may be permitted by this part and as may be provided elsewhere in this chapter.

§412:8-301 Permitted investments of capital and surplus. (a) To the extent specified herein, a trust company may invest its own assets in securities and obligations of:

- (1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;
- (2) United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Financing Corporation, Resolution Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority, and the United States Postal Service; and
- (3) Quasi-United States governmental institutions including without limitation the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European In-

vestment Bank, and other multilateral lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member, provided that the total amount invested in obligations of any one issuer shall not exceed twenty per cent of the trust company's capital and surplus.

(b) To the extent specified herein, a trust company may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.

(c) To the extent specified herein, a trust company may invest its own assets in bonds or similar obligations issued by any state of the United States other than this State, the District of Columbia, or any territory or possession of the United States, by municipal governments of such states, territories or possessions or by any foreign country or political subdivision of such country; provided, that:

- (1) The bond, note, or warrant has been issued in compliance with the constitution and laws of any such government;
- (2) There has been no default in payment of either principal or interest on any of the general obligations of such government for a period of five years immediately preceding the date of the investment; and
- (3) The total amount invested in such obligations of any one issuer by a trust company shall not exceed twenty per cent of the trust company's capital and surplus.

(d) To the extent specified herein, a trust company may invest its own assets in capital stock, notes, bonds, and other obligations of any corporation which at the time of the investment is incorporated under the laws of the United States or any state or territory thereof or the District of Columbia; provided, that the aggregate amount invested by a trust company under this subsection and subsection (e) in any one corporation shall not exceed twenty per cent of the trust company's capital and surplus.

(e) To the extent specified herein, a trust company may invest its own assets in securities of an investment grade. The term "investment grade" means notes, bonds, certificates of interest or participation, beneficial interests, mortgage or receivable-related securities, and other obligations that are commonly understood to be of investment grade quality, including without limitation those securities that are rated within the four highest grades by any nationally-recognized rating service or unrated securities of similar quality as reasonably determined by the trust company in its prudent judgment (which may be based in part upon estimates which it believes to be reliable). Investment grade does not include investments which are predominantly speculative in nature. The aggregate amount invested by a trust company under this subsection and subsection (d) in any one company or other issuer shall not exceed twenty per cent of the trust company's capital and surplus.

(f) To the extent specified herein, a trust company may purchase, hold, convey, sell or lease real or personal property as follows:

- (1) The real property in or on which the business of the trust company is carried on, including its corporate offices, other space in the same property to rent as a source of income; permanent or vacation residences or recreational facilities for its officers and employees; other real property necessary to the accommodation of the trust company's business, including but not limited to parking facilities, data processing centers, and real property held for future corporate use where the trust company in good faith expects to utilize the property as trust company premises; provided, if the trust company ceases to use any real property and improvements thereon for one of the foregoing purposes, it shall, within five years thereafter, sell the real property or cease to carry it or them as an asset; provided further, such property

- shall not without the approval of the commissioner exceed seventy-five per cent of the trust company's capital and surplus;
- (2) Personal property used in or necessary to the accommodation of the trust company's business, including but not limited to furniture, fixtures, equipment, vaults and safety deposit boxes. The trust company's investment in furniture and fixtures shall not without the approval of the commissioner exceed twenty-five per cent of the trust company's capital and surplus.

Any trust company acquiring any real property in any manner other than provided in this section shall immediately, upon receiving notice from the commissioner, charge the same to profit and loss, or otherwise remove the same from assets, and when any loss impairs the capital and surplus of the trust company the impairment shall be made good in the manner provided in this chapter.

§412:8-302 Deposits made by trust companies. A trust company may deposit any of its funds with a depository institution.

PART IV. INVESTMENT OF FIDUCIARY ASSETS

§412:8-400 General requirements. Within the limits of the standard of a prudent investor, a trust company as fiduciary, custodian, agent, personal representative, or otherwise may acquire and retain every kind of property, real, personal, or mixed and every kind of investment, including without limitation bonds, debentures, and other corporate obligations, and corporate stocks, preferred or common, and securities of any open-end or closed-end management type investment company or unit investment trust registered under the federal Investment Company Act of 1940, as from time to time amended, and may retain property properly acquired without limitation as to time and without regard to its suitability for original purchase. Notwithstanding any other law, and unless expressly prohibited by the governing instrument, a trust company may invest fiduciary funds and other funds over which it has investment discretion in the securities of an investment company or trust to which the trust company, or an affiliate of the trust company, is providing services as investment advisor, sponsor, distributor, custodian, transfer agent, registrar, or otherwise, and is receiving reasonable remuneration for the services. Nothing herein shall authorize a departure from or variation of, the express terms or limitations set forth in the instrument creating the fiduciary relationship, but the terms "legal investment" or "authorized investment", or words of similar import, means any investment conforming to the foregoing standard.

§412:8-401 Trust funds awaiting investment. (a) Except as may be otherwise provided by the terms of the trust, a trust company holding trust funds awaiting investment, distribution, or other use shall place any funds in excess of \$100 or an amount equal to the aggregate sum it holds in trust in an interest-bearing account within a reasonable time and such interest shall be credited to the account of the trust whose funds are awaiting investment, distribution, or other use.

(b) This section shall not apply to funds held by the trust company as personal representative or guardian.

(c) The trust company shall be accountable for no other interest on such funds except as required by this section.

(d) Nothing in this section shall relieve the trust company from the obligation to invest all funds held in trust by it as required by law or the terms of the trust instrument.

§412:8-402 Common trust fund investments. (a) As used in this chapter the term "common trust funds" shall have the same meaning as under Section 584 of the Internal Revenue Code of 1986, as the same may be hereafter amended, and shall also include any other type of collective investment fund which is exempt from federal income taxation under any other provision or regulation of the Code, or rule issued by the Internal Revenue Service or Department of Treasury.

(b) A trust company may establish one or more common trust funds for the collective investment and reinvestment of moneys contributed thereto by it as fiduciary, and by it and others as co-fiduciaries; and the trust company and its co-fiduciaries may invest funds held as trustee, guardian, or in any other fiduciary capacity in which it or they shall be authorized to invest funds, in any common trust fund, if the investment is not expressly forbidden by the instrument, decree, or order creating the fiduciary relationship. Common trust funds may be invested and reinvested in those investments in which trust companies are authorized to invest trust funds.

(c) The statutes, rules, regulations, interpretations or court decisions governing common trust funds of national banking associations, as they may be amended from time to time, shall also govern common trust funds of a trust company.

§412:8-403 Disclosure of fees. All fees and commissions charged by a trust company to its clients or the manner by which fees and commissions shall be determined shall be disclosed in writing prior to rendering the services for which the fees or commissions are charged.

ARTICLE 9. FINANCIAL SERVICES LOAN COMPANIES

PART I. GENERAL PROVISIONS

§412:9-100 Definitions. In this article:

"Consumer loan" means a loan made to a natural person primarily for personal, family, or household purposes:

- (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) Which is secured by real property, or by personal property used or expected to be used as the borrower's principal dwelling.

"Depository financial services loan company" means a financial services loan company that is authorized to accept deposits by this chapter and whose deposits are insured by the Federal Deposit Insurance Corporation.

"Financial services loan company" means a corporation which is engaged in making loans where the interest charged, contracted for or received is in excess of rates permitted by law other than this article. No person may use the term financial services loan company or hold itself out as engaging in the business of a financial services loan company unless licensed or authorized in accordance with this chapter. Financial services loan companies were previously known as "industrial loan companies".

"Nondepository financial services loan company" means a financial services loan company that is not authorized to accept deposits.

"Open-end credit" means a loan by a financial services loan company under a plan which:

- (1) The financial services loan company reasonably contemplates repeated transactions;

- (2) The financial services loan company may impose a finance charge from time to time on an outstanding unpaid balance; and
- (3) The amount of credit that may be extended to the borrower during the term of the plan (up to any limit set by the financial services loan company) is generally made available to the extent that any outstanding balance is repaid.

“Principal” or “principal amount” means the face amount of the note or other form of contract.

“Service corporation” means a corporation whose stock is owned entirely by one or more depository financial services loan companies.

§412:9-101 Necessity for financial services loan company license. Except as expressly permitted by federal law or this chapter or section 415-106(c), no person shall engage in any activity for which a license to operate as a financial services loan company is required by this chapter, including without limitation, making loans and extensions of credit where the interest charged, contracted for or received is in excess of rates permitted by law other than this article, the use of the term “financial services loan company”, or the exercise of such other powers or privileges restricted to financial services loan companies under applicable law unless it is a corporation incorporated in this State and has such a license.

§412:9-102 Annual license fee. On or before December 31 of each year, each financial services loan company shall pay to the commissioner an annual license fee of \$50 for each license that it holds for the ensuing year. A financial services loan company whose application for a license was approved in December may pay to the commissioner the first annual license fee of \$50 for the ensuing year on or before the expiration of thirty days after receiving notice of the approval of the financial services loan company’s application.

PART II. POWERS OF FINANCIAL SERVICES LOAN COMPANIES

§412:9-200 General powers. Except as expressly prohibited or limited by this chapter, a financial services loan company shall have the power to make loans where the interest charged, contracted for or received is in excess of rates permitted by law other than this article, engage in other activities which are usual or incidental to the business for which it is licensed, and shall have all rights, powers and privileges of a corporation organized under the laws of this State, including but not limited to, the power to:

- (1) Make loans and extensions of credit of any kind, whether unsecured or secured by real or personal property of any kind or description;
- (2) Borrow money from any source within or without this State;
- (3) Charge or retain a fee for the originating, selling, brokering, or servicing of loans and extensions of credit;
- (4) Discount, purchase, or acquire loans, including but not limited to notes, credit sales contracts, mortgage loans, or other instruments;
- (5) Become the legal or beneficial owner of tangible personal property and fixtures and such other real property interests as shall be incidental thereto, to lease such property, to obtain an assignment of a lessor’s interest in a lease of the property, and to incur obligations incidental to the financial services loan company’s position as the legal or beneficial owner and the lessor of the property;
- (6) Sell or refer credit related insurance products, and collect premiums or fees for the sale or referral thereof, including, but not limited to, credit life insurance, credit disability insurance, accident and health or

sickness insurance, involuntary unemployment insurance, personal property insurance and mortgage protection insurance; and

- (7) Make investments as permitted under this article.

§412:9-201 Powers that require regulatory approval. (a) A financial services loan company may sell or refer the following products and services and collect premiums or fees for the sale or referral thereof only after obtaining the approval of the commissioner:

- (1) Accidental death and dismemberment insurance, whether or not connected with a loan, provided that the purchase of such insurance must be voluntary and not required as a condition of a loan. The approval of the insurance commissioner must also be obtained prior to the sale of any insurance product; and
- (2) Auto club memberships and home and automobile security plans, whether or not connected with a loan and extension of credit, provided that the purchase of any such service or product must be voluntary and not required as a condition of a loan.

(b) In approving any request to sell or refer the products and services in subsection (a), the commissioner may impose such conditions and restrictions that are in the public interest.

§412:9-202 Prohibitions. Except as otherwise expressly authorized by this chapter, a financial services loan company shall not:

- (1) Employ its funds, directly or indirectly, in trade or commerce by buying or selling ordinary goods, chattels, wares, and merchandise, or by owning or operating industrial or manufacturing plants of any kind;
- (2) Issue commercial letters of credit;
- (3) Sell real estate, securities, or insurance; or
- (4) Engage in any activity requiring a charter as a trust company under article 8 of this chapter.

PART III. LOANS AND EXTENSIONS OF CREDIT

§412:9-300 General requirements for loans and extensions of credit. A financial services loan company shall make loans and extensions of credit that are consistent with prudent lending practices, and in compliance with all applicable federal and State laws.

§412:9-301 Interest computation methods. A financial services loan company may charge, contract for, and receive interest on loans on a precomputed basis or a simple interest basis.

- (1) Precomputed loans are loans where interest is paid or deducted in advance at the inception of the loans. The two types of precomputed loans, discount and add-on, are as follows:
- (A) Under the discount method, interest is computed on the principal amount of the loan for the full term of the loan as though the principal amount were to remain outstanding and unpaid for the full term of the loan. The interest and other authorized and permitted charges may be deducted from the principal amount at the time the loan is made and may be retained by the financial services loan company and applied (in the case of other charges) for the purposes authorized by this article. Interest may be computed and retained in this manner notwithstanding the fact that periodic payments to reduce the principal amount are required

- on the loan and the borrower does not receive the full principal amount, but only the balance thereof after the deductions;
- (B) Under the add-on method, interest is computed on the amount to be actually received by the borrower, as though the amount were to remain outstanding and unpaid for the full term of the loan. Interest and other authorized and permitted charges may be added to the amount to be actually received by the borrower, and the total amount produced by the addition may then be constituted the principal amount of the loan. The amount of the interest and other authorized and permitted charges so added may then be deducted from the principal amount and retained by the financial services loan company at the time the loan is made. Interest may be computed and retained in this manner notwithstanding the fact that periodic payments to reduce the principal amount are required on the loan and that the amount received by the borrower is less than the principal amount by the amount of the interest and other charges;
- (2) Simple interest loans are loans on which interest is computed on the principal balance remaining unpaid from time to time. "Principal balance remaining unpaid" is defined as the original principal amount less payments applied to reduce the original principal amount.

§412:9-302 Interest rates. (a) A financial services loan company shall have the right to charge, contract for, and receive interest, fees and other charges on loans, as permitted by chapter 478, or as otherwise permitted by law.

(b) In addition to and without limiting the authority granted by subsection (a), for any loan on which interest is calculated under the authority of section 412:9-301, a financial services loan company may charge, contract for, and receive interest at any rate which does not exceed the maximum rate allowed by this section:

- (1) For precomputed loans, interest that is paid or deducted in advance shall not exceed fourteen per cent a year for the first eighteen months or portion thereof, plus ten and one-half per cent a year for the next twelve months or portion thereof, plus seven per cent a year for the next twelve months or portion thereof, plus four per cent a year for the last six months or portion thereof, of the term of the loan. The maximum term of a precomputed loan where the preceding rates are charged will be forty-eight months. If the term of a precomputed loan exceeds forty-eight months, the financial services loan company may charge, contract for, and receive a "finance charge" in any form or forms at an "annual percentage rate" not to exceed twenty-four per cent a year, together with any other charges that are excluded or excludable from the determination of finance charge under the Truth in Lending Act. The terms "finance charge" and "annual percentage rate" shall have the same meaning as under the Truth in Lending Act.
- (2) For simple interest loans, a financial services loan company may charge, contract for, and receive a "finance charge" in any form or forms at an "annual percentage rate" not to exceed twenty-four per cent a year, together with any other charges that are excluded or excludable from the determination of finance charge under the Truth in Lending Act. The terms "finance charge" and "annual percentage rate" as used in this subsection shall have the same meaning as under the Truth in Lending Act.

The rate in this subsection shall be applicable to any simple interest loan, whether or not the Truth in Lending Act applies to the transaction, notwithstanding the fixed or variable manner in which interest or a finance charge may be computed under the loan, and whether or not the contract uses the terms "interest" or "annual percentage rate" or "finance charge" or any combination of such terms.

For rate computation purposes the financial services loan company conclusively shall be presumed to have given all disclosures in accordance with the terms of the loan that are contemplated by the Truth in Lending Act, including those necessary to exclude any charges from the finance charge.

(c) On maturity of a loan, the rate of interest on the unpaid principal balance of the loan shall be twenty-four per cent a year, unless a lesser rate is specified in the note or other form of contract signed by the borrower as an after-maturity interest rate.

(d) Any open-end loan account that is also a "credit card agreement" as defined in section 478-1 shall be subject to the rate limitations in section 478-4 rather than the rate limitations in this article.

§412:9-303 Effect of excessive interest. If a greater rate of interest than that permitted under this article is contracted for in any loan under this article, the loan shall not, by reason thereof, be void. But, if in any action on the loan, proof is made that a greater rate of interest than that permitted by law has been directly or indirectly contracted for, the financial services loan company shall only recover the amount actually received by the borrower in cash, credit or the equivalent thereof plus the charges, if any, which were properly charged to the borrower and which have not been deducted from the principal amount of the contract or otherwise paid by the borrower. The borrower shall only recover costs. If interest has been paid, judgment shall be for the recoverable amount less the amount of interest paid. Sections 478-5 and 478-6 shall not apply to loans made under this article by financial services loan companies.

§412:9-304 Consumer loan charges. Unless specifically authorized in this article or by rule adopted by the commissioner, a financial services loan company shall only have the right to charge, contract for, and receive in advance or otherwise the following charges in addition to the interest permitted in section 412:9-302 for a consumer loan made under this article:

- (1) Late charges under the consumer loan on any delinquent installment, or portion of the delinquent installment where there has been no extension or deferment. Delinquency occurs when the installment or payment is not paid on the due date. Late charges shall not be collected more than once for the same delinquent installment. Late charges on any consumer loan shall not exceed five per cent of the delinquent installment, and late charges shall not be assessed on any consumer loan after acceleration of the maturity of the consumer loan;
- (2) A prepayment penalty as provided in the note or other form of contract signed by the borrower on any amount which is voluntarily prepaid; provided that:
 - (A) The prepayment penalty on any consumer loan with a term of five years or more that is primarily secured by an interest in real property and in which the interest rate is computed under section 412:9-301(2) and which is prepaid within five years of the date of the loan shall be computed on the amount prepaid in excess of twenty per cent of the original principal amount of the loan in any twelve month period measured from the date of the loan or from any anniversary of the loan date. The prepayment penalty

- may be charged only on amounts in excess of the twenty per cent amount in each twelve-month period in such five-year period and shall not exceed six months of interest at the maximum interest rate permissible for the consumer loan by law on the amount prepaid;
- (B) The prepayment penalty shall not be charged on a consumer loan that is a variable rate or open-end loan, on a precomputed loan on which interest is computed under section 412:9-301(1), or on loans which are not secured by real estate; and
- (C) The prepayment penalty shall not be charged on any amount which is paid because of the exercise of any acceleration provision by the financial services loan company;
- (3) Extension or deferment charges on any payment on account of the principal balance of a loan, or a portion thereof, which is due on a particular date and which is extended or deferred to a later date by mutual agreement. The charges shall be based upon the amount so extended or deferred at interest not exceeding that permitted upon the original loan under section 412:9-302, for the actual period of the extension or deferment. The extension or deferment charges may be collected either in advance at the commencement of the period of extension or deferment or otherwise as agreed. The term and conditions of the extension or deferment, including the amount of the consumer loan so extended or deferred, and the period of, and the charge for the extension or deferment shall be set forth in writing and signed by the borrower with one copy given to the borrower;
- (4) Non-refundable discount, points, loan fees, and loan origination charges, provided that:
- (A) Discount, points, loan fees and loan origination charges shall not be charged on precomputed loans on which interest is computed under section 412:9-301(1); and
- (B) The non-refundable discount, points, loan fees and loan origination charges shall be permitted on consumer loans on which interest is computed under section 412:9-301(2) only if the consumer loan is secured by an interest in real property. Provided further, that except for open-end loans, the non-refundable discount, points, loan fees, and origination charges shall be included as interest to determine compliance of the loan with the interest rate limits under section 412:9-302(b)(2) when the consumer loan is made;
- The non-refundable discount, points, loan fees, and loan origination charges shall be fully earned on the date the loan commitment agreement or other form of contract is executed and the commitment fee paid or on the date the consumer loan is made and shall not be subject to refund on prepayment of the consumer loan;
- (5) Fees, charges and expenses reasonably related to the consumer loan transaction which are retained by the financial services loan company, provided that such fees are bona fide and reasonable and not unfair or deceptive. Such fees are limited to notary fees, appraisal fees, appraisal review fees, and any other fees as adopted by the commissioner pursuant to rule;
- (6) Fees, charges and expenses reasonably related to the consumer loan transaction which are actually paid to third parties, no portion of which inures to the benefit of the financial services loan company. Such fees, charges and expenses may include, but are not limited to,

charges for credit reports, actual taxes and fees charged by a governmental agency for recording, filing or entering of record any security agreements or instruments including the partial or complete release of such security agreements or instruments, insurance premiums of the kind and to the extent described in paragraph (2) of subsection (e) of Section 226.4 of Regulation Z of the Board of Governors of the Federal Reserve System; provided that the insurance premium shall not exceed \$4, appraisal fees, appraisal review fees, title report or title insurance fees, mortgage reserve funds to be used for payment of taxes, insurance, lease rent and condominium assessments, and attorney's fees and expenses for documentation of the consumer loan or for the collection of any consumer loan in default.

§412:9-305 Open-end consumer loans. Open-end consumer loans made under the authority of this article shall be subject to the following special restrictions:

- (1) A financial services loan company shall not compound interest on any open-end consumer loan by adding any unpaid interest to the unpaid principal balance of the open-end loan. However, the unpaid principal balance may include charges other than interest and late charges;
- (2) Regardless of the interest computation method used in each billing cycle under an open-end loan agreement, the unpaid principal balance of any day shall be determined by adding to any balance unpaid as of the beginning of that day all advances and other permissible amounts (other than interest) charged to the borrower, and deducting all payments and other credits made or received that day;
- (3) If credit life insurance or credit disability insurance is provided, the additional charge for the insurance shall be calculated in each billing cycle by applying the current monthly premium rate (which may be calculated daily), as approved by the insurance commissioner, to the entire outstanding balances, or to as much of the outstanding balances that the insurance covers, using the same method used for the calculation of loan interest. A financial services loan company shall not be obligated to advance to the insurer any premiums for the insurance on a borrower who is delinquent in making the required minimum payments on the loan if one or more of the payments is past due for ninety days or more. However, the financial services loan company shall advance to the insurer the amounts required to keep the insurance in force during the ninety-day period. The advanced amounts may be debited to the borrower's open-end account; and
- (4) A financial services loan company may retain any security interest in real or personal property securing the open-end loan until the open-end loan is terminated.

§412:9-306 Refunds on prepayment of a precomputed loan. (a) A borrower shall be entitled to a refund of the unearned interest that has been paid in advance when a precomputed loan is paid in full or refinanced prior to maturity, or on which judgment has been obtained:

- (1) The amount of the refund on a loan with an original term of sixty months or less shall be computed under a method no less favorable to the borrower than the Rule of 78ths method (also known as the Sum of the Digits method). The refund shall represent at least as great a proportion of the total finance charge as the sum of the periodical time balances, after the day of prepayment, bears to the sum of all the

periodical time balances under the schedule of payments in the loan agreement;

- (2) If the original term of a precomputed loan exceeds sixty months, the amount of refund of unearned interest shall be equal to the difference between the total interest originally charged and the actuarially earned amount;
- (3) Refunds on precomputed loans originated prior to the effective date of this Act shall be made in accordance with the terms of existing loan agreements, provided that the refund provision complied with applicable law at the consumer loan origination.

(b) No refund less than \$1 need be made and the financial services loan company shall not be required to refund any portion of the unearned interest that has been paid in advance which results in a minimum interest retained on the precomputed loan of less than \$15.

§412:9-307 Fraction of a month. In computing interest, late charges, or refunds for precomputed loans under sections 412:9-302, 412:9-304 and 412:9-306 any fraction of a month may be considered as a whole month.

§412:9-308 Repayment terms. Nothing in this article shall prohibit loans with a demand feature, including but not limited to a single payment demand loan.

§412:9-309 Assignments, sale or pledge of loans. Any loan made under this article may be assigned, sold, or pledged in whole or in part to any person. That person may charge, contract for, and receive interest on, and enforce the terms of, the loan to the same extent permitted except for the assignment, sale, or pledge; provided that no loan shall be assigned, sold or pledged to another person doing business in the State unless that other person is a financial institution or has the right to charge, contract for, or receive interest at the same interest rate and on the same terms as provided for in the loan, and if there is an assignment or sale, that loan is assigned or sold without recourse. Notwithstanding the foregoing, any financial services loan company may assign loans to a person or persons that are not financial institutions for purposes of collection of delinquent payments. That person or persons may enforce the terms of the loan to the same extent as the financial services loan company that originated the loan.

PART IV. DEPOSITORY FINANCIAL SERVICES LOAN COMPANIES

§412:9-400 Special powers of a depository financial services loan company. In addition to the powers granted in Parts II and III of this article, depository financial services loan companies, but not nondepository financial services loan companies, shall have the right, power and privilege to:

- (1) Solicit, accept and hold deposits from any person, whether or not a resident of or domiciled in this State, and issue documents evidencing the accounts. Provided that a depository financial services loan company shall not solicit, accept or hold demand deposits or authorize a depositor to make transfers by check, draft, debit card, negotiable order of withdrawal, or similar order, payable to third parties;
- (2) Sell fixed rate annuities and collect premiums and fees for the sale or referral of those fixed rate annuities, if the written approval of the commissioner is obtained. The financial services loan company shall comply with all applicable requirements of chapter 431. Sales shall be made by a general agent, subagent or solicitor licensed pursuant to chapter 431. In approving any request to sell or refer fixed rate annu-

ties pursuant to this paragraph, the commissioner may impose conditions and restrictions that are in the public interest;

- (3) Issue stand-by letters of credit, if the written approval of the commissioner is obtained. In approving any request to issue stand-by letters of credit pursuant to this paragraph, the commissioner may impose conditions and restrictions that are in the public interest. Any depository financial services loan company issuing stand-by letters of credit shall include those obligations in computing the total loans and extensions of credit to a person outstanding at any one time which are subject to the limitations in section 412:9-404; and
- (4) Offer gifts, premiums, other considerations or promotional items to solicit deposits. Premiums may be offered in lieu of all or part of the interest on deposits.

§412:9-401 Required reserve for a depository financial services loan company. (a) Every depository financial services loan company shall maintain and have on hand at all times a reserve composed of cash and other securities in an amount equal to seven per cent of the depository financial services loan company's liabilities on outstanding deposits with an original term not exceeding one year, and five per cent of the depository financial services loan company's liabilities on outstanding deposits with an original term of one year or more. The reserve shall not be pledged. The reserve requirement shall be determined as of the same calendar day in each calendar week and shall be based on the daily average of all outstanding deposits of the immediate preceding seven calendar days. During the succeeding seven calendar day period beginning with each determination date, the average daily balance of the reserve shall equal or exceed the reserve amount so determined. Determination of the reserve requirement shall be computed within two working days after the determination date.

(b) Cash reserves shall be limited to cash on hand, cash in federal reserve banks, federal home loan banks, and federally insured financial institutions, and direct obligations of the United States, this State or its counties. Cash reserves may be deposited in United States branches of non-United States banks, with the written approval of the commissioner. The cash reserve shall at all times be at least fifty per cent of the reserve required by this section.

(c) Other securities used as reserves shall be limited to obligations of the United States and its agencies and of this State and its counties that qualify as permitted investments under sections 412:9-409(a)(1) and (a)(2) and 412:9-409(b), reverse repurchase agreements whereby the depository financial services loan company has purchased obligations of the United States under terms which require the seller to repurchase the obligations of the United States for cash on demand or in not less than thirty days, bankers acceptances, irrevocable lines of credit of one year or more approved by the commissioner, and securities listed on the New York or the American stock exchanges. Not more than twenty-five per cent of the total reserve shall be held in securities listed on the New York or American stock exchanges.

(d) If the reserve or cash reserve portion of the reserve of any depository financial services loan company falls below the amount required by this section, the depository financial services loan company shall promptly take action to correct the deficiency. Upon discovery of any deficiency, the depository financial services loan company shall notify the commissioner of the deficiency and inform the commissioner of any action being taken to correct the deficiency. If the deficiency has not been corrected, the commissioner may in writing direct the depository financial services loan company to take action necessary to cure the deficiency.

§412:9-402 Membership in federal home loan bank. Any depository financial services loan company may become a member of a federal home loan bank organized under authority of the Federal Home Loan Bank Act, or any successor or similar systems of federal home loan banks established by Congress, and may purchase and hold the shares of such federal home loan bank. The depository financial services loan company may have and exercise all powers not in conflict with the laws of this State incident to such membership; provided, however, that notwithstanding such membership the depository financial services loan company and its directors, officers, and shareholders shall continue to be subject to all liabilities and duties imposed upon them by any law of this State.

§412:9-403 Service corporations. Subject to the approval of the commissioner, one or more depository financial services loan companies, may form and own a service corporation only under the following conditions:

- (1) The depository financial services loan company or companies participating in the formation of the service corporation are in and will remain in a safe and sound condition, and the depository financial services loan company's or companies' solvency will not be adversely affected by the formation or ownership of the service corporation;
- (2) A depository financial service loan company may not own or invest in any capital stock, securities or other interest of a service corporation if, together with its investment in the capital stock, securities or other interest of any other service corporations, its aggregate outstanding investment in all service corporations will exceed fifty per cent of the depository financial services loan company's capital and surplus;
- (3) No service corporation may be formed except upon written approval by the commissioner of an application submitted in a form satisfactory to the commissioner. The approval shall be subject to the written acknowledgement by the applicant that the service corporation shall be subject to: (a) the supervision of the commissioner; (b) examination pursuant to this section; and (c) such other terms and conditions as the commissioner deems appropriate;
- (4) Every service corporation shall permit the commissioner to examine its books, records, and activities from time to time, to the extent and whenever the commissioner deems necessary to determine the propriety of any investment by a depository financial services loan company in such service corporation and whether the activities of the service corporation pose a significant risk of loss to the parent depository financial services loan company. The service corporation shall pay the entire cost of the examination. In addition, a service corporation, at its sole expense, shall cause an independent audit to be made of its books, records, and activities if and when deemed necessary by the commissioner;
- (5) A service corporation may engage in any activity permitted to its parent depository financial services loan company and any other activity as the commissioner may approve;
- (6) A service corporation may engage in permitted activities directly or through one or more subsidiaries or joint ventures; and
- (7) Whenever a service corporation engages in an activity which is not permitted under this section, and because of such activity a depository financial services loan company's investment in the service corporation would be improper, within ninety days following written notice from the commissioner to the depository financial services loan company: (a) the improper activity shall be discontinued; or (b) the deposi-

tory financial services loan company shall divest itself of its ownership or investment in the service corporation. The service corporation or the depository financial services loan company may appeal the commissioner's decision and request a hearing in accordance with chapter 91.

§412:9-404 Limitation on loans and extensions of credit to one borrower. (a) No depository financial services loan company shall permit a person to become indebted or liable to it, either directly or indirectly, on loans and extensions of credit in a total amount outstanding at any one time in excess of twenty per cent of the depository financial services loan company's capital and surplus; provided that such aggregate amount may be increased to one hundred per cent of the depository financial services loan company's capital and surplus if the loans and extensions of credit made to the person in excess of twenty per cent of the depository financial service loan company's capital and surplus are fully secured by real property as provided in section 412:9-405.

(b) The limitations set forth in this section shall not apply to:

- (1) Loans and extensions of credit to the extent secured by a pledge or security interest in a deposit account in the lending depository financial services loan company; and
- (2) Loans and extensions of credit secured by the interest-bearing obligations of the United States or those for which the faith and credit of the United States are distinctly pledged to provide for the payment of principal and interest thereof or of the State or any county or municipal or political subdivision of this State, issued in compliance with the laws of this State, where the market value of the security shall be at any time not less than one hundred five per cent of the face amount of the loans and extensions of credit.

§412:9-405 Loans and extensions of credit fully secured by real property. (a) For loans and extensions of credit fully secured by real property other than unimproved raw land, a depository financial services loan company may advance, directly or indirectly, up to and including ninety-five per cent of the appraised value of the real property securing the loan and extension of credit. The principal amount of the loan and extension of credit shall be added together with the outstanding balances of all prior liens on the real property to determine the ninety-five per cent loan to value ratio.

(b) For loans and extensions of credit fully secured by mortgages on unimproved raw land, the maximum loan-to-value ratio shall not exceed seventy per cent of the appraised value of the unimproved raw land. Parcels of land with direct access by road and served by electric power shall not be deemed unimproved raw land.

§412:9-406 Appraisals required. (a) Depository financial services loan companies shall comply with the applicable appraisal requirements of the Federal Deposit Insurance Corporation, and, to the extent required by the Federal Deposit Insurance Act or the rules and regulations of the Federal Deposit Insurance Corporation, shall obtain an appraisal prepared by an appraiser licensed or certified by the State before making any loan and extension of credit in excess of \$100,000 which is secured by real property.

(b) A depository financial services loan company may make loans and extensions of credit of \$100,000 or less which are secured by improved real property using the most recent real property tax assessment value, provided that:

- (1) The amount of the loan and extension of credit, including any prior liens shall not exceed seventy per cent of the tax assessed value of fee simple property, and sixty per cent of the tax assessed value of leasehold property; and
 - (2) The use of tax assessed values is made pursuant to a written loan policy which describes the conditions under which the tax assessment values may be used.
- (c) The provisions of this section shall not prevent a depository financial services loan company from placing additional liens on any collateral in an abundance of caution or to secure the repayment of debt previously contracted for in good faith when the additional liens are necessary to further secure the payment of the debt and to save the depository financial services loan company from loss.

§412:9-407 Limits on transactions with affiliates, executive officers, directors or principal shareholders. No depository financial services loan company shall make any loan and extension of credit or engage in any transaction in violation of section 18j of the Federal Deposit Insurance Act, 12 U.S.C. §1828(j) or sections 22(g), 22(h), 23A or 23B of the Federal Reserve Act, 12 U.S.C. §§375a, 375b, 371c and 371c-1.

§412:9-408 General requirement for investments. (a) A depository financial services loan company shall make investments that are consistent with prudent banking practices and in compliance with all applicable federal and state law.

(b) The board of directors of a depository financial services loan company and any other person charged with the responsibility of investing the depository financial services loan company's assets shall exercise such reasonable diligence, discretion, judgment, and intelligence as would be expected of a prudent investor. Among other things, they shall not engage in speculative or unsound investments, and they shall at all times consider the probable safety as well as the probable income of the capital being invested.

(c) The board of directors shall establish written investment policies.

§412:9-409 Permitted investments. (a) To the extent specified herein, a depository financial services loan company may invest its own assets in securities and obligations of:

- (1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;
- (2) United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Financing Corporation, Resolution

- Funding Corporation, Student Loan Marketing Association, Tennessee Valley Authority and the United States Postal Service; and
- (3) Quasi-United States governmental institutions, including without limitation the International Bank for Reconstruction and Development (World Bank,) the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions in which the United States Government is a shareholder or contributing member, provided that the total amount invested in any one issuer shall not exceed twenty per cent of the depository financial services loan company's capital and surplus.
- (b) To the extent specified herein, a depository financial services loan company may invest its own assets in bonds, securities, or similar obligations issued by this State or any county of this State, through an appropriate agency or instrumentality.
- (c) To the extent specified herein, a depository financial services loan company may invest its own assets in bonds or similar obligations issued by any state of the United States other than this State, the District of Columbia, or any territory or possession of the United States, by municipal governments of such states, territories or possessions, or by any foreign country or political subdivision of such country; provided, that:
- (1) The bond, note, or warrant has been issued in compliance with the constitution and laws of any such government;
 - (2) There has been no default in payment of either principal or interest on any of the general obligations of such government for a period of five years immediately preceding the date of the investment; and
 - (3) The total amount invested in such obligations of any one issuer by a depository financial services loan company shall not exceed twenty per cent of the depository financial services loan company's capital and surplus.
- (d) To the extent specified herein, a depository financial services loan company may invest its own assets in notes, bonds, and other obligations of any corporation which at the time of the investment is incorporated under the laws of the United States or any state or territory thereof or the District of Columbia; provided, that the aggregate amount invested by a depository financial services loan company under this subsection and subsections (e) and (g)(3) in any one corporation shall not exceed twenty per cent of the depository financial services loan company's capital and surplus.
- (e) To the extent specified herein, a depository financial services loan company may invest its own assets in securities of an investment grade. The term "investment grade" means notes, bonds, certificates of interest or participation, beneficial interests, mortgage or receivable-related securities, and other obligations that are commonly understood to be of investment grade quality, including without limitation those securities that are rated within the four highest grades by any nationally-recognized rating service or unrated securities of similar quality as reasonably determined by the depository financial services loan company in its prudent judgment (which may be based in part upon estimates which it believes to be reliable). Investment grade does not include investments which are predominantly speculative in nature. The aggregate amount invested by a depository financial services loan company under this subsection and subsections (d) and (g)(3) in any one company or other issuer shall not exceed twenty per cent of the depository financial service loan company's capital and surplus. Subject to the approval of the commissioner, the twenty per cent limitation shall not apply to investment grade securities secured entirely by mortgage loans originated by the depository financial

services loan company. In approving any transaction under this section, the commissioner may impose any conditions to ensure the safety and soundness of the institution.

(f) To the extent specified herein, a depository financial services loan company may purchase, hold, convey, sell or lease real or personal property as follows:

- (1) The real property in or on which the business of the depository financial services loan company is carried on, other space in the same property to rent as a source of income; permanent or vacation residences or recreational facilities for its officers and employees; other real property necessary to the accommodation of the depository financial services loan company's business, including but not limited to parking facilities, data processing centers, and real property held for future use where the depository financial services loan company in good faith expects to utilize the property as depository financial services loan company premises; provided, if the depository financial services loan company ceases to use any real property and improvements thereon for one of the foregoing purposes, it shall, within five years thereafter, sell the real property or cease to carry it or them as an asset; provided further, such property shall not without the approval of the commissioner exceed seventy-five per cent of the depository financial services loan company's capital and surplus;
- (2) Personal property used in or necessary to the accommodation of the depository financial services loan company's business, including but not limited to furniture, fixtures, equipment, vaults and safety deposit boxes. The depository financial services loan company's investment in furniture and fixtures shall not without the approval of the commissioner exceed twenty-five per cent of the depository financial services loan company's capital and surplus;
- (3) Personal property and fixtures which the depository financial services loan company acquires for purposes of leasing to third parties and such real property interests as shall be incidental thereto;
- (4) Such real property or tangible personal property as may come into its possession as security for loans or in the collection of debts; or as may be purchased by or conveyed to the depository financial services loan company in satisfaction of or on account of debts previously contracted in the course of its business, when such property was held as security by the depository financial services loan company; and
- (5) The seller's interest under an agreement of sale, as that term is defined in sections 501-101.5 and 502-85, including without limitation the reversionary interest in the real property and the right to income under the agreement of sale, with or without recourse to the seller.

Except as otherwise authorized in this section any tangible personal property coming into the possession of any depository financial services loan company pursuant to paragraph (4) shall be disposed of as soon as practicable and shall not, without the written consent of the commissioner, be considered a part of the assets of the depository financial services loan company after the expiration of two years from the date of acquisition.

Except as otherwise authorized in this section any real property acquired by a depository financial services loan company pursuant to paragraph (4) shall be sold or exchanged for other real property by the depository financial services loan company within five years after title thereto has vested in it by purchase or otherwise, or within such further time as may be extended by the commissioner.

Any depository financial services loan company acquiring any real property in any manner other than provided by this section shall immediately, upon receiving notice from the commissioner, charge the same to profit and loss, or otherwise remove the same from the assets, and when any loss impairs the capital and surplus of the depository financial services loan company the impairment shall be made good in the manner provided in this chapter.

(g) To the extent specified herein, a depository financial services loan company may invest its own assets in capital stock of:

- (1) Service corporations as set forth in this article;
- (2) A corporation whose stock is acquired or purchased to save a loss on a preexisting debt secured by such stock; provided, that the stock shall be sold within twelve months of the date acquired or purchased, or within such further time as may be granted by the commissioner;
- (3) Companies listed on the New York or American stock exchanges or on NASDAQ; provided that the aggregate amount invested by a depository financial services loan company under this paragraph and subsections (d) and (e) in any one corporation shall not exceed twenty per cent of the depository financial service loan company's capital and surplus.

§412:9-410 Deposits made by depository financial services loan companies. A depository financial services loan company may deposit any of its funds with:

- (1) A federal reserve bank or a federal home loan bank in any amount; or
- (2) Another depository institution;

provided that the deposits in any one depository institution does not exceed twenty-five per cent of the depository financial services loan company's capital and surplus, unless otherwise permitted by federal law.

PART V. NONDEPOSITORY FINANCIAL SERVICES LOAN COMPANIES

§412:9-500 Prohibitions. Except as otherwise expressly authorized by this chapter or other law, a nondepository financial services loan company shall not:

- (1) Solicit, accept or hold deposits, investment certificates, thrift certificates or other accounts or instruments identical or similar to a deposit account, nor shall it borrow money in the form of, or issue, promissory notes, debentures, bonds or other obligations to the public; provided, however, that a nondepository financial services loan company may borrow funds from, and issue its notes, debentures, bonds or other obligations to financial institutions and other institutional lenders and not more than twenty-five institution-affiliated parties at any one time; or
- (2) Issue standby letters of credit.

ARTICLE 10. CREDIT UNIONS

PART I. GENERAL PROVISIONS

§412:10-100 Definitions. The following definitions shall apply in construing this article unless such application would produce a result clearly inconsistent with the context of the statutory provision:

“Capital” means share accounts, membership shares, reserves and undivided earnings.

“Common bond” means persons or groups of persons, including members of the immediate family of persons within such groups, having a similar profession or occupation, being members of the same industry or trade, belonging to the same trade union; being members of the same association, club, or other organization; residing within an identifiable neighborhood, community, rural district, or county; being employed by a common employer; or being employed by the credit union.

“Corporate credit union” means a credit union whose field of membership consists primarily of other credit unions.

“Credit union” means a cooperative, nonprofit association, chartered under this chapter for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money to improve their economic and social condition.

“Credit union service organization” means any organization which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions it serves.

“Deposit account” means a balance held by a credit union and established by a member, another credit union or a governmental unit in accordance with standards established by the board of directors of the credit union including balances designated as deposits, deposit certificates, checking accounts or other names. Ownership of a deposit account does not represent an interest in the capital of the credit union upon dissolution or conversion to another type of institution. A deposit account is a debt owed by the credit union to the account holder.

“Federal power” means any activity, right, privilege, or immunity granted to any federal credit union under any federal statute, rule, regulation, interpretation, or court decision.

“Field of membership” means the group or category of persons eligible for membership in a credit union who share a common bond.

“Fixed asset” means a structure, land, computer hardware and software, and equipment.

“Insolvent” means the condition that results when the cash value of assets realizable in a reasonable time is less than the liabilities that must be met within that time.

“Members of the immediate family” shall be defined in the credit union’s bylaws and may include persons related by blood or marriage, as well as foster and adopted children.

“Membership share” means a balance held by a credit union and established by a member in accordance with standards specified by the credit union. Each member may own only one membership share. Ownership of a membership share confers membership and voting rights.

“Reserves” means allocations of retained earnings and includes regular and special reserves, except for any allowances for loan losses and investment losses.

“Residential real property” means real property on which is situated a dwelling unit comprised of not more than four family units, the primary use of which is occupancy as a home, and includes, without limitation, a condominium or cooperative apartment.

“Share” or “share account” means a balance held by a credit union and established by a member in accordance with standards specified by the credit union including balances designated as “regular shares,” “share draft accounts,” “share certificates,” “membership shares” or other names. Ownership of a share account represents an interest in the capital of the credit union upon dissolution or conversion to another type of institution.

§412:10-101 Necessity for credit union charter. Except as expressly permitted by federal law or this chapter or section 415-106(c), no person shall engage in the business of a credit union, represent itself as a credit union, use a name or title containing the phrase "credit union" or any derivation thereof, or control any other person engaging in the business of a credit union.

§412:10-102 Capital stock or surplus. A credit union shall have no capital stock, and shall have no minimum paid in capital or surplus requirement.

§412:10-103 Application for charter. (a) Five or more residents of this State who share a common bond may file an application with the commissioner to engage in the business of a credit union.

(b) The application shall contain the following information, unless waived by the commissioner:

- (1) The proposed name of the credit union;
- (2) Proposed lease agreements for its principal office;
- (3) The territory in which the proposed credit union will operate;
- (4) A business plan;
- (5) Employment history, education, management experience and other biographical information for all original chartering applicants, and proposed executive officers of the credit union;
- (6) Proposed policies regarding loans, investments, operations, accounting, recordkeeping and applicable federal and state consumer laws; and
- (7) Any other information that the commissioner may require.

(c) The application shall be submitted on a form prescribed by the commissioner. The application shall be accompanied by a fee as the commissioner shall establish by rule, no part of which shall be refundable.

§412:10-104 Articles and bylaws. (a) The applicants shall file with the commissioner proposed articles of association and bylaws as a part of the application for organization.

(b) The articles of association shall contain, but shall not be limited to the following provisions:

- (1) Name and location of the proposed credit union;
- (2) Name and addresses of the chartering applicants and the number of shares subscribed by each;
- (3) Proposed field of membership, specified in detail; and
- (4) Term of the existence of the credit union, which may be perpetual.

(c) The bylaws shall contain provisions for the general government of the credit union which are consistent with the requirements of this article.

(d) In order to simplify the organization of credit unions, the commissioner shall cause to be prepared model articles of association and bylaws, consistent with this article, which may be used by credit union organizers for their guidance. Such articles of association and bylaws shall be available to persons desiring to organize a credit union.

§412:10-105 Disclosure of information. The identity of each original chartering applicant, and any information which is not confidential shall be available to the public. The original chartering applicants may request in writing that information be kept confidential. The original chartering applicants shall designate and separate any matter which the original chartering applicants claim is confidential and shall submit a separate statement providing the reasons and authority for the request for confidential treatment. The failure by the original chartering applicants to request

confidential treatment and designate and separate the confidential matter shall preclude any objection or claim for wrongful disclosure of the same. Information determined by the commissioner to be confidential, pursuant to the original chartering applicants' request or otherwise, shall not be available to the public.

§412:10-106 Deposit and share insurance. (a) The organizers of the proposed credit union shall apply for insurance on share and deposit accounts from the National Credit Union Administration or any successor governmental agency.

(b) No credit union shall transact any credit union business until it has received federal insurance of its share and deposit accounts.

(c) A corporate credit union shall be exempt from the requirements of this section.

§412:10-107 Grant of approval. (a) Approval of the application for charter shall be granted if the commissioner finds that:

- (1) The proposed credit union will be formed for legitimate purposes contemplated by this article;
- (2) The qualifications, character, experience, and general fitness of the original chartering applicants and proposed executive officers are such as will command public confidence. For purposes of this section, the commissioner may presume that in the absence of credible evidence to the contrary, an original chartering applicant or proposed executive officer is of good character and is qualified to participate in the affairs of the proposed credit union. Such presumption may be rebutted by evidence to the contrary, including without limitation a finding that such applicant or executive officer has:
 - (A) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;
 - (B) Consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;
 - (C) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;
 - (D) Wilfully made or caused to be made in any application or report filed with the commissioner, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has wilfully omitted to state in any application or report any material fact which was required to be stated therein; or
 - (E) Wilfully committed any violation of, or has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this chapter or of any rule or order issued under this chapter;
- (3) The characteristics of the common bond of the proposed field of membership set forth in the proposed articles of association are favorable to the economic viability of the proposed credit union;
- (4) The proposed operations of the credit union will be conducted in a safe and sound manner; and
- (5) The articles of association and bylaws are in compliance with this article.

(b) Upon approval of the application by the commissioner, the credit union shall be a body corporate and as such, subject to the limitations herein contained,

shall be vested with all the powers and charged with all the liabilities conferred and imposed by this article.

(c) In granting approval of the application, the commissioner may impose such conditions and restrictions as shall be in the public interest, including without limitation requiring the applicants to fulfill representations contained in their application and agreements made with the commissioner during the application process.

(d) Upon issuance of a charter, the commissioner shall return the articles of association and bylaws to the applicants or their representatives. The original articles and bylaws shall be preserved in the permanent files of the credit union.

(e) The applicants shall not transact any credit union business until the application has been approved by the commissioner and a charter has been issued.

§412:10-108 Denial of charter. If the commissioner is not satisfied that the applicant meets all the criteria set forth for approval, the commissioner shall issue a written decision denying the applicant's application for charter. An applicant who is denied approval may request a hearing before the commissioner in accordance with chapter 91. Any final decision of the commissioner denying an applicant a charter may be appealed to the circuit court as provided in chapter 91.

§412:10-109 Membership. (a) The membership of a credit union shall consist of those persons who share a common bond set forth in the articles of association, have been duly admitted members, have paid any required one-time or periodic membership fee, or both, have subscribed to one or more shares and have complied with such other requirements as the articles of association and bylaws specify.

(b) Organizations comprised primarily of individuals who are eligible for membership in the credit union, and corporations whose total number of stockholders or whose majority stockholders are comprised primarily of such individuals, may be admitted to membership in the same manner and under the same conditions as individuals. Likewise, organizations one of whose principal functions is to provide services to persons who are eligible for membership in the credit union may be admitted to membership. Other organizations having a commonality of interest with the credit union may be admitted to membership with the approval of the commissioner.

(c) Any credit union organized under this article may accept as a member any other credit union organized under this chapter or federal law.

(d) The board of directors shall act on all membership applications, unless the board has appointed one or more membership officers, who shall be empowered to approve or disapprove membership applications according to criteria established in the bylaws and under the direction of the board. A record of the actions taken by a membership officer shall be made available in writing to the board of directors for inspection. Any person whose application has been disapproved may appeal such decision to the board in writing.

(e) Members who cease to be eligible for membership may be permitted to retain their membership in the credit union, under reasonable standards established by the board of directors.

(f) The members of a credit union shall not be personally or individually liable for the payment of the credit union's debts solely by virtue of holding membership.

(g) The board of directors may expel a member from membership in the credit union, if such member fails to comply with the articles, bylaws, rules or regulations of the credit union, any law applicable to the credit union, or for any other just cause; provided, that no member may be expelled unless:

- (1) The member has been informed in writing of the reasons for the expulsion;
- (2) The member has, upon request, a reasonable opportunity to present evidence and argue against the expulsion, before a hearing panel consisting of the board of directors and the supervisory committee; and
- (3) If the hearing is requested, a majority of the hearing panel votes to expel the member.

The amounts paid by an expelled member for shares of the credit union shall be paid to such member after deducting any amounts due by such member to the credit union; provided that such expulsion shall not relieve the expelled member from any remaining liability to the credit union.

§412:10-110 Membership meetings. (a) A credit union shall hold annual and special meetings of members when and as required by its bylaws. The bylaws shall provide that members be given reasonable notice of a meeting. A quorum for conducting any business at any meeting shall be fifteen members, and when not inconsistent with the other provisions of this article, a majority of all votes cast at any duly constituted meeting shall determine any question.

- (b) At any meeting the members may:
 - (1) Decide any question properly raised at the meeting;
 - (2) Amend the bylaws if the notice of meeting has specified the questions to be considered; or
 - (3) Act on any matters as provided by the bylaws.

§412:10-111 Voting. (a) Persons eligible to vote at a credit union meeting shall be:

- (1) A member for at least three months; provided, that during the first twelve months of the existence of the credit union, this requirement shall not apply; and
- (2) In compliance with all other voting requirements as provided by the bylaws.

(b) Each member shall have only one vote, regardless of the number or type of shares of the credit union such member owns. A credit union member other than a natural person may vote through an agent designated for the purpose.

(c) No member shall be entitled to vote by proxy.

(d) Notwithstanding anything in this section, credit unions may, if the bylaws of the credit union so provide, conduct elections by mail or allow voting by absentee ballot; provided that all ballots shall be signed by the voting member and shall be valid only for the designated meeting.

(e) The board of directors may establish a minimum age, not greater than eighteen years of age, as a qualification of eligibility to vote at meetings of the members or to hold office, or both.

§412:10-112 Board of directors. (a) The governing body of a credit union shall be its board of directors. The board shall consist of an odd number of directors, at least five in number, to be elected annually by and from the members as the bylaws provide. All members of the board shall hold office for such terms as the bylaws provide. The terms of office may be staggered so that an approximately equal number expire each year. Any vacancy occurring on the board shall be filled until the next annual election by appointment by the remainder of the directors. At all board meetings a majority of the board shall constitute a quorum. The board shall have such power, authority, duties, and responsibilities vested in and imposed on directors by law.

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(b) At their first meeting after the annual meeting of the members, the directors shall elect from their number the board officers specified in the bylaws. The bylaws shall specify the specific duties of each of the board officers. The terms of the board officers shall be one year, or until their successors are chosen and have been duly qualified.

(c) Notwithstanding any other provision of this article, a credit union may use any titles it chooses for the officials holding the positions described in this article, as long as such titles are not misleading.

(d) The board of directors may appoint from its own number an executive committee, consisting of not less than three directors, which may be authorized to act for the board in all respects, subject to any conditions or limitations prescribed by the board.

(e) The board of directors shall meet at least once a month and shall have the general direction and control of the affairs of the credit union. The board may meet at other times as is necessary. Minutes shall be kept of all meetings of the board of directors.

(f) In addition to the duties found elsewhere in this article, it shall be the special duty of the board of directors to:

- (1) Authorize the employment and compensation of the president who will act as the chief executive officer of the credit union and be in active charge of its operations. The president shall hire such other persons necessary to carry on the business of the credit union;
- (2) Purchase adequate fidelity coverage for the president and for other officers and employees handling or having custody of funds or property;
- (3) Approve an annual operating budget for the credit union;
- (4) Authorize the conveyance of property;
- (5) Borrow or lend money to carry on the functions of the credit union;
- (6) Appoint any special committees deemed necessary; and
- (7) Perform such other duties as the members from time to time direct, and perform or authorize any action not inconsistent with this chapter and not specifically reserved by the bylaws for the members.

§412:10-113 No compensation of directors or committee members. No member of the board, no officer of the board other than the treasurer, and no member of any committee, other than an employee, shall be compensated for services; provided that reasonable life, health, accident, similar insurance protection, and the reimbursement of reasonable expenses incurred in the execution of the duties of the position shall not be considered compensation.

§412:10-114 Credit committee. (a) If the bylaws provide for a credit committee, the board of directors may appoint or the members may elect a credit committee. The credit committee shall consist of an odd number of members of the credit union, not less than three, but which shall not include more than one loan officer. The bylaws shall specify the number, qualifications, terms and other conditions of service of the credit committee. The board of directors shall fill any vacancies in the credit committee until successors are appointed or elected at the next annual election.

(b) The credit committee shall have general supervision of all loans to members, unless that function is delegated to a credit manager. It may approve or disapprove loan applications, subject to written policies established by the board of directors.

(c) The credit committee shall meet as often as the credit union's business requires to consider applications for loans or to review the work of the loan

officers. A majority of committee members shall constitute a quorum, and except for those loans or lines of credit required to be approved by the board of directors, the vote of a majority present at any duly constituted meeting shall constitute the decision of the committee.

§412:10-115 Credit manager. If the bylaws provide, the board of directors may appoint a credit manager in addition to or in lieu of a credit committee, subject to the direct supervision of the president of the credit union. The president may also be the credit manager. The credit manager may approve or disapprove loan applications, subject to written policies established by the board of directors.

§412:10-116 Loan officers. (a) The board of directors, and if given such power by the board, the credit committee or the credit manager, may appoint one or more loan officers, who may be empowered to approve or disapprove loan applications, subject to written policies established by the board of directors. Not more than one member of any credit committee may serve as a loan officer. Each loan officer shall report to the credit committee or credit manager any action taken on a loan application within seven days after the filing thereof.

(b) A member whose application was disapproved by a loan officer may appeal such action to the credit committee, the credit manager or the board of directors, as provided by the bylaws.

§412:10-117 Supervisory committee. (a) Within thirty days following each annual election, the board of directors shall appoint a supervisory committee consisting of no fewer than three and not more than five members, one of whom may be a director other than the treasurer. The bylaws shall specify the qualifications, terms and other conditions of service of the supervisory committee. The board of directors shall fill vacancies in the supervisory committee until successors are appointed after the next annual election.

(b) The supervisory committee shall make or cause to be made an annual audit of the books and affairs of the credit union, and such supplementary audits as the board or the commissioner may require; provided that the supervisory committee shall hire a certified public accountant or other qualified person or firm to conduct the audit if any of the following conditions exist:

- (1) The supervisory committee has not conducted an annual supervisory committee audit;
- (2) The board of directors or the commissioner deems an outside audit necessary; or
- (3) The credit union has experienced persistent and serious recordkeeping or accounting deficiencies in violation of the requirements of sections 412:3-108 or 412:3-111 which continue past a usual, expected or normal period of time.

The committee shall submit a report of each such audit to the board of directors and upon request, to the commissioner, and a summary of the report to the members at the next annual membership meeting of the credit union.

(c) The supervisory committee shall cause the passbooks and accounts of the members to be verified with the records of the credit union from time to time, and not less frequently than once every two years. The supervisory committee shall make or cause to be made such supplementary audits, examinations, and verifications of members' accounts as it deems necessary or as are required by the commissioner or the board of directors, and submit reports of these supplementary audits to the board of directors.

§412:10-118 Record of officials. Within thirty days after election or appointment, a record of the names and addresses of the members of the board and such other committees and officers, as required by the commissioner, shall be filed with the division of financial institutions.

§412:10-119 Conflicts of interest. No director, committee member, officer, agent or employee of the credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting that person's pecuniary interest or the pecuniary interest of any corporation, partnership, or association (other than the credit union) in which that person is directly or indirectly interested.

§412:10-120 Suspension or removal of officials. (a) The supervisory committee by a two-thirds vote of the entire committee may suspend any member of the credit committee or the credit manager and shall report such action to the board of directors. The board shall meet not less than seven nor more than twenty-one days after such suspension to take appropriate action. The suspended person shall have the right to appear and be heard at the meeting.

(b) The supervisory committee by a two-thirds vote of the entire committee may suspend any officer or any member of the board of directors until the next members' meeting, which shall be held not less than seven nor more than twenty-one days after such suspension. At such meeting the suspended person shall have the right to appear and be heard. The suspension shall be acted upon by the members and the person shall be removed for cause from or restored to office.

(c) The board of directors by a two-thirds vote of those present at a meeting may suspend or remove any member of the supervisory committee or of the credit committee for failure to perform duties in accordance with this chapter, the articles of association, or the bylaws. The committee member shall have the right to appear and be heard at such meeting.

§412:10-121 Central credit unions. (a) Central credit unions may be chartered under this article and shall enjoy all powers of other credit unions chartered under this article and be subject to all provisions of this article not inconsistent with this section.

(b) A central credit union is a credit union whose field of membership includes the following:

- (1) Officers, directors, committee members and employees of credit unions organized under this article or any other credit union law;
- (2) Officers, directors and employees of associations of credit unions;
- (3) Employees of federal or state government agencies responsible for the supervision of credit unions in this State;
- (4) Persons in the field of membership of liquidated credit unions or of credit unions which have entered into or will enter into voluntary or involuntary liquidation proceedings;
- (5) Employees of an employer having an insufficient number of employees to form or conduct the affairs of a separate credit union; and
- (6) Members of the immediate families of persons qualifying for membership under this subsection.

§412:10-122 Taxation. (a) All credit unions, now or hereafter chartered under this chapter shall have the same immunity from state and local taxation that federally chartered credit unions have from time to time under the laws of the United States government. Any credit union organized under this chapter shall be exempt from all taxation now or hereafter imposed by this State or any taxing

authority within this State. No law which taxes corporations in any form shall apply to such credit union, except that any real property and personal services provided to the credit union shall be subject to taxation to the same extent as other similar property is taxed.

(b) The participation by a credit union in any government program providing unemployment, social security, old age pension or other benefits shall not be deemed a waiver of the taxation exemption hereby granted.

§412:10-123 Fiscal year. The fiscal year of every credit union organized under this article shall end at the close of business on December 31.

§412:10-124 Conducting business outside this State. A credit union organized under this article may conduct business outside of this State in other states or territories where it is permitted to conduct business as a credit union.

§412:10-125 Credit union advisory board. (a) There shall be a credit union advisory board consisting of five members appointed pursuant to section 26-34 by the governor who shall also designate the chairman of the board. There shall be at least one member from each of the counties who shall serve for four years. The terms of the members shall be staggered and shall expire as follows: one on December 31 after the year that this chapter becomes law and one at the end of each succeeding calendar year thereafter. The governor shall appoint persons of tested credit union experience and who are members of credit unions operating under this chapter. However, until such time that there are credit unions operating under this chapter, the governor may make appointments to the board of persons with tested credit union experience from any credit union operating in this State.

(b) The powers and duties of the board shall include, but not be limited to:

- (1) Advising the commissioner and others in improving the operations and supervision of credit unions;
- (2) Making necessary recommendations as to procedural rules pursuant to chapter 91;
- (3) Proposing laws and rules to safeguard the interest of depositors and members;
- (4) Promoting the extension of credit at the lowest possible rates and cooperating with every group of people who may be or may become interested in the formation and development of a credit union under this article;
- (5) Keeping detailed minutes of each board meeting; and
- (6) Other duties designated by the commissioner or as provided by this article.

(c) Board meetings shall be held at such times and places as shall be determined by the chairman and the commissioner. Meetings may be called as needed, either by the chairman, the commissioner, or a majority of the board members.

(d) Three members of the board shall constitute a quorum at any meeting and a majority vote of those present shall prevail. No member of the board shall be qualified to act in any matter involving a credit union of which the advisory board member is an officer, director, committee person, member, employee, or to which the board member is indebted. The members of the board shall serve without compensation but shall be reimbursed through the office of the commissioner for expenses incurred in the performance of their duties.

PART II. POWERS OF CREDIT UNIONS

§412:10-200 General powers. (a) Except as expressly prohibited or limited by this chapter, a credit union shall have the power to issue shares, solicit, accept and hold deposits, and engage in any activities which are usual or incidental to the business of a credit union. In addition to the powers mentioned elsewhere in this article, a credit union may:

- (1) Enter into contracts of any nature;
 - (2) Sue and be sued;
 - (3) Adopt, use and display a common seal;
 - (4) Acquire, lease, hold, assign, pledge, hypothecate, sell, or otherwise dispose of property, either in whole or in part, necessary or incidental to its operations;
 - (5) Offer to its members, public unit accounts and other credit unions, shares, share certificates, share drafts, deposits, as provided in this article;
 - (6) Make loans and extensions of credit of any kind, whether unsecured or secured by real or personal property of any kind or description;
 - (7) Borrow from any source within or without the State; provided that a credit union shall notify the commissioner in writing of its intention to borrow in excess of an aggregate of fifty per cent of its capital;
 - (8) Discount or sell any of the credit union's assets, and purchase the assets of another credit union;
 - (9) Offer related financial services, including, but not limited to, electronic fund transfers, safe deposit boxes, leasing and correspondent arrangements with other financial institutions;
 - (10) Hold membership in other credit unions organized under this or other laws, in service centers, and in associations and organizations controlled by or fostering the interests of credit unions, including a central liquidity facility organized under State or federal law;
 - (11) Engage in activities and programs as requested by any governmental unit, subject to approval by the board of directors and not inconsistent with this article;
 - (12) Act as fiscal agent for and receive payments on share and deposit accounts from a governmental unit;
 - (13) Make contributions to any nonprofit civic, charitable or service organizations; and
 - (14) Make investments as permitted under this article.
- (b) A credit union may exercise all incidental powers that are necessary or requisite to enable it to effectively carry out its purposes.

§412:10-201 Powers granted under federal law. (a) In this section "federal power" means any activity, right, privilege, or immunity granted to a federal credit union under any federal statute, rule, regulation, interpretation or court decision.

(b) Any credit union desiring to acquire any federal power, shall file an application with the commissioner. The application shall indicate the applicable federal statute rule, regulation, interpretation or court decision, the extent of the federal power desired, the reasons for the application, and any other information requested by the commissioner. The commissioner may by rule prescribe the form of application and application filing fees.

(c) If the commissioner is satisfied that the power should be granted, the commissioner shall issue a written approval of the application, subject to such terms and conditions as the commissioner deems appropriate. Other credit unions

may file an application if they desire the same federal power, but approval of any application need not be granted. Any federal power granted pursuant to this section is in addition to, and not in limitation of, any other provision of this chapter, and the federal power may be exercised notwithstanding any other provision of this chapter.

(d) If any federal power is terminated or modified, the commissioner may terminate or make a similar modification to any corresponding power granted under this section.

(e) The commissioner may suspend or revoke any federal power granted under this section or under previous law if the commissioner finds:

- (1) That the credit union has violated any conditions imposed in connection with the grant of power; or,
- (2) The credit union has not begun to exercise such power within one year of the date it was granted.

(f) The commissioner shall retain jurisdiction over the enforcement of any power granted under this section or under previous law. Any action taken under subsections (d) or (e) of this section shall be taken only after the commissioner has given the credit union notice of the proposed action and an opportunity to be heard.

§412:10-202 Credit union service organizations. A credit union may invest its funds in shares, stocks, or obligations of credit union service organizations providing services which are associated with the routine operations of credit unions, up to one per cent of the capital of the credit union. This authority does not include the power to acquire control directly or indirectly, of another financial institution. Loans to credit union service organizations, shall not exceed one per cent of the capital of the credit union. The one per cent limitation on loans to credit union service organizations is independent of, and in addition to, the one per cent limitation on investment in credit union service organizations.

§412:10-203 Sale or purchase of obligations or notes. A credit union may purchase, sell, pledge, or discount or otherwise receive or dispose of, in whole or in part, any eligible obligations of its members and to purchase from any liquidating credit union notes made by individual members of the liquidating credit union as may be agreed upon by the board of directors of the liquidating credit union and the board of directors of the purchasing credit union, but no purchase may be made under authority of this section, if after that purchase, the aggregate of the unpaid balances of notes purchased under authority of this section would exceed five per cent of the capital of the credit union.

§412:10-204 Sale or purchase of assets. A credit union may sell all or part of its assets to another credit union, purchase all or part of the assets of another credit union and assume the liabilities of the selling credit union and those of its members.

PART III. ACCOUNTS

§412:10-300 Applicability of other provisions of this chapter. Except to the extent that the provisions of this part are inconsistent, all provisions of article 4 shall apply to the share accounts and deposit accounts offered by a credit union. In case of any inconsistencies, the provisions of this part shall control.

§412:10-301 Share accounts and membership shares. (a) Share accounts and membership shares (if any) shall be subscribed to and paid for in such manner as the bylaws prescribe.

(b) A credit union may require its members to subscribe to and make payments on membership shares.

(c) The par value of shares and membership shares shall be prescribed in the bylaws.

(d) A membership share may not be redeemed or withdrawn except upon termination of membership in the credit union.

(e) A credit union may limit the number of shares which may be owned by a member, but any such limit shall apply alike to all members.

§412:10-302 Dividends. (a) At such intervals as the board of directors may authorize, and after provision for required reserves, the board of directors may declare dividends to be paid on share accounts and membership shares (if any) from undivided earnings.

(b) Dividends may be paid at various rates with due regard to the conditions that pertain to each type of account such as minimum balance, notice and time requirements.

§412:10-303 Deposit accounts. (a) A credit union may accept deposit accounts from its members, other credit unions and governmental units subject to the terms, rates and conditions established by the board of directors.

(b) Interest may be paid on deposit accounts at various rates with due regard to the conditions that pertain to each type of account such as minimum balance, notice and time requirements.

§412:10-304 Withdrawals. (a) Funds in share and deposit accounts may be withdrawn for payment to the account holder or third parties in such manner and in accordance with such procedures as are established by the board of directors.

(b) Share and deposit accounts shall be subject to any withdrawal notice requirement which is imposed pursuant to the bylaws.

§412:10-305 Minor accounts. Payments on share and deposit accounts may be received from a minor who may withdraw funds from such accounts including the dividends and interest thereon. Payments on share and deposit accounts by a minor and withdrawals thereof by the minor shall be valid in all respects. For such purposes a minor is deemed of full age.

§412:10-306 Joint accounts. A member may designate any person or persons to own a share or deposit account with the member in joint tenancy with the right of survivorship, as a tenant in common or under any other form of joint ownership permitted by law, but no co-owner, unless a member in the co-owner's own right, shall be permitted to vote, obtain loans, or hold office or be required to pay a membership fee.

§412:10-307 Trust accounts. (a) Share and deposit accounts may be owned by a member in trust for a beneficiary.

(b) Beneficiaries may be minors, but no beneficiary, unless a member in that person's own right, shall be permitted to vote, obtain loans, hold office or be required to pay a membership fee.

§412:10-308 Payable-on-death accounts. Notwithstanding any other provision of law, a credit union may establish share and deposit accounts payable to one or more persons during their lifetimes and on the death of all of them to one or more payable-on-death payees. Any transfer to a payable-on-death payee is effec-

tive by reason of the account contract and shall not be considered to be a testamentary transfer.

§412:10-309 Liens. The credit union shall have a lien on the share accounts and accumulated dividends of a member for any sum owed the credit union by said member and for any loan endorsed by the member. The credit union shall also have a right of immediate set-off with respect to every deposit account. The credit union may also refuse to allow withdrawals from any share or deposit account. The credit union may waive its rights to a lien, to immediate set-off, to restrict withdrawals, or to any combination of such rights with respect to any share or deposit account or groups of such accounts.

§412:10-310 Dormant accounts. (a) If there has been no activity on a share or deposit account for one year, the credit union may impose a reasonable maintenance fee.

(b) Share and deposit accounts, dividends, interest and other sums due or standing in the name of a member or other person and held by the credit union are presumed abandoned unless the member or other person has, within five years:

- (1) Increased or decreased the amount of the funds or presented an appropriate record for the crediting of dividends or interest;
- (2) Corresponded in writing with the credit union concerning the funds; or
- (3) Otherwise indicated an interest in the funds as evidenced by a memorandum on file with the credit union.

PART IV. LOANS

§412:10-400 Applicability of part. This part sets forth the requirements and restrictions for lending by all credit unions. A credit union may make loans and extensions of credit as permitted by this part and as provided elsewhere in this article.

§412:10-401 General requirements for loans. A credit union shall make loans and extensions of credit that are consistent with prudent lending practices and in compliance with all applicable federal and State law.

§412:10-402 Loans to members. A credit union may make unsecured and secured loans to its members for such purposes and upon such conditions as the bylaws may provide. The board of directors shall establish written policies with respect to the granting of loans and the extending of lines of credit, including the terms, conditions and acceptable forms of security.

§412:10-403 Interest rates. (a) The interest rates on loans shall be determined by the board of directors, subject to the following:

- (1) The interest rate on any credit union loan hereafter made shall not exceed eighteen per cent per year on the unpaid balance, may be fixed or variable, and may provide for a balloon payment. A variable rate may be based upon an index, the prime rate, or some other objective factor, so that the interest rate will increase or decrease according to such factor.
- (2) The commissioner, without regard to chapter 91, may establish an interest rate ceiling exceeding the eighteen per cent per year for periods not to exceed eighteen months, if the commissioner determines that prevailing interest rate levels threaten the safety and soundness of credit unions.

(b) The board may also authorize any refund of interest on such classes of loans and under such conditions as it prescribes.

(c) If a greater rate of interest than that permitted under this article is contracted for in any loan under this article, the loan shall not, by reason thereof, be void. But, if in any action on the loan, proof is made that a greater rate of interest than that permitted by law has been directly or indirectly contracted for, the credit union shall only recover the amount actually received by the borrower in cash, credit or the equivalent thereof plus the charges, if any, which were properly charged to the borrower and which have not been deducted from the principal amount of the contract or otherwise paid by the borrower. The borrower shall only recover costs. If interest has been paid, judgment shall be for the recoverable amount less the amount of interest paid. Sections 478-5 and 478-6 shall not apply to loans made under this article by credit unions.

§412:10-404 Other charges. (a) In addition to interest charged on loans, a credit union may charge members all reasonable expenses in connection with the making, closing, disbursing, extending, collecting or renewing of loans.

(b) A credit union may assess charges to members, in accordance with the bylaws, for failure to meet their obligations to the credit union in a timely manner.

§412:10-405 Applications. Except as provided in section 412:10-410, every application for a loan shall be made in writing upon a form prescribed by the credit union. Each loan shall be evidenced by a written document.

§412:10-406 Prepayment of loan. A member may repay a loan, prior to maturity in whole or in part on any business day without penalty.

§412:10-407 Limitations on obligations of one borrower. (a) No credit union shall permit a person to become indebted or liable to it, either directly or indirectly, on loans or extensions of credit in a total amount outstanding at any one time in excess of ten per cent of the credit union's capital.

(b) The aggregate obligations of a borrower to a credit union shall include any obligations owed to the same credit union by a partnership or association of which the borrower is a partner or member if such partnership or membership imposes liability on the borrower for said obligations by agreement or operation of law.

(c) The limitations set forth in this section shall not apply to:

- (1) A credit union's deposits with another depository institution made in compliance with this chapter;
- (2) A credit union's sale of federal funds to another depository institution with a maturity of one business day or under a continuing contract;
- (3) Loans and extensions of credit secured by the interest-bearing obligations of the United States or those for which the faith and credit of the United States are distinctly pledged to provide for the payment of the principal and interest thereof or of the State or any county or municipal or political subdivision of this State, issued in compliance with the laws of this State, where the market value of the security shall be at any time not less than one hundred five per cent of the face amount of the loans and extensions of credit; and
- (4) Loans and extensions of credit to the extent secured by a pledge or security interest in a share or deposit account in the lending credit union.

§412:10-408 Loans to officials. (a) Loans may be made to officers, directors and members of the credit and supervisory committees of the credit union, provided that:

- (1) The loan complies with all lawful requirements under this article with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers;
- (2) The loan shall be approved by the board of directors if the aggregate amount of all loans outstanding to the applicant including the loan amount applied for exceeds \$10,000. Loans that are fully secured by shares and deposits in the credit union need not be approved by the board of directors and need not be included in determining the aggregate amount of loans outstanding to the applicant. Acting as a co-borrower, guarantor, or endorser of any loan to other members made by the same credit union shall be counted as a loan in determining the aggregate amount of loans made by the credit union to any applicant; and
- (3) The loan applicant takes no part in and is not present during the consideration of the application.

§412:10-409 Real estate mortgage loans. (a) The amount of any credit union loan secured by a mortgage on real property shall be limited to the following percentages of the appraised value of the property:

- (1) Ninety per cent of the value of any residential real property; and
 - (2) Eighty per cent of the value of any non-residential real property. The principal amount of the loan shall be added together with the outstanding balances of all prior liens on the real property to determine the loan to value ratio.
- (b) The amount of a loan secured by residential real property may be increased by the unencumbered share or deposit balances of the borrowing member that are pledged to the loan.
- (c) Loans secured by real property other than residential real property shall provide for the regular reduction of principal.
- (d) For loans secured by real property, the credit union may require the borrower to make regular deposits for the payment of insurance, taxes and other expenses assessed against the property.

§412:10-410 Lines of credit. A credit union may offer its members self-replenishing lines of credit. Loan advances within the limits of a line of credit may be made without the necessity of submitting additional loan applications; provided that the applicant qualifies for the line of credit and the applicant's aggregate indebtedness under the line of credit does not exceed the approved limit. The board, credit committee or credit manager shall review, or cause to be reviewed, all lines of credit at least once every three years.

§412:10-411 Loans to other credit unions. A credit union may make loans to other credit unions, central credit unions, corporate credit unions or a central liquidity facility established under federal or state law; provided that the loans shall be approved by the board of directors and that the aggregate of all loans to such credit unions and a central liquidity facility shall not exceed twenty-five per cent of the lending credit union's capital.

§412:10-412 Participation loans. Participation loans to credit union members jointly with other credit unions, credit union service organizations, or financial organizations shall be in accordance with written policies of the board of directors.

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A credit union which originates a loan for which participation arrangements are made in accordance with this section shall retain an interest of at least ten per cent of the face amount of the loan.

§412:10-413 Other loan programs. (a) A credit union may loan to members under any government guaranteed or insured loan program and such insurance on these loans shall be deemed adequate security. The terms of such loans shall be as defined by the board of directors under the provisions of the loan program.

(b) A credit union may purchase the conditional sales contracts, notes and similar instruments of its members.

(c) A credit union may finance for any person the sale of the credit union's personal property, including property obtained as a result of defaults in obligations owed to the credit union, under the terms, conditions and rates provided by this article.

PART V. INVESTMENTS

§412:10-500 Applicability of part. This part sets forth the requirements and restrictions for investments made by all credit unions. A credit union may invest its assets as may be permitted by this part and as may be provided elsewhere in this article.

§412:10-501 General requirement for investments. (a) A credit union shall make investments that are consistent with prudent investment practices and in compliance with all applicable federal and State law.

(b) The board of directors of a credit union and any other person charged with the responsibility of investing the credit union's assets shall exercise such reasonable diligence, discretion, judgment, and intelligence as would be expected of a prudent investor. Among other things, they shall not engage in speculative or unsound investments, and they shall at all times consider the probable safety as well as the probable income of the capital being invested.

(c) The board of directors shall establish written investment policies.

§412:10-502 Permitted investments. (a) To the extent specified herein, a credit union may invest its own assets in securities and obligations of:

- (1) The United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States, including without limitation Federal Reserve Banks, the Government National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, and the Small Business Administration;
- (2) United States government-sponsored agencies, which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States, including without limitation Banks for Cooperatives, Federal Agricultural Mortgage Corporation, Federal Farm Credit Banks, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Federal Intermediate Credit Banks, Federal Land Banks, Federal National Mortgage Association, Resolution Funding Corporation, Stu-

dent Loan Marketing Association, Tennessee Valley Authority, and the United States Postal Service; and

- (3) Quasi-United States governmental institutions, including without limitation the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the United States government is a shareholder or contributing member, provided that the total amount invested in any one issuer shall not exceed ten per cent of the credit union's capital.

(b) To the extent specified herein, a credit union may invest its own assets in bonds, securities, or similar obligations issued by this State, or any county of this State, through an appropriate agency or instrumentality.

(c) To the extent specified herein, a credit union may invest its own assets in bonds or similar obligations issued by any state of the United States other than this State, the District of Columbia, or any territory or possession of the United States, by municipal governments of such states, territories or possessions, or by any foreign country or political subdivision of such country; provided, that:

- (1) The bond, note, or warrant has been issued in compliance with the constitution and laws of any such government;
- (2) There has been no default in payment of either principal or interest on any of the general obligations of such government for a period of five years immediately preceding the date of the investment; and
- (3) The total amount invested in such obligations of any one issuer by a credit union shall not exceed ten per cent of the credit union's capital.

(d) To the extent specified, a credit union may invest its own assets in credit union service organizations pursuant to section 412:10-202.

(e) To the extent specified herein, a credit union may invest its own assets in securities that are rated within the four highest grades by a nationally-recognized rating service and which represent ownership of one or more promissory notes, certificates of interest, or participation in such notes, or which are secured by one or more promissory notes, certificates of interest, or participation in such notes, which notes:

- (1) Are directly secured by a first lien on residential real estate or a residential manufactured home as defined under Title 42 of the United States Code, whether or not such manufactured home is considered real or personal property under State law; and
- (2) Were originated by a credit union, insurance company, or similar institution which is supervised and examined by a federal or state authority, or by a mortgagee approved by the Secretary of Housing and Urban Development. Notes secured by a lien on a manufactured home may also originate from a credit union approved for insurance by the Secretary of Housing and Urban Development. The total amount invested in such securities by a credit union shall not exceed twenty per cent of its capital and surplus.

The term "securities" in this paragraph shall have the same meaning as given in chapter 485.

(f) To the extent specified herein, a credit union may invest its own assets in mortgage related securities that:

- (1) Are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77D(5)); or
- (2) Are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C.

78C(a)(41)), subject to such rules as the commissioner may adopt, including rules prescribing minimum size of issue (at the time of initial distribution) or minimum aggregate sales prices, or both.

(g) To the extent specified herein, a credit union may purchase, hold, convey, sell or lease real or personal property as follows:

- (1) The real property in or on which the business of the credit union is carried on, other space in the same property to rent as a source of income, other real property necessary to the accommodation of the credit union's business, including but not limited to parking facilities, data processing centers, and real property held for future use where the credit union in good faith expects to utilize the property as credit union premises; provided, if the credit union ceases to use any real property and improvements thereon for one of the foregoing purposes, it shall, within five years thereafter, sell the real property or cease to carry it or them as an asset; provided further, such property shall not, without the approval of the commissioner, exceed five per cent of the credit union's capital;
- (2) Personal property used in or necessary to the accommodation of the credit union's business, including but not limited to furniture, fixtures, equipment, vaults and safety deposit boxes. The credit union's investment in furniture and fixtures shall not, without the approval of the commissioner, exceed five per cent of the credit union's capital;
- (3) Such real property or tangible personal property as may come into the credit union's possession as security for loans or in the collection of debts; or as may be purchased by or conveyed to the credit union in satisfaction of or on account of debts previously contracted in the course of the credit union's business, when such property was held as security by the credit union; and
- (4) The seller's interest under an agreement of sale, as that term is defined in sections 501-101.5 and 502-85, including without limitation the reversionary interest in the real property and the right to income under the agreement of sale, with or without recourse to the seller.

Except as otherwise authorized in this section any tangible personal property coming into the possession of any credit union pursuant to paragraph (3) shall be disposed of as soon as practicable and shall not, without the written consent of the commissioner, be considered a part of the assets of the credit union after the expiration of two years from the date of acquisition.

Except as otherwise authorized in this section any real property acquired by a credit union pursuant to paragraph (3) shall be sold or exchanged for other real property by the credit union within five years after title thereto has vested in it by purchase or otherwise, or within such further time as may be granted by the commissioner.

Any credit union acquiring any real property in any manner other than provided by this section shall immediately, upon receiving notice from the commissioner, charge the same to profit and loss, or otherwise remove the same from assets, and when any loss impairs the capital of the credit union the impairment shall be made good in the manner provided in this chapter.

§412:10-503 Deposits made by credit unions. A credit union may deposit any of its funds in a deposit or share account with another depository institution; provided that the other depository institution has been designated a depository by the board of directors of the credit union and the accounts of the depository institutions are insured by the Federal Deposit Insurance Corporation, National Credit Union Share Insurance Fund or a successor agency.

PART VI. RESERVE ALLOCATIONS

§412:10-600 Regular reserve. (a) At the end of each accounting period and before the payment of any dividend, each credit union shall set aside from its gross earnings the following reserve against contingencies:

- (1) A credit union in operation for less than four years or having assets of less than \$500,000 shall set aside ten per cent of its gross earnings until the regular reserve equals seven and a half per cent of its total outstanding loans and risk assets, whereupon the credit union shall set aside five per cent of its gross earnings until the regular reserve equals ten per cent of its total outstanding loans and risk assets.
- (2) A credit union in operation for four or more years or having assets of \$500,000 or more shall set aside ten per cent of gross earnings until the balance in the regular reserve equals four per cent of its total outstanding loans and risk assets, whereupon the credit union shall set aside five per cent of its gross earnings until the regular reserve equals six per cent of its total outstanding loans and risk assets.

(b) Whenever a credit union's regular reserve account falls below the percentages required by this section, the credit union shall notify the commissioner and shall make up the deficiency by regular contributions in such amounts as may be needed to maintain the required level.

(c) The commissioner may decrease or waive entirely the reserve requirement for an individual credit union in one or more accounting periods when in the commissioner's opinion such a decrease is necessary or desirable.

(d) The regular reserve shall belong to the credit union and shall be used to meet losses on risk assets and to meet such other classes of losses as are approved by the commissioner. The regular reserve shall not be distributed except on liquidation of the credit union, or in accordance with a plan approved by the commissioner.

§412:10-601 Special reserves. The board of directors may establish, or commissioner may require any credit union on an individual basis to establish, and transfer funds into one or more special reserve accounts when in the board's or the commissioner's judgment such action is necessary to protect the interests of the credit union's members, including without limitation circumstances when a credit union purchases accounts, or suffers an impairment or threat of impairment that endangers the adequacy of its regular reserve account. Special reserves may include allowances for loan losses and investment losses.

§412:10-602 Risk assets. The commissioner shall define by rule what is deemed "risk assets" for the purpose of establishing the regular reserve.

PART VII. OTHER MEMBER SERVICES

§412:10-700 Insurance for members. A credit union may purchase or make available insurance for its members either on an individual or group basis.

§412:10-701 Liability insurance for officers. A credit union may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the credit union, or who is or was serving at the request of the credit union as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity or arising out

of such person's status as such, whether or not the credit union would have the power to indemnify such person against such liability.

§412:10-702 Group purchasing. A credit union may enter into marketing arrangements and joint ventures with other credit unions, or organizations or financial institutions to facilitate its members' voluntary purchase of goods, insurance and other services from third parties, consistent with the purposes of the credit union. A credit union may be compensated for services so provided.

§412:10-703 Money-type instruments. A credit union may collect, receive and disburse monies in connection with the providing of negotiable checks, money orders, travelers checks, and other money-type instruments, and the providing of services through automated teller machines and for such other purposes as may provide benefit or convenience to its members. A credit union may charge fees for such services.

§412:10-704 Retirement accounts. A credit union may act as trustee or custodian of any form of retirement, pension, profit-sharing, or deferred income accounts authorized under federal law or the laws of this State including but not limited to individual retirement accounts, pension funds of self-employed individuals, and pension funds of a company or organization whose employees or members are eligible for membership in the credit union.

PART VIII. CORPORATE CREDIT UNION

§412:10-800 Application of part. Provisions of this part shall govern the formation and operations of a corporate credit union. Only one corporate credit union may be chartered under this article and as such shall have the exclusive right to use the term "corporate credit union" as part of its name. All parts of this chapter not inconsistent with this part shall apply.

§412:10-801 Purposes. The purposes of the corporate credit union are to:

- (1) Accumulate and prudently manage the liquidity of its member credit unions through interlending and investment services;
- (2) Act as an intermediary for credit union funds between members and other corporate credit unions;
- (3) Obtain liquid funds from other credit union organizations, financial intermediaries, and other sources;
- (4) Foster and promote in cooperation with other state, regional, and national corporate credit unions and credit union organizations or associations the economic security, growth, and development of member credit unions; and
- (5) Provide payment systems and correspondent services to its members.

§412:10-802 Membership. Membership in the corporate credit union shall consist of and be limited to the credit union subscribers to the articles of association, credit unions chartered under this article, the Federal Credit Union Act or any other credit union law, and organizations or associations of credit unions.

§412:10-803 Organization. The application, approval and formation process for the corporate credit union shall be the same as for any other credit union, except that ten or more credit unions shall be required to file an application for a charter.

§412:10-804 Management and operation of corporate credit union. The corporate credit union shall be organized and operated like any other credit union, except that:

- (1) Persons eligible to hold office and vote shall be designated by the board of directors of each member of the corporate credit union as the voting representative in the corporate credit union. Such voting representative shall be eligible to hold office in the corporate credit union as if such person were an individual member of the corporate credit union. Each member shall have only one vote;
- (2) The corporate credit union shall be exempt from the regular reserve requirements established under this article, but shall establish and maintain an equity reserve to meet losses, in accordance with rules adopted by the commissioner;
- (3) The corporate credit union shall be exempt from the share and deposit requirements of this article and from the security laws of this State; and
- (4) The supervisory committee of a corporate credit union shall cause an annual opinion audit to be made by an independent, duly licensed CPA and shall submit the audit report to the board of directors. A summary of the audit report shall be submitted to the membership at the next annual meeting. A copy of the audit report shall be submitted to the commissioner within 30 days after receipt by the board of directors.

§412:10-805 Powers. The corporate credit union shall have all the rights, powers and privileges of any other credit union chartered under this article, as well as the power to:

- (1) Accept funds, either as shares or deposits, from a member and from any credit union chartered by this State, by another state or territory of the United States, or by the United States, whether or not such credit union is a member of the corporate credit union, or from a similar institution incorporated under the laws of another country;
- (2) Make loans to or invest in a member or in any credit union chartered by this State, by another state or territory of the United States, or by the United States, whether or not such credit union is a member of the corporate credit union;
- (3) Make loans to or place deposits in a bank, savings bank, trust company, or savings and loan association chartered by this State, by another state or territory of the United States, or by the United States;
- (4) Provide payment systems and correspondent services to its members;
- (5) Participate with any credit union chartered by this State, another state or territory of the United States, or the United States in making loans to its members or to members of any other participating credit union, under the terms and conditions to which the participating credit unions agree;
- (6) Contract for penalties for payment of loans prior to the scheduled maturity;
- (7) Sell all or a part of its assets to another depository financial institution, purchase all or part of the assets of another depository financial institution and assume the liabilities of the selling depository financial institution and those of the selling depository institution's members or depositors;
- (8) Act as intermediary for the funds of members, credit unions and other corporate credit unions;

- (9) Act as agent for members, other credit unions and credit union organizations in paying, receiving, transferring the assets and liabilities received and invested as permitted in this article;
- (10) Receive and hold in safekeeping the securities and other assets of its members and, in connection therewith, make such disposition of such assets as may be agreed to or directed by the member; and
- (11) Exercise all incidental powers that are convenient, suitable or necessary to enable it to carry out the corporate credit union's purposes.

§412:10-806 Participation in central system. The corporate credit union may enter into agreements and subscribe to any required shares for the purpose of participation in the National Credit Union Administration Central Liquidity Facility created by Public Law 95-630 or any other state or federal central liquidity facility or central financial system for credit unions. The corporate credit union may also enter into agreements with any third parties to aid credit unions to obtain additional sources of liquidity.

§412:10-807 Collection on loans to members. (a) For any amounts due from a member to the corporate credit union, the corporate credit union shall have:

- (1) A right of immediate set-off against the balances of the share and deposit accounts of each member; and
- (2) A lien on all share and deposit accounts of each member in the total amount of the indebtedness, which shall attach to such accounts and be effective whenever the member is indebted to the corporate credit union, and which shall have priority over the interest of all members and unsecured creditors of the debtor member.

(b) The board of directors or credit committee of the corporate credit union may require and accept additional security for loans to a member in the form of a pledge, assignment, hypothecation, or mortgage of any assets of the member or a guarantor.

§412:10-808 Meetings. The board of directors of the corporate credit union shall meet at least every ninety days in person or by means of telephone as provided in the bylaws.

ARTICLE 11. FINANCIAL INSTITUTION HOLDING COMPANIES

§412:11-100 Applicability of article. The provisions of this article shall govern the registration, reporting and examination of financial institution holding companies in this State.

§412:11-101 Registration and reporting of financial institution holding companies. (a) Within one hundred eighty days after the date of enactment of this article, or within one hundred eighty days after becoming a financial institution holding company, whichever is later, and annually thereafter on dates established by the commissioner, which shall not be earlier than ninety days after the close of the fiscal year, each financial institution holding company shall register with the commissioner, on forms provided or prescribed by the commissioner. Such forms shall include information with respect to the financial condition, operation, management and inter-company relationships of the financial institution holding company and its subsidiaries and related matters as the commissioner may deem necessary or appropriate to carry out the purposes of this article. The commissioner shall, as far as possible consistent with the effective discharge of the commissioner's responsibilities, prescribe forms in current use by financial institution hold-

ing companies in discharging their registration or reporting obligations under the federal Securities Exchange Act, the federal Bank Holding Company Act and the federal Home Owners' Loan Act. The commissioner may, in the commissioner's discretion, extend the time within which a financial institution holding company shall register and file the requisite information.

(b) The commissioner is authorized to adopt rules pursuant to chapter 91 as may be necessary to enable the commissioner to administer and carry out the registration and reporting procedures and requirements of this section.

§412:11-102 Examination of financial institution holding company. The commissioner may from time to time conduct such reasonable examinations of any financial institution holding company as may be necessary or appropriate to determine whether the condition or activities of the company are jeopardizing the safety or soundness of the operations of its financial institution subsidiary. The commissioner shall not conduct such examinations of holding companies unless the commissioner has good cause to believe that a holding company is experiencing financial adversity which will have a material negative impact on the safety and soundness of its financial institution subsidiary. The cost of such examinations shall be assessed against and paid by the financial institution holding company in the same manner as financial institutions under section 412:2-105.

§412:11-103 Use of federal examinations. The commissioner may accept, adopt, or use in lieu of an examination prescribed by section 412:11-102 or otherwise, all or any part of the results of an examination conducted by an appropriate federal regulatory agency of a financial institution or a financial institution holding company for the same period or subject matter that would be covered by an examination required or permitted under this article.

§412:11-104 Service of process. Every financial institution holding company shall designate in its registration statement the name and address of an agent in this State who is authorized to receive service of process and any notices in behalf of the holding company. Service may be made on a financial institution holding company by leaving a copy of the process at the office of the appointed agent in this State. If such person is not available or refuses to accept service or notice, the service or notice may be served upon any officer or manager of the financial institution subsidiary located in this State.

§412:11-105 Sanctions for failure to register or submit reports. Any financial institution holding company failing to register or furnish any report or information as and when required under this article, shall be subject to an administrative fine of not more than \$200 for each day that it fails to register or for each day that any such report is delinquent, which fine shall be recovered pursuant to the provisions of section 412:2-611.

§412:11-106 Injunctions. If it appears to the commissioner that any person has committed or is about to commit a violation of any provision of this article or any rule or order of the commissioner, the commissioner may apply to the circuit court for an order enjoining such person from violating or continuing to violate this article or any rule or order and for injunctive relief as the nature of the case or the interests of the financial institution or the financial institution holding company or its depositors, beneficiaries, creditors or shareholders may require."

SECTION 2. Section 53-18, Hawaii Revised Statutes, is amended to read as follows:

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"§53-18 Investment of funds. A redevelopment agency may invest any of its funds not required for immediate disbursement in securities which constitute legal investments under state laws relating to investment of trust funds by trust companies, including those authorized by [part II of chapter 402, and section 406-22.] article 8 of chapter 412."

SECTION 3. 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, 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,] 412, 415, 421, 422, 425, 431, 438, 439, 440, 442, 447, 448, 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 4. 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 state or national banks[, either commercial banks within the meaning of section 403-2, or national banks excepted under section 403-10, doing business] authorized to accept or hold deposits in the State of Hawaii, on unsecured short term loans made to borrowers who have the highest credit rating with those banks."

SECTION 5. Section 201E-56, Hawaii Revised Statutes, is amended to read as follows:

"§201E-56 Bonds as legal investments. The State and all of its public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, including savings and loan associations, all investment companies, insurance companies, insurance associations, and other persons carrying on an insurance business in the State, all credit unions, and all personal representatives, guardians, trustees, and other fiduciaries in the State may legally invest any moneys or funds belonging to them or within their control and available for investment under other provisions of law, in any bonds or other obligations issued by the housing finance and development corporation, or in any bonds or other obligations issued by any public housing authority or agency in the United States when the bonds or other obligations of the public housing authority or agency are secured by a pledge of annual contributions or other financial assistance to be paid by the federal government or any agency thereof, and the bonds and other obligations of the corporation and the bonds and other obligations of any such public housing authority or agency shall be autho-

rized security for all public deposits and shall be fully negotiable in the State. It is the purpose of this section to authorize any of the foregoing to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension, and trust funds and funds held on deposit, for the purchase of any such bonds or other obligations; provided that nothing contained in this section shall operate to relieve any person, firm, or corporation from liability for failure to exercise reasonable care in selecting investments or, in the case of a guardian or trustee, from liability for failure to exercise the judgment and care to observe the duties required of a guardian or trustee by [sections 406-22] article 8 of chapter 412 and section 554-6."

SECTION 6. Section 201E-192, Hawaii Revised Statutes, is amended to read as follows:

"[[§201E-192]] Program administration. The corporation, in administering the housing alteration revolving loan fund program, shall establish the terms and conditions, maturities, interest rates, collateral, and other requirements for loans. The corporation shall have the power to take all necessary actions to collect any delinquent amounts in the event of a default in the payment of any installment of principal or interest on any loans made from the fund and to otherwise secure such loans in a manner which affords reasonable protection of the State's resources. The corporation may enter into agreements with or purchase services required for the purposes of this subpart from any state or national bank [as defined in section 403-2.] authorized to accept or hold deposits in the State."

SECTION 7. Section 206-33, Hawaii Revised Statutes, is amended to read as follows:

"§206-33 Development project bonds as legal investments. The State and all of its public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, including savings and loan associations, all investment companies, insurance companies, insurance associations, and other persons carrying on an insurance business in the State, and all personal representatives, guardians, trustees, and other fiduciaries in the State may legally invest moneys or funds belonging to them or within their control and available for investment under other provisions of law, in any bonds or other obligations issued by the board of land and natural resources, and the bonds and other obligations of the board or agency shall be authorized security for all public deposits and shall be fully negotiable in the State. It is the purpose of this section to authorize any of the foregoing to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension, and trust funds and funds held on deposit, for the purchase of any bonds or other obligations; provided that nothing contained in this section shall operate to relieve any person, firm, or corporation from liability for failure to exercise reasonable care in selecting investments or, in the case of a guardian or trustee, from liability for failure to exercise the judgment and care to observe the duties required of a guardian or trustee by [sections 406-22] article 8 of chapter 412 and section 554-6."

SECTION 8. Section 207-11, Hawaii Revised Statutes, is amended by amending the definition of "foreign lender" to read as follows:

"Foreign lender" means (A) "a depository institution" as defined in section 501(a)(2) of the federal Depository Institutions Deregulation and Monetary

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Control Act of 1980, a "real estate investment trust" as defined in the Internal Revenue Code, an insurance company, the principal office of which is in another state, whether incorporated or unincorporated and whether acting in its individual capacity or in a fiduciary capacity, (B) the trustee or trustees from time to time in office of any employee benefit plan, (C) a lender approved by the Secretary of the United States Department of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act, (D) any corporation of which all of the capital stock (except the directors' qualifying shares) is owned by one or more foreign lenders specified in (A), (B), and (C), and (E) any corporation of which all of the capital stock (except for the directors' qualifying shares) is owned by one or more foreign lenders specified in (D), but the term "foreign lender" does not include any [small loan or] financial services loan company [of the general character covered by chapters 408 and 409.] licensed under article 9 of chapter 412."

SECTION 9. Section 207-12, Hawaii Revised Statutes, is amended to read as follows:

"§207-12 Exemptions and immunities. A foreign lender which (1) does not maintain a place of business in this State, (2) conducts its principal activities outside this State, and (3) complies with this part, does not by engaging in this State in any or all of the activities specified in section 207-13, violate the laws of this State relating to doing business or doing a banking, trust, or insurance business, or become subject to chapter [401, 402, 403, 406, 407,] 412, 415, or 431, or become subject to any taxation which would otherwise be imposed for doing business in or doing a banking, trust, or insurance business in, or having gross income or receipts from sources in, property in, or the conduct of any activity in, this State, or become subject to any taxation under chapter 235, 237, or 241, and no income or receipts of any foreign lender arising out of any of the activities specified in the following section shall constitute income from sources in, property in, or activities conducted in this State for the purposes of any tax imposed by this State; provided that nothing in this part shall be construed to exempt the real property of a foreign lender from taxation to the same extent, according to its value, as other real property is taxed, or to preclude the inclusion of the dividends or other income from foreign lenders in the income of individuals taxable under chapter 235 to the same extent as is included dividends and other income from domestic lenders; and provided further that if any such foreign lender shall acquire any property in this State in enforcement of the rights of the foreign lender in the event of a default by any borrower, as permitted by section 207-13(4), then commencing one year after title to such property has vested in the foreign lender, the rents or other receipts received by the foreign lender from, and the proceeds of sale by the foreign lender of, such property shall be subject to taxation under chapters 235 and 237 in the same manner and to the same extent as if the rents, other receipts, or proceeds were received by a resident of this State; and provided further that if any such foreign lender shall otherwise acquire any property in this State or engage in any business or activities in this State not specified in section 207-13, then the rents and other receipts received by the foreign lender from such property and the proceeds of sale by the foreign lender of such property and all income and receipts from the foreign lender's business or activities in this State not specified in section 207-13 shall be subject to taxation under chapters 235 and 237 in the same manner and to the same extent as if such rents, other receipts, proceeds, and income were received by a resident of this State, but such other activities and business shall not deprive the foreign lender of the immunities and exemptions from taxation hereinabove stated with respect to the activities specified in section 207-13."

SECTION 10. 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 state or national banks[, either commercial banks within the meaning of section 403-2, or national banks excepted under section 403-10, doing business] authorized to accept or hold deposits in the State, on secured short term loans made to borrowers who have the highest credit rating with 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 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 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 11. Section 241-1, Hawaii Revised Statutes, is amended by amending the definitions of "bank", "building and loan association", and "financial services loan company" to read as follows:

"Bank" means and includes any national banking association and any bank [organized under the laws of the State, any foreign bank doing business in the State under the authority of chapter 405D, and any other corporation doing a banking business within the State under the authority of chapters 403 and 405.] chartered² or licensed pursuant to chapter 412.

"Building and loan association" means any corporation [subject to chapter 407.] or mutual association which has been authorized to operate as a savings bank or savings and loan association pursuant to chapter 412, and any federal savings and loan association.

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"Financial services loan company" means any company which has been authorized to engage in the business of a financial services loan company [subject to chapter 408.] pursuant to chapter 412."

SECTION 12. Section 241-3.5, Hawaii Revised Statutes, is amended to read as follows:

"[§]§241-3.5[] Deduction from entire net income. There shall be allowed as a deduction from entire net income to the extent not deductible in determining federal taxable income, the adjusted eligible net income of an international banking facility, as defined in [chapter 405A,] section 412:5-206, determined as follows:

- (1) The eligible net income of an international banking facility shall be the amount remaining after subtracting from the eligible gross income the applicable expenses.
- (2) Eligible gross income shall be the gross income derived by an international banking facility from:
 - (A) Making, arranging for, placing, or servicing loans to foreign persons; provided that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is eighty per cent or more owned or controlled, either directly or indirectly, by one or more domestic corporations (other than a bank), domestic partnership, or resident individual, substantially all the proceeds of the loan shall be for use outside of the United States;
 - (B) Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer) or with other international banking facilities; or
 - (C) Entering into foreign exchange trading or hedging transactions related to any of the transactions described in this paragraph.
- (3) Applicable expenses shall be any expense or other deduction attributable, directly or indirectly, to the eligible gross income described in paragraph (2).
- (4) Adjusted eligible net income shall be determined by subtracting from eligible net income the ineligible funding amount, and by subtracting from the amount then remaining the floor amount.
- (5) The ineligible funding amount shall be the amount, if any, determined by multiplying eligible net income by a fraction, the numerator of which is the average aggregate amount for the taxable year of all liabilities, including deposits, and other sources of funds to the international banking facility which were not owed to or received from foreign persons, and the denominator of which is the average aggregate amount from the taxable year of all liabilities, including deposits and other sources of funds of the international banking facility.
- (6) The floor amount shall be the amount, if any, determined by multiplying the amount remaining after subtracting the ineligible funding amount from the eligible net income by a fraction, not greater than one, which is determined as follows:
 - (A) The numerator shall be:
 - (i) The percentage, as set forth in subparagraph (C), of the average aggregate amount of the taxpayer's loans to foreign persons and deposits with foreign persons which are banks or foreign branches of banks, or savings and loan associa-

- tions or foreign branches of savings and loan associations, as the case may be, (including foreign subsidiaries or foreign branches of the taxpayer), which loans and deposits were recorded in the financial accounts of the taxpayer for its branches, agencies, and offices within the State for taxable years 1980, 1981, and 1982, minus;
- (ii) The average aggregate amount of such loans and such deposits for the taxable year of the taxpayer (other than such loans and deposits to an international banking facility); provided that in no case shall the amount determined in this clause exceed the amount determined in this subparagraph;
- (B) The denominator shall be the average aggregate amount of the loans to foreign persons and deposits with foreign persons which are banks or foreign branches of banks, including foreign subsidiaries or foreign branches of the bank, (or savings and loan associations, as the case may be) which loans and deposits were recorded in the financial accounts of the taxpayer's international banking facility for the taxable year;
- (C) The percentage shall be one hundred per cent for the first taxable year in which the taxpayer establishes an international banking facility and for the next succeeding four taxable years. The percentage shall be eighty per cent for the sixth, sixty per cent for the seventh, forty per cent for the eighth, and twenty per cent for the ninth and tenth taxable years next succeeding the year such bank or savings and loan association establishes such facility, and zero in the eleventh succeeding year and thereafter.
- (7) If adjusted eligible net income is a loss, the amount of such loss shall be added to entire net income.
- (8) As used in this section, the term "foreign person" means:
- (A) An individual who is not a resident of the United States,
 - (B) A foreign corporation, a foreign partnership, or a foreign trust, as defined in section 7701 of the federal Internal Revenue Code of 1954, as amended, other than a domestic branch thereof,
 - (C) A foreign branch of a domestic corporation (including the taxpayer),
 - (D) A foreign government or an international organization or an agency of either, or
 - (E) An international banking facility.
- For the purposes of this paragraph, the term "foreign" and "domestic" have the same meaning as set forth in section 7701 of the federal Internal Revenue Code of 1954, as amended."

SECTION 13. Section 356-33, Hawaii Revised Statutes, is amended to read as follows:

"§356-33 Housing bonds as legal investments. The State and all of its public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, including savings and loan associations, all investment companies, insurance companies, insurance associations, and other persons carrying on an insurance business in the State, all credit unions, and all personal representatives, guardians, trustees, and other fiduciaries in the State may legally invest any moneys or funds belonging to them or within their control and available for investment under other provisions of law, in any bonds or other obligations issued by the Hawaii housing authority, or in any

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bonds or other obligations issued by any public housing authority or agency in the United States when the bonds or other obligations of the public housing authority or agency are secured by a pledge of annual contributions or other financial assistance to be paid by the federal government or any agency thereof, and the bonds and other obligations of the authority and the bonds and other obligations of any such public housing authority or agency shall be authorized security for all public deposits and shall be fully negotiable in the State. It is the purpose of this section to authorize any of the foregoing to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investment, retirement, compensation, pension, and trust funds and funds held on deposit, for the purchase of any such bonds or other obligations; provided that nothing contained in this section shall operate to relieve any person, firm, or corporation from liability for failure to exercise reasonable care in selecting investments or, in the case of a guardian or trustee, from liability for failure to exercise the judgment and care to observe the duties required of a guardian or trustee by [sections 406-22] article 8 of chapter 412 and section 554-6."

SECTION 14. Section 415-3, Hawaii Revised Statutes, is amended to read as follows:

"**§415-3 Purposes.** Every corporation incorporated under this chapter has the purpose of engaging in any lawful business, other than [banking, insurance,] activities of a financial institution under chapter 412, activities under chapter 431, or carrying on any profession, except pursuant to chapter 415A, unless a more limited purpose is set forth in the articles of incorporation."

SECTION 15. Section 415-106, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A foreign financial institution whose principal office is not within the State and which is federally or state-chartered and federally-insured, which by law is subject to periodic examination by its regulatory authority and to the requirement of periodic audit, shall not be considered to be doing business in this State by reason of engaging in the advertising or solicitation of savings accounts or investment or other certificates in this State by mail, radio, television, magazines, newspapers or any other media that are published or circulated within this State; provided that in any advertising or solicitation by mail, or in any media which is directed primarily to persons in this State, there shall be a conspicuous statement made that the institution is not supervised or regulated by this State. Such financial institution shall not thereby become subject to chapter [401, 402, 403, 406, 407 or 408.] 412. This subsection shall not apply to any financial institution doing business in Hawaii, chartered or licensed pursuant to chapter [401, 402, 403, 406, 407 or 408.] 412."

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

"(a) The corporate equity shall not be used for distribution to members, but only for the following purposes, and only to the extent authorized by the board, subject to the provisions and limitations of the charter of incorporation and bylaws:

- (1) For the benefit of the corporation or the improvement of the real property, including its use as collateral for loans [authorized under section 403-98.]¹

- (2) For expansion of the corporate equity by acquisition of additional interest in real property for purposes consistent with its charter.
- (3) For public benefit or charitable purposes."

SECTION 17. Section 431:10D-211, Hawaii Revised Statutes, is amended to read as follows:

"§431:10D-211 Credit union groups. The lives of the members of a credit union may be insured under a policy issued to the credit union which shall be deemed the policyholder to insure members of the credit union for the benefit of persons other than the credit union or any of its officials, subject to the following requirements:

- (1) Except for item (2), the members eligible for insurance under the policy shall be all of the members of the credit union.
- (2) An insurer may exclude or limit the coverage on any member as to whom evidence of individual insurability is not satisfactory to the insurer.
- (3) The premiums for the policy shall be paid by the policyholder, either from the credit union's own funds or from charges collected from the insured members specifically for the insurance, or from both; provided that when the premium is paid by the members, or by the credit union and its members jointly, at least seventy-five per cent of the then eligible members, excluding any as to whom evidence of insurability is not satisfactory to the insurer, must elect to make the required contributions.
- (4) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the credit union.
- (5) As used herein a credit union means a credit union chartered under the provisions of the Federal Credit Union Act or [the Hawaii Credit Union Act,] article 10 of chapter [410.] 412.

SECTION 18. Section 432:1-104, Hawaii Revised Statutes, is amended to read as follows:

"§432:1-104 Definitions. For the purposes of this article:

- (1) Commissioner means the insurance commissioner of the State of Hawaii.
- (2) Mutual benefit society is any corporation, unincorporated association, society, or entity:
 - (A) Organized and carried on for the primary benefit of its members and their beneficiaries and not for profit, and:
 - (i) Making provision for the payment of benefits in case of sickness, disability, or death of its members, or disability, or death of its members' spouses or children, or
 - (ii) Making provision for the payment of any other benefits to or for its members,
 - whether or not the amount of the benefits is fixed or rests in the discretion of the society, its officers, or any other person or persons; and the fund from which the payment of the benefits shall be defrayed is derived from assessments or dues collected from its members; and the payment of death benefits is made to the families, heirs, blood relatives, or persons named by its members as their beneficiaries; or

- (B) Organized and carried on for any purpose, which:
 - (i) Regularly requires money to be paid to it by its members, whether the money be in the form of dues, subscriptions, receipts, contributions, assessments or otherwise, and
 - (ii) Provides for the payment of any benefit or benefits or the payment of any money or the delivery of anything of value to its members or their relatives, or to any person or persons named by its members as their beneficiaries, or to any class of persons which includes or may include its members, whether or not the amount or value of the benefit, benefits, money, or thing of value is fixed, or rests in the discretion of the society, its officers, or any other person or persons; or
- (C) Organized and carried on for any purpose, whose requirements and provisions although not identical with, are determined by the commissioner to be substantially similar to, those enumerated in subsections (A) and (B).

Participating in a prepaid legal service plan subject to chapter 488 shall not in itself make a corporation, unincorporated association, society, or entity a mutual benefit society and subject to this article. [It shall be deemed to be a fiduciary company within the meaning of section 402-1 and shall, in all respects, unless otherwise specifically provided, be subject to part I of chapter 402, relating to fiduciary companies.]”

SECTION 19. Section 432:1-501, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The powers, authorities, and duties relating to examinations vested in and imposed upon the commissioner under article 2 of the insurance code are extended to and imposed upon the commissioner in respect to examinations of mutual benefit societies. [The provisions of section 401-3 relative to examination of fiduciary companies shall not apply to mutual benefit societies.]”

SECTION 20. Section 432:1-502, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Except as otherwise provided by the court or judge, any receiver appointed under this article shall have, exercise, and perform all of the powers and duties of a receiver of a [fiduciary company, as conferred and prescribed in section 402-5, which is made applicable.] financial institution under chapter 412, article 2, part IV.”

SECTION 21. Section 435E-15, Hawaii Revised Statutes, is amended to read as follows:

“**§435E-15 Funds, investment.** All funds held in trust which are in excess of current financial needs shall be invested and reinvested from time to time, under the direction of the board of trustees, in a manner consistent with the requirements of [section 406-22,] article 8 of chapter 412, or in certificates of deposits or time deposits issued by banks [and], savings banks, savings and loan associations and depository financial services loan companies in Hawaii duly insured by instrumentalities of the United States government.”

SECTION 22. Section 441-41, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The investment of perpetual care funds and pre-need trusts by a bank or trust company appointed as trustee shall be governed by the standards prescribed in [section 406-22 for trust companies acting as fiduciaries.] article 8 of chapter 412.”

SECTION 23. Section 476-28, Hawaii Revised Statutes, is amended to read as follows:

“§476-28 Regulation of finance charges. It shall be unlawful, directly or indirectly, to charge, contract for, collect, or receive any finance charge, on a credit sale contract except as is provided by this section.

- (1) If the finance charge is stated as a dollar amount and is added on or deducted in advance, and the buyer promises to pay a fixed total of payments, the finance charge shall not exceed the amount of interest or discount which could lawfully be added on or deducted in advance by a financial services loan company under [chapter 408] article 9 of chapter 412 on a loan to run for the same period as the credit sale contract, where the actual cash received by the borrower would be equal in amount to the principal balance of the credit sale contract, provided that a minimum finance charge of not more than \$10 shall be allowable in a credit sale when the finance charge is stated in a dollar amount. Upon maturity of a contract, the rate of finance charge on the unpaid principal balance of the contract shall be eighteen per cent a year, unless a lesser rate for after maturity finance charge is specified in the contract.
- (2) As an alternative to the finance charge authorized by paragraph (1), a seller may contract for and receive a finance charge at a rate not exceeding twenty-four per cent a year on the principal balance remaining unpaid from time to time under the contract, whether or not the rate of the finance charge under the contract is fixed or variable. Upon maturity of a contract, the rate of finance charge on the unpaid principal balance of the contract may be twelve per cent a year, the original contract rate of finance charge or, in the case of any extension or deferral, the rate of finance charge permitted by this chapter on the amount extended or deferred, whichever is greatest.”

SECTION 24. Section 478-4, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) It shall in no case be deemed unlawful, with respect to any consumer credit transaction (except a credit card agreement) and any home business loan to stipulate by written contract, for any rate of simple interest not exceeding [the greater of] one per cent per month or twelve per cent [per annum,] a year or, in the event the creditor is a financial institution regulated under chapter 412 (other than a trust company or a credit union), for any rate of simple interest not exceeding two per cent per month or twenty-four per cent a year; and it shall in no case be unlawful, with respect to any credit card agreement, to stipulate by written contract for any rate of simple interest not exceeding [the greater of] one and one-half per cent per month or eighteen per cent a year.

(b) As an alternative to the rate of interest specified in subsection (a), it shall be lawful with respect to any consumer credit transaction (except a credit card

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agreement) and any home business loan to stipulate by written contract for the payment and receipt of a finance charge in any form or forms at an annual percentage rate not to exceed twelve per cent, or twenty-four per cent in the event the creditor is a financial institution regulated under chapter 412 (other than a trust company or a credit union), together in either case with any other charges that are excluded or excludable from the determination of finance charge under the Truth in Lending Act, and, with respect to any credit card agreement, to stipulate by written contract for the payment and receipt of a finance charge at an annual percentage rate not to exceed eighteen per cent, together with any other charges that are excluded or excludable from the determination of finance charge under the Truth in Lending Act. The rates in this paragraph shall be available as alternative permissible rates for any of the credit transactions referred to, whether in fact or in law the Truth in Lending Act applies to the transaction, notwithstanding the advance, fixed, or variable manner in which interest or finance charge may be computed under the contract, and whether the contract uses the terms interest, annual percentage rate, finance charge or any combination of such terms. For rate computation purposes, with respect to any contract to which this paragraph may apply, the creditor conclusively shall be presumed to have given all disclosures in the manner, form and at the time contemplated by the Truth in Lending Act, including those necessary to exclude any charges from the finance charge.”

SECTION 25. Section 478-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The rate limitations contained in subsections (a) and (b) of this section shall not apply to any credit transaction authorized by, and entered into in accordance with the provisions of, articles 9 and 10 of chapter [408] 412 or 476.”

SECTION 26. Section 478-5, Hawaii Revised Statutes, is amended to read as follows:

“§478-5 Usury not recoverable. If a greater rate of interest than that permitted by law is contracted for with respect to any consumer credit transaction, any home business loan or any credit card agreement, the contract shall not, by reason thereof, be void. But if in any action on the contract proof is made that a greater rate of interest than that permitted by law has been directly or indirectly contracted for, the creditor shall only recover the principal and the debtor shall recover costs[; provided that any bank or savings and loan association may charge, contract for, receive, collect in advance, or recover interest, discount, and other charges at the same rates and in the same amounts as permitted by law in the case of loans made by financial services loan companies licensed under chapter 408, subject to the penalties imposed by that chapter if a greater rate of interest than that permitted by chapter 408 is contracted for or there is any other violation of sections 408-15 and 408-17 applicable to licensees under chapter 408]. If interest has been paid, judgment shall be for the principal less the amount of interest paid. This section shall not be held to apply, [except for the foregoing proviso,] to loans made [under chapter 408.] by financial services loan companies and credit unions at the rates authorized under and pursuant to articles 9 and 10 of chapter 412.”

SECTION 27. Section 478-8, Hawaii Revised Statutes, is amended to read as follows:

“§478-8 Exemptions from usury. (a) The provisions of this chapter (except for this section and section 478-3) shall not apply to any mortgage loan wholly

or partially secured by a guarantee or insurance or a commitment to insure issued under the provisions of the National Housing Act, Chapter 13 of Title 12 of the United States Code, the Veterans Benefit Act, subchapters I and II of Chapter 37 of Title 38 of the United States Code, and subchapter III of Chapter 8A of Title 42 of the United States Code.

(b) The provisions of this chapter (except for this section and section 478-3) shall not apply to any:

- (1) Indebtedness which is secured by a first mortgage lien on real property, and is agreed to or incurred after May 30, 1980; or
- (2) Consumer credit agreement of sale made after May 30, 1980, under which a vendor agrees to sell real property to a vendee but retains legal title to the real property and in which the rate of interest or the manner in which such rate shall be determined is clearly stated. As used in this paragraph, agreement of sale includes subagreement of sale or other subsequent subagreement of sale made on or after June 18, 1982. Notwithstanding the first sentence of this paragraph, with respect to any consumer credit agreement of sale made on or after July 1, 1985, upon extension at maturity or renegotiation thereof, the maximum rate of interest charged thereafter shall not be more than the greater of the rate of interest payable under the agreement of sale immediately prior to such maturity or renegotiation or four percentage points above the highest weekly average yield on United States Treasury securities adjusted to a constant maturity of three years, as made available by the Federal Reserve Board within sixty days prior to the time of extension or renegotiation; or
- (3) Indebtedness which is secured by a purchase-money junior mortgage lien on real property that is agreed to and incurred after June 18, 1982; provided that purchase-money junior mortgage lien means a mortgage that is subordinate in lien priority to an existing mortgage on the same real property which is given to the seller as part of the buyer's consideration for the purchase of real property and delivered at the same time that the real property is transferred as a simultaneous part of the transaction; or
- (4) Any transaction for the sale of goods, services, or both, by a seller in the business of selling such goods or services, if the transaction is subject to chapter 476 or the rate of interest charged by the seller in the transaction does not exceed eighteen per cent a year; provided that this paragraph shall not apply to any transaction regulated by chapter [403, 406, 407, 408, 409, 410,] 412 or 431 or to any transaction for the sale of financial services. This paragraph shall not be deemed to limit any seller's right to charge interest under section 478-2.

(c) The provisions of this chapter (except for this section and section 478-3) shall not apply to a loan made by an employee benefit plan as defined in section 1002(3) of Title 29 of the United States Code, as amended, or a loan made by the employees' retirement system of the State of Hawaii.

(d) This chapter shall not apply to any mortgage loan which may be made by a financial institution pursuant to rules adopted by the commissioner of financial institutions pursuant to section 412:2-108."

SECTION 28. Section 490:9-203, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

"(4) A transaction, although subject to this Article, is also subject to article 9 of chapter [408 (financial services loan act), chapter 409 (small loan act),] 412

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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 29. Section 514A-95, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) Every managing agent shall:
- (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 article 8 of chapter [406;] 412;
 - (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 managing agent against the loss of any association money, securities, or other property caused by the fraudulent or dishonest acts of employees of the managing agent. 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, or permit deductibles;
 - (4) Act promptly and diligently to recover from the bond, if the fraud or dishonesty of the managing agent's employees causes a loss to an association, and apply the bond proceeds, if any, to reduce the association's loss. If more than one association suffers a loss, the managing agent shall divide the proceeds among the associations in proportion to each association's loss. An association may request a court order requiring the managing agent to act promptly and diligently to recover from the bond. If an association cannot recover its loss from the bond proceeds of the managing agent, the association may recover by court order from the real estate recovery fund established under section 467-16, provided that:
 - (A) The loss is caused by the fraud, misrepresentation, or deceit of the managing agent or its employees;
 - (B) The managing agent is a licensed real estate broker; and
 - (C) The association fulfills the requirements of sections 467-16 and 467-18 and any applicable rules of the commission; and
 - (5) Pay an application fee and, upon approval, an initial registration fee 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(o) and the rules adopted pursuant thereto."

SECTION 30. Section 514A-97, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

- "(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 article 8 of chapter [406;] 412; 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."

SECTION 31. Section 514A-106, Hawaii Revised Statutes, is amended to read as follows:

"§514A-106 Financial institutions and escrow companies, obligations. Any person subject to chapter [403, 407, 408, 410,] 412 or 454, or who is subject to any other law for the purpose of lending money upon the security of real property shall:

- (1) Within forty-five days after receipt of an application for credit from any individual for the purpose of purchasing a residential unit designated for owner-occupants under this part, notify the applicant of the action on the application; and
- (2) Prior to making any commitment to extend credit to any individual for the purpose of purchasing a residential unit designated for owner-occupants under this part, take all reasonable steps necessary to determine that the individual, in fact, intends to become an owner-occupant of such residential unit."

SECTION 32. Section 516-40, Hawaii Revised Statutes, is amended to read as follows:

"§516-40 Bonds as legal investments. The State and all of its public officers, municipal corporations, political subdivisions, and public bodies, all banks, bankers, trust companies, savings banks and institutions, including savings and loan associations, all investment companies, insurance companies, insurance associations, and other persons carrying on an insurance business in the State, and all personal representatives, guardians, trustees, and other fiduciaries in the State may legally invest moneys or funds belonging to them or within their control and available for investment under other provisions of law, in any bonds or other obligations issued by the housing finance and development corporation under this part, and such bonds and other obligations of the corporation shall be authorized security for all public deposits and shall be fully negotiable in the State. It is the purpose of this section to authorize any of the foregoing to use any funds owned or controlled by them, including (but not limited to) sinking, insurance, investments, retirement, compensation, pension, and trust funds and funds held on deposit, for the purchase of any such bonds or other obligations; provided that nothing contained in this section shall operate to relieve any person, firm, or corporation from liability for failure to exercise reasonable care in selecting investments or, in the case of a guardian or trustee, from liability for failure to exercise the judgment and care to observe the duties required of a guardian or trustee by [sections 406-22] article 8 of chapter 412 and section 554-6."

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SECTION 33. Section 554-6, Hawaii Revised Statutes, is amended to read as follows:

“§554-6 Investments. Every trustee, other than a trust company acting as such, except inssofar as the terms of the instrument or words creating or defining the trust specifically provide otherwise, or unless it is otherwise ordered by the court, which order may be made on an ex parte hearing, shall invest the funds of the trust only in the investments authorized in the cases of trust companies acting as trustees under [section 406-22.] article 8 of chapter 412, and with respect to all investments and the security for the same every such trustee shall have and be subject to the same rights, powers, privileges, duties, obligations, and responsibilities as would apply to trust companies acting as trustees as to similar investments and the security for the same under [section 406-22.] article 8 of chapter 412. Nothing in this section shall be deemed to authorize any trustee other than a trust company to issue participation certificates or notes. Any investment made by any such trustee under order by the court made on an ex parte hearing or otherwise may be held during the life of the trust or lesser period unless the terms of the instrument or words creating or defining the trust or the terms of the order of the court or of any subsequent order of the court specifically provide otherwise.”

SECTION 34. Section 560:3-601, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If a proposed personal representative under (a)(2) above is not either a trust company [qualified] chartered under article 8 of chapter [406] 412 or a bank with authority to engage in trust business [under section 403-33], the registrar or the court shall determine whether or not the proposed personal representative of the estate has the experience and capacity to effectively serve as a personal representative, and whether or not the character, financial responsibility, and general fitness of the officers and the directors of the proposed personal representative are such as to command the confidence of the community and warrant the belief that the office of personal representative will be honestly and efficiently managed. If the registrar or the court determines that the proposed personal representative is so experienced and capable and its personnel does possess such qualities, the registrar or the court shall appoint the corporation as personal representative conditioned upon the posting of a bond under Part 6 in such amount as seems prudent under the circumstances of the estate.”

SECTION 35. Section 10(1) of Act 106, Session Laws of Hawaii 1992, is amended by amending the definition of “trust company” to read as follows:

““Trust company” means a corporation or joint stock company authorized to conduct business as a trust company under article 8 of chapter [406.] 412.”

SECTION 36. All acts passed by the legislature during this Regular Session of 1993, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act unless such acts specifically provide that this Act is being amended.

SECTION 37. This Act shall not affect rights and duties that matured, penalties that were incurred, proceedings that were begun, applications that were filed, and the validity of any extension of credit or other transaction lawfully entered into, on or before its effective date.

SECTION 38. Except as otherwise expressly set forth in section 412:2-512, 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 39. Chapters 401, 402, 403, 404, 405, 405A, 405D, 406, 407, 408, 409, 410, and 411, Hawaii Revised Statutes, are repealed.

SECTION 40. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 41. This Act shall take effect July 1, 1993.

(Approved July 1, 1993.)

Notes

1. So in original.
2. Should be underscored.

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H.B. NO. 2010

A Bill for an Act Relating to the Hawaiian Home Lands Trust Individual Claims Review Panel.

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

SECTION 1. Section 674-1, Hawaii Revised Statutes, is amended to read as follows:

"[I]§674-1[] Purpose. The purpose of this chapter is to establish a process under which individual beneficiaries under the Hawaiian home lands trust may resolve claims for actual damages arising out of or resulting from a breach of trust, which occurred between August 21, 1959, and June 30, 1988, and was caused by an act or omission of an employee of the [state] State in the management and disposition of trust resources:

- (1) By establishing a Hawaiian home lands trust individual claims review panel which shall:
 - (A) Receive, review, and evaluate the merits of an individual beneficiary's claim;
 - (B) Render findings and issue an advisory opinion regarding the merits of each claim filed with the panel, including an estimate of the probable award of actual damages or recommended corrective action that may be implemented to resolve each claim;
 - (C) Prepare and transmit a report to the governor and legislature, at least twenty days prior to the convening of [the 1993 legislature in regular] each regular legislative session, and a final report, at least twenty days prior to the convening of the [1994 legislature in regular] 1997 regular legislative session, on the activities of the panel including a summary of each claim brought before the panel, the panel's findings and advisory opinion regarding the merits of each claim, and an estimate of the probable compensation or any recommended corrective action for [legislation] legislative action;

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- (D) Disburse any compensation awarded by the [1993 and 1994 legislatures] legislature in regular session or undertake [such] other [action] actions as provided by law which [is] are acceptable to a claimant; and
- (2) By providing an individual beneficiary claimant the right to bring an action to recover actual damages for a breach of trust, in the circuit courts of the State of Hawaii, if the action taken by the [1993 and 1994 legislatures] legislature in regular session on each claim brought before the panel is not acceptable to an individual beneficiary claimant."

SECTION 2. Section 674-4, Hawaii Revised Statutes, is amended to read as follows:

"[§674-4]] Tenure and compensation of members. The term of office of each member of the panel shall be until December 30, [1995.] 1997. Any member appointed to fill a vacancy shall be appointed by the governor for the remainder of the term. A vacancy in the panel shall not affect its powers.

Each member of the panel shall be compensated at the rate of \$100 per day for each day's actual attendance to the member's duties; provided that the compensation shall not exceed a maximum of \$10,000 per year. The members of the panel shall be paid their necessary traveling and subsistence expenses incurred in the discharge of their duties. [Such costs will] Expenses incurred under this section shall be paid by the department of commerce and consumer affairs."

SECTION 3. Section 674-5, Hawaii Revised Statutes, is amended by amending subsection (a) and (b) to read as follows:

"(a) Supervisory, administrative, investigatory, hearings, and clerical personnel necessary for the efficient functioning of the panel shall be appointed by the panel and the director of [the department of] commerce and consumer affairs on a temporary exempt basis. There shall be a special assistant to the chairperson of the Hawaiian homes commission, to be hired by the commission, for the purposes of this chapter.

(b) Upon application by a claimant, the panel, under appropriate circumstances and in accordance with section 103-3, may [retain and] provide for legal services to assist a claimant in the preparation and presentation of a claim for review by the panel under this chapter."

SECTION 4. Section 674-6, Hawaii Revised Statutes, is amended to read as follows:

"[§674-6]] Rulemaking powers. The panel shall adopt rules in accordance with chapter 91 [within six months after the effective date of this chapter] prescribing the procedures to be followed in the filing of claims and in the proceedings for review of claims under this chapter, and [such] any other rules as the panel deems necessary to carry out the purposes of this chapter."

SECTION 5. Section 674-7, Hawaii Revised Statutes, is amended to read as follows:

"[§674-7]] Review by panel required. Any individual beneficiary under the trust claiming actual damages arising out of or resulting from a breach of trust, which occurred between August 21, 1959, and June 30, 1988, and which was

caused by an act or omission of an employee of the State in the management and disposition of trust resources under the trust, shall file a claim therefor for review by the panel no later than August 31, [1993,] 1995, or shall forever be barred."

SECTION 6. Section 674-9, Hawaii Revised Statutes, is amended to read as follows:

"[§674-9] Panel hearing or review proceedings; fact-finding; evidence. No persons other than the panel or hearings officer, the claimant, representatives of the concerned state agency, legal counsel, witnesses, and persons called by the panel to assist in its review, shall be present during any hearing or other proceedings conducted by the panel, except with the permission of the chairperson. For every claim filed, the department shall be notified and shall be entitled to be present during any hearing or other proceeding conducted by the panel. The panel may, in its discretion, conduct an inquiry of a party, witness, or any other person without the presence of any or all parties.

All proceedings shall be informal. Except as otherwise provided in this chapter, chapters 91 and 92 shall not apply. For the purpose of this chapter, the panel shall prepare a record of each claim. The record shall include:

- (1) All correspondence, pleadings, motions, and rulings;
- (2) Evidence received or considered, including oral or written testimony, exhibits, and a statement of any matters officially noticed;
- (3) Offers of proof and rulings thereon;
- (4) Proposed findings and exceptions;
- (5) Staff memoranda,¹ including investigative reports, submitted to members of the panel in connection with their review of the claim;
- (6) Recommended or proposed findings of the hearings officer who presided at the hearing; and
- (7) The panel findings and advisory opinion.

No matters outside the record shall be considered by the panel in reviewing and evaluating a claim. Unless otherwise provided by chapter 92F, the record of each claim shall be public and open for public inspection, except that staff memoranda, including investigative reports, shall be confidential and shall be made public only after a hearing has been held on the claim pursuant to the panel's rules. At the discretion of the panel, staff memoranda, including investigative reports, may be disclosed to the parties prior to a hearing on the claim. Any party to whom a staff memorandum or investigative report is disclosed shall maintain its confidentiality and may make public its contents only after a hearing has been held on the claim.

The panel may require a stenographic record of all or part of its proceedings for the use of the panel, but [such] the stenographic record shall not be made available to the parties. The panel may receive any oral or documentary evidence, or any matter that, in the opinion of the panel, may contribute to its function under this chapter, whether or not [such] the statement, document, information or matter would be admissible in a court of law. Questioning of parties, and witnesses 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 other persons appearing before the panel. Discovery by the parties shall not be allowed."

SECTION 7. Section 674-10, Hawaii Revised Statutes, is amended to read as follows:

"[§674-10] Findings and advisory opinion. (a) The panel shall prepare findings and an advisory opinion concerning the probable merits of a claim, probable award of compensation, or recommended corrective action by the State.

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(b) The findings and advisory opinion shall be signed by all members of the panel; provided that any member of the panel may file a written concurring or dissenting advisory opinion.

(c) The advisory opinion of the panel rendered on each claim shall be incorporated in the reports required by section 674-14 for submission [prior to the closing of the 1993 and 1994 legislatures.] to the legislature.”

SECTION 8. Section 674-11, Hawaii Revised Statutes, is amended to read as follows:

“[§674-11[]] Subsequent litigation; excluded evidence. No statement made in the course of any investigation, hearing, or review proceedings of the panel shall be admissible in evidence either as an admission, to impeach the credibility of a witness, or for any other purpose in any legal proceeding. No opinion, conclusion, finding, or recommendation of the panel on the issue of liability, or on the issue of compensation, or corrective action shall be admitted into evidence in any legal proceeding, nor shall any party to the panel hearing, or the counsel, or other representative of [such] the party, refer to or comment thereon in any opening statement, any argument, or at any other time, to any court or jury.”

SECTION 9. Section 674-14, Hawaii Revised Statutes, is amended to read as follows:

“[§674-14[]] Annual report. The panel shall prepare a report to be transmitted to the governor and to the legislature, at least twenty days prior to the convening of [the 1993 legislature in regular] each regular legislative session, and a final report to be transmitted to the governor and to the legislature, at least twenty days prior to the convening of the [1994 legislature in regular] 1997 regular legislative session, which summarizes its activities in furtherance of this chapter, and shall include a summary of each claim brought before the panel, the panel's findings and advisory opinion regarding the merits of each claim, and an estimate of the probable compensation or recommended corrective action by the State, for action by the [1993 and 1994 legislatures] legislature in regular session.”

SECTION 10. Section 674-16, Hawaii Revised Statutes, is amended to read as follows:

“[§674-16[]] Waiver of immunity. (a) The State waives its immunity from liability for actual damages suffered by an individual beneficiary arising out of or resulting from a breach of trust or fiduciary duty, which occurred between August 21, 1959, to June 30, 1988, and was caused by an act or omission of an employee of the State in the management and disposition of trust resources.

(b) This waiver shall not apply to the following:

- (1) Any claim for which a remedy was or is provided elsewhere in or under the laws of the State;
- (2) Any claim which was or is the subject of prior or pending litigation; or
- (3) Any claim predicated, in whole or in part, upon any act or omission which occurred prior to August 21, 1959.”

SECTION 11. Section 674-17, Hawaii Revised Statutes, is amended to read as follows:

“[§674-17[]] Right to sue, individual claims. (a) An aggrieved individual claimant shall have the right to bring an action, in accordance with this part, in

the circuit courts of the State for recovery of actual damages suffered by the claimant arising out of or resulting from a breach of trust which occurred between August 21, 1959, to June 30, 1988; provided that no action shall be filed until after October 1, [1994.] 1997.

(b) "Aggrieved individual claimant", as used in this section, means an individual claimant whose claim was reviewed by the panel under this chapter and who has filed, no later than October 1, [1994.] 1997, a written notice with the panel that the claimant does not accept the action taken by the [1993 or 1994 legislatures] legislature in regular session upon [such] the claim. Any claimant who fails to file a written notice rejecting the action of the legislature upon the claim shall be deemed to have accepted the action taken by the legislature."

SECTION 12. Section 674-19, Hawaii Revised Statutes, is amended to read as follows:

"[[§674-19]] Limitation on actions. Every claim cognizable under this part shall forever be barred unless the action is commenced by September 30, [1996.] 1999."

SECTION 13. Section 674-20, Hawaii Revised Statutes, is amended to read as follows:

"[[§674-20]] No implied liability or award. In no case shall any liability be implied against the State, and no award shall be made against the State on any claim brought under this [chapter] part except upon [such] legal evidence [as] that would establish liability against an individual or corporation."

SECTION 14. Section 674-21, Hawaii Revised Statutes, is amended to read as follows:

"[[§674-21]] Attorney's fees and costs. In any action brought under this [chapter,] part, the court may, as it deems just, award to a prevailing claimant and enter as part of its order or judgment, a reasonable sum for costs and expenses incurred, including reasonable attorney's fees."

SECTION 15. There is appropriated out of the general revenues of the State of Hawaii the sum of \$797,799, or so much thereof as may be necessary for fiscal year 1993-1994, for the administration of this Act.

The sums appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 16. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 17. This Act shall take effect upon its approval; provided that section 15 shall take effect on July 1, 1993.

(Approved July 1, 1993.)

Note

1. Comma should be underscored.

A Bill for an Act Relating to Hawaiian Home Lands.

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

SECTION 1. The legislature finds that when the United States Congress passed the Hawaiian Homes Commission Act and set aside approximately 203,000 acres of public lands as Hawaiian home lands for the rehabilitation of native Hawaiians, the United States reaffirmed the trust responsibility it had assumed towards the Hawaiian people.

The legislature also finds that, in contravention of the Hawaiian Homes Commission Act, many thousands of acres of Hawaiian home lands have been withdrawn from the trust by territorial and state executive actions. Other trust lands have been taken or held by government agencies or private entities with no record of transactions, formal conveyances, or compensation. Trust lands were also exchanged for lands of lesser value and other trust lands were leased for nominal rents. While the vast majority of these violations occurred before statehood, various agencies or private parties continued to use trust lands after statehood.

The legislature finds that restoring those lands to the trust or exchanging them for lands of equal value and compensating the trust for the State's past use of the lands:

- (1) Is in accord with the State's responsibility under Hawaii's Admission Act;
- (2) Serves to strengthen the trust; and
- (3) Will better enable the department of Hawaiian home lands and the department's executive board, the Hawaiian homes commission, to accomplish the department's goal of accelerating the settlement of native Hawaiians on Hawaiian home lands.

The legislature further finds that it is the responsibility of the State, as trustee of Hawaiian home lands, to pursue claims against the federal government for those actions that originated under the auspices of the federal government and its agent, the Territory of Hawaii.

SECTION 2. The purposes of this Act are to:

- (1) Appropriate funds and provide additional means necessary to remedy the State's past wrongful, improper, or unauthorized withdrawals, transfers, takings, or uses of Hawaiian home lands between August 21, 1959, and the present;
- (2) Authorize the State to pursue claims against the United States for the federal government's wrongful, improper, and unauthorized uses, transfers, or takings of Hawaiian home lands; and
- (3) Authorize the State to initiate land exchanges to resolve wrongful transfers and grants of Hawaiian home lands, otherwise known as alienations, to non-government entities.

SECTION 3. Act 316, Session Laws of Hawaii 1992, is amended by amending section 4 to read as follows:

"**SECTION 4.** There is appropriated out of the general revenues of the State of Hawaii the sum of \$12,000,000, or so much thereof as may be necessary for fiscal year 1992-1993, for the purpose of paying compensation for the State's uncompensated use of Hawaiian home lands since August 21, 1959, including the use of these lands under governors' executive orders and proclamations[.], but the

unexpended and unencumbered balance of the appropriated sum shall not lapse until the close of business on June 30, 1994. The sum appropriated shall be expended by the department of budget and finance upon certification by the office of state planning that a wrongful use has been verified. Compensation may be paid [throughout fiscal year 1992-1993,] as claims are verified and the amounts of compensation owed are determined. The office of state planning may adopt rules pursuant to chapter 91, Hawaii Revised Statutes, as may be necessary for the purposes of this section."

SECTION 4. Section 5, Act 316, Session Laws of Hawaii 1992, is amended by amending subsection (b) to read as follows:

"(b) The department of Hawaiian home lands may purchase parcels of public land until December 31, [1993.] 1994. Notwithstanding any law to the contrary, the department of land and natural resources shall convey by quitclaim deed, with the prior concurrence of the office of state planning, the parcels of land purchased by the department of Hawaiian home lands."

SECTION 5. (a) The office of the governor is authorized to present proposals to the legislature to resolve claims against the State of Hawaii for breaches of the Hawaiian home lands trust. The governor shall consult with a court-appointed independent representative of the beneficiaries of the Hawaiian home lands trust. In this process, the independent representative shall be deemed to be the sole representative of the beneficiary class. Actions of the independent representative are binding on the class of beneficiaries. The independent representative, when appointed, shall participate in pending non-judicial proceedings to resolve claims against the State with the Hawaiian homes commission and other administrative agencies which have a role in the resolution until:

- (1) The Hawaiian home lands trust corpus and its assets are transferred by the State to a sovereign, native Hawaiian entity upon its recognition by the United States government and the State;
- (2) The Hawaiian homes commission members are selected by their beneficiaries; or
- (3) December 1, 1994.

The office of the governor and the department of budget and finance shall submit a report on the actions taken to resolve the claims brought forth by the department of Hawaiian home lands and the final amount of compensation due to the department of Hawaiian home lands to the legislature at least twenty days prior to the convening of the regular session of 1994. The independent representative may also submit, if necessary, findings and recommendations to the legislature at least twenty days prior to the convening of the regular session of 1994.

(b) 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 1993-1994, for the purpose of paying the independent representative and any additional services that may be required.

The sum appropriated shall be expended by the department of the attorney general.

SECTION 6. In accordance with section 204(a)(3) of the Hawaiian Homes Commission Act, the State and the department of Hawaiian home lands may exchange lands previously alienated from the Hawaiian home lands trust for lands of equal value. The exchanges are subject to the consent and approval of the Secretary of the United States Department of the Interior. The State may provide

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additional compensation to the department of Hawaiian home lands in the form of additional land for Hawaiian home lands previously alienated from the trust.

SECTION 7. The department of the attorney general, the department of Hawaiian home lands, and the office of state planning are authorized to pursue Hawaiian home lands trust claims against the federal government. In these endeavors, the department of the attorney general, the department of Hawaiian home lands, and the office of state planning shall consult with the independent representative authorized in section 5 of this Act.

SECTION 8. (a) The department of land and natural resources is authorized to convey public lands to the department of Hawaiian home lands in full or partial satisfaction of the past rent due to the department of Hawaiian home lands to implement the purposes of this Act.

(b) The department of Hawaiian home lands may use the amounts appropriated in section 3 of this Act in payment for or credit towards the acquisition of public lands.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$475,000, or so much thereof as may be necessary for fiscal year 1993-1994, to assist the state task force on department of Hawaiian home lands title and related claims in preparing the remaining claims package for submission to the legislature in 1994.

The sum appropriated shall be expended by the office of state planning.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$350,000, or so much thereof as may be necessary for fiscal year 1993-1994, to continue the pursuit of Hawaiian home lands trust claims against the federal government.

The sum appropriated shall be expended by the department of the attorney general.

SECTION 11. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 12. Session law material to be repealed is bracketed. New session law material is underscored.

SECTION 13. This Act shall take effect upon its approval; except that section 5(b) and sections 9 and 10 shall take effect on July 1, 1993.

(Approved July 1, 1993.)

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H.B. NO. 2060

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 education is an important part of the daily lives of the citizens of Hawaii and, in particular, of our young people.

Schools, libraries, and open space are essential elements of a residential community and should exist in harmony with the surrounding community. Where resources are readily available to accommodate public facilities, it is in the best interest of all citizens to promote cooperative and shared resources among various public agencies.

SECTION 2. The department of education and the University of Hawaii shall develop a cooperative agreement on the eventual construction of a new Manoa district library not to exceed 23,000 square feet in area, and to be located on the property of the University of Hawaii currently used as a parking lot and the present library site, subject to the condition that no existing University of Hawaii buildings shall be displaced or relocated as a result of this plan. The plan shall provide for adequate parking for the University of Hawaii.

SECTION 3. The chairperson of the board of education, the president of the University of Hawaii, and the chairperson of the University of Hawaii board of regents shall submit a report to the Legislature on the status of the cooperative planning effort no later than 20 days prior to the convening of the Regular Session of 1994.

SECTION 4. If a lease to the property described in Section 2, an exchange arrangement, or both, is deemed necessary for the accomplishment of the construction of the library facility, an agreement shall be prepared and submitted to the board of regents. The lease agreement shall be valid as long as the property is used as a library, and the rent charged under any lease agreement shall not exceed an amount of \$1 per year. All costs necessary for the preparation, processing, and recording of any agreement shall be the responsibility of the department of education.

SECTION 5. Upon termination of any lease agreement, all improvements shall become the property of the University of Hawaii.

SECTION 6. This Act shall take effect on July 1, 1993.

(Approved July 1, 1993.)

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H.B. NO. 2098

A Bill for an Act Relating to Hawaiian Sovereignty.

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

SECTION 1. On January 16, 1893, John L. Stevens, American minister in Hawaii and friend of those supporting the annexation of Hawaii to the United States, ordered the United States marines to invade Honolulu under the pretext of protecting American citizens and their property. Stevens thereafter recognized a new provisional government even before Queen Liliuokalani surrendered. The actions by the annexationists were condemned by President Cleveland's special envoy and the President himself. When President Cleveland refused to submit a treaty of annexation to the Senate, the new provisional government established the Republic of Hawaii which lasted until annexation in 1898. Sixty-one years later, Hawaii became a state.

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Until the provisional government was recognized by John L. Stevens, the Kingdom of Hawaii was recognized as an independent nation by the United States, France, and Great Britain. Many native Hawaiians and others view the overthrow of 1893 and subsequent actions by the United States, such as supporting establishment of the provisional government and later the Republic of Hawaii, the designation of the crown and government lands as public lands, annexation, and the ceding of public lands to the federal government without the consent of native Hawaiians, as illegal. Because the actions taken by the United States were viewed as illegal and done without the consent of native Hawaiians, many native Hawaiians feel there is a valid legal claim for reparations. Many native Hawaiians believe that the lands taken without their consent should be returned and if not, monetary reparations made, and that they should have the right to sovereignty, or the right to self-determination and self-government as do other native American peoples.

The legislature has also acknowledged that the actions by the United States were illegal and immoral, and pledges its continued support to the native Hawaiian community by taking steps to promote the restoration of the rights and dignity of native Hawaiians. The purpose of this Act is to provide funding for resources to educate the general public about Hawaiian sovereignty.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000, or so much thereof as may be necessary for fiscal year 1993-1994, for the development of programs and curriculum to educate the general public about Hawaiian sovereignty; provided that these education programs and curriculum are developed through a purchase of service contract with Hui Na'aauo.

SECTION 3. The sum appropriated shall be expended by the office of Hawaiian affairs for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1993.

(Approved July 1, 1993.)

ACT 355

S.B. NO. 336

A Bill for an Act Making an Appropriation for High School Athletics.

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 \$371,000 or so much thereof as may be necessary for fiscal year 1993-1994, and the sum of \$371,000, or so much thereof as may be necessary for fiscal year 1994-1995, to establish a pilot program to place ten full-time athletic trainers in the public high schools.

SECTION 2. For the purposes of the pilot program, athletic trainers shall provide basic first aid training to coaches, assistant coaches, and other school personnel who may be involved in student athletics.

SECTION 3. The sums appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1993.

(Approved July 1, 1993.)

ACT 356

S.B. NO. 539

A Bill for an Act Relating to Human Services.

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

SECTION 1. Act 329, Session Laws of Hawaii 1990, as amended by Act 188, Session Laws of Hawaii 1992, is amended as follows:

1. By amending section 3 to read:

“SECTION 3. (a) Effective July 1, 1990, to June 30, [1993] 1995, there is established a five-year demonstration project, known as the family center demonstration project, to be conducted by the department of human services. Under this project, the department shall be responsible for the planning, implementation, and establishment of family centers.

For the purpose of this Act, “family” means the family as an enduring personal support system with the functions of nurturing, caring for, and educating children, youths, adults, and the elderly.

(b) There is established the family center council for the purpose of planning and implementing the establishment and development of the family center demonstration project. The council shall be appointed by the governor and consist of representatives from the public and private sectors of the community.

The council’s duties shall include but not be limited to the development of a plan to make the family center demonstration project permanent. This plan shall focus on implementation of a permanent family center project in 1995 and shall, at minimum, address and make recommendations on the following:

- (1) The continuance of the family center project;
- (2) The development of an administrative structure promoting family center concepts;
- (3) The development of a funding structure promoting collaboration and integration between agencies, both public and private, and with the different sectors of the community;
- (4) The incorporation of training components and community action;
- (5) The provision of technical assistance to communities, agencies, and interested community members relating to the development of family centers;
- (6) The development of an evaluation and assessment component which includes, but is not limited to, the review, assessment, and development of project methodology and process, and the evaluation of project results and accomplishments;
- (7) The development of a process by which family centers are allocated resources;
- (8) The development of a process by which family center sites are selected; and
- (9) The preparation of a projected budget for the expenditures required to continue or to expand the family center project.

(c) The purpose of the family center demonstration project shall be to coordinate the provision of core services to families at community-based centers to

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develop each community's capacity to identify and resolve its problems. Each center shall be responsive to its community and involve its participants as equal partners in program development and execution. Accordingly, each center shall be advised by a community liaison committee which shall be composed of community members.

Each family center shall offer an array of services tailored to the specific needs of its constituents. Services shall be developed pursuant to family support principles which direct that services must:

- (1) Be offered at convenient times in accessible locations;
- (2) Build on strengths, rather than search for deficits;
- (3) Involve participants and the community in planning and implementation;
- (4) Show respect for participants;
- (5) Serve the best interests of children;
- (6) Strengthen families;
- (7) Be presented in coordination with other agencies and services in the community; and
- (8) Focus on community strengthening and development.

No single service shall overshadow the others, and services shall be provided in a coordinated manner. Because some services will be provided directly by the centers and other services will be provided by other agencies, the centers, with input from parent constituents, shall develop a service plan, using a systems management approach, for the provision of services. The staff of each center shall be responsible for ensuring that all components of the service plan are carried out. This may require interventions on the part of the staff, including but not limited to: [accompanying]

- (1) Accompanying parents to appointments with other agencies; [advocating]
- (2) Advocating on behalf of parents; [reminding]
- (3) Reminding parents of appointments with other agencies; and [providing]
- (4) Providing short-term counseling to parents concerning referrals for services.

Each family center shall consider the following services, activities, and components when developing its core services:

- (1) Enhancement of parenting skills, including community-or neighborhood-wide events and activities which promote family relationships in a positive and enjoyable manner;
- (2) Infant and child stimulation activities to maximize child growth and development;
- (3) Outreach services targeted at community organizations, families, youth, and others to ensure community awareness, acceptance, and participation;
- (4) Health care, family planning, counseling, and other services to avoid unwanted pregnancies;
- (5) Assessment and treatment planning for developmental problems of the parent or the child;
- (6) Temporary developmental child care for the offspring of parents receiving services on-site;
- (7) Peer support activities, including recreational and social activities;
- (8) Educational services, such as post-high school classes and instruction to those attempting to earn general equivalency diplomas; and
- (9) Job preparation and skill development services to assist young parents in preparing for, securing, and maintaining employment.

(d) After conferring with the family center council, the director of human services may:

- (1) Enter into agreements with the federal government, [other] state departments and agencies, and the counties;
- (2) Enter into assistance agreements with private persons, groups, institutions, or corporations;
- (3) Purchase services required or appropriate under this Act from any private persons, groups, institutions, or corporations;
- (4) Allocate and expend any resources available for the purposes of this Act; and
- (5) Do all things necessary to accomplish the purposes and provisions of this Act.

(e) An evaluation component shall be required for the family centers, [which includes] that shall include, but [is] not be limited to, the following areas:

- (1) Descriptive data on client status;
- (2) Program utilization data;
- (3) Profiles of participants;
- (4) Intervention plans; [and]
- (5) Participant and community satisfaction ratings[.];
- (6) Information pertaining to the lessons learned from operating under family center concepts; and
- (7) Information pertaining to whether the family center project has changed the human services system, why each change occurred, and, if applicable, why expected changes did not occur.

The department of human services may utilize a portion of the funds available to conduct evaluations of the family centers.

(f) A training and technical assistance component shall be required for the family centers, [which includes] that shall include, but [is] not be limited to, the following:

- (1) Conducting training sessions for family center directors, staff, and liaison committee members to promote strengthening families within the community;
- (2) Conducting community development sessions for local communities;
- (3) Conducting community forums to describe the asset model and philosophy of family centers to private businesses, government agencies, and nonprofit agencies;
- (4) Providing technical assistance to community groups relating to the development of community capacity to address community problems through family centers;
- (5) Providing technical assistance to applicants for family centers in addressing collaboration with existing services within the community; and
- (6) Conducting periodic sessions with family center directors to address on-going networking requirements and to share solutions in addressing community problems.

The department of human services may utilize a portion of the funds available to conduct training sessions and provide technical assistance in developing and promoting family centers."

2. By amending section 4 to read:

"SECTION 4. The legislative reference bureau, in consultation with the department of human services shall monitor and evaluate the demonstration project and shall submit a [status] preliminary evaluation report on its findings to the

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legislature at least twenty days prior to the convening of the regular [sessions of 1991 and 1992,] session of 1994, and a final evaluation report on its findings to the legislature at least twenty days prior to the convening of the regular session of [1993. Status] 1995. Preliminary and final evaluation reports shall include but not be limited to:

- (1) A descriptive summary of the operation of the family centers, including the services provided and a copy of the service plan developed by the centers; the number of recipients of services at the centers; the allocation of funds; staffing information; and the role and responsibility of the community family center liaison committees;
- (2) An assessment of the impact of the centers upon the communities served;
- (3) The composition and role of the family centers;
- (4) Recommendations regarding the continuance of the family center demonstration project and plans for the implementation of other project sites;
- (5) Recommendations regarding the process by which family centers are allocated resources;
- (6) A projected budget for the expenditures required to continue or to expand the demonstration project; and
- (7) Proposals for legislation necessary to facilitate the continuation or expansion of the demonstration project.”

3. By amending section 8 to read:

“SECTION 8. This Act shall take effect upon its approval; provided that sections 5 and 7 shall take effect on July 1, 1990; provided further that sections 1, 3, and 4 shall be repealed on July 1, [1993.] 1995.”

SECTION 2. Section 346-53, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The standard of need for families of given sizes shall equal the poverty level established by the federal government[,] in 1993, 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, 1989, the] 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.] The standard of need shall be determined by dividing the 1993 federal poverty level by twelve and rounding down the quotient. The remaining quotient shall be multiplied by sixty-two and one-half per cent and the final product shall be rounded down to determine the assistance allowance.”

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 July 1, 1993.)

ACT 357

S.B. NO. 920

A Bill for an Act Relating to the Employees' Retirement System.

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

SECTION 1. Chapter 88, Hawaii Revised Statutes, is amended:

1. By adding a new definition to section 88-21 to be appropriately inserted and to read as follows:

"Water safety officer": any regularly employed member of any county of the State whose principal duty is to stand guard over the beaches of the State and counties to ensure the safety of individuals thereon."

2. By amending section 88-45 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, 1989, all firefighters, police officers, corrections officers, investigators of the departments of the prosecuting attorney and of the attorney general, [and] narcotics enforcement investigators, and water safety officers shall contribute twelve and two-tenths per cent of their compensation to the annuity savings fund for service in that capacity.”

3. By amending section 88-47 to read as follows:

“§88-47 Membership. (a) 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, water safety officers, 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] This class 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[.]; and
- (3) Except for 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, [and] narcotics enforcement investigators, and water safety officers, 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)] (b) None of the provisions of this part shall apply to class C members except as specifically provided in part VII."

4. By amending section 88-74 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:
 - (A) 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, police officer, or an investigator of the department of the prosecuting attorney;
 - (B) 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;
 - (C) 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;
 - (D) 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; [and]
 - (E) After June 30, 1992, if the member has at least ten years of credited service, a part of which is credited as a corrections officer or narcotics enforcement investigator; provided the member is employed with the department of public safety, is promoted or accepts a position as a public safety internal affairs investigator, and retires from that department; and
 - (F) After December 31, 1993, 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 water safety officer:

then for each year of service as a firefighter, [a] police officer, [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, or water safety officer, the retirement allowance shall be two and one-half per cent of the member's average final compensation. The maximum retirement allowance for [such a member] those members 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, or water safety officer, 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] that is the actuarial equivalent of [such] the additional contributions with regular interest; or
- (3) If the member has credited service as a judge, an elective officer, or the chief clerk, assistant clerk, sergeant at arms, or assistant 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, assistant clerk, sergeant at arms, or assistant 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] that 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] the 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,] paragraph, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of [such] the member's average final compensation."

SECTION 2. (a) All water safety officers of any county of the State shall be designated class A members of the employees' retirement system as of December 31, 1993.

(b) Water safety officers who are class C members shall have the option of converting their class C water safety officer service to class A. All water safety officers who are class C members, shall file an election form with the board of trustees by December 1, 1993, and arrange for additional deductions or lump sum payments pursuant to sections 88-45 and 88-59, Hawaii Revised Statutes, to commence by July 1, 1994.

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

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

(Approved July 1, 1993.)

ACT 358

S.B. NO. 1027

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. The legislature finds that, in accordance with Act 318, Session Laws of Hawaii 1992, an advisory commission on the compensation for the members of the board of trustees for the office of Hawaiian affairs was appointed by the governor to study and to make recommendations to the legislature on the matter of compensation for board members. The members of the advisory commission were selected from nominations submitted by native Hawaiian organizations.

The legislature further finds that the needs and priorities of the Hawaiian community have expanded and changed since the 1978 constitutional convention. The legislature also finds that the office of Hawaiian affairs itself has undergone tremendous expansion.

The legislature believes that it is beneficial to provide a salary to the members of the board of trustees so that they may better concentrate on meeting the needs of their beneficiaries.

SECTION 2. Chapter 10, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§10- Audit and report. The auditor shall conduct an audit of the office at least once every four years and shall submit a report on findings and recommendations to the governor and the legislature on or before the convening of the next immediate legislative session. The first audit report shall be submitted no later than January 15, 1996.

§10- Salary commission; established. (a) There is established a salary commission for the members of the board of trustees for the office of Hawaiian affairs. The salary commission shall consist of seven members appointed by the governor on or before November 30, 1996, and every four years thereafter. The members of the salary commission shall be selected from nominations submitted by native Hawaiian organizations as defined in section 673-2(c). The members shall serve without compensation, but shall be entitled to reimbursement for necessary expenses while in the discharge of their duties and responsibilities.

(b) Before the fortieth legislative day of the 1997 regular session and every four years thereafter, the salary commission shall study and make recommendations for the salary of the members of the board of trustees for the office of Hawaiian affairs, and then shall be dissolved. The recommended salary shall be effective as of the date of the recommendations unless the legislature disapproves the recommendation by adoption of a concurrent resolution prior to adjournment sine die of the legislative session in which the recommendation is submitted.”

SECTION 3. Section 10-9, Hawaii Revised Statutes, is amended to read as follows:

"§10-9 [Compensation;] Salaries; benefit; expenses. Members of the board [shall be allowed]:

- (1) [Compensation at the rate of \$100 a day for each day's actual attendance at meeting;] Shall receive an annual salary which shall be paid:
 - (A) Exclusively from revenue under section 10-13.5; and
 - (B) In equal amounts, beginning with the first pay period for state employees in November of the year the member of the board is elected.

Effective July 1, 1993, and until the salary commission makes recommendations for salary, the salary of the chairperson of the board shall be \$37,000 a year and the salary of other members of the board shall be \$32,000 a year. Any provision of law to the contrary notwithstanding, all members of the board shall be included in any benefit program generally applicable to officers and employees of the State except for benefit programs relating to retirements;
- (2) [Transportation] Shall be allowed transportation fares between islands and abroad; and
- (3) [Personal] Shall be allowed 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] those board meetings or official business shall require a member to leave the island upon which the member resides[.]; and
- (4) Shall be allowed a protocol allowance to cover expenses incurred in the course of a member's duties and responsibilities."

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$146,500, or so much thereof as may be necessary for fiscal year 1993-1994, and the sum of \$146,500, or so much as may be necessary for fiscal year 1994-1995, to carry out the purposes of this Act; provided that no funds shall be made available under this Act unless the sums appropriated are matched by funds derived from the office of Hawaiian affairs' pro rata share of the revenues generated by the public land trust. The sums appropriated shall be expended by office of Hawaiian affairs.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval; provided that SECTION 4 shall take effect on July 1, 1993.

(Approved July 1, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Hawaiian Sovereignty.

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

SECTION 1. Findings. The legislature finds that:

- (1) Native Hawaiians are a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archi-

- pelago whose society was organized as a nation prior to the arrival of the first non-indigenous people in 1778;
- (2) At the time of the arrival of the first non-indigenous people in 1778, the native Hawaiian people lived in a highly-organized, self-sufficient, subsistence society based on a communal land tenure system with a sophisticated language, culture, and religion;
- (3) A unified monarchical government of the Hawaiian Islands was established in 1810, under Kamehameha I, the first King of Hawai‘i;
- (4) Throughout the 19th century and until 1893, the United States:
- (A) Recognized the independence of the Hawaiian Nation;
 - (B) Extended full and complete diplomatic recognition to the Hawaiian government; and
 - (C) Entered into treaties with the Hawaiian government to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;
- (5) In 1893, the United States Minister to the sovereign and independent Kingdom of Hawaii, John L. Stevens, conspired with a small group of non-Hawaiian residents of the Kingdom (including citizens of the United States) to overthrow the indigenous and lawful government of Hawaii;
- (6) In pursuit of that conspiracy, the United States Minister and the naval representative of the United States caused armed forces of the United States to invade the sovereign Hawaiian Nation in support of the overthrow of the indigenous and lawful government, and the United States Minister thereupon extended diplomatic recognition to a provisional government formed by the conspirators without the consent of the native Hawaiian people or the lawful Government of Hawaii in violation of treaties between the two nations and of international law;
- (7) On December 18, 1893, in a message to Congress, President Grover Cleveland reported fully and accurately on these illegal actions, and acknowledged that by these acts—described by the President as acts of war—the government of a peaceful and friendly people was overthrown and that a “substantial wrong has thus been done which a due regard for our national character was well as the rights of the injured people requires that we endeavor to repair”;
- (8) Queen Lili‘uokalani, the lawful monarch of Hawaii, and the Hawaiian Patriotic League, representing the aboriginal citizens of Hawaii, promptly petitioned the United States for redress of these wrongs and for restoration of the indigenous government of the Hawaiian Nation; however, this petition was not acted on; and
- (9) In 1898, Hawaii was annexed to the United States through the Newlands Resolution without the consent of or compensation to the indigenous people of Hawaii or their sovereign government. As a result, the indigenous people of Hawaii were denied the mechanism for expression of their inherent sovereignty through self-government and self-determination, their lands, and their ocean resources.

SECTION 2. Purpose. The purpose of this Act is to acknowledge and recognize the unique status the native Hawaiian people bear to the State of Hawaii and to the United States and to facilitate the efforts of native Hawaiians to be governed by an indigenous sovereign nation of their own choosing. In the spirit of self-determination and by this Act, the Legislature seeks counsel from the native Hawaiian people on the process of:

- (1) Holding a referendum to determine the will of the native Hawaiian people to call a democratically convened convention for the purpose

of achieving consensus on an organic document that will propose the means for native Hawaiians to operate under a government of their own choosing;

- (2) Providing for a mechanism to democratically convene a Hawaiian convention so that native Hawaiians may openly and freely discuss and decide the form and structure of that government; and
- (3) Describing the process for the conduct of fair, impartial, and valid elections including a referendum election.

SECTION 3. Definitions. As used in this chapter, unless the context otherwise requires:

“Commission” means the Hawaiian sovereignty advisory commission.

“Hawaiian” and “native Hawaiian” mean any descendent of the races inhabiting the Hawaiian islands prior to 1778.

“Hawaiian organization” means any organization in the State which serves and represents the interests of Hawaiians, has a membership consisting of at least a majority of Hawaiians, and has been organized for at least one year.

“Qualified voter” means any person qualified to vote pursuant to section 13D-3, Hawaii Revised Statutes.

“Special elections” means the Hawaiian convention referendum, the election of delegates, and the ratification election.

SECTION 4. Hawaiian sovereignty advisory commission. (a) There is established within the office of state planning for administrative purposes the Hawaiian sovereignty advisory commission, to advise the legislature in carrying out the purposes of this Act. The commission shall consist of nineteen members appointed by the governor without regard for section 78-4, Hawaii Revised Statutes. At least twelve of the nineteen members shall be appointed from nominations submitted by Hawaiian organizations. Among the twelve, the governor shall appoint one member so designated from each of the following organizations: the Office of Hawaiian Affairs; Ka Lahui Hawai‘i; the State Council of Hawaiian Homestead Association; and the Association of Hawaiian Civic Clubs. The commission shall consist of at least one member from each of the islands, or island groups of: Kauai or Niihau; Maui; Molokai or Lanai; Oahu; and Hawaii. Appointments shall be made before August 1, 1993, and shall not be subject to confirmation by the senate. Any appointment not made by that date shall be filled by the commission during its first meeting which shall be held before August 15, 1993. Any member planning to be a delegate to the Hawaiian convention shall be recused from any decision-making relating to the apportionment of districts and delegates. No member who participated in any decision-making relating to apportionment shall be eligible to serve as a delegate to the Hawaiian convention. The members shall elect a chairperson and vice-chairperson. Any vacancy on the commission shall be filled by the governor within fifteen days after being notified of a vacancy. Members shall serve without compensation but shall be reimbursed for expenses, including travel and subsistence expenses, necessary for the performance of their duties. Expenses shall be paid by the office of state planning.

(b) The commission shall advise the legislature on:

- (1) Conducting special elections related to this Act;
- (2) Apportioning voting districts;
- (3) Establishing the eligibility of convention delegates;
- (4) Conducting educational activities for Hawaiian voters, a voter registration drive, and research activities in preparation for the convention;
- (5) Establishing the size and composition of the convention delegation; and

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- (6) Establishing the dates for the special elections.
(c) The commission shall submit a report of findings and recommendations to the legislature not less than twenty days prior to the convening of the regular session of 1994.

SECTION 5. Task forces. (a) The governor shall convene an interagency task force, consisting of persons from such public agencies as may be necessary, to support the needs of the commission.

(b) The commission may establish a task force, otherwise known as a kupuna council, to provide advice and support as necessary to the commission. Members shall be appointed without regard for section 78-4, Hawaii Revised Statutes. Members of the kupuna council shall serve without compensation but shall be reimbursed for expenses, including travel and subsistence expenses, necessary for the performance of their duties.

SECTION 6. Ballot question. The legislature proposes the following ballot question:

"Shall a Hawaiian convention be convened to propose an organic document for the governance of a Hawaiian sovereign nation?"

The commission shall review and may suggest revisions to that question. Upon due consideration, the legislature shall determine the question to be submitted to qualified voters in the 1994 general election.

SECTION 7. Qualifications of voters and elections. The commission shall submit a plan to the 1994 legislature on the qualifications of voters and the conduct of special elections to implement the purposes of this Act, providing that the plan complies with the general election laws of the State.

SECTION 8. Hawaiian convention. The duly elected delegates to the convention shall convene in a manner and at a time recommended by the commission and enacted by the 1994 legislature.

SECTION 9. There are appropriated or authorized from the sources of funding indicated below the following sums, or so much thereof as may be necessary for fiscal year 1993-1994, for the purposes of this Act:

<u>FY 1993-1994</u>	
General Funds	\$210,000
Special Funds	\$210,000

The special funds authorized by this Act shall be derived solely from the revenues generated under the authority of section 5(f) of the Admission Act.

The sums appropriated or authorized shall be expended by the office of state planning the purposes of this Act.

The office of state planning may hire staff necessary to accomplish the purposes of this Act, including but not limited to a planning and policy analyst and a program assistant. Such persons shall be exempt from chapter 76 and 77.

SECTION 10. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions of 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 11. This Act shall take effect on July 1, 1993.

(Approved July 1, 1993.)

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S.B. NO. 1137

A Bill for an Act Relating to Tuition Waivers.

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

SECTION 1. Article XV, section 4, of the Hawaii Constitution designates the Hawaiian language as one of the two official languages of the State. Public recognition of the historical, cultural, and aesthetic value of the Hawaiian language implicit in that designation clearly justifies legislative efforts to preserve the language and promote its teaching and use.

The legislature finds that persons of Hawaiian ancestry are under-represented at the University of Hawaii when compared to their numbers in the total state population. While persons of Hawaiian ancestry comprise 23.2 per cent of the total state population, they represent less than 11.0 per cent of the student population of the University of Hawaii system.

The legislature further finds that there are few teachers of Hawaiian ancestry in the department of education relative to the number of Hawaiian students. Of the more than 10,557 teachers employed by the department of education, only 822 of those teachers are of Hawaiian ancestry. This represents 7.8 per cent of the instructional workforce while Hawaiian students make up more than 23.2 per cent of the student population.

In an effort to address the problems outlined above and to affirm its commitment to the Hawaiian people, the legislature wishes to assist persons of Hawaiian ancestry to pursue higher education, especially those who:

- (1) Enter the field of education to teach future generations;
- (2) Commit themselves to the study of the Hawaiian language;
- (3) Are financially needy persons of Hawaiian ancestry; or
- (4) Are persons of Hawaiian ancestry that participate in student recruitment and support programs at the University of Hawaii.

The purpose of this Act is to provide for tuition waivers for Hawaiians in the University of Hawaii system, with the purpose of encouraging Hawaiians to pursue a degree in education or to perpetuate the Hawaiian language by enrolling in the appropriate courses or program of study.

SECTION 2. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§304. Hawaiians; tuition waiver. (a) The University of Hawaii shall waive all tuition fees for two hundred fifty Hawaiian students in addition to the tuition waivers currently granted to Hawaiian students.

(b) The university shall give first priority when granting tuition waivers to Hawaiian students who are:

- (1) Enrolled in Hawaiian language courses or programs;
 - (2) Pursuing degrees in education;
 - (3) Financially needy; or
 - (4) Participating in student recruitment programs of the university.
- (c) As used in this section, unless the context otherwise requires:

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"Hawaiian" means any descendant of the aboriginal peoples inhabiting the Hawaiian Islands that:

- (1) Exercised sovereignty and subsisted in the Hawaiian Islands in 1778; and
- (2) Have continued to reside in Hawaii since 1778."

SECTION 3. Section 304-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The board may charge a resident tuition fee for regular courses of instruction at any University of Hawaii campus, including any community college; provided that the tuition fee for nonresident students, both undergraduate and graduate, shall be not less than two times the tuition fee for resident students, but in no event less than two times the undergraduate tuition fee for resident students at the Manoa Campus.

The board may also charge other fees for special programs of instruction, as well as laboratory fees or course fees or fees for student activities[.]. However, each [of which] fee shall be the same for resident and nonresident students. The board may charge other fees for summer session or evening courses, including differential fees for nonresident students.

The nonresident tuition differential shall not be applicable to:

- (1) East-West Center student grantees pursuing baccalaureate or advanced degrees[.];
- (2) United States military personnel stationed in Hawaii on active duty, and their authorized dependents during the period [such] that the personnel are stationed in the State[, nor to];
- (3) Hawaiians, as defined in section 304-, residing outside of Hawaii; [students]
- (4) Students from any Pacific island or Asian district, commonwealth, territory, or insular jurisdiction, state, or nation [which] that does not provide public institutions of higher learning[, nor to employees]; and
- (5) Employees of the university, their spouses, and dependents.

The board may waive entirely or reduce the tuition fee or any of the other fees for graduate teaching and research assistants. The board may enter into agreements with government and university officials of any other state or foreign country to provide for reciprocal waiver of the nonresident tuition differential. The board may waive the nonresident tuition differential for selected students from Pacific and Asian jurisdictions when their presence would be beneficial to the university or the State."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved July 1, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 361

S.B. NO. 1670

A Bill for an Act Relating to Literacy and Lifelong Learning Program.

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

SECTION 1. Chapter 312, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

"§312- Literacy and lifelong learning program. (a) In addition to its other duties, the board of education, through the state librarian, shall:

- (1) Provide for the establishment and ongoing operation of a literacy and lifelong learning program, including but not limited to the planning, programming, and budgeting of operating, research and development, and capital investment programs;
- (2) Coordinate and facilitate the activities of literacy service providers and literacy programs in the public, private, and volunteer sectors;
- (3) Serve as a clearinghouse for information relating to grants and other moneys available for literacy providers and programs, literacy services available in the State, the measurable results of various literacy programs, and statistics and demographics concerning those individuals receiving and in need of literacy services;
- (4) Develop public-private sector literacy partnerships with the assistance of the governor's council for literacy and lifelong learning; and
- (5) Act as the oversight state agency in the public-private partners for literacy trust fund for the purpose of section 312- (d).

(b) The objectives of the literacy and lifelong learning program shall be to provide programmatic activities that promote intergenerational learning and well-being by improving parents' skills and attitudes toward education; increasing children's learning skills; enhancing parenting skills; and uniting adults and children in positive educational experiences.

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

§312- Public-private partners for literacy trust fund. (a) There is established as a separate fund of the Hawaii Community Foundation, a Hawaii nonprofit corporation, by that certain instrument of gift dated May 2, 1991, a fund known as the public-private partners for literacy trust fund. Income and capital gains from the fund shall be used exclusively for family literacy programs, as defined in the instrument of gift. The fund shall consist of private contributions and the income and capital gains earned by the fund. The fund shall be subject to the following restrictions:

- (1) Only the income and capital gains earned by investment of the fund's moneys may be expended; and
- (2) Income and capital gains earned by investment of the fund's moneys may not be used during any period when the value of the fund is less than the aggregate principal sum contributed to the fund.

(b) The aggregate principal sum deposited in the fund and any income and capital gains earned by the fund but not used for family literacy programs shall be invested, in accordance with the provisions of the instrument of gift, 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.

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(c) If the fund is terminated or the Hawaii Community Foundation is dissolved, the principal amount of all contributions and any other amounts remaining in the fund shall be distributed in accordance with the provisions of the instrument of gift.

(d) The results of the annual audit of the Hawaii Community Foundation shall be submitted to the board of education, through the state librarian, not more than thirty days after the Hawaii Community Foundation receives the audit results. The Hawaii Community Foundation shall retain for a period of three years, and permit the department of education and the state librarian, or their duly authorized representatives, to inspect and have access to, all documents, papers, books, records, and other evidence that are pertinent to the fund.

(e) The purpose of this section is to create, by statute, a private charitable trust to ensure its perpetual existence. This is not a fund to be placed in the state treasury, and the State shall not administer the fund nor be liable for its operation or solvency. The fund shall be a private charitable trust to be administered by a private trust company as the trustee.

§312- Advisory council for literacy and lifelong learning. There is established within the office of the state librarian an advisory council to be known as the governor's council for literacy and lifelong learning. The council shall consist of eighteen members. All members shall be appointed by the governor in accordance with section 26-34. The composition of the council shall reflect the distribution of the State's population, with consideration being given to varied community needs and interests in literacy; provided that there shall be at least one member from each of the counties of the State. The council shall advise the board of education on matters relating to literacy and lifelong learning programs. The members of the council shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties."

SECTION 2. Section 581-5, Hawaii Revised Statutes, is repealed.

SECTION 3. All rights, powers, functions, and duties of the office of children and youth under chapter 581, Hawaii Revised Statutes, relating to literacy and lifelong learning programs, are transferred to the office of the state librarian.

All officers and employees 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 the state personnel laws and this Act.

No officer or employee of the State having tenure 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, 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 that officer or employee is transferred or appointed; and provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service 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 that such officer or employee possesses the minimum qualifications for the position to which that officer or employee is transferred or appointed.

If 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 or the governor.

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 office of children and youth relating to the functions transferred to the office of the state librarian shall be transferred with the functions to which they relate.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

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

(Approved July 1, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 362

S.B. NO. 1905

A Bill for an Act Relating to Vaccination and Immunization.

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

SECTION 1. The legislature finds that the effectiveness of childhood vaccinations in saving lives and preventing debilitating diseases has been well documented. Vaccination is among the most cost-effective components of preventive medical care, and for every dollar spent on childhood immunization, ten dollars are saved in later medical costs.

The purpose of this Act is to: (1) require the department of health to allow for the immunization and vaccination of additional persons, and expand the scope of the immunization and vaccination program to specifically include measles, mumps, rubella, haemophilus influenza (systemic), hepatitis B, influenza, and pneumococcal disease; (2) exempt certain immunizations from copayment provisions; and (3) define "prevailing medical standards" to clarify what childhood vaccinations are to be covered by insurance.

SECTION 2. Section 325-38, Hawaii Revised Statutes, is amended to read as follows:

"§325-38 Immunization of indigent [and], medically indigent[.], and other persons. (a) The department of health shall provide for the free immunization and vaccination [for the] of indigent and medically indigent persons and may provide such immunizations for others, especially children, of high risk and susceptibility as may be defined by the director through rules adopted pursuant to chapter 91, for their protection against the types of diseases [which] that, in the discretion of the director [of health], would be inimical to the health and lives of [those] persons who may contract [the] these diseases, including but not limited to [smallpox,] diphtheria, pertussis, tetanus, polio, typhoid, measles, mumps, rubella,

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haemophilus influenza (systemic), hepatitis B, influenza, and pneumococcal disease, and against [such] other diseases for which vaccines have and will have been developed in the future. [For the purpose of this section the term "indigent"]

(b) As used in this section:

"Indigent person" means a person without adequate and proper means of subsistence[, for the support of] to whom the department of human services is liable or responsible[. The term "medically indigent"] for support.

"Medically indigent person" means a person otherwise able to subsist [himself,] but who, in the emergency of sickness, is not able to care for the extra expenses necessary to maintain or restore health.

(c) The director, through rules adopted in accordance with chapter 91, may define terms necessary to carry out the purposes of this section."

SECTION 3. Section 431:10A-115.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) All health insurance policies issued in this State which provide coverage for the children of the insured shall provide coverage for child health supervision services from the moment of birth through age five years. These services shall be exempt from any deductible provisions, and immunizations shall be exempt from any copayment provisions, which may be in force in these policies or contracts.

(b) Child health supervision services shall include twelve visits at approximately the following intervals: birth; two months; four months; six months; nine months; twelve months; fifteen months; eighteen months; two years; three years; four years; and five years. Services to be covered at each visit shall include a history, physical examination, developmental assessment, anticipatory guidance, [and appropriate] immunizations, and laboratory tests, in keeping with prevailing medical standards. For purposes of this subsection, the term "prevailing medical standards" means the recommendations of the Immunizations Practices Advisory Committee of the U.S. Department of Health and Human Services and the American Academy of Pediatrics; provided that in the event that the recommendations of the committee and the academy differ, the department of health shall determine which recommendations shall apply."

SECTION 4. Section 431:10A-206.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) All health insurance policies issued in this State, which provide coverage for the children of the insured shall provide coverage for child health supervision services from the moment of birth through age five years. These services shall be exempt from any deductible provisions, and immunizations shall be exempt from any copayment provisions, which may be in force in these policies or contracts.

(b) Child health supervision services shall include twelve visits at approximately the following intervals: birth; two months; four months; six months; nine months; twelve months; fifteen months; eighteen months; two years; three years; four years; and five years. Services to be covered at each visit shall include a history, physical examination, developmental assessment, anticipatory guidance, [and appropriate] immunizations, and laboratory tests, in keeping with prevailing medical standards. For purposes of this subsection, the term "prevailing medical standards" means the recommendations of the Immunizations Practices Advisory Committee of the U.S. Department of Health and Human Services and the American Academy of Pediatrics; provided that in the event that the recommendations of

the committee and the academy differ, the department of health shall determine which recommendations shall apply.

SECTION 5. Section 432:1-602.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) All individual and group hospital and medical service corporation contracts which provide coverage for the children of the subscriber shall provide coverage for child health supervision services from the moment of birth through age five years. These services shall be exempt from any deductible provisions, and immunizations shall be exempt from any copayment provisions, which may be in force in these policies or contracts.

(b) Child health supervision services shall include twelve visits at approximately the following intervals: birth; two months; four months; six months; nine months; twelve months; fifteen months; eighteen months; two years; three years; four years; and five years. Services to be covered at each visit shall include a history, physical examination, developmental assessment, anticipatory guidance, [and appropriate] immunizations, and laboratory tests, in keeping with prevailing medical standards. For purposes of this subsection, the term "prevailing medical standards" means the recommendations of the Immunizations Practices Advisory Committee of the U.S. Department of Health and Human Services and the American Academy of Pediatrics; provided that in the event that the recommendations of the committee and the academy differ, the department of health shall determine which recommendations shall apply."

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

SECTION 7. This Act shall take effect on July 1, 1993.

(Approved July 1, 1993.)

Note

1. "Policies or" should be underscored.

ACT 363

H.B. NO. 1149

A Bill for an Act Relating to Workers' Compensation.

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

SECTION 1. The legislature finds that workers' compensation coverage and its related costs are of growing concern to Hawaii's small business community. While it is the policy of the legislature to ensure the broadest coverage possible, it is not proper to require or encourage double payments of premiums when double benefits are not provided. This situation may occur when the same individual is on the payroll and has ownership as an officer or director of more than one corporation.

The stated purpose of workers' compensation is to provide to injured employees certain medical, wage loss protection, and lump sum awards, presumably because they require financial and medical assistance they could not otherwise afford. However, the legislature finds that in the case of owners and officers or directors of corporations, some individuals have arranged for equal or better protection outside of the means available to them under workers' compensation, or they

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have in their opinion sufficient resources available to obviate the need for mandated coverage.

It is the purpose of this Act to effectuate these findings.

SECTION 2. Section 386-1, Hawaii Revised Statutes, is amended by amending the definition of "employment" to read:

"Employment" means any service performed by an individual for another person under any contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully entered into. It includes service of public officials, whether elected or under any appointment or contract of hire express or implied.

"Employment" does not include the following service:

- (1) Service for a religious, charitable, educational, or nonprofit organization if performed in a voluntary or unpaid capacity;
- (2) Service for a religious, charitable, educational, or nonprofit organization if performed by a recipient of aid therefrom and the service is incidental to or in return for the aid received;
- (3) Service for a school, college, university, college club, fraternity, or sorority if performed by a student who is enrolled and regularly attending classes and in return for board, lodging, or tuition furnished, in whole or in part;
- (4) Service performed by a duly ordained, commissioned, or licensed minister, priest, or rabbi of a church in the exercise of the minister's, priest's, or rabbi's ministry or by a member of a religious order in the exercise of nonsecular duties required by the order;
- (5) Service performed by an individual for another person solely for personal, family, or household purposes if the cash remuneration received is less than \$225 during the current calendar quarter and during each completed calendar quarter of the preceding twelve month period;
- (6) Domestic, which includes attendant care, and day care services authorized by the department of human services under the Social Security Act, as amended, performed by an individual in the employ of a recipient of social service payments;
- (7) Service performed without wages for a corporation without employees by a corporate officer in which the officer is at least a twenty-five per cent stockholder; and
- (8) Service performed by an individual for a corporation if the individual owns at least fifty per cent of the corporation; provided that no employer shall require an employee to incorporate as a condition of employment.

As used in this paragraph "religious, charitable, educational, or nonprofit organization" means a corporation, unincorporated association, community chest, fund, or foundation organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual."

SECTION 3. New statutory material is underscored.

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

(Approved July 8, 1993.)

ACT 364

H.B. NO. 2156

A Bill for an Act Relating to Education.

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

SECTION 1. The education of our children is one of the most important functions of our government and a foundation of our democracy. We must prepare our students for life in the twenty-first century—a century that will be rooted in the information age and its rapidly developing technologies. The key to our children's success in the next century is their becoming lifelong learners who know how to use these technologies effectively. To meet the needs of our children, schools must be reinvented to reflect current future-oriented educational strategies and incorporate modern learning technology.

Within the context of existing constitutionally-defined roles and statutory authority, and from a perspective of being outcome-oriented rather than process-oriented, it is the intent of this Act to set forth the legislature's vision and expectations for educational reform to be undertaken by the board of education, the department of education, and the schools.

School reform is difficult work, and requires that parents, community leaders, teachers, and school-level administrators share a common vision. Schools must be given the opportunity to plan innovative programs appropriate for their schools. Reform also requires statewide commitment to measurable improvement and a guarantee of quality facilities and services to provide the best possible learning environment for Hawaii's children.

The purpose of this Act is to put the needs of Hawaii's children first, and to facilitate positive change in the schools by removing obstacles to local funding and planning initiatives, encouraging greater community participation in schools, improving assessment and accountability at both the state and local level, and using creative methods to finance, plan, design, and construct quality school facilities and equipment for the education of Hawaii's children. The legislature hopes to accomplish these objectives by:

- (1) Providing budget and fiscal flexibility to empower schools to be innovative and creative;
- (2) Improving educational assessment and accountability programs;
- (3) Encouraging innovation, changing incentives, and stabilizing leadership during the transformation of the public schools; and
- (4) Reinventing and renewing our commitment to quality school facilities.

PART I. BUDGET AND FUNDING REFORM

SECTION 2. Chapter 37, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§37- Department of education; allotment and expenditure plan; updates. The department of education shall submit an annual allotment and expenditure plan to the governor for each fiscal year. The governor may require the department of education to submit an update of the expenditure plan based on changing economic conditions.

§37- Department of education; carryover of funds. (a) The department of education may retain up to five per cent of any appropriation at the close of a fiscal year and the funds retained shall not lapse until June 30 of the first fiscal year of the next fiscal biennium. The department of education shall submit:

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- (1) A report to the director of finance, by the close of the first fiscal year, identifying the total amount of funds that will carry over to the second fiscal year; and
 - (2) A copy of this report to the legislature, as well as a report identifying the carryover of funds on a school-by-school basis, at least twenty days prior to the convening of the next regular session of the legislature.
- (b) Any appropriation retained in accordance with this section may be used by the department of education to supplement the appropriation for any program for which the department of education is responsible; provided that the retention of an appropriation shall not be used as a basis for reducing the department's future budget requests unless the department requests such a reduction."

SECTION 3. Section 37-32, Hawaii Revised Statutes, is amended to read as follows:

"§37-32 Quarterly allotment periods. [No] Except as provided in section 37-, no officer, department or establishment shall expend or be allowed to expend during any fiscal year any sum for any purpose not specifically authorized by the legislature for expenditure during that particular fiscal year, and not made available pursuant to the allotment system provided for in sections 37-31 to 37-41. For the purposes of the allotment system, each fiscal year shall be divided into four quarterly allotment periods, beginning, respectively, on the first days of July, October, January, and April; provided that in any case where the quarterly allotment period is impracticable, the director of finance may prescribe a different period suited to the circumstances, not exceeding six months nor extending beyond the end of the fiscal year."

SECTION 4. Section 37-41, Hawaii Revised Statutes, is amended to read as follows:

"§37-41 Appropriations to revert to state treasury; exceptions. Unless otherwise provided by [law,] section 37- or any other law, every appropriation or part thereof of any kind made subject to sections 37-31 to 37-40, remaining unexpended and unencumbered at the close of any fiscal year shall lapse and be returned to the general fund in the manner prescribed in section 40-66."

SECTION 5. Section 37-71, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

- "(e) The proposed budget shall include [such other]:
- (1) A statement of the percentage differences between the current biennium recommendations and the previous biennium appropriations for education programs. The information shall be displayed by programs or groups of programs, with corresponding amounts and percentage differences. If any component of an education program is added or removed, the governor shall provide an estimate of how the addition or removal affects the current biennium recommendations;
 - (2) A statement of the difference between the total amount proposed for the current biennium and the total amount expended in the previous biennium for education programs per pupil; and
 - (3) Other financial statements, information, and data [which] that in the opinion of the governor are necessary or desirable in order to make

known in all practical detail the programs, program plans, and financial conditions of the State.

As used in this subsection, "education programs" include instructional, personnel, transportation, facilities, facilities repair and maintenance, and other programs deemed appropriate by the department of education."

SECTION 6. Act 295, Session Laws of Hawaii 1992, is amended by amending section 7 to read as follows:

"**SECTION 7. Review of existing statutes.** The auditor shall review chapter 37 in general and specifically with regard to exempting the department of education from sections 37-31 through 37-42 relating to the allotment system, and chapter 26 in general and specifically with regard to the operation and maintenance of public buildings, for the purposes of determining whether current laws support, enhance, or restrict the administration and implementation of education restructuring designed to promote and enhance decision-making at the school level.

The auditor shall submit a report to the legislature no later than twenty days prior to the convening of the 1993 regular session and make recommendations concerning the inclusion, deletion, or amendment of current laws. [Beginning July 1, 1993, provisions of chapters 26 and 37 which have an affect or impact on public schools that are not reenacted or amended during the 1993 regular session shall no longer apply to the department of education.]"

PART II. ASSESSMENT AND ACCOUNTABILITY

SECTION 7. Chapter 296, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . EDUCATIONAL ASSESSMENT AND ACCOUNTABILITY

§296- Findings and purpose. The legislature recognizes that while it bears the constitutional authority for raising revenues and allocating resources, the successful implementation of school improvement programs that bring about enhanced student outcomes requires that schools be provided greater flexibility in budgeting, expenditure control, and determination of educational needs at the school level. The legislature also recognizes that providing increased flexibility requires increased accountability. Therefore, the purpose of this part is to provide greater fiscal autonomy in exchange for enhanced assessment and reporting of educational outcomes by the board of education and individual schools.

The legislature believes that achieving enhanced assessment and greater accountability requires the board of education and the legislature to work together as partners, over time, to change the fundamental assumptions that govern the current school system. The legislature intends that there be a transition period, wherein the board and the superintendent begin to implement the provisions of this part, within the constraints of the department's budget. While improved assessment and accountability will not be achieved overnight, the reporting requirements outlined in this part should give schools and communities the information they need to begin structuring programs tailored to improving student outcomes at the school level.

§296- Educational assessment and accountability; annual reports. The board of education shall submit to the legislature and to the governor, at least twenty days prior to the convening of each regular legislative session, an educational status report which shall include, but not be limited to, the following:

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

SECTION 8. Chapter 296C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§296C- Student assessment waiver. Any school electing to participate in school/community-based management may develop and implement its own student assessment mechanisms; provided that the board of education shall include the results of the assessments in the educational status report to the legislature and the governor required in section 296- ."

SECTION 9. Section 296-11, Hawaii Revised Statutes, is amended to read as follows:

"§296-11 Duties of superintendent. (a) Under policies established by the board of education, the superintendent of education shall administer programs of education and public instruction throughout the State, including education at the preschool, primary, and secondary school levels, health education and instruction, and such other programs as may be established by law.

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

[The superintendent shall annually report to the governor on:

- (1) The number and percentage of students in public schools who, based on the statewide testing program, are scoring in each of the lowest three stanines in basic skills. Such a breakdown shall include statewide, districtwide, and individual school totals, and the number and percentage of students according to grade levels; and
- (2) The actions being taken by the department to improve these students' achievement levels; and
- (3) The progress of the students in the lowest three stanines to ascertain if these students are improving on a yearly basis; and
- (4) An analysis of the effectiveness of actions implemented to address the needs of these students.

The report shall be submitted to the legislature twenty days prior to the convening of each regular session and made available to the general public.]"

PART III. INNOVATION, INCENTIVES, AND LEADERSHIP

SECTION 10. The legislature finds that while a great deal of time, energy, and money have been invested in improving schools, there is often a gap between program intent and measurable results. To be effective, school improvement programs must be integrated with student achievement from the outset, and continually evaluated to ensure their effectiveness in improving student outcomes. Further, the school budget process should be explicitly linked to outcomes, with funding directed at those programs that are proven effective in increasing student achievement.

The purpose of these sections is to empower schools by providing them with the tools they need to institute creative and innovative school programs, identify current successful programs, stabilize school leadership, and re-direct funding towards those areas proven effective in improving student achievement.

SECTION 11. Chapter 89, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§89- Collective bargaining and local school initiatives. (a) Notwithstanding any other law to the contrary, any collective bargaining agreement concerning public school employees may include terms that would allow an employee to work a longer period each day and a longer school year. Consideration of a longer school day or longer school year shall be related to state and local school initiatives and may be included in proposals submitted in connection with the incentive and innovation grant review process.

(b) Upon mutual agreement between the board of education and the affected exclusive representative, the department of education may develop a proposal and request funding for performance-based, retention, and differentiated pay adjustments. The department shall submit its proposal for pay adjustments to the legislature for review and consideration in its operating budget or in a separate appropriation.

The adjustments proposed by the parties shall recognize the efforts of and encourage public school employees to:

- (1) Adopt a student-centered approach in all aspects of public school education;
- (2) Demonstrate improvement in the performance of students and the school;
- (3) Provide continuous commitment, involvement, and leadership in educational initiatives; and
- (4) Achieve other educational outcomes as agreed to by the parties.

(c) Pay adjustments may be considered for groups of employees who are recognized for their collective efforts in one or more of the four areas outlined in subsection (b), as well as for individuals.

§89- School/community-based management waiver. A school participating in the school/community-based management program shall have the authority to initiate a waiver from policies, rules, or procedures, including collective bargaining agreements, as provided for in section 296C-4.”

SECTION 12. Chapter 296, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

“§296-2 Department of education; board of education; superintendent of education. (a) There shall be a principal executive department to be known as

the department of education which shall be headed by an elected executive board to be known as the board of education. The board shall have power in accordance with law to formulate policy and to exercise control over the public school system through its executive officer, the superintendent of education.

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

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

SECTION 13. Chapter 296, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

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

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

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

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

§296- Authority to create temporary positions. The department of education may create temporary positions as it deems necessary, provided that:

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

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

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

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

- (1) Parents;
- (2) Students;
- (3) Teachers;
- (4) School administrators;

- (5) School support staff;
- (6) Business persons; and
- (7) The military.

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

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

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

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

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

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

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

(h) The superintendent shall submit a report to the legislature on the operations of the review panel at least twenty days before the convening of the regular session, beginning in 1995."

SECTION 14. The legislative auditor shall review the operations of the incentive and innovation grant review panel established by the board of education pursuant to section 296-. The auditor shall submit a report to the legislature with its findings and recommendations no later than twenty days prior to the convening of the 1995 regular session.

SECTION 15. Review of classification and compensation for public school employees. The legislature believes that in keeping with the spirit of innovation in the public schools, it is fitting to consider the restructuring of compensation for public school employees. To fully implement the reforms necessary to bring our schools into the twenty-first century, the current system of rewards and incentives for teachers, administrators, and other school personnel must be altered to fit a new way of thinking. If the compensation system for public school employees continues to reward old habits and old ways of thinking, there will be no incentive for employees to embrace the new system, and consequently there will be no change.

In addition, the legislature believes that in putting children first, it is essential to attract and retain the "best and the brightest" individuals to the teaching profession. And the best teachers should be encouraged to remain in the classroom, close to the children. The legislature intends to restructure the current system,

which rewards teachers for moving farther and farther away from the classroom, with a system where rewards are firmly rooted in the needs of the children.

To remove barriers that contribute to system gridlock, the legislature is providing all parties involved in public school collective bargaining agreements with a window in which to consider negotiating teacher salary and classification. The board of education, the department of education, and public school employee unions shall negotiate for salary and classification in preparation for the 1995-1997 collective bargaining agreement.

SECTION 16. Section 89-9, Hawaii Revised Statutes, is amended to read as follows:

1. By amending subsection (a) to read:

“(a) The employer and the exclusive representative shall meet at reasonable times, including meetings in advance of the employer’s budget-making process, and shall negotiate in good faith with respect to wages, hours, the number of incremental and longevity steps and movement between steps within the salary range, salary ranges and applicable requirements as provided in sections 297-32 and 297-33, classification as provided in section 297-31.1, the amounts of contributions by the State and respective counties to the Hawaii public employees health fund to the extent allowed in subsection (e), and other terms and conditions of employment which are subject to negotiations under this chapter and which are to be embodied in a written agreement, or any question arising thereunder, but such obligation does not compel either party to agree to a proposal or make a concession.”

2. By amending subsection (d) to read:

“(d) Excluded from the subjects of negotiations are matters of classification and reclassification, except teacher classification as provided in section 297-31.1, benefits of but not contributions to the Hawaii public employees health fund, retirement benefits, and the salary ranges now provided by law[;], except those salary ranges and applicable requirements provided in sections 297-32 and 297-33; provided that the number of incremental and longevity steps, the amount of wages to be paid in each range and step, and movement between steps within the salary range shall be negotiable. The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with merit principles or the principle of equal pay for equal work pursuant to sections 76-1, 76-2, 77-31, and 77-33, or which would interfere with the rights of a public employer to (1) direct employees; (2) determine qualification, standards for work, the nature and contents of examinations, hire, promote, transfer, assign, and retain employees in positions and suspend, demote, discharge, or take other disciplinary action against employees for proper cause; (3) relieve an employee from duties because of lack of work or other legitimate reason; (4) maintain efficiency of government operations; (5) determine methods, means, and personnel by which the employer’s operations are to be conducted; and take such actions as may be necessary to carry out the missions of the employer in cases of emergencies; provided that the employer and the exclusive representative may negotiate procedures governing the promotion and transfer of employees to positions within a bargaining unit, procedures governing the suspension, demotion, discharge or other disciplinary actions taken against employees, and procedures governing the lay off of employees; provided further that violations of the procedures so negotiated may be the subject of a grievance process agreed to by the employer and the exclusive representative.”

SECTION 17. Section 16 shall be repealed on June 30, 1995, and section 89-9, subsections (a) and (d), Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the approval of this Act.

SECTION 18. Educational officer classification/ compensation; review of statutes. The legislative auditor shall review Chapter 297, Part III, Salaries and Classification, with particular emphasis on the role of the educational officers classification/compensation appeals board. The auditor shall submit a report to the legislature no later than twenty days prior to the convening of the 1994 regular session with recommendations on the inclusion, deletion, or amendment of current law. Beginning July 1, 1995, sections 297-31.2 through 297-31.5 shall be repealed unless reenacted or amended during the 1994 or 1995 regular session.

SECTION 19. Section 296-2, Hawaii Revised Statutes, is repealed.

PART IV. FACILITIES

SECTION 20. The legislature finds that a critical factor in educational reform is the improvement of the physical environment in our public schools. Our educational facilities not only need to be expanded and maintained, but also equipped with technology that will assist in the transformation of our educational system from the industrial-based school model to the modern information-age model. In order to achieve this transition, our students need access within our educational facilities to the latest technologies developed for modern schools. The legislature further finds that this large-scale construction and renovation of our public school facilities is necessary to enable our students to compete as we approach the twenty-first century.

The purpose of these sections is to confirm the legislature's commitment to funding school facilities by making the state educational facilities improvement special fund permanent, and providing for the authorization of general obligation bonds into the fund. In addition, these sections explore innovative financing mechanisms for the improvement of public educational facilities and the provision of modern learning technology and equipment. These mechanisms may provide for a long-range construction and improvement plan and spread the cost of educational facilities over time to assure that sufficient revenues are available to complete the plan. Finally, these sections provide for improving facilities on a day-to-day basis, in the classroom, by allowing school/community-based management schools to implement innovative programs for classroom cleaning.

SECTION 21. Chapter 89, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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

SECTION 22. Chapter 296C, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§296C- Classroom cleaning; findings and purpose. The legislature finds that the physical environment within the classroom is an important factor in student learning and achievement. The legislature has been made aware of ongoing problems related to classroom cleaning, and further finds that this is a health and

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safety issue, as well as an educational issue, that can no longer be tolerated. The purpose of this section is to put the needs of the students first, by allowing schools to develop innovative mechanisms to ensure that students and teachers have clean classrooms.

§296C- Classroom cleaning project; established. (a) There is established a classroom cleaning project in schools designated to participate in school/community-based management. Each SCBM school, through its council, may develop mechanisms to provide for classroom cleaning, including, but not limited to, having parent, student, or other community groups clean the classrooms on a regular, continuing basis.

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

(c) The department shall submit a report to the legislature on the program at least twenty days prior to the convening of the 1995 regular session."

SECTION 23. Chapter 296, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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

SECTION 24. Section 36-32, Hawaii Revised Statutes, is amended to read as follows:

"[§36-32] State educational facilities improvement special fund. (a) 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. In addition, activities of the department of education intended to eliminate the gap between the facility needs of schools and available resources shall be eligible for funding from the special fund. Expenditures 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, and 37-33 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.]

(b) The department of accounting and general services shall submit an annual report to the legislature, which shall include a financial statement of the special fund and the status of projects undertaken pursuant to this section, no later than twenty days prior to the convening of each regular session."

SECTION 25. 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 1991 and 1993 through 1995,] the sum [of \$90,000,000] from all general excise tax revenues realized by the State that represents the difference between \$90,000,000 and the proceeds from the sale of any general obligation bonds authorized for that fiscal year for the purposes of the state educational facilities improvement special fund 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 a sum, not to exceed \$5,000,000, 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 compound interest bond reserve 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 26. The superintendent of education shall prepare a facilities improvement master plan outlining the specific actions, including a timetable and desired funding, that the department of education shall take to close the gap between the current need for facilities construction and improvement, as identified by the department of education, and the current funding available for that purpose. The plan shall link the planned department actions to the funding anticipated from the state educational facilities improvement special fund.

The plan shall include, but not be limited to:

- (1) Actions that will add to present funding for facilities, including earmarking tax increases for education, reviewing current impact fee guidelines, and making more efficient use of capital improvement projects funding;
- (2) Actions that will reduce capital improvement project design and construction costs, including using standardized design, constructing less than fifty-year life buildings, reviewing use of air-conditioning, utilizing turn-key contracts, issuing design-construct bids, and sharing infrastructure costs with counties;
- (3) Proposals to revise program guidelines, including reducing class size, changing existing space requirements, double-shifting kindergarten classes, building larger schools, and reviewing supplementary pull-out programs;
- (4) Proposals to maximize the use of existing facilities, including promoting multi-track, year-round schools, promoting a longer school day, redistricting students outside their normal school area, taking administrative functions out of classroom space, and using other non-school space within the community; and
- (5) Consideration of the capacity of the construction industry in Hawaii to carry out proposed projects.

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The superintendent of education shall submit an interim plan with its findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of 1994.

SECTION 27. The director of finance is authorized to issue general obligation bonds in the sum of \$90,000,000 in fiscal year 1993-1994 and \$90,000,000 in fiscal year 1994-1995, or so much thereof as may be necessary, and the same sum is appropriated for deposit into the state educational facilities improvement special fund for each of those fiscal years; provided that the department of education shall not be required to assume the payment of the debt service associated with the general obligation bonds authorized under this section.

SECTION 28. There is appropriated out of the general revenues of the State of Hawaii the sum of \$488,000, or so much thereof as may be necessary for fiscal year 1993-1994, and the sum of \$148,000, or so much thereof as may be necessary for fiscal year 1994-1995, to implement the performance-based, retention, and differentiated pay adjustments for qualifying school principals. The sum appropriated shall be expended by the department of education in accordance with the provisions of section 11 of this Act concerning performance-based, retention, and differentiated pay adjustments.

SECTION 29. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 30. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 31. This Act shall take effect upon its approval; provided that sections 27 and 28 shall take effect on July 1, 1993; and provided further that the provisions of section 11 concerning pay adjustments and the provisions of section 13 concerning reallocation of vacant positions shall be repealed on June 30, 1995.

(Approved July 8, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

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S.B. NO. 1148

A Bill for an Act Relating to Health Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to Article 10A to be appropriately designated and to read as follows:

“§431:10A- Contraceptive services; options. (a) Notwithstanding any provision of law to the contrary, each employer group health policy, contract, plan, or agreement issued or renewed in this State on or after January 1, 1994, that provides for payment of or reimbursement for pregnancy-related services, shall provide as an employer option, contraceptive services for the subscriber or any dependent of the subscriber who is covered by the policy.

(b) Any policies, contracts, plans, or agreements under subsection (a) above, that provide prescription drug coverage, shall not exclude any FDA-approved prescriptive contraceptive drug or device, or impose any unusual co-payment, charge, or waiting requirement for such drug or device.

(c) For the purpose of this section, "contraceptive services" means physician-delivered, physician-supervised, physician assistant-delivered, certified nurse midwife-delivered, or nurse-delivered medical services intended to promote the effective use of prescription contraceptive supplies or devices to prevent unwanted pregnancy.

(d) Nothing in this section shall be construed to extend the practice or privileges of any health care provider beyond that provided in the laws governing the provider's practice and privileges."

SECTION 2. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§432- Contraceptive services; options. (a) Notwithstanding any provision of law to the contrary, each employer group health policy, contract, plan, or agreement issued or renewed in this State on or after January 1, 1994, that provides for payment of or reimbursement for pregnancy-related services, shall provide as an employer option, contraceptive services and contraceptive prescription drug coverage for the subscriber or any dependent of the subscriber who is covered by the policy.

(b) Any policies, contracts, plans, or agreements under subsection (a) above, that provide prescription drug coverage, shall not exclude any FDA-approved prescriptive contraceptive drug or device, or impose any unusual co-payment, charge, or waiting requirement for such drug or device.

(c) For the purpose of this section, "contraceptive services" means physician-delivered, physician-supervised, physician assistant-delivered, certified nurse midwife-delivered, or nurse-delivered medical services intended to promote the effective use of prescription contraceptive supplies or devices to prevent unwanted pregnancy.

(d) Nothing in this section shall be construed to extend the practice or privileges of any health care provider beyond that provided in the laws governing the provider's practice and privileges."

SECTION 3. New statutory material is underscored.¹

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

(Approved July 8, 1993.)

Note

1. Edited pursuant to HRS §23G-16.5.

**COMMITTEE REPORTS
ON MEASURES ENACTED**

**TABLES SHOWING EFFECT
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**Seventeenth State Legislature
1993 Regular Session**

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